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Contents

Federal Register

Vol. 68, No. 64

Thursday, April 3, 2003

Actuaries, Joint Board for Enrollment

See Joint Board for Enrollment of Actuaries

Agency for Toxic Substances and Disease Registry

NOTICES

Grants and cooperative agreements; availability, etc.:
Public Health Conference Support Program, 16287

Agriculture Department

See Commodity Credit Corporation

See Farm Service Agency

See Forest Service

See Natural Resources Conservation Service

RULES

Rural empowerment zones and enterprise communities,
16169–16170

Army Department

NOTICES

Reports and guidance documents; availability, etc.:
Historic properties protection—
Capehart and Wherry Era Army Family Housing, etc.
(1949-1962), 16266–16267

Broadcasting Board of Governors

NOTICES

Meetings; Sunshine Act, 16260

Centers for Disease Control and Prevention

NOTICES

Agency information collection activities; proposals,
submissions, and approvals, 16284–16287
Grants and cooperative agreements; availability, etc.:
Public Health Conference Support Program, 16287
Public Health Laboratory Biomonitoring Implementation
Program, 16287–16292

Chemical Safety and Hazard Investigation Board

NOTICES

Meetings; Sunshine Act, 16260–16262

Coast Guard

NOTICES

Meetings:
Great Lakes Pilotage Advisory Committee, 16299

Commerce Department

See Industry and Security Bureau

See National Oceanic and Atmospheric Administration

Commodity Credit Corporation

RULES

Loan and purchase programs:
Acreage reporting and common provisions, 16170–16185

NOTICES

Grants and cooperative agreements; availability, etc.:
Farmland Protection Program, 16253–16258

Community Development Financial Institutions Fund

NOTICES

Agency information collection activities; proposals,
submissions, and approvals, 16347–16349

Defense Department

See Army Department

PROPOSED RULES

Civilian health and medical program of uniformed services
(CHAMPUS):
TRICARE program—
Anesthesiologist's assistants inclusion as authorized
providers and cardiac rehabilitation in freestanding
cardiac rehabilitation facilities coverage, 16247–
16249

Federal Acquisition Regulation (FAR):

Central contractor registration, 16365–16371

Privacy Act; implementation, 16249–16250

NOTICES

Environmental statements; availability, etc.:
Air Force Memorial, Arlington, VA, 16264
Privacy Act:
Systems of records, 16264–16266

Education Department

NOTICES

Grants and cooperative agreements; availability, etc.:
Educational research and improvement—
Charter School Facilities Credit Enhancement Program,
16267–16270
Leveraging Educational Assistance Partnership and
Special Leveraging Educational Assistance
Partnership Programs, 16270–16271
Special education and rehabilitative services—
Small Business Innovation Research Program, 16271–
16274

Employee Benefits Security Administration

RULES

Organization, functions, and authority delegations:
Pension and Welfare Benefits Administration; agency
name change to Employee Benefits Security
Administration, 16398–16401

Energy Department

See Federal Energy Regulatory Commission

Environmental Protection Agency

NOTICES

Agency information collection activities; proposals,
submissions, and approvals, 16282–16283

Executive Office of the President

See Presidential Documents

Farm Service Agency

RULES

Farm marketing quotas, acreage allotments, and production
adjustments:
Acreage reporting and common provisions, 16170–16185

Federal Aviation Administration

RULES

Airworthiness directives:
Air Tractor, Inc., 16198–16200
Boeing, 16200–16203
British Aerospace, 16195–16197

Raytheon, 16203–16207
 Stemme GmbH & Co. KG, 16190–16192
 Twin Commander Aircraft Corp., 16192–16195
 Class E airspace, 16207–16208
 Class E airspace; correction, 16351

PROPOSED RULES**Aircraft:**

New aircraft; standard airworthiness certification, 16217–16220

Airworthiness directives:

Airbus, 16225–16227
 Iniziative Industriali Italiane S.p.A., 16220–16225

Class E2 airspace, 16229–16230

Class E5 airspace, 16230–16231

Class E airspace, 16227–16229

NOTICES**Advisory circulars; availability, etc.:**

Air carrier maintenance programs, 16339–16340

Transport category airplanes—

Seat restraint systems and occupant protection; dynamic evaluation, 16340

Air traffic operating and flight rules, etc.:

Oceanic airspace designation, 16340–16342

Grants and cooperative agreements; availability, etc.:

Airport Improvement Program, 16342

Passenger facility charges; applications, etc.:

William R. Fairchild International Airport, WA, 16342–16343

Federal Communications Commission**PROPOSED RULES****Common carrier services:**

Telephone Consumer Protection Act; implementation—
 Do-Not-Call Implementation Act, 16250–16252

Federal Election Commission**NOTICES**

Meetings; Sunshine Act, 16283

Federal Emergency Management Agency**NOTICES****Disaster and emergency areas:**

Connecticut, 16299

District of Columbia, 16300

Guam, 16300

Maryland, 16300–16301

Micronesia, 16301

New Hampshire, 16301–16302

New York, 16302

Northern Mariana Islands, 16302–16303

Ohio, 16303

Meetings:

National Fire Academy Board of Visitors, 16303

Federal Energy Regulatory Commission**NOTICES****Electric rate and corporate regulation filings:**

Virginia Electric & Power Co. et al., 16276–16278

Environmental statements; availability, etc.:

Alabama Power Co., 16278–16279

ANR Pipeline Co., 16279–16280

Hackberry LNG Terminal, L.L.C., 16280–16281

Hydroelectric applications, 16281**Practice and procedure:**

Off-the-record communications, 16281–16282

Applications, hearings, determinations, etc.:

Atmos Energy Corp., 16274

Boundary Gas, Inc., 16274–16275

Calpine Energy Services, L.P., 16275
 Enbridge Pipelines (Louisiana Intrastate) LLC, 16275
 Equitrans, L.P., 16275–16276
 Texas Eastern Transmission, LP, 16276
 Wisconsin Public Service Corp., 16276

Federal Reserve System**RULES****Truth in lending (Regulation Z):**

Official staff commentary; amendments, 16185–16190

NOTICES**Banks and bank holding companies:**

Change in bank control, 16283

Formations, acquisitions, and mergers, 16284

Federal Trade Commission**PROPOSED RULES****Appliances, consumer; energy consumption and water use information in labeling and advertising:**

Comparability ranges—

Clothes washers, 16231–16237

Telemarketing sales rule:

National do-not-call registry; user fees, 16238–16247

Federal Transit Administration**NOTICES****Environmental statements; notice of intent:**

New York City, NY; Fulton Street Transit Center, 16343–16346

Fish and Wildlife Service**NOTICES****Agency information collection activities; proposals, submissions, and approvals, 16304–16305****Endangered and threatened species:**

Recovery plans—

Southern sea otter, 16305–16306

Food and Drug Administration**NOTICES****Meetings:**

Pharmaceutical Science Advisory Committee, 16292

Reports and guidance documents; availability, etc.:

Nasal aerosols and nasal sprays; bioavailability and bioequivalence studies, 16292–16293

Forest Service**NOTICES****Meetings:**

Willamette Provincial Advisory Committee, 16258

General Services Administration**PROPOSED RULES****Federal Acquisition Regulation (FAR):**

Central contractor registration, 16365–16371

NOTICES**Federal travel:**

eTravel initiative; correction, 16351

Health and Human Services Department

See Agency for Toxic Substances and Disease Registry

See Centers for Disease Control and Prevention

See Food and Drug Administration

See Health Resources and Services Administration

See National Institutes of Health

Health Resources and Services Administration**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 16293–16294

Meetings:

Migrant Health National Advisory Council, 16294

Homeland Security Department

See Coast Guard

See Federal Emergency Management Agency

Housing and Urban Development Department**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 16303–16304

Industry and Security Bureau**RULES**

Export administration regulations:

Explosives detection equipment and related software and technology, exports and reexports; foreign policy controls imposition and expansion, 16208–16214

NOTICES

Meetings:

Information Systems Technical Advisory Committee, 16262

Inter-American Foundation**NOTICES**

Meetings; Sunshine Act, 16304

Interior Department

See Fish and Wildlife Service

See Land Management Bureau

See Reclamation Bureau

RULES

Native American Graves Protection and Repatriation Act; implementation:

Civil penalties on museums that fail to comply with Act, 16353–16364

Internal Revenue Service**RULES**

Procedure and administration:

Damages caused by unlawful tax collection actions; civil cause of action
Correction, 16351

Joint Board for Enrollment of Actuaries**NOTICES**

Meetings:

Actuarial Examinations Advisory Committee, 16253

Justice Department

See Justice Programs Office

Justice Programs Office**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 16308

Labor Department

See Employee Benefits Security Administration

See Mine Safety and Health Administration

See Occupational Safety and Health Administration

RULES

Organization, functions, and authority delegations:

Pension and Welfare Benefits Administration; agency name change to Employee Benefits Security Administration, 16397–16399

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 16308–16311

Land Management Bureau**NOTICES**

Environmental statements; notice of intent:

Fayette County, AL, et al.; oil and gas exploration and development, 16306–16307

Resource management plans, etc.:

Malheur and Jordan Resource Areas, OR, 16307–16308

Mine Safety and Health Administration**NOTICES**

Safety standard petitions:

Dakota Westmoreland Corp.; correction, 16311

HB Coal Co., Inc., et al., 16311

National Aeronautics and Space Administration**PROPOSED RULES**

Federal Acquisition Regulation (FAR):

Central contractor registration, 16365–16371

National Highway Traffic Safety Administration**NOTICES**

Motor vehicle safety standards:

Nonconforming vehicles—

Importation eligibility; determinations, 16346–16347

National Institutes of Health**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 16294–16295

Meetings:

Interagency Autism Coordinating Committee, 16295–16296

National Eye Institute, 16296

National Institute of Allergy and Infectious Diseases, 16297–16298

National Institute of Dental and Craniofacial Research, 16296

National Institute of Environmental Health Sciences, 16297

National Institute of Neurological Disorders and Stroke, 16296–16297

National Library of Medicine, 16298–16299

National Oceanic and Atmospheric Administration**RULES**

Fishery conservation and management:

Atlantic highly migratory species—

Swordfish, 16216

NOTICES

Marine mammals:

Incidental taking; authorization letters, etc.—

Minerals Management Service; seismic surveys in Gulf of Mexico; sperm whales, etc., 16262–16263

Permits:

Endangered and threatened species, 16263–16264

Natural Resources Conservation Service**NOTICES**

Environmental statements; availability, etc.:

Lingle-Ft. Laramie Water Quality Project, WY, 16258–16260

Grants and cooperative agreements; availability, etc.:

Farmland Protection Program, 16253–16258

Nuclear Regulatory Commission**PROPOSED RULES**

Fee schedules revision; 94% fee recovery (2003 FY),
16373–16395

NOTICES

Operating licenses, amendments; no significant hazards,
considerations; biweekly notices; correction, 16313

Applications, hearings, determinations, etc.:

PSEG Nuclear, LLC, 16312–16313

Occupational Safety and Health Administration**NOTICES**

Nationally recognized testing laboratories, etc.:

NSF International, 16311–16312

Presidential Documents**ADMINISTRATIVE ORDERS**

East Timor; security assistance, certification and report
(Presidential Determination No. 2003-19), 16167

Iraq; authorization for assistance (Presidential
Determination No. 2003-18), 16165

Reclamation Bureau**RULES**

Public conduct on Reclamation lands and projects, 16214–
16215

Securities and Exchange Commission**NOTICES**

Agency information collection activities; proposals,
submissions, and approvals, 16313–16314

Intermarket Trading System; plan amendments, 16319–
16320

Investment Company Act of 1940:

Deregistration applications—

John Hancock Cash Reserve, Inc., et al., 16320–16321

Exemption applications—

FSA Capital Management Services LLC, 16321–16323

Self-regulatory organizations; proposed rule changes:

National Association of Securities Dealers, Inc., 16323–
16334

New York Stock Exchange, Inc., 16334–16337

Options Clearing Corp., 16337

Applications, hearings, determinations, etc.:

Landesbank Baden-Wuerttemberg, 16314

Public utility holding company filings, 16314–16319

State Department**NOTICES**

Grants and cooperative agreements; availability, etc.:

Tunisia; Educational Partnerships Program, 16337–16339

Toxic Substances and Disease Registry Agency

See Agency for Toxic Substances and Disease Registry

Transportation Department

See Federal Aviation Administration

See Federal Transit Administration

See National Highway Traffic Safety Administration

RULES

Organization, functions, and authority delegations:

Administrator, Maritime Administration, 16215–16216

Treasury Department

See Community Development Financial Institutions Fund

See Internal Revenue Service

Veterans Affairs Department**NOTICES**

Agency information collection activities; proposals,
submissions, and approvals, 16349

Meetings:

Cemeteries and Memorials Advisory Committee, 16349

Special Medical Advisory Group, 16349–16350

Separate Parts In This Issue**Part II**

Interior Department, 16353–16364

Part III

Defense Department; General Services Administration;
National Aeronautics and Space Administration,
16365–16371

Part IV

Nuclear Regulatory Commission, 16373–16395

Part V

Labor Department, 16397–16399

Part V

Labor Department, Employee Benefits Security
Administration, 16398–16401

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR**Administrative Orders:**

Presidential	
Determinations:	
No. 2003-18 of March	
24, 2003	16165
No. 2003-19 of March	
28, 2003	16167

5 CFR

5201	16398
------	-------

7 CFR

25	16169
718	16170
723	16170
1412	16170
1413	16170

10 CFR**Proposed Rules:**

170	16374
171	16374

12 CFR

226	16185
-----	-------

14 CFR

39 (7 documents)	16190,
16192, 16195, 16198, 16200,	
16203, 16205	
71 (2 documents)	16207,
16351	

Proposed Rules:

21	16217
39 (3 documents)	16220,
16222, 16225	
71 (3 documents)	16227,
16229, 16230	

15 CFR

740	16208
742	16208
762	16208
774	16208

16 CFR**Proposed Rules:**

305	16231
310	16238

26 CFR

301	16351
-----	-------

29 CFR

70	16398
71	16398
2509	16399
2510	16399
2520	16399
2550	16399
2560	16399
2570	16399
2575	16399
2582	16399
2584	16399
2589	16399
2590	16399

32 CFR**Proposed Rules:**

199	16247
312	16249

43 CFR

10	16354
423	16214

47 CFR**Proposed Rules:**

64	16250
----	-------

48 CFR**Proposed Rules:**

2	16366
4	16366
13	16366
32	16366
52	16366

49 CFR

1	16215
---	-------

50 CFR

635	16216
-----	-------

Title 3—

Presidential Determination No. 2003–18 of March 24, 2003

The President

Assistance for Iraq

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 507 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2003, Division E of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7), I hereby determine that the provision of assistance or other financing for Iraq is important to the national security interests of the United States. I hereby authorize the furnishing of this assistance or other financing.

You are hereby authorized and direct to transmit this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, March 24, 2003.

Presidential Documents

Presidential Determination No. 2003-19 of March 28, 2003

Security Assistance to East Timor: Certification and Report Pursuant to Section 637(a)(2) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107-228)

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Constitution and laws of the United States, including section 637(b)(2) of the Foreign Relations Authorization Act, Fiscal Year 2003, I hereby certify that East Timor has established an independent armed forces; and that the provision to East Timor of military assistance in the form of excess defense articles and international military education and training is in the national security interests of the United States, and will promote both human rights in East Timor and the professionalization of the armed forces of East Timor.

You are hereby authorized and directed to report this certification, accompanying memorandum of justification, and report on East Timor security assistance to the Congress, and to arrange for the publication of this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, March 28, 2003.

Rules and Regulations

Federal Register

Vol. 68, No. 64

Thursday, April 3, 2003

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

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 25

Rural Empowerment Zones and Enterprise Communities

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The Secretary of the U.S. Department of Agriculture acting through the Under Secretary, Rural Development, revises the regulations for the rural empowerment zone program to amend the definition of designation date to include the designation date for two rural empowerment zones authorized by the Community Renewal Tax Relief Act of 2000 (Round III).

EFFECTIVE DATE: April 3, 2003.

FOR FURTHER INFORMATION CONTACT: Deputy Administrator for Community Development, USDA Rural Development, Office of Community Development, STOP 3203, 1400 Independence Ave., SW., Washington, DC 20024-3203, telephone 1-800-645-4712, or by sending an Internet e-mail message to "feedback@ocdx.usda.gov". For hearing- and speech-impaired persons, information concerning this program may be obtained by contacting USDA's Target Center at (202) 720-2600 (Voice and TDD).

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be non-significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Programs Affected

The Catalog of Federal Domestic Assistance Program affected by this action is 10.772, Empowerment Zone Program.

Program Administration

The program is administered through the Office of Community Development within the Rural Development mission area of the Department of Agriculture.

Paperwork Reduction Act

There are no reporting or recordkeeping requirements associated with this rule.

Intergovernmental Review

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis was not performed.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted, (2) no retroactive effect will be given to this rule and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR part 11 must be exhausted before bringing litigation challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Environmental Impact Statement

It is the determination of the Secretary that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, and 7 CFR part 25, an Environmental Impact Statement is not required.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for

Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, USDA must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Therefore this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132, Federalism

The policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs or other effects on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of governments. Thus, it has been determined under Executive Order 13132, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Background

On December 21, 2000, the Community Renewal Tax Relief Act (Pub. L. 106-554) was signed into law, authorizing the designation of two additional rural empowerment zones, bringing the total authorized rural empowerment zones to ten. The eligibility criteria for Round III are exactly the same as for the rural empowerment zones authorized by the Taxpayer Relief Act of 1997 (Pub. L. 105-34).

The Secretary announced on January 11, 2002 that the Northern Maine

Development Commission, Inc. (Aroostook County) in Maine and Middle Rio Grande FUTURO Communities in Texas were designated as rural empowerment zones pursuant to the Round III authorizing legislation.

It is important to establish with certainty the beginning date of the period that runs with empowerment zone designation for these communities. It is particularly relevant to bond counsels which provide opinions on the validity of tax preferential bonds issued under the empowerment zone provisions in the Internal Revenue Code. Accordingly, this final rule amends the definition of designation date to include the designation date for Round III empowerment zones in addition to the other relevant designation dates.

This regulation is being published as a final rule without a Notice of Prior Rulemaking because the change being made is a matter of historical fact and is not subject to change in response to comments. Therefore, public comment is unnecessary and impracticable and contrary to the public interest. For this same reason, this final rule will be effective immediately upon publication.

Delegation of Authority

In the Final Rule published on March 25, 2002 (67 FR 13553), the Secretary of Agriculture delegated to the Under Secretary, Rural Development, authority to promulgate regulations for 7 CFR part 25.

List of Subjects in 7 CFR Part 25

Community development, Economic development, Empowerment zones, Enterprise communities, Housing, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Rural development.

■ In accordance with the reasons set out in the preamble, 7 CFR part 25 is amended as follows:

PART 25—RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

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

Authority: 5 U.S.C. 301; 26 U.S.C. 1391; Pub. L. 103–66, 107 Stat. 543; Pub. L. 105–34, 111 Stat. 885; Sec. 766, Pub. L. 105–277, 112 Stat. 2681–37; Pub. L. 106–554 [Title I of H.R. 5562], 114 Stat. 2763.

Subpart A—General Provision

■ 2. Amend § 25.3 by revising the definition of “designation date” to read as follows:

§ 25.3 Definitions.

* * * * *

Designation date means December 21, 1994, in the case of Round I designations, December 24, 1998, in the case of Round II and Round IIS designations and January 11, 2002, in the case of Round III designations.

* * * * *

Dated: March 25, 2003.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. 03–8039 Filed 4–2–03; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR 718 and 723

Commodity Credit Corporation

7 CFR 1412 and 1413

RIN 0560–AG79

Acreage Reporting and Common Provisions

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule implements provisions of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) by making changes to Agency regulations that govern provisions common to multiple programs, including acreage report requirements, farm constitution, and monitoring compliance with those provisions. Other provisions of the 2002 Act will be implemented under separate rules. The intent of this rule is to implement statutory requirements for reports of acreage and conform the regulations with changes in other Agency programs.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Dan McGlynn, Production, Emergencies and Compliance Division, United States Department of Agriculture (USDA), Stop 0517, 1400 Independence Ave. SW., Washington, DC 20250–0517. Telephone: (202) 720–3463. Electronic mail: Dan_McGlynn@wdc.usda.gov. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1601(c) of the 2002 Act requires that the regulations needed to

implement Title I of the 2002 Act are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Executive Order 12866

This final rule has been determined to be not significant under Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Programs

This final rule has a potential impact on all programs listed in the Catalog of Federal Domestic Assistance in the Agency program index under the Department of Agriculture, Farm Service Agency.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because FSA and CCC are not required by 5 U.S.C. 553 or any law to publish a notice of proposed rulemaking for this rule.

Environmental Assessment

The environmental impacts of this final rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. FSA has concluded the rule is categorically excluded from further environmental review and documentation as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778. This rule preempts State laws that are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, administrative remedies must be exhausted.

Executive Order 12372

The provisions of this rule are not subject to Executive Order 12372, which required intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC and FSA are not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for this rule. Further, this rule imposes no mandates, as defined in sections 202 and 205 of UMRA, on State, local or tribal governments, or the private sector.

Paperwork Reduction Act

Sections 1601(c) and 2702(b) of the 2002 Act provide that the promulgation of regulations and the administration of Title I and II of the 2002 Act shall be done without regard to chapter 35 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Background

This rule amends CCC and FSA regulations that govern how marketing quotas, allotments, and base acres are maintained, monitored, divided, and reallocated. These regulations determine an agricultural producer's ability to market certain crops and their eligibility to receive marketing loans, support prices, and other CCC and FSA program benefits.

The 2002 Act authorizes the establishment of base acres on a farm and the issuance of direct payments and counter-cyclical payments for covered commodities and peanuts. Requirements are provided that must be met as a condition of receipt of these payments. Among other changes, the 2002 Act also terminates marketing quota programs for peanuts.

Sections 1105(c) and 1305(c) of the 2002 Act require producers on a farm to submit annual acreage reports with respect to all cropland on the farm as a condition of the receipt of any direct payments, counter-cyclical payments, marketing assistance loans and loan deficiency payments. In the recent past, the reporting of only certain planted acres by a farmer has been required for some FSA and CCC programs. In

addition, sections 1105(a)(2) and 1305(a)(2) authorize the Secretary to issue such rules as the Secretary considers necessary to ensure producer compliance with the following requirements: subtitles B and C of title XII the Food Security Act of 1985; planting flexibility requirements of sections 1106 and 1306; the requirement to use farmland in a quantity equal to the attributable base acres for the farm for an agricultural or conserving use; the requirement to control noxious weeds and maintain the land using sound agricultural practices, if the agricultural or conserving use involves the non-cultivation of any base acres.

Under section 1101 of the 2002 Act, owners of a farm will be provided a one-time opportunity to elect the method by which base acres are to be calculated. This election applies to the farm, as it is constituted for CCC program purposes. Many FSA farms are comprised of land with divided ownership held by multiple owners. All owners of a farm must agree to the method by which base acres on the farm are calculated. Therefore, what constitutes a distinct farm operation for these purposes (the constitution of a "farm") is vital to the ability of CCC to implement the 2002 Act.

The regulations at 7 CFR part 718 are being amended in their entirety to make the changes required by the 2002 Act, and to incorporate the use of Geographic Information Systems. The changes made in this rule are expected to improve overall program administration, provide requirements and procedures for program participants, and allow for increased program support from new technologies.

The amendments to part 718 do not impact farm program participation or payment levels. Also, there are no expected impacts on acres planted, prices, or program payments. Therefore, net farm income and consumer costs will be unchanged and Federal outlays will remain within parameters established in the 2002 Act.

Additions to the regulations have also been made to cover ownership questions where current public records may be inadequate or where there is some other dispute about ownership. The rule will allow certifications to be used and allow claims to be barred where there is such a certification and there has been a failure of other claimants to act promptly or where the current public records are inadequate to readily resolve ownership issues. Not allowing such certifications would make it difficult for a number of small farms to receive prompt payments due to changes in ownership over the years

which may not be reflected in the current public records and which may not be easily be corrected. While the rule could result in a bar to some claims that might otherwise be established, the rule in effect imposes a burden on all owners to ensure that their interests in the property are made known to FSA so that programs can be run in a timely manner and without excessive research and effort with the many farms that have to be serviced.

In addition, the rule provides for the Bureau of Indian Affairs of the Department of Interior to make certain decisions on behalf of farms entrusted to them or under their management. This follows current practice. The rule also provides that in the event of the need to collect a refund or claim in connection with these BIA-related farms, the sum, among other remedies, may be collected by an offset against the particular beneficiaries or by an offset against the farm itself. This collection provision reflects that the FSA may not, on many occasions, know who the beneficiaries of such farms are and that such adjustment as may be needed among individual interested parties can best be made by the BIA. This rule also makes a corrections to the hard white wheat regulations of 7 CFR Part 1413 published on February 3, 2003, 68 FR 5205. Specifically the applicability section of that rule is changed in this rule in keeping with the intent of that rulemaking so as not to limit 1413 to only "winter" varieties of hard white wheat. Further, a numbering correction is made to another section. These changes are exempt from comment for the same reasons as exempted the original rules from comment and because they are corrective in nature.

List of Subjects

7 CFR Part 718

Acreage allotments, Agricultural commodities, Marketing quotas.

7 CFR Part 723

Acreage allotments, Agricultural commodities, Marketing quotas, Price support programs, Tobacco.

7 CFR Part 1412

Agriculture, Feed Grains, Grains, Oilseeds, Price support programs.

7 CFR Part 1413

Agricultural commodities, Feed grains, Grains.

■ Accordingly, 7 CFR parts 718, 723, 1412 and 1413 are amended as set forth below.

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

■ 1. The authority for part 718 is revised to read as follows:

Authority: 7 U.S.C. 1311 *et seq.*, 1501 *et seq.*, 1921 *et seq.*, 7201 *et seq.*, 15 U.S.C. 714b.

■ 2. Subpart A is revised to read as follows:

Subpart A—General Provisions

Sec.

718.1 Applicability.

718.2 Definitions.

718.3 State committee responsibilities.

718.4 Authority for farm entry and providing information.

718.5 Rule of fractions.

718.6 Controlled substance.

718.7 Furnishing maps.

718.8 Administrative county.

718.9 Signature requirements.

718.10 Time limitations.

§ 718.1 Applicability.

(a) This part is applicable to all programs set forth in chapters VII and XIV of this title which are administered by the Farm Service Agency (FSA). This rule governs how FSA monitors marketing quotas, allotments, base acres and acreage reports. The regulations affected are those that establish procedures for measuring allotments and program eligible acreage, and determining program compliance.

(b) The provisions of this part will be administered under the general supervision of the Administrator, FSA, and shall be carried out in the field by State and county FSA committees (State and county committees).

(c) State and county committees, and representatives and employees thereof, do not have authority to modify or waive any regulations in this part.

(d) No provisions or delegation herein to a State or county committee shall preclude the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

§ 718.2 Definitions.

Except as provided in individual parts of chapters VII and XIV of this title, the following terms shall be as defined herein:

Administrative variance (AV) means the amount by which the determined

acreage of tobacco may exceed the effective allotment and be considered in compliance with program regulations.

Allotment means an acreage for a commodity allocated to a farm in accordance with the Agricultural Adjustment Act of 1938, as amended.

Allotment crop means any tobacco crop for which acreage allotments are established pursuant to part 723 of this chapter.

Barley means barley that follows the standard planting and harvesting practice of barley for the area in which the barley is grown.

Base acres means the quantity of acres established according to part 1413 of this title.

CCC means the Commodity Credit Corporation.

Combination means consolidation of two or more farms or parts of farms, having the same operator, into one farm.

Common ownership unit means a distinguishable parcel of land consisting of one or more tracts of land with the same owners, as determined by FSA.

Constitution means the make-up of the farm before any change is made because of change in ownership or operation.

Controlled substances means the term set forth in 21 CFR part 1308.

Corn means field corn or sterile high-sugar corn that follows the standard planting and harvesting practices for corn for the area in which the corn is grown. Popcorn, corn nuts, blue corn, sweet corn, and corn varieties grown for decoration uses are not corn.

County means the county or parish of a state. For Alaska, Puerto Rico and the Virgin Islands, a county shall be an area designated by the State committee with the concurrence of the Deputy Administrator.

County committee means the FSA county committee.

Crop reporting date means the latest date the Administrator, FSA will allow the farm operator, owner, or their agent to submit a crop acreage report in order for the report to be considered timely.

Cropland. (a) Means land which the county committee determines meets any of the following conditions:

(1) Is currently being tilled for the production of a crop for harvest. Land which is seeded by drilling, broadcast or other no-till planting practices shall be considered tilled for cropland definition purposes;

(2) Is not currently tilled, but it can be established that such land has been tilled in a prior year and is suitable for crop production;

(3) Is currently devoted to a one-row or two-row shelter belt planting, orchard, or vineyard;

(4) Is in terraces that, were cropped in the past, even though they are no longer capable of being cropped;

(5) Is in sod waterways or filter strips planted to a perennial cover;

(6) Is preserved as cropland in accordance with part 1410 of this title; or

(7) Is land that has newly been broken out for purposes of being planted to a crop that the producer intends to, and is capable of, carrying through to harvest, using tillage and cultural practices that are consistent with normal practices in the area; provided further that, in the event that such practices are not utilized other than for reasons beyond the producer's control, the cropland determination shall be void retroactive to the time at which the land was broken out.

(b) Land classified as cropland shall be removed from such classification upon a determination by the county committee that the land is:

(1) No longer used for agricultural production;

(2) No longer suitable for production of crops;

(3) Subject to a restrictive easement or contract that prohibits its use for the production of crops unless otherwise authorized by the regulation of this chapter;

(4) No longer preserved as cropland in accordance with the provisions of part 1410 of this title and does not meet the conditions in paragraphs (a)(1) through (a)(6) of this definition; or

(5) Converted to ponds, tanks or trees other than those trees planted in compliance with a Conservation Reserve Program contract executed pursuant to part 1410 of this title, or trees that are used in one-or two-row shelterbelt plantings, or are part of an orchard or vineyard.

Current year means the year for which allotments, quotas, acreages, and bases, or other program determinations are established for that program. For controlled substance violations, the current year is the year of the actual conviction.

Deputy Administrator means Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture or their designee.

Determination means a decision issued by a State, county or area FSA committee or its employees that affects a participant's status in a program administered by FSA.

Determined acreage means that acreage established by a representative of the Farm Service Agency by use of official acreage, digitizing or planimetry areas on the photograph or other photographic image, or

computations from scaled dimensions or ground measurements.

Direct and counter-cyclical program (DCP) cropland means land that currently meets the definition of cropland, land that was devoted to cropland at the time it was enrolled in a production flexibility contract in accordance with part 1413 of this title and continues to be used for agricultural purposes, or land that met the definition of cropland on or after April, 4, 1996, and continues to be used for agricultural purposes and not for nonagricultural commercial or industrial use.

Division means the division of a farm into two or more farms or parts of farms.

Entity means a corporation, joint stock company, association limited partnership, irrevocable trust, estate, charitable organization, or other similar organization including any such organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization.

Extra Long Staple (ELS) Cotton means cotton that meets all of the following conditions:

(1) American-Pima, Sea Island, Sealand, all other varieties of the Barbandense species of cotton and any hybrid thereof, and any other variety of cotton in which 1 or more of these varieties is predominant; and,

(2) The acreage is grown in a county designated as an ELS county by the Secretary; and,

(3) The production from the acreage is ginned on a roller-type gin.

Family member means an individual to whom a person is related as spouse, lineal ancestor, lineal descendant, or sibling, including:

(1) Great grandparent;

(2) Grandparent;

(3) Parent;

(4) Child, including a legally adopted child;

(5) Grandchild

(6) Great grandchildren;

(7) Sibling of the family member in the farming operation; and

(8) Spouse of a person listed in paragraphs (1) through (7) of this definition.

Farm means a tract, or tracts, of land that are considered to be a separate operation under the terms of this part provided further that where multiple tracts are to be treated as one farm, the tracts must have the same operator and must also have the same owner except that tracts of land having different owners may be combined if all owners agree to the treatment of the multiple tracts as one farm for these purposes.

Farm inspection means an inspection by an authorized FSA representative using aerial or ground compliance to determine the extent of producer adherence to program requirements.

Farm number means a number assigned to a farm by the county committee for the purpose of identification.

Farmland means the sum of the DCP cropland, forest, acreage planted to an eligible crop acreage as specified in 1437.3 of this title and other land on the farm.

Field means a part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, permanent waterways, woodlands, and croplines in cases where farming practices make it probable that such cropline is not subject to change, or other similar features.

GIS means Geographic Information System or a system that stores, analyzes, and manipulates spatial or geographically referenced data. GIS computes distances and acres using stored data and calculations.

GPS means Global Positioning System or a positioning system using satellites that continuously transmit coded information. The information transmitted from the satellites is interpreted by GPS receivers to precisely identify locations on earth by measuring distance from the satellites.

Grain sorghum means grain sorghum of a feed grain or dual purpose variety (including any cross that, at all stages of growth, having characteristics of a feed grain or dual purpose variety) that follows the standard planting and harvesting practice for grain sorghum for the area in which the grain sorghum was planted. Sweet sorghum is not considered a grain sorghum.

Ground measurement means the distance between 2 points on the ground, obtained by actual use of a chain tape, GPS with an minimum accuracy level as determined by the Deputy Administrator, or other measuring device.

Joint operation means a general partnership, joint venture, or other similar business organization.

Landlord means one who rents or leases farmland to another.

Measurement service means a measurement of acreage or farm-stored commodities performed by a representative of FSA and paid for by the producer requesting the measurement.

Measurement service after planting means determining a crop or designated acreage after planting but before the

farm operator files a report of acreage for the crop.

Measurement service guarantee means a guarantee provided when a producer requests and pays for an authorized FSA representative to measure acreage for FSA and CCC program participation unless the producer takes action to adjust the measured acreage. If the producer has taken no such action, and the measured acreage is later discovered to be incorrect, the acreage determined pursuant to the measurement service will be used for program purposes for that program year.

Minor child means an individual who is under 18 years of age. State court proceedings conferring majority on an individual under 18 years of age will not change such an individual's status as a minor.

Nonagricultural commercial or industrial use means land that is no longer suitable for producing annual or perennial crops, including conserving uses, or forestry products.

Normal planting period means that period during which the crop is normally planted in the county, or area within the county, with the expectation of producing a normal crop.

Normal row width means the normal distance between rows of the crop in the field, but not less than 30 inches for all crops.

Oats means oats that follows the standard planting and harvesting practice of oats for the area in which the oats are grown.

Operator means an individual, entity, or joint operation who is determined by the FSA county committee to be in control of the farming operations on the farm.

Owner means one who has legal ownership of farmland, including:

(1) Any agency of the Federal Government, however, such agency shall not be eligible to receive any payment pursuant to such contract;

(2) One who is buying farmland under a contract for deed;

(3) One who has a life-estate in the property; or

(4) For purposes of enrolling a farm in a program authorized by chapters VII and XIV of this title:

(i) One who has purchased a farm in a foreclosure proceeding; and

(A) The redemption period has not passed; and

(B) The original owner has not redeemed the property.

(ii) One who meets the provisions of paragraph (d)(1)(i) of this definition shall be entitled to receive benefits in accordance with an agency program only to the extent the owner complies with all program requirements.

(5) One who is an heir to property but cannot provide legal documentation to confirm ownership of the property, if such heir certifies to the ownership of the property and the certification is considered acceptable, as determined by the Deputy Administrator. Upon a false or inaccurate certification the Deputy Administrator may impose liability on the certifying party for additional cost that results—however such a certification may be taken by the Deputy Administrator as a bar to other claims where there has been a failure of other persons claiming an interest in the property to act promptly to protect or declare their interest or where the current public records do not accurately set out the current ownership of the farm.

Partial reconstitution means a reconstitution that is made effective in the current year for some crops, but is not made effective in the current year for other crops. This results in the same farm having two or more farm numbers in one crop year.

Participant means one who participates in, or receives payments or benefits in accordance with any of the programs administered by FSA.

Pasture means land that is used to, or has the potential to, produce food for grazing animals.

Person means an individual, or an individual participating as a member of a joint operation or similar operation, a corporation, joint stock company, association, limited stock company, limited partnership, irrevocable trust, revocable trust together with the grantor of the trust, estate, or charitable organization including any entity participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or a participant in a similar entity, or a State, political subdivision or agency thereof. To be considered a separate person for the purpose of this part, the individual or other legal entity must:

- (1) Have a separate and distinct interest in the land or the crop involved;
- (2) Exercise separate responsibility for such interest; and
- (3) Be responsible for the cost of farming related to such interest from a fund or account separate from that of any other individual or entity.

Producer means an owner, operator, landlord, tenant, or sharecropper, who shares in the risk of producing a crop and who is entitled to share in the crop available for marketing from the farm, or would have shared had the crop been produced. A producer includes a grower of hybrid seed.

Quota means the pounds allocated to a farm for a commodity in accordance with the Agricultural Adjustment Act of 1938, as amended.

Random inspection means an examination of a farm by an authorized representative of FSA selected as a part of an impartial sample to determine the adherence to program requirements.

Reconstitution means a change in the land constituting a farm as a result of combination or division.

Reported acreage means the acreage reported by the farm operator, farm owner, farm producer, or their agent on a Form prescribed by the FSA.

Required inspection means an examination by an authorized representative of FSA of a farm specifically selected by application of prescribed rules to determine adherence to program requirements or to verify the farm operator's, farm owner's, farm producer, or agent's report.

Rice means rice excluding sweet, glutinous, or candy rice such as Mochi Gomi.

Secretary means the Secretary of Agriculture of the United States, or a designee.

Sharecropper means one who performs work in connection with the production of a crop under the supervision of the operator and who receives a share of such crop for its labor.

Skip-row or strip-crop planting means a cultural practice in which strips or rows of the crop are alternated with strips of idle land or another crop.

Staking and referencing means determining an acreage before planting by:

- (1) Measuring or computing a delineated area from ground measurements and documenting the area measured; and,
- (2) Staking and referencing the area on the ground.

Standard deduction means an acreage that is excluded from the gross acreage in a field because such acreage is considered as being used for farm equipment turn-areas. Such acreage is established by application of a prescribed percentage of the area planted to the crop in lieu of measuring the turn area.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

Subdivision means a part of a field that is separated from the balance of the field by temporary boundary, such as a cropline which could be easily moved or will likely disappear.

Tenant means:

(1) One who rents land from another in consideration of the payment of a specified amount of cash or amount of a commodity; or

(2) One (other than a sharecropper) who rents land from another person in consideration of the payment of a share of the crops or proceeds therefrom.

Tolerance means a prescribed amount within which the reported acreage and/or production may differ from the determined acreage and/or production and still be considered as correctly reported.

Tract means a unit of contiguous land under one ownership, which is operated as a farm, or part of a farm.

Tract combination means the combining of two or more tracts if the tracts have common ownership and are contiguous.

Tract division means the dividing of a tract into two or more tracts because of a change in ownership or operation.

Turn-area means the area across the ends of crop rows which is used for operating equipment necessary to the production of a row crop (also called turn row, headland, or end row).

Upland cotton means planted and stub cotton that is produced from other than pure strain varieties of the Barbados species, any hybrid thereof, or any other variety of cotton in which one or more of these varieties predominate. For program purposes, brown lint cotton is considered upland cotton.

Wheat means wheat for feed or dual purpose variety that follows the standard planting and harvesting practice of wheat for the area in which the wheat is grown.

§ 718.3 State committee responsibilities.

(a) The State committee shall, with respect to county committees:

(1) Take any action required of the county committee, which the county committee fails to take in accordance with this part;

(2) Correct or require the county committee to correct any action taken by such committee, which is not in accordance with this part;

(3) Require the county committee to withhold taking any action which is not in accordance with this part;

(4) Review county office rates for producer services to determine equity between counties;

(5) Determine, based on cost effectiveness, which counties will use aerial compliance methods and which counties will use ground measurement compliance methods; or

(6) Adjust the per acre rate for acreage in excess of 25 acres to reflect the actual

cost involved when performing measurement service from aerial slides or digital images.

(b) The State committee shall submit to the Deputy Administrator requests to deviate from deductions prescribed in § 718.108, or the error amount or percentage for refunds of redetermination costs as prescribed in § 718.111.

§ 718.4 Authority for farm entry and providing information.

(a) This section applies to all farms that have a tobacco allotment or quota under part 723 of this chapter and all farms that are currently participating in programs administered by FSA.

(b) A representative of FSA may enter any farm that participates in an FSA or CCC program in order to conduct a farm inspection as defined in this part. A program participant may request that the FSA representative present written authorization for the farm inspection before granting access to the farm. If a farm inspection is not allowed within 30 days of written authorization:

(1) All FSA and CCC program benefits for that farm shall be denied;

(2) The person preventing the farm inspection shall pay all costs associated with the farm inspection;

(3) The entire crop production on the farm will be considered to be in excess of the quota established for the farm; and

(4) For tobacco, the farm operator must furnish proof of disposition of:

(i) All tobacco which is in addition to the production shown on the marketing card issued with respect to such farm; and

(ii) No credit will be given for disposing of excess tobacco other than that identified by a marketing card unless disposed of in the presence of FSA in accordance with § 718.109 of this part.

(c) If a program participant refuses to furnish reports or data necessary to determine benefits in accordance with paragraph (a) of this section, or FSA determines that the report or data was erroneously provided through the lack of good faith, all program benefits relating to the report or data requested will be denied.

§ 718.5 Rule of fractions.

(a) Fractions shall be rounded after completion of the entire associated computation. All mathematical calculations shall be carried to two decimal places beyond the number of decimal places required by the regulations governing each program. In rounding, fractional digits of 49 or less beyond the required number of decimal

places shall be dropped; if the fractional digits beyond the required number of decimal places are 50 or more, the figure at the last required decimal place shall be increased by "1" as follows:

Required decimal	Computation	Result
Whole numbers.	6.49 (or less)	6
	6.50 (or more)	7
Tenths	7.649 (or less)	7.6
	7.650 (or more).	7.7
Hundredths	8.8449 (or less).	8.84
	8.8450 (or more).	8.85
Thousandths ..	9.63449 (or less).	9.634
	9.63450 (or more).	9.635
0 thousandths	10.993149 (or less).	10.9931
	10.993150 (or more).	10.9932

(b) The acreage of each field or subdivision computed for tobacco and CCC disaster assistance programs shall be recorded in acres and hundredths of an acre, dropping all thousandths of an acre. The acreage of each field or subdivision computed for crops, except tobacco, shall be recorded in acres and tenths of an acre, rounding all hundredths of an acre to the nearest tenth.

§ 718.6 Controlled substance.

(a) The following terms apply to this section:

(1) *USDA benefit* means the issuance of any grant, contract, loan, or payment by appropriated funds of the United States.

(2) *Person* means an individual.

(b) Notwithstanding any other provision of law, any person convicted under Federal or State law of:

(1) Planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year shall be ineligible for any payment made under any Act, with respect to any commodity produced during the crop year of conviction and the four succeeding crop years, by such person.

(2) Trafficking a controlled substance shall be, at the discretion of the court, ineligible for any or all USDA benefits as follows:

(i) For up to 5 years after the first conviction;

(ii) For up to 10 years after a second conviction; and

(iii) Permanently for a third conviction.

(3) Possession of a controlled substance shall be ineligible for any or all USDA benefits for:

(i) Up to one year upon the first conviction;

(ii) For up to 5 years after a second or subsequent conviction for such an offense as determined by the court.

(c) USDA benefits subject to paragraph (b) of this section include:

(1) Any payments or benefits under the Direct and Counter Cyclical Program (DCP) in accordance with part 1413 of this title;

(2) Any payments or benefits for losses to trees, crops, or livestock covered under disaster programs administered by FSA;

(3) Any price support loan available in accordance with part 1464 of this title;

(4) Any price support or payment made under the Commodity Credit Corporation Charter Act;

(5) A farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act or any other Act;

(6) Crop Insurance under the Federal Crop Insurance Act;

(7) A loan made or guaranteed under the Consolidated Farm and Rural Development Act or any other law formerly administered by the Farmers Home Administration; or

(d) If a person denied benefits under this section is a shareholder, beneficiary, or member of an entity or joint operation, benefits for which the entity or joint operation is eligible shall be reduced, for the appropriate period, by a percentage equal to the total interest of the shareholder, beneficiary, or member.

§ 718.7 Furnishing maps.

A reasonable number, as determined by FSA, of reproductions of photographs, mosaics and maps shall be available to the owner of a farm insurance companies reinsured by the Federal Crop Insurance Corporation (FCIC), private party contractors performing their official duties on behalf of FSA, CCC, and other USDA agencies. To all others, reproductions shall be made available at the rate FSA determines will cover the cost of making such items available.

§ 718.8 Administrative county.

(a) If all land on the farm is physically located in one county, the farm shall be administratively located in such county. If there is no FSA office in the county or the county offices have been consolidated, the farm shall be administratively located in the contiguous county most convenient for the farm operator.

(b) If the land on the farm is located in more than one county, the farm shall

be administratively located in either of such counties as the county committees and the farm operator agree. If no agreement can be reached, the farm shall be administratively located in the county where the principal dwelling is situated, or where the major portion of the farm is located if there is no dwelling.

(c) The State committee shall submit all requests to deviate from regulations specified in this section to the Deputy Administrator.

§ 718.9 Signature requirements.

(a) When a program authorized by this chapter and parts 1410 and 1413 of this title requires the signature of a producer; landowner; landlord; or tenant, a husband or wife may sign all such FSA or CCC documents on behalf of the other spouse, unless such other spouse has provided written notification to FSA and CCC that such action is not authorized. The notification must be provided to FSA with respect to each farm.

(b) Except a husband or wife may not sign a document on behalf of a spouse with respect to:

(1) Program document required to be executed in accordance with part 3 of this title;

(2) Easements entered into under part 1410 of this title;

(3) Power of attorney;

(4) Such other program documents as determined by FSA or CCC.

(c) An individual; duly authorized officer of a corporation; duly authorized partner of a partnership; executor or administrator of an estate; trustee of a trust; guardian; or conservator may delegate to another the authority to act on their behalf with respect to FSA and CCC programs administered by USDA service center agencies by execution of a Power of Attorney, or such other form as approved by the Deputy Administrator. FSA and CCC may, at their discretion, allow the delegations of authority by other individuals through use of the Power of Attorney or such other form as approved by the Deputy Administrator.

(d) Notwithstanding another provision of this regulation or any other FSA or CCC regulation in this title, a parent may execute documents on behalf of a minor child unless prohibited by a statute or court order.

(e) Notwithstanding any other provision in this title, an authorized agent of the Bureau of Indian Affairs (BIA) of the United States Department of Interior may sign as agent for landowners with properties affiliated with or under the management or trust of the BIA. For collection purposes,

such payments will be considered as being made to the persons who are the beneficiaries of the payment or may, alternatively, be considered as an obligation of all persons on the farm in general. In the event of a need for a refund or other claim may be collected, among other means, by other monies due such persons or the farm.

§ 718.10 Time limitations.

Whenever the final date prescribed in any of the regulations in this title for the performance of any act falls on a Saturday, Sunday, national holiday, State holiday on which the office of the county or State Farm Service Agency committee having primary cognizance of the action required to be taken is closed, or any other day on which the cognizant office is not open for the transaction of business during normal working hours, the time for taking required action shall be extended to the close of business on the next working day. Or in case the action required to be taken may be performed by mailing, the action shall be considered to be taken within the prescribed period if the mailing is postmarked by midnight of such next working day. Where the action required to be taken is with a prescribed number of days after the mailing of notice, the day of mailing shall be excluded in computing such period of time.

■ 3. Subpart B is revised to read as follows:

Subpart B—Determination of Acreage and Compliance

Sec.

718.101 Measurements.

718.102 Acreage reports.

718.103 Late-filed reports.

718.104 Revised reports.

718.105 Tolerances, variances, and adjustments.

718.106 Inaccurate acreage reports.

718.107 Acreages.

718.108 Measuring acreage including skip row acreage

718.109 Deductions.

718.110 Adjustments.

718.111 Notice of measured acreage.

718.112 Redetermination.

§ 718.101 Measurements.

(a) Measurement services include, but are not limited to, measuring land and crop areas, quantities of farm-stored commodities, and appraising the yields of crops in the field when required for program administration purposes. The county committee shall provide measurement service if the producer requests such service and pays the cost, except that service shall not be provided to determine total acreage or production of a crop when the request is made:

(1) After the established final reporting date for the applicable crop, unless a late filed report is accepted as provided in § 718.103;

(2) After the farm operator has furnished production evidence when required for program administration purposes except as provided in this subpart; or

(3) In connection with a late-filed report of acreage, unless there is evidence of the crop's existence in the field and use made of the crop, or the lack of the crop due to a disaster condition affecting the crop.

(b) The acreage requested to be measured by staking and referencing shall not exceed the effective farm allotment for marketing quota crops or acreage of a crop that is limited to a specific number of acres to meet any program requirement.

(c) When a producer requests, pays for, and receives written notice that measurement services have been furnished, the measured acreage shall be guaranteed to be correct and used for all program purposes for the current year even though an error is later discovered in the measurement thereof, if the producer has taken action with an economic significance based on the measurement service, and the entire crop required for the farm was measured. If the producer has not taken action with an economic significance based on the measurement service, the producer shall be notified in writing that an error was discovered and the nature and extent of such error. In such cases, the corrected acreage will be used for determining program compliance for the current year.

(d) When a measurement service reveals acreage in excess of the permitted acreage and the allowable tolerance as defined in this part, the producer must destroy the excess acreage and pay for FSA to verify destruction, in order to keep the measurement service guarantee.

§ 718.102 Acreage reports.

(a) In order to be eligible for benefits, participants in the programs specified in paragraphs (b)(1) through (b)(6) of this section must annually submit accurate information as required by these provisions.

(b)(1) Participants in the programs governed by part 1412 of this title must report the acreage of fruits and vegetables planted for harvest on a farm enrolled in such program;

(2) Participants in the programs governed by parts 1421 and 1427 of this title must report the acreage planted to a commodity for harvest for which a

marketing assistance loan or loan deficiency payment is requested;

(3) Participants in the programs governed by part 1410 of this title must report the use of land enrolled in such programs;

(4) All participants in the programs governed by part 1437 of this title must report all acreage in the county of the eligible crop in which the producer has a share;

(5) Participants in the programs governed by part 723 of this chapter and part 1464 of this title must report the acreage planted to tobacco by kind on all farms that have an effective allotment or quota greater than zero;

(6) All participants in the programs governed by parts 1412, 1421, and 1427 of this title must report the use of all cropland on the farm.

(c) The reports required under paragraph (a) of this section shall be timely filed by the farm operator, farm owner, producer of the crop on the farm, or a duly authorized representative with the county committee by the final reporting date applicable to the crop as established by the county committee and State committee.

§ 718.103 Late-filed reports.

(a) A report may be accepted after the required date if the crop or identifiable crop residue is in the field.

(b) The farm operator shall pay the cost of a farm inspection unless the County Committee determines that failure to report in a timely manner was beyond the producer's control.

§ 718.104 Revised reports.

(a) The farm operator may revise a report of acreage with respect to 2002 and subsequent years to change the acreage reported if:

(1) The county committee determines that the revision does not have an adverse impact on the program;

(2) The acreage has not already been determined by FSA; and

(3) Actual crop or residue is present in the field.

(b) Revised reports shall be filed and accepted:

(1) At any time for all crops if the crop or residue still exists in the field for inspection to verify its existence and use made of the crop, the lack of the crop, or a disaster condition affecting the crop; and

(2) If the requirements of paragraph (a) of this section have been met and the producer was in compliance with all other program requirements at the reporting date.

§ 718.105 Tolerances, variances, and adjustments.

(a) Tolerance is the amount by which the determined acreage for a crop may differ from the reported acreage or allotment for the crop and still be considered in compliance with program requirements under §§ 718.102(b)(1), (b)(3) and (b)(5).

(b) Tolerance rules apply to those fields for which a staking and referencing was performed but such acreage was not planted according to those measurements or when a measurement service is not requested for acreage destroyed to meet program requirements.

(c) Tolerance rules do not apply to:

(1) Program requirements of §§ 718.102(b)(2), (b)(4) and (b)(6);

(2) Official fields when the entire field is devoted to one crop;

(3) Those fields for which staking and referencing was performed and such acreage was planted according to those measurements; or

(4) The adjusted acreage for farms using measurement after planting which have a determined acreage greater than the marketing quota crop allotment.

(d) An administrative variance is applicable to all allotment crop acreages. Allotment crop acreages as determined in accordance with this part shall be deemed in compliance with the effective farm allotment or program requirement when the determined acreage does not exceed the effective farm allotment by more than an administrative variance determined as follows:

(1) For all kinds of tobacco subject to marketing quotas, except dark air-cured and fire-cured the larger of 0.1 acre or 2 percent of the allotment; and

(2) For dark air-cured and fire-cured tobacco, an acreage based on the effective acreage allotment as provided in the table as follows:

Effective acreage allotment is within this range	Administrative variance
0.01 to 0.99	0.01
1.00 to 1.49	0.02
1.50 to 1.99	0.03
2.00 to 2.49	0.04
2.50 to 2.99	0.05
3.00 to 3.49	0.06
3.50 to 3.99	0.07
4.00 to 4.49	0.08
4.50 and up	0.09

(e) A tolerance applies to tobacco, other than flue-cured or burley, if the measured acreage exceeds the allotment by more than the administrative variance but by not more than the tolerance. Such excess acreage of tobacco may be adjusted to the effective

farm acreage allotment to avoid marketing quota penalties or receive price support.

(f) If the acreage report for a crop is outside the tolerance for that crop:

(1) FSA may consider the requirements of §§ 718.102 (b)(1), (b)(3) and (b)(5) not to have been met, and;

(2) Participants may be ineligible for all or a portion of payments or benefits subject to the requirements of §§ 718.102 (b)(1), (b)(3) and (b)(5).

§ 718.106 Non-compliance and fraudulent acreage reports.

Participants that knowingly and willfully provide false or inaccurate acreage reports may be ineligible for some or all payments or benefits subject to the requirements of §§ 718.102 (b)(1), (b)(3) and (b)(5):

(a) The county committee determines that the acreage report filed according to §§ 718.102 (b)(1), (b)(3) and (b)(5) is inaccurate, and;

(b) A good-faith effort to accurately report the acreage was not made because the report was knowingly and willfully falsified.

§ 718.107 Acreages.

(a) If an acreage has been established by FSA for an area delineated on an aerial photograph or within a GIS, such acreage will be recognized by the county committee as the acreage for the area until such time as the boundaries of such area are changed. When boundaries not visible on the aerial photograph are established from data furnished by the producer, such acreage shall not be recognized as official acreage until an authorized representative of FSA verifies the boundaries.

(b) Measurements of any row crop shall extend beyond the planted area by the larger of 15 inches or one-half the distance between the rows.

(c) The entire acreage of a field or subdivision of a field devoted to a crop shall be considered as devoted to the crop subject to a deduction or adjustment except as otherwise provided in this part.

§ 718.108 Measuring acreage including skip row acreage.

(a) When one crop is alternating with another crop, whether or not both crops have the same growing season, only the acreage that is actually planted to the crop being measured will be considered to be acreage devoted to the measured crop.

(b) Subject to the provisions of this paragraph and section, whether planted in a skip row pattern or without a pattern of skipped rows, the entire

acreage of the field or subdivision may be considered as devoted to the crop only where the distance between the rows, for all rows, is 40 inches or less. If there is a skip that creates idle land wider than 40 inches, or if the distance between any rows is more than 40 inches, then the area planted to the crop shall be considered to be that area which would represent the smaller of; a 40 inch width between rows, or the normal row spacing in the field for all other rows in the field—those that are not more than 40 inches apart. The allowance for individual rows would be made based on the smaller of actual spacing between those rows or the normal spacing in the field. For example, if the crop is planted in single, wide rows that are 48 inches apart, only 20 inches to either side of each row (for a total of 40 inches between the two rows) could, at a maximum, be considered as devoted as the crop and normal spacing in the field would control. Half the normal distance between rows will also be allowed beyond the outside planted rows not to exceed 20 inches and will reflect normal spacing in the field.

(c) In making calculations under this section, further reductions may be made in the acreage considered planted if it is determined that the acreage is more sparsely planted than normal using reasonable and customary full production planting techniques.

(d) The Deputy Administrator has the discretionary authority to allow row allowances other than those specified in this section in those instances in which crops are normally planted with spacings greater or less than 40 inches, such as in case of tobacco, or where other circumstances are present which the Deputy Administrator finds justifies that allowance.

(e) Paragraphs (a) through (d) of this section shall apply with respect to the 2003 and subsequent crops. For preceding crops, the rules in effect on January 1, 2002, shall apply.

§ 718.109 Deductions.

(a) Any contiguous area which is not devoted to the crop being measured and which is not part of a skip-row pattern under § 718.108 shall be deducted from the acreage of the crop if such area meets the following minimum national standards or requirements:

- (1) A minimum width of 30 inches;
- (2) For tobacco—three-hundredths (.03) acre. Turn areas, terraces, permanent irrigation and drainage ditches, sod waterways, non-cropland, and subdivision boundaries each of which is at least 30 inches in width may

be combined to meet the 0.03-acre minimum requirement; or

(3) For all other crops and land uses—one-tenth (.10) acre. Turn areas, terraces, permanent irrigation and drainage ditches, sod waterways, non-cropland, and subdivision boundaries each of which is at least 30 inches in width and each of which contain 0.1 acre or more may be combined to meet any larger minimum prescribed for a State in accordance with this subpart.

(b) If the area not devoted to the crop is located within the planted area, the part of any perimeter area that is more than 217.8 feet (33 links) in width will be considered to be an internal deduction if the standard deduction is used.

(c) A standard deduction of 3 percent of the area devoted to a row crop and zero percent of the area devoted to a close-sown crop may be used in lieu of measuring the acreage of turn areas.

§ 718.110 Adjustments.

(a) The farm operator or other interested producer having excess tobacco acreage (other than flue-cured or burley) may adjust an acreage of the crop in order to avoid a marketing quota penalty if such person:

(1) Notifies the county committee of such election within 15 calendar days after the date of mailing of notice of excess acreage by the county committee; and

(2) Pays the cost of a farm inspection to determine the adjusted acreage prior to the date the farm visit is made.

(b) The farm operator may adjust an acreage of tobacco (except flue-cured and burley) by disposing of such excess tobacco prior to the marketing of any of the same kind of tobacco from the farm. The disposition shall be witnessed by a representative of FSA and may take place before, during, or after the harvesting of the same kind of tobacco grown on the farm. However, no credit will be allowed toward the disposition of excess acreage after the tobacco is harvested but prior to marketing, unless the county committee determines that such tobacco is representative of the entire crop from the farm of the kind of tobacco involved.

§ 718.111 Notice of measured acreage.

Notice of measured acreage shall be provided by FSA and mailed to the farm operator. This notice shall constitute notice to all parties who have ownership, leasehold interest, or other, in such farm.

§ 718.112 Redetermination.

(a) A redetermination of crop acreage, appraised yield, or farm-stored

production for a farm may be initiated by the county committee, State committee, or Deputy Administrator at any time. Redetermination may be requested by a producer with an interest in the farm if they pay the cost of the redetermination. The request must be submitted to FSA within 15 calendar days after the date of the notice described in §§ 718.110 or 718.111, or within 5 calendar days after the initial appraisal of the yield of a crop, or before the farm-stored production is removed from storage. A redetermination shall be undertaken in the manner prescribed by the Deputy Administrator. A redetermination shall be used in lieu of any prior determination.

(b) The county committee shall refund the payment of the cost for a redetermination when, because of an error in the initial determination:

(1) The appraised yield is changed by at least the larger of:

(i) Five percent or 5 pounds for cotton;

(ii) Five percent or 1 bushel for wheat, barley, oats, and rye; or

(iii) Five percent or 2 bushels for corn and grain sorghum; or

(2) The farm stored production is changed by at least the smaller of 3 percent or 600 bushels; or

(3) The acreage of the crop is:

(i) Changed by at least the larger of 3 percent or 0.5 acre; or

(ii) Considered to be within program requirements.

■ 4. Subpart C is revised to read as follows:

Subpart C—Reconstitution of Farms, Allotments, Quotas, and Bases

Sec.

718.201 Farm constitution.

718.202 Determining the land constituting a farm.

718.203 County committee action to reconstitute a farm.

718.204 Reconstitution of allotments, quotas, and bases.

718.205 Substantive change in farming operation, and changes in related legal entities.

718.206 Determining farms, tracts, allotments, quotas, and bases when reconstitution is made by division.

718.207 Determining allotments, quotas, and bases when reconstitution is made by combination.

§ 718.201 Farm constitution.

(a) In order to implement agency programs and monitor farmer compliance with regulations, the agency must have records on what land is being farmed by a particular producer. This is accomplished by a determination of what land or groups of land 'constitute' an individual unit or farm. Land, which

has been properly constituted under prior regulations, shall remain so constituted until a reconstitution is required under paragraph (c) of this section. The constitution and identification of land as a farm for the first time and the subsequent reconstitution of a farm made hereafter, shall include all land operated by an individual entity or joint operation as a single farming unit except that it shall not include:

(1) Land under separate ownership unless the owners agree in writing and the labor, equipment, accounting system, and management are operated in common by the operator but separate from other tracts;

(2) Land under a lease agreement of less than 1 year duration;

(3) Land in different counties when the tobacco allotments or quotas established for the land involved cannot be transferred from one county to another county by lease, sale, or owner. However, this paragraph shall not apply if:

(i) All of the land is contiguous;

(ii) The land is located in counties that are contiguous in the same State if:

(A) A burley or flue-cured tobacco quota is established for one or more of the tracts; and

(B) The county committee determines that the tracts will be operated as a single farming unit as set forth in § 718.202; or

(iii) Because of a change in operation, tracts or parts of tracts will be divided from the parent farm that currently has land in more than one county, and there is no change in operation and ownership of the remainder of the farm, or if there is a change in ownership, the new owner agrees in writing to the constitution of the farm.

(4) Federally-owned land;

(5) State-owned wildlife lands unless the former owner has possession of the land under a leasing agreement; and

(6) Land constituting a farm which is declared ineligible to be enrolled in a program under the regulations governing the program; and

(7) For acreage base crops, land located in counties that are not contiguous. However, this paragraph shall not apply if:

(i) Counties are divided by a river;

(ii) Counties do not touch because of a correction line adjustment; or

(iii) The land is within 20 miles, by road, of other land that will be a part of the farming unit.

(b)(1) If all land on the farm is physically located in one county, the farm shall be administratively located in such county. If there is no FSA office in the county or the county offices have

been consolidated, the farm shall be administratively located in the contiguous county most convenient for the farm operator.

(2) If the land on the farm is located in more than one county, the farm shall be administratively located in either of such counties as the county committees and the farm operator agree. If no agreement can be reached, the farm shall be administratively located in the county where the principal dwelling is situated, or where the major portion of the farm is located if there is no dwelling.

(c) A reconstitution of a farm either by division or by combination shall be required whenever:

(1) A change has occurred in the operation of the land after the last constitution or reconstitution and as a result of such change the farm does not meet the conditions for constitution of a farm as set forth in paragraph (a) of this section except that no reconstitution shall be made if the county committee determines that the primary purpose of the change in operation is to establish eligibility to transfer allotments subject to sale or lease, or increase amount of program benefits received;

(2) The farm was not properly constituted the previous time;

(3) An owner requests in writing that the land no longer be included in a farm composed of tracts under separate ownership;

(4) The county committee determines that the farm was reconstituted on the basis of false information;

(5) The county committee determines that tracts included in a farm are not being operated as a single farming unit.

(d) Reconstitution shall not be approved if the county committee determines that the primary purpose of the reconstitution is to:

(1) Circumvent the provisions of part 12 of this title; or

(2) Circumvent any other chapter of this title.

§ 718.202 Determining the land constituting a farm.

(a) In determining the constitution of a farm, consideration shall be given to provisions such as ownership and operation. For purposes of this part, the following rules shall be applicable to determining what land is to be included in a farm.

(b) A minor shall be considered to be the same owner or operator as the parent, court-appointed guardian, or other person responsible for the minor child, unless the parent or guardian has no interest in the minor's farm or production from the farm, and the minor:

(1) Is a producer on a farm;

(2) Maintains a separate household from the parent or guardian;

(3) Personally carries out the farming activities; and

(4) Maintains a separate accounting for the farming operation.

(c) A minor shall not be considered to be the same owner or operator as the parent or court-appointed guardian if the minor's interest in the farming operation results from being the beneficiary of an irrevocable trust and ownership of the property is vested in the trust or the minor.

(d) A life estate tenant shall be considered to be the owner of the property for their life.

(e) A trust shall be considered to be an owner with the beneficiary of the trust; except a trust can be considered a separate owner or operator from the beneficiary, if the trust:

(1) Has a separate and distinct interest in the land or crop involved;

(2) Exercises separate responsibility for the separate and distinct interest; and

(3) Maintains funds and accounts separate from that of any other individual or entity for the interest.

(f) The county committee shall require specific proof of ownership.

(g) Land owned by different persons of an immediate family living in the same household and operated as a single farming unit shall be considered as being under the same ownership in determining a farm.

(h) All land operated as a single unit and owned and operated by a parent corporation and subsidiary corporations of which the parent corporation owns more than 50 percent of the value of the outstanding stock, or where the parent is owned and operated by subsidiary corporations, shall be constituted as one farm.

§ 718.203 County committee action to reconstitute a farm.

Action to reconstitute a farm may be initiated by the county committee, the farm owner, or the operator with the concurrence of the owner of the farm. Any request for a farm reconstitution shall be filed with the county committee.

§ 718.204 Reconstitution of allotments, quotas, and bases.

(a) Farms shall be reconstituted in accordance with this subpart when it is determined that the land areas are not properly constituted and, to the extent practicable, shall be based on the facts and conditions existing at the time the change requiring the reconstitution occurred.

(b) Reconstitutions of farms subject to a direct and counter-cyclical program contract in accordance with part 1413 of this title will be effective for the current year if initiated on or before August 1 or prior to the issuance of DCP payments for the farm or farms being reconstituted.

(c) For tobacco farms, a reconstitution will be effective for the current year for each crop for which the reconstitution is initiated before the planting of such crop begins or would have begun.

(d) Notwithstanding the provisions of paragraph (c) of this section, a reconstitution may be effective for the current year if the county committee determines, and the State committee concurs, that the purpose of the request for reconstitution is not to perpetrate a scheme or device designed to evade the requirements governing programs found in this title.

§ 718.205 Substantive change in farming operation, and changes in related legal entities.

(a) Land that is properly constituted as a farm shall not be reconstituted if:

(1) The reconstitution request is based upon the formation of a newly established legal entity which owns or operates the farm or any part of the farm and the county committee determines there is not a substantive change in the farming operation;

(2) The county committee determines that the primary purpose of the request for reconstitution is to:

- (i) Obtain additional benefits under one or more commodity programs;
- (ii) Avoid damages or penalties under a contract or statute;
- (iii) Correct an erroneous acreage report; or

(iv) Circumvent any other program provisions. In addition, no farm shall remain as constituted when the county committee determines that a substantive change in the farming operation has occurred which would require a reconstitution, except as otherwise approved by the State committee with the concurrence of the Deputy Administrator.

(b) In determining whether a substantive change has occurred with respect to a farming operation, the county committee shall consider factors such as the composition of the legal entities having an interest in the farming operation with respect to management, financing, and accounting. The county committee shall also consider the use of land, labor, and equipment available to the farming operations and any other relevant factors that bear on the determination.

(c) Unless otherwise approved by the State committee with the concurrence of

the Deputy Administrator, when the county committee determines that a corporation, trust, or other legal entity is formed primarily for the purpose of obtaining additional benefits under the commodity programs of this title, the farm shall remain as constituted, or shall be reconstituted, as applicable, when the farm is owned or operated by:

(1) A corporation having more than 50 percent of the stock owned by members of the same family living in the same household;

(2) Corporations having more than 50 percent of the stock owned by stockholders common to more than one corporation; or

(3) Trusts in which the beneficiaries and trustees are family members living in the same household.

(d) Application of the provisions of paragraph (c) of this section shall not limit or affect the application of paragraphs (a) and (b) of this section.

§ 718.206 Determining farms, tracts, allotments, quotas, and bases when reconstitution is made by division.

(a) The methods for dividing farms, tracts, allotments, quotas, and bases in order of precedence, when applicable, are estate, designation by landowner, contribution, cropland, DCP cropland, default, and history. The proper method shall be determined on a crop by crop basis.

(b)(1) The estate method is the pro-rata distribution of allotments, quotas, and bases for a parent farm among the heirs in settling an estate. If the estate sells a tract of land before the farm is divided among the heirs, the allotments, quotas, and bases for that tract shall be determined according to paragraphs (c) through (h) of this section.

(2) Allotments, quotas, and bases shall be divided in accordance with a will, but only if the county committee determines that the terms of the will are such that a division can reasonably be made by the estate method.

(3) If there is no will or the county committee determines that the terms of a will are not clear as to the division of allotments, quotas, and bases, such allotments, quotas, and bases shall be apportioned in the manner agreed to in writing by all interested heirs or devisees who acquire an interest in the property for which such allotments, quotas, and bases have been established. An agreement by the administrator or executor shall not be accepted in lieu of an agreement by the heirs or devisees.

(4) If allotments, quotas, and bases are not apportioned in accordance with the provisions of paragraphs (b)(2) or (b)(3) of this section, the allotments, quotas, and bases shall be divided pursuant to

paragraphs (d) through (h) of this section, as applicable.

(c)(1) If the ownership of a tract of land is transferred from a parent farm, the transferring owner may request that the county committee divide the allotments, quotas, and bases, including historical acreage that has been double cropped, between the parent farm and the transferred tract, or between the various tracts if the entire farm is sold to two or more purchasers, in a manner designated by the owner of the parent farm subject to the conditions set forth in paragraph (c)(3) of this section.

(2) If the county committee determines that allotments, quotas, and bases cannot be divided in the manner designated by the owner because of the conditions set forth in paragraph (c)(3) of this section, the owner shall be notified and permitted to revise the designation so as to meet the conditions in paragraph (c)(3) of this section. If the owner does not furnish a revised designation of allotments, quotas, and bases within a reasonable time after such notification, or if the revised designation does not meet the conditions of paragraph (c)(3) of this section, the county committee will divide the allotments, quotas, and bases in a pro-rata manner in accordance with paragraphs (d) through (h) of this section.

(3) A landowner may designate a manner in which allotments, quotas, and bases are divided according to this paragraph.

(i) The transferring owner and transferee shall file a signed written memorandum of understanding of the designation with the county committee before any CCC or FSA prescribed form, letter or contract providing an allotment, base or quota is issued and before a subsequent transfer of ownership of the land. The landowner shall designate the allotments, quotas, and bases that shall be permanently reduced when the sum of the allotments, quotas, and bases exceeds the cropland for the farm.

(ii) Where the part of the farm from which the ownership is being transferred was owned for a period of less than 3 years, the designation by landowner method shall not be available with respect to the transfer unless the county committee determines that the primary purpose of the ownership transfer was other than to retain or to sell allotments, quotas, or bases. In the absence of such a determination, and if the farm contains land which has been owned for less than 3 years, that part of the farm which has been owned for less than 3 years shall be considered as a separate farm

and the allotments, quotas, or bases, shall be assigned to that part in accordance with paragraphs (d) through (h) of this section. Such apportionment shall be made prior to any designation of allotments, quotas, and bases with respect to the part that has been owned for 3 years or more.

(4) The designation by landowner method is not applicable to crop allotments or quotas which are restricted to transfer within the county by lease, sale, or by owner, when the land on which the farm is located is in two or more counties.

(5) The designation by landowner method may be applied at the owner's request to land owned by any Indian Tribal Council which is leased to two or more producers for the production of any crop of a commodity for which an allotment, quota, or base has been established. If the land is leased to two or more producers, an Indian Tribal Council may request that the county committee divide the allotments, quotas, and bases between the applicable tracts in the manner designated by the Council. The use of this method shall not be subject to the conditions of paragraph (c)(3) of this section.

(d)(1) The contribution method is the pro-rata distribution of a parent farm's allotments and quotas to each tract as the tract contributed to the allotments and quotas at the time of combination and may be used when the provisions of paragraphs (b) and (c) of this section do not apply.

(2) The county committee determines and the State committee or a representative thereof concurs, that the use of the contribution method would not result in an equitable distribution of allotments and quotas, considering available land, cultural operations, and changes in type of farming.

(e) The cropland method is the pro-rata distribution of allotments and quotas to separate tracts proportionately to the tract's contribution to the cropland for the parent tract. This method shall be used if paragraphs (b) through (d) of this section do not apply unless the county committee determines that division by the history method would result in more representative allotments and quotas than the cropland method, taking into consideration the operation normally carried out on each tract for the commodities produced on the farm.

(f)(1) The history method is the pro-rata distribution of allotments and quotas to separate tracts on the basis of the operation normally carried out on each tract of the parent farm. The county committee may use the history

method of dividing allotments and quotas when it:

(i) Determines that this method would result in a more accurate pro-rata distribution of allotments and quotas based on actual contribution of the tract to the totals of the parent farm than the cropland method would; and

(ii) Obtains written consent of all owners to use the history method.

(2) The county committee may waive the requirement for written consent of the owners for dividing allotments and quotas if the county committee determines that the use of the cropland method would result in an inequitable division of the parent farm's allotments and quotas and the use of the history method would provide more favorable results for all owners.

(g) The DCP cropland method is the pro-rata distribution of bases to the resulting tracts in the same proportion to the DCP cropland that each resulting tract bears to the DCP cropland for the parent tract. This method of division shall be used if paragraphs (b) and (c) of this section do not apply.

(h) The default method is the separation of tracts from a farm with each tract maintaining the bases attributed to the tract when the reconstitution is initiated. (i)(1) Allotments, quotas, and bases apportioned among the resulting farms pursuant to paragraphs (d) through (h) of this section may be increased or decreased with respect to a farm by as much as 10 percent of the parent farm's allotment, quota, or base determined under such subsections for the parent farm if:

(i) The owners agree in writing; and

(ii) The county committee determines the method used did not provide an equitable distribution considering available land, cultural operations, and changes in the type of farming conducted on the farm. Any increase in an allotment, quota, or base with respect to a tract pursuant to this paragraph shall be offset by a corresponding decrease for such allotments, quotas or bases established with respect to the other tracts which constitute the farm.

(2) Farm program payment yields calculated for the resulting farms of a division may be increased or decreased if the county committee determines the method used did not provide an equitable distribution considering available land, cultural operations, and changes in the type of farming conducted on the farm. Any increase in a farm program payment yield on a resulting farm shall be offset by a corresponding decrease on another resulting farm of the division.

(j) If a farm with burley tobacco quota is divided through reconstitution and one or more of the farms resulting from the division are apportioned less than 1,000 pounds of burley tobacco quota, the owners of such farms shall take action as provided in part 723 of this chapter to comply with the 1,000 pound minimum by July 1 of the current year or the quota shall be dropped. Exceptions to this are farms divided:

(1) Among family members;

(2) By the estate method; and

(3) When no sale or change in ownership of land occurs; or

(4) With one resulting farm receiving all of the quota.

§ 718.207 Determining allotments, quotas, and bases when reconstitution is made by combination.

When two or more farms or tracts are combined for a year, that year's allotments, quotas, and bases, with respect to the combined farm or tract, as required by applicable commodity regulations, shall not be greater than the sum of the allotments, quotas, and bases for each of the farms or tracts comprising the combination, subject to the provisions of § 718.204.

PART 723—TOBACCO

■ 5. The authority citation for part 723 continues to read as follows:

Authority: 7 U.S.C. 1301 *et seq.*; 7 U.S.C. 1421; 7 U.S.C. 1445-1 and 1445-2.

■ 6. Subpart B is amended by adding §§ 723.221, 723.222, and 723.223 to read as follows:

Subpart B—Allotments, Quotas, Yields, Transfers, Release and Reapportionment, History Acreages, and Forfeitures

* * * * *

§ 723.221 Eminent domain acquisitions.

(a) This section provides a uniform method for reallocating tobacco with respect to land involved in eminent domain acquisitions. An eminent domain acquisition is a taking of title to land, an easement to impound water on the land (impoundment), or an easement to flood the land (flowage), under the power of a Federal, State, or other agency. Acquisition may be by court condemnation of the land or by negotiation between the agency and the owner. This section does not apply to acquisition of land by an agency by a method other than eminent domain acquisition. All land acquired, including surrounding land acquired as a package acquisition, shall be considered an eminent domain

acquisition if the agency expended funds using its power of eminent domain.

(b) In this section, owner means a person having title to the land for a period of at least 12 months immediately before the date of transfer of title or grant of the impoundment or flowage easement under the eminent domain acquisition. If a person has owned the land for less than such 12-month period, they may still be considered the owner if the State committee determines they acquired the land for farming and not for obtaining status as an owner under this section. However, no person shall be considered the owner if he acquired the land subject to a pending eminent domain acquisition contract to an agency or an option by an agency or subject to pending condemnation proceedings. When the current titleholders are not the owner according to this section, the State committee shall determine who previously had title to the land and who is the owner according to this paragraph.

(c) Tobacco may be pooled for the benefit of an owner whose farm is acquired by eminent domain. Pooling shall be for a 3-year period from the date of displacement or during a period. The displaced owner may request transfer of allotments and quotas from the pool to other farms owned by such person.

(d) The owner shall be considered displaced from a farm by eminent domain acquisition on the date:

(1) The owner loses possession of the land;

(2) The owner is voluntarily displaced if a binding contract for acquisition has been executed;

(3) The owner, in the case of a flowage easement, determines it is no longer practical to conduct farming operations on the land; or

(4) The owner loses possession of the land as lessee under a lease from the agency that provided uninterrupted possession to the owner from the date of acquisition to the end of the lease.

(e) The owner shall notify the county committee in writing of the eminent domain acquisition and furnish the date of displacement within 30 days so that tobacco may be pooled in accordance with this section. Failure to so notify the county committee shall result in the loss of the ability of the owner to extend the 3-year period provided in paragraph (c) of this section.

(f) If the county committee is notified or otherwise determines that an owner has been displaced from the farm, the county committee shall establish a pool for the tobacco eligible under this section for a 3-year period beginning on

the date of displacement. Pooled tobacco shall be considered fully planted and, for each year in the pool, shall be established in accordance with applicable regulations.

(g) There shall be no pooling of an tobacco if:

(1) The county committee determines that an agency has eminent domain power to acquire a farm for the continued production of an tobacco, and

(i) The agency acquires a farm only for such purpose; and

(ii) The agency files a written notice with the county committee designating the tobacco to be produced on the farm.

(2) An agency acquires and retains the land in an agricultural or related activity. The tobacco for such land will be in accordance with applicable regulations.

(3) A displaced owner voluntarily waives the right to have all the tobacco or any part pooled and requests that the tobacco be retained on the agency acquired land;

(4) Agency acquired cropland will not be farmed and represents less than 15 percent of the total cropland on the farm. The tobacco shall be retained on the portion of the farm not acquired by the agency.

(5) An agency acquires land that will not be farmed and the cropland it contains is less than 15 percent of the total on the farm, the entire tobacco for the acquired land shall be retained on the land not acquired by the agency. The owner must file a written request with the county committee for such retention. The tobacco to be retained on the farm cannot exceed the land devoted to an agriculture related activity. Tobacco that is not retained shall be pooled; or

(6) If, prior to pooling, an owner requests transfer of the tobacco to other farms they own in the same county, the county committee may approve a transfer without establishment of a pool, subject to the requirements of paragraph (j) of this section. This paragraph shall govern the release and reapportionment of pooled tobacco notwithstanding other provisions of applicable commodity regulations.

(h) Pooled tobacco may be released on an annual basis by the owner to a county committee during any year in which tobacco is pooled and not otherwise transferred from the pool. The county committee may reapportion the released tobacco to other farms in the same county that have tobacco for the same commodity. Pooled tobacco shall not be released on a permanent basis or surrendered after release to the State committee for reapportionment in other counties. Reapportionment shall be on

the basis of past acreage of the commodity, land, labor, and equipment available for the production of the commodity, crop rotation practices, and other physical factors affecting the production of the commodity. Pooled tobacco that is released shall be considered to have been fully planted in the pool and not on the farm to which such tobacco is reapportioned.

(i) Pooled tobacco that may be transferred on a permanent or temporary basis by sale, lease, or by owner designation may be transferred permanently from the pool by the owner or temporarily for the duration of the pooled tobacco, subject to the terms and conditions for such transfers in the applicable commodity regulations. The transfer of tobacco acreage allotment or marketing quota shall be approved acre for acre.

(j)(1) Displaced owners may request a transfer of all or part of the pooled tobacco to any other farm in the United States that is owned by the displaced owner, but only if there are farms in the receiving county with tobacco, for the particular commodity or, if there are no such farms, the county committee determines that farms in the receiving county are suited for the production of the commodity. For purposes of this paragraph:

(i) Receiving farm means the farm to which transfer from the pool is to be made;

(ii) Receiving State and county committee mean those committees for the State and county in which the receiving farm is located; and

(iii) Transferring State and county committees mean those committees for the State and county in which the agency acquired farm is located.

(2) The displaced owner shall file with the receiving county committee written application for transfer of tobacco from the pool within 3 years after the date of displacement. The application shall contain a certification from the owner that no agreement has been made with any person for the purpose of obtaining tobacco from the pool for a person other than for the displaced owner. The owner shall attach to the application all pertinent documents pertaining to the current ownership or purchase of land and any leasing arrangements, such as the deed of trust or mortgage, a warranty deed, a note, sales agreement, and lease.

(3) The receiving county committee shall consider each application and determine whether the transfer from the pool shall be approved. Before an application is acted upon by the receiving county committee, the owner shall personally appear before the

receiving county committee after reasonable notice, bring any additional pertinent documents as may be requested for examination by the receiving county committee, and answer all pertinent questions bearing on the proposed transfer. Such personal appearance requirement may be waived if the receiving county committee determines from facts presented to it on behalf of the owner that such personal appearance would unduly inconvenience the owner on account of illness or other good cause and such personal appearance would serve no useful purpose. Any action by the receiving county committee shall be subject to the approval required under paragraph (j)(5) of this section.

(4) The transfer from the pool will be approved by the receiving county committee only if the county committee determines that the owner has made a normal acquisition of the receiving farm for the purpose of bona fide ownership to reestablish farming operations. The elements of such an acquisition shall include, but are not limited to, the following:

(i) Appropriate legal documents must establish title to the receiving farm;

(ii) If the displaced owner was the operator of the acquired farm at the date of displacement, such owner must personally operate and be the operator of the receiving farm for the first year that the tobacco is transferred;

(iii) If the displaced owner was not the operator of the acquired farm at the date of displacement and was not a producer on that farm because the leasing or rental agreement provided for cash, fixed rent, or standing rent payment, such owner shall not be required to operate personally and be the operator of the receiving farm, but at least 75 percent of the allotments for the receiving farm must be planted on the receiving farm during the first year of the transfer. With respect to a commodity for which a quota is applicable but for which there is no acreage allotment, an acreage that is equal to the result of dividing the quota transferred to the receiving farms by the receiving farm's yield, multiplied by 75 percent must be planted during the first year of the transfer;

(iv) If the displaced owner was not the operator of the acquired farm at the date of displacement but was a producer on that farm at the date of displacement as the result of having received a share of the crops produced on the acquired farm, such displaced owner shall not be required to be the operator of the receiving farm but must be a producer on the receiving farm during the first year that tobacco is transferred;

(v) The agreement between the displaced owner and the seller of the receiving farm must not contain a requirement that the receiving farm be leased to the seller or a person designated by or subject to the control of the seller. The seller or a person designated by or subject to the control of the seller may not lease the receiving farm for the first year the tobacco is transferred; and

(vi) The agreement under which the receiving farm was purchased or leased must be customary in the community where the receiving farm is located with respect to purchase price and timing and amount of purchase or rental payments.

(5) The approval by the receiving county committee of a transfer from the pool under this paragraph shall be effective upon concurrence by the State committee of the receiving State. The receiving State committee may authorize a transfer from the pool in any case where the owner presents evidence satisfactory to the receiving State committee that:

(i) The eligibility requirements of paragraphs (j)(4)(ii) through (j)(4)(iv) of this section cannot be met without substantial hardship because of illness, old age, multiple farm ownership, or lack of a dwelling on the farm to which an allotment or quota is to be transferred; or

(ii) The owner has made a normal acquisition of the receiving farm for the purpose of bona fide ownership to reestablish farming operations for the displaced owner, even if the farm is leased to the seller of the farm for the first year for which the tobacco is transferred.

(6) Upon approval under this paragraph, the receiving county committee shall issue a notice of tobacco under the applicable commodity regulations, taking into consideration the land, labor, and equipment available for the production of the commodity, crop rotation practices, and the soil and other physical factors. In determining the tobacco available for transfer, the receiving county committee shall consider the receiving tract as a separate ownership. The acreage transferred from the pool shall not exceed the tobacco most recently established for the acquired farm placed in the pool. When all or a part of the tobacco placed in the pool is transferred and used to establish or increase the tobacco for other farms owned or purchased by the owner, all of the proportionate part of the past acreage history for the acquired farm shall be transferred to and considered for purposes of future tobacco to have

been planted on the receiving farm for which tobacco, are established or increased under this section. If only a part of the available tobacco is transferred from the pool, the remaining part of the tobacco, shall remain in the pool for transfer to other farms of the owner until all such tobacco has been transferred or until the period of eligibility for establishing or increasing tobacco under this section has expired.

(7) If any tobacco is transferred under this section and it is later determined by the receiving county or State committee, or by the Deputy Administrator, that the transfer was obtained by misrepresentation, or that the conditions of paragraph (j)(4) of this section are not met, the tobacco for the receiving farm shall be reduced for each year the transfer purportedly was in effect by the amount attributable to the tobacco transferred from the pool. If the time for the transfer of the tobacco from the pool has not expired, the tobacco initially transferred from the pool shall be returned to the pool after the period of time has expired in which the displaced owner could request administrative review. Cancellation of the transfer of tobacco by the receiving county committee requires approval by the receiving State committee. The receiving county committee shall issue a notice of marketing quota and penalty in accordance with applicable commodity regulations.

(8) If the displaced owner requests transfer of pooled tobacco, within the prescribed period, but the request for transfer is filed during a year or a part of the pooled tobacco was released to the transferring county committee pursuant to paragraph (h), the request will be processed in the usual manner but the amount released shall not be effective until the succeeding year. When a request for transfer of pooled tobacco involves a transfer from one State to another, the receiving State committee shall ask the transferring State committee whether any of the tobacco for which transfer is requested has been released to the transferring county committee for the current year.

(k)(1) When the displaced owner leases part but not all of the agency acquired land, such part shall be constituted as a separate farm on the date of the displacement of the owner from the land not so leased.

(2) If a parent farm consists of separate ownership tracts, each such tract being acquired in whole or in part shall be considered as a separate farm for purposes of paragraphs (g)(3) and (g)(4) of this section.

(3) If a portion of a farm is acquired by an agency and the owner is displaced

therefrom, the acquired portion shall be constituted as a separate farm on the date of displacement unless the tobacco is retained on the portion not acquired as provided in paragraphs (g)(3) and (g)(4) of this section, in which case the farm shall not be reconstituted but the farmland and cropland data shall be corrected on all appropriate records for the parent farm.

(l)(1) The displaced owner may request from the county committee a written designation of beneficiary of the rights in the tobacco attributable to the acquired land in the event of the death of the displaced owner, and may revise such designation from time to time. The beneficiary of a deceased owner may continue a lease or negotiate a lease with the agency, transfer rights with respect to farms owned by the beneficiary, and release, sale, lease, and owner transfer rights under this section.

(2) If the displaced owner does not file a designation of beneficiary under paragraph (l)(1) of this section and the displaced owner dies before displacement or after pooling occurs, the following persons shall be considered the beneficiary with applicable rights:

(i) The surviving joint owner of the farm where two persons own the farm as joint tenants with right of survivorship; and

(ii) The persons who succeed to the deceased displaced owner's interest under a will or by intestate succession. However, in the case of intestate succession, the person shall be limited to the surviving spouse, parent, sibling or child of the deceased displaced owner. In the settlement of the estate of the deceased displaced owner, the heirs may file a written agreement with the county committee for the division of the deceased displaced owner's rights under this section.

(m)(1) No transfer from the pool under paragraphs (h), (i), or (j) of this section shall be approved if there remains any unpaid marketing quota penalty due with respect to the marketing of the commodity from the acquired farm by the displaced owner, or if any of the commodity produced on the agency acquired farm has not been accounted for as required under applicable regulations.

(2) If tobacco for an acquired farm next established after the date of displacement would have been reduced because of false or improper identification of the commodity produced on or marketed from the farm, or as the result of a false acreage report, the tobacco shall be reduced in the pool accordance to applicable regulations.

§ 723.222 Exempting Federal prison farms and Federal wildlife refuges.

A marketing penalty shall not be assessed with respect to any commodity that is produced on a Federal prison farm or Federal wildlife refuge. This exception does not apply to penalties incurred by an individual who has a separate interest in a crop that is subject to marketing quotas and was produced on a Federal prison farm or Federal wildlife refuge.

§ 723.223 Transfer of allotments and quotas—State public lands.

(a) Transfers of allotments and quotas between farms in the same county may be permitted where both farms are lands owned by the State.

(b) An application requesting the transfer of one or more of the allotments and quotas on a farm entirely comprised of lands owned by a State shall be filed with the county committee by the State. The application shall identify the farms as being within the same county, show that each farm is entirely comprised of lands owned by the State, and list the allotments and quotas requested to be transferred. Additional information about the farm operations, including leases, shall also be included in the application.

(c) The State committee shall establish the closing date for filing applications under paragraph (b) of this section, for each year, which shall be no later than the general planting date in the county for the commodity involved in the transfer.

(d)(1) Each transfer of an allotment and quota shall be adjusted for differences in farm productivity if the yield projected for the year the transfer is to take effect for the farm to which transfer is made exceeds by more than ten percent the yield projected for the year the transfer is to take effect for the farm from which transfer is made. The county committee shall determine the amount of the allotment and quota to be transferred where a productivity adjustment is required to be made by dividing:

(i) The product of the yield for the farm from which the transfer is made and the acreage to be transferred from such farm, by

(ii) The yield for the farm to which the transfer is made.

(2) Acreage for the farm receiving the allotment or quota shall be adjusted by the same percentage as the allotment or quota being transferred is adjusted. The allotment and quota and related acreage transferred from the farm from which the transfer is made shall be the full amount, but the amount of all allotment or quota and related acreage for the farm

to which the transfer is made shall be the adjusted amount.

(e) The amount of allotment and quota on a farm after a transfer under this section is made shall not exceed the average amount of allotment or quota of at least three farms with acreage of cropland similar to the farm receiving the transfer in the community having the applicable allotment acreage and quota on these farms.

(f) Each transfer of any allotment and quota shall be require that acreage equal to the allotment and quota transferred shall be devoted to and maintained in permanent vegetative cover on the farm from which the transfer is made before any productivity adjustment. The acreage to be devoted to and maintained in permanent vegetative cover with respect to quota crops shall be determined by dividing the quota transferred by the yield of the farm from which the quota is transferred.

(g) Transfer of an allotment and quota under this section shall only be approved if:

(1) The county committee determines that a timely filed application has been received and that the provisions of this section have been met; and

(2) A representative of the State committee also determines that the provisions of this section have been met. If a transfer is approved, the county committee shall issue revised notices of the allotment or quota for each farm affected. If a county committee determines that requirements for a transfer were not met, a report shall be provided to the State committee. If the State committee agrees that requirements were not met, the transfer will be canceled, and the allotment and quota shall be transferred back to the original farm. Where a cancellation and transfer back is required, the county committee shall issue revised notices of the allotment or quota showing the reasons for the cancellation.

PART 1412—DIRECT AND COUNTER CYCLICAL PROGRAM AND PEANUT QUOTA BUYOUT PROGRAMS

7. Amend § 1412.407 as follows:

■ A. By revising paragraph (d)(2) to read as set forth below.

■ B. Amend paragraph (e) by adding Houston County, Alabama, Tazewell County, Illinois, and Clinton County, Pennsylvania as State Committee-established regions within the respective states.

§ 1412.407 Planting flexibility.

* * * * *

(d) * * *

(2) The farm has a history of planting fruits, vegetables, or wild rice, as

determined by the CCC, in any one of the crop years 1991 through 1995 or 1998 through 2001, in which case the payment acres for the farm shall be reduced on an acre-for-acre basis; or

* * * * *

PART 1413—HARD WHITE WHEAT INCENTIVE PROGRAM

■ 8. Amend § 1413.101 by revising paragraph (b) to read as follows:

§ 1413.101 Applicability.

* * * * *

(b) A production payment incentive shall be available only for hard white wheat that grades U.S. # 2 grade or higher, established by the Federal Grain Inspection Service, that is produced and harvested in the United States.

* * * * *

§ 1413.105 [Amended]

■ 9. Amend § 1413.105 by redesignating the second paragraph (c)(1) and paragraph (c)(2) as paragraphs (c)(2) and (c)(3) respectively.

Signed in Washington, DC, on February 19, 2003.

James R. Little,

Administrator, Farm Service Agency and Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 03-8025 Filed 3-31-03; 3:45 pm]

BILLING CODE 3410-05-P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-1136]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff commentary.

SUMMARY: This final rule revises the official staff commentary to Regulation Z, which implements the Truth in Lending Act. The commentary interprets the requirements of Regulation Z. The revisions state the rules for disclosing fees to expedite a payment or delivery of a card. The revisions interpret the rules for replacing an accepted credit card to permit an issuer, under certain conditions, to replace an accepted card with more than one card. The revisions also discuss the treatment of private mortgage insurance payments in disclosing the payment schedule and the selection of Treasury security yields for determining whether a mortgage loan is covered by provisions in

Regulation Z that implement the Home Ownership and Equity Protection Act.

DATES: This rule is effective April 1, 2003; the date for mandatory compliance is October 1, 2003.

FOR FURTHER INFORMATION CONTACT:

Krista P. DeLargy or Dan S. Sokolov, Attorneys, or Jane E. Ahrens, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for users of Telecommunications Device for the Deaf (“TDD”) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by providing for uniform disclosures about its terms and cost. TILA gives consumers the right to rescind certain transactions that involve a lien on their principal dwelling, and it requires additional disclosures and imposes substantive restrictions on certain home-secured loans with rates or fees above a certain amount. The act also addresses the rights and responsibilities of credit card issuers and cardholders.

TILA is implemented by the Board’s Regulation Z (12 CFR part 226). The Board has delegated to officials in the Board’s Division of Consumer and Community Affairs authority to issue official staff interpretations of Regulation Z. Good faith compliance with the commentary affords creditors protection from liability under section 130(f) of TILA. The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions that arise.

In December 2002, the Board published for comment proposed changes to the commentary (67 FR 72,618, December 6, 2002). The revisions discuss the rules for disclosing fees to expedite a payment or delivery of a card; replacing an accepted credit card; including private mortgage insurance premiums in the payment schedule disclosure; and selecting Treasury security yields for determining whether a mortgage loan is covered by the Home Ownership and Equity Protection Act. The Board received approximately 350 comment letters, most on the inquiry about overdraft or “bounced check” services. About 280 of the comments were from financial institutions, other creditors, and their representatives. The remaining comment letters were from consumer

groups, individuals, and one state agency.

With one exception, the final rule is being adopted substantially as proposed; the proposed comment concerning expedited payment fees has not been adopted. In addition, some changes have been made for clarity in response to commenters’ suggestions.

In addition to the proposed commentary revisions, the Board’s staff requested information on overdraft or “bounced check” protection services. Institutions provide the service in lieu of establishing a traditional overdraft line of credit for the customer. Under these programs, even though the institution generally reserves the right not to pay particular items, a dollar limit is typically established for the account holder and then the institution routinely pays overdrafts on the account up to that amount without a case-by-case assessment. The staff solicited comment and information from the public about how these services are designed and operated, to determine the need for additional guidance to financial institutions under Regulation Z or other laws.

About 300 of the comment letters responded to the request to provide information about the various ways that depository institutions offer bounced check protection services. The comment letters describe programs being offered to depository institutions by a number of vendors. The programs vary from vendor to vendor, and also appear to vary in their implementation from institution to institution. The Board’s staff is continuing to gather information on these services, which are not addressed in the final rule.

II. Commentary Revisions

Subpart B—Open-End Credit

Section 226.6—Initial Disclosure Statement

6(b) Other Charges

Representatives of the credit card industry requested official guidance on the rules for disclosing two fees charged to consumers in connection with open-end credit plans—a fee imposed when a consumer requests that an individual payment be expedited, and a fee imposed when a consumer requests expedited delivery of a credit card. Because the proper characterization of these fees under TILA previously has been unclear, the staff proposed to revise comment 6(b) to provide guidance.

Under Regulation Z, creditors must disclose fees that are “finance charges,” which are defined as “charges payable

directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit." For open-end credit plans, fees that are not finance charges but that may be imposed as part of the plan must also be disclosed; these are commonly referred to as "other charges." The commentary interprets this requirement to apply to "significant charges related to the plan." Regulation Z does not require disclosure of charges that are not considered either finance charges or "other charges."

Fee To Expedite a Payment on a Credit or Charge Card Account

Card issuers increasingly have been making expedited payment services available to consumers. The expedited payment service provides consumers an alternative to mailing a payment that might not reach the card issuer by the due date. Typically to avoid being assessed a late fee, consumers request expedited payment service for a lesser charge.

Comment 6(b)-1 provides examples of "other charges" that must be disclosed to consumers under Regulation Z; the list of examples is not exhaustive. A revision to comment 6(b)-1 was proposed indicating that a fee imposed for expediting an individual payment at the consumer's request should be disclosed as an "other charge." The proposed comment only covered an expedited payment service where that method of payment was not established in advance as the regular payment method for the account. Under the proposal, changes in the amount of the fee would not trigger a change-in-terms notice.

Generally, consumer groups agreed with the proposal to treat the fee for an expedited payment service as an "other charge" subject to the condition that creditors document consumers knowing and voluntary assent to the fee. Otherwise, they believed the fee is a finance charge. They also advocated that the change-in-terms notice requirements apply.

Most industry commenters opposed the proposed comment on expedited payment fees. They asserted that the fee should not be disclosed under TILA as an "other charge" because in their view the payment service is not part of the credit plan and is not significant in its occurrence or in amount. Industry commenters disagreed that the fee resembles a late charge or substitutes for it. They noted that the fee is disclosed to consumers at the time they request the payment service and, therefore, they believe consumers will not benefit materially from disclosure of the fee on

account-opening disclosures or on periodic statements under TILA. More generally, industry commenters believe that because there is another reasonable payment option available to the consumer without paying a charge, the expedited payment fee should not be disclosed either as a finance charge or as an "other charge" under TILA. They contend that the creditor's fee should be considered separate from the credit plan as though it were imposed by a third-party courier or wire transfer service. Some commenters expressed concern about the potential effect of treating an expedited payment fee as part of the credit plan for home-equity lines of credit; they believe the fee should not be considered a term of the plan subject to the rules in § 226.5b that limit unilateral changes.

The proposal was intended to address fees charged to consumers who request an expedited payment service as an alternative to mailing a payment that might not reach the card issuer by the due date. This service typically allows consumers to avoid being assessed a late fee, which typically is higher than the fee imposed for the expedited payment service. The expedited payment service covered by the proposal is not a payment method established in advance as the expected method for making regular payments on the account. Where a card issuer offers an expedited payment service, it is usually available to all account holders; the proposal was not directed to situations where the issuer makes an ad hoc accommodation to satisfy the request of a particular customer. The proposal also was not intended to address electronic payment options that are not offered as an alternative to paying a late fee, or bill-payment services offered in connection with a consumer's deposit account that might be used to pay credit card bills as well as other bills.

For the reasons discussed in the proposal, expedited payment fees, as currently constructed and described above, are not finance charges under TILA and Regulation Z because the consumer has a reasonable means for making payment on the account without paying a fee to the creditor. As noted above, the act and regulation also require disclosure by the creditor of the amount of any charge other than a finance charge "that may be imposed as part of the plan * * *." 15 U.S.C. 1637(a)(5); 12 CFR 226.6(b). The official staff commentary interprets this requirement to apply to "significant charges related to the plan (that are not finance charges)" and provides examples of charges that are "other charges" under this standard as well as

charges that are not "other charges" under this standard. See comments 6(b)-1 and -2.

Based on the record established by the comment letters, the fee for expediting a payment that was described in the proposal does not clearly meet the standard for treatment as an "other charge." Accordingly, the proposed revision to comment 6(b)-1, classifying the fee as an "other charge," is not being adopted. In order to provide clear compliance guidance, comment 6(b)-2 is being revised to indicate that, at this time, creditors are not required to disclose the fee under TILA and Regulation Z. Creditors should continue their current practice of informing consumers of the amount of the charge at the time the service is requested. In addition, when the fee is charged to the credit account, creditors must include the cost on the periodic statement for that billing cycle. See § 226.7(b).

In response to the request for comment on the proper classification of this fee and the fee to expedite delivery of a credit card discussed below, commenters suggested that the Board adopt a general rule for classifying fees under TILA. In their view, the adoption of such a rule would aid creditors' compliance, particularly when determining how new fees should be treated under TILA. There is significant merit in reviewing this area to assess whether general principles can be articulated for determining the appropriate treatment of creditors' fees. Accordingly, in connection with a broader review of Regulation Z, the staff plans to recommend that the Board undertake such an assessment to determine if a general rule can be established consistent with the requirements of TILA. This review would include assessing the treatment of existing fees to determine if a different classification for individual fees is appropriate.

Fees for Expediting Delivery of a Credit or Charge Card

Comment 6(b)-2 provides examples of charges that are neither finance charges nor "other charges." A revision to comment 6(b)-2 was proposed to add, as an example, a card issuer's fee for expediting delivery of a card upon request, provided the issuer does not charge for delivery by standard mail service. The proposed comment is being adopted substantially as proposed. A minor revision has been made to clarify that the comment also applies when the card is delivered without a fee by a means other than standard mail service that is at least as fast as standard mail service.

Industry commenters uniformly agreed that fees for expedited credit card delivery should not have to be disclosed under TILA as long as the consumer can obtain the card without paying a fee; some of these commenters believe it should be sufficient if the card issuer sends the card without a fee by any "reasonable method." Consumer groups contended that the fee should be disclosed as an "other charge" if the creditor documents consumers' knowing and voluntary assent to the fee, the fee charged for expediting delivery is reasonably related to the actual cost of delivery, and the card is available without a fee by first-class mail or faster. If these conditions are not satisfied, consumer advocates believe the fee should be disclosed as a finance charge.

The final comment reflects the view that a fee for expedited delivery of a credit card is not incidental to the extension of credit and thus is not a finance charge where the consumer requests the service and the card is also available by standard mail service (or another means that is at least as fast) without a fee. In those circumstances, the amount of the voluntary charge for expedited delivery in relation to the creditor's cost is not a factor in determining whether the fee is a finance charge.

In addition, the fee does not appear to be an "other charge" under Regulation Z. An expedited card delivery service does not appear to be significant or related to the credit plan because the service is provided only occasionally, such as when a consumer seeks to replace a lost or stolen credit card and requests expedited delivery. Finally, nothing in the record suggests the need for additional documentation to demonstrate that the consumer's assent to the service is knowing and voluntary.

Section 226.9—Subsequent Disclosure Requirements

9(c) Change in Terms

A revision to comment 9(c)(2)–1 was proposed to address expedited payment fees consistent with the proposed revision to comment 6(b)–1. Because expedited payment fees are not being classified as "other charges" at this time, the proposed revision to comment 9(c)(2)–1 is unnecessary and is not being adopted.

Section 226.12—Special Credit Card Provisions

12(a) Issuance of Credit Cards

Under the proposal, comment 12(a)(2)–6 would be revised to allow card issuers, subject to certain conditions, to replace an accepted credit

card with one or more replacement cards. Most commenters supported the proposed commentary provision with some suggested revisions, as discussed below. The proposal is adopted with revisions.

Section 132 of TILA, which is implemented by § 226.12(a) of Regulation Z, generally prohibits creditors from issuing credit cards except in response to a request or application. Section 132 explicitly exempts from this prohibition credit cards issued as renewals of or substitutes for previously accepted credit cards. Existing comment 12(a)(2)–5, the "one-for-one rule," interprets these statutory and regulatory provisions by providing that, in general, a creditor may not issue more than one credit card as a renewal of or substitute for an accepted card (as that term is defined under Regulation Z). The existing staff commentary does not, however, construe Section 132 as requiring one-for-one replacement in all circumstances. *See* comment 12(a)(2)–6.

Advances in technology used for information transmittal have enabled card issuers to issue credit cards in different sizes and formats. These new cards may enhance consumer convenience. A merchant's card reading equipment determines, however, whether a consumer can use a particular credit card with that merchant. For example, some merchants' equipment and some automated teller machines require insertion of a "full-size" credit card. Certain cards that are reduced in size may require different card readers than those presently used for "full-size" cards. Some card issuers have requested guidance on the issuance of cards using new technologies, which are intended to supplement but not necessarily replace a cardholder's existing card.

To address these developments, under the proposal, comment 12(a)(2)–6 would be revised to provide additional guidance, consistent with the statute and legislative purpose. The proposed comment indicated that a card issuer may replace an accepted credit card with more than one renewal or substitute card on the same account where: (1) The replacement cards access only the account of the accepted card; (2) all cards issued under the account are governed by the same terms and conditions; and (3) the consumer's total liability for unauthorized use with respect to the account does not increase.

Several industry commenters requested that the first condition be revised to require only that any replacement card access the same "credit plan" as the accepted card. This suggested revision is too broad. For

example, some open-end credit plans might include multiple accounts, such as a credit card account and a home equity line of credit (HELOC), where the consumer's credit card does not access the HELOC account. The commenters' suggestion to broaden the comment would permit creditors to replace an accepted card with one that accesses the credit card account and another that accesses the HELOC. Because the consumer did not previously have credit card access to the HELOC, adding such access on an unsolicited basis would be inconsistent with the legislative purposes of Section 132. Accordingly, the final comment provides that the replacement cards should access only the accounts previously accessed by the consumer's accepted card. Minor revisions have been made to this part of the final comment for clarity; no change in meaning is intended.

Some industry commenters requested a clarification in the final rule that a supplemental card need not access all of the features of the consumer's existing card account. Neither the proposal nor the final comment requires that all replacement cards issued access all of the account features of the accepted card.

Commenters also requested a clarification that issuers would not be prevented from issuing multiple replacement cards when there is a substitution due to a change in the card issuer's name or account number, or where there is a successor card issuer. The requirement that supplemental cards must access the same account as the accepted card does not preclude issuers from issuing multiple replacement cards as part of a proper substitution. *See, e.g.,* comments 12(a)(2)–2 and –3.

Some industry commenters opposed the second condition—that all cards issued in connection with a renewal or substitution be subject to the same terms and conditions. Some commenters noted that for safety and soundness reasons, an issuer might limit use of a supplemental access device to low-dollar sales transactions (such as purchases at a vending machine or gas pump); limit the availability of credit on a supplemental card (such as a card for the cardholder's dependent child); or limit use of particular access devices to transactions with merchants that employ special security procedures or agree to special risk-sharing arrangements. Other commenters requested clarification that all credit features accessible with a supplemental card need not be subject to the same terms, for example, a different APR

might apply to purchase transactions and cash advances.

As proposed, the final comment provides that where a card issuer replaces an accepted card with more than one renewal or substitute card on an unsolicited basis, all replacement cards must be issued subject to the same terms and conditions. The final comment clarifies that this requirement applies only to terms and conditions that are required to be disclosed under § 226.6 of Regulation Z, except that a creditor may vary terms for which no change-in-terms notice is required under § 226.9(c). For example, a card issuer could issue a supplemental card that has a lower APR, has a lower credit limit, can only be used for small dollar transactions or for a subset of merchants, or is subject to different security procedures than the accepted card. Moreover, the comment does not suggest that all the credit features available with the unsolicited supplemental card must be subject to the same terms; for example, the APRs for purchase transactions and cash advances might differ for the supplemental card to the same extent that these terms differ for the accepted card.

Commenters generally supported the third condition, that the consumer's total liability for unauthorized use of the account must not increase as a result of the creditor's issuance of a supplemental card. That condition is adopted without revision in the final comment.

Several consumer groups advocated adding a condition that either the replacement cards all be mailed in the same envelope to deter identity theft or the consumer be given written notice seven days before the mailing of an additional card. They also recommended requiring other security measures, such as consumer-initiated card activation.

Card issuers typically send cards that are not activated and employ security procedures requiring the consumer to verify receipt of the card, to avoid or limit monetary losses from the theft of credit cards sent through the mail. These measures have become increasingly common and are used on a substantial portion of cards now issued. It is expected that industry will continue these practices, which should be as effective when replacing an accepted card with one or more renewal or substitute cards.

Comment was also solicited on whether it would be appropriate to allow the unsolicited issuance of supplemental cards for an existing account on the conditions specified

above even when there is no renewal of or substitution for the cardholder's existing card. Industry commenters stated that allowing additional cards to be sent outside of renewal or substitution would reduce card issuers' costs by eliminating the need to produce and distribute unnecessary replacement cards. They also noted that the issuance of supplemental cards alone (as opposed to issuance in connection with a renewal or substitution) would not result in increased risk of liability for unauthorized use of the cards. Consumer advocates opposed the unsolicited issuance of more than one card on an existing account (when there is no renewal or substitution) unless consumers are notified by mail seven days before an additional card is sent and security measures such as consumer-initiated card activation are required, to protect against any added risk of theft and unauthorized use.

Based on the comments received, staff plans to recommend that the Board consider amending § 226.12(a) to allow the unsolicited issuance of additional cards on an existing account outside of renewal or substitution under certain conditions. Also, consideration may be given to whether changes to Regulation E's restrictions on the unsolicited issuance of additional debit cards on a consumer's existing asset account are warranted.

Subpart C—Closed-End Credit

Section 226.18—Content of Disclosures

18(g) Payment Schedule

The disclosures for closed-end loans must include the number, amounts, and timing of payments scheduled to repay the obligation. Premiums paid for insurance that protects the creditor against the consumer's default or other credit loss (sometimes referred to as private mortgage insurance) are finance charges that must be included in the payment schedule. The payment schedule should reflect the fact that, under the Homeowners Protection Act of 1998 (HPA), such insurance generally must terminate before the term of the loan expires.

With some revisions for clarity, changes to comment 18(g)–5 are adopted as proposed to provide additional guidance on how mortgage insurance premiums should be disclosed on the payment schedule when some premiums are collected and escrowed at the time the loan is closed. Creditors are required to disclose a payment schedule based on the borrower's legal obligation. The comment provides an example to facilitate compliance.

Commenters generally supported the proposal. Several commenters noted that the loan documents might be silent on how the termination of insurance premiums will be implemented under the HPA. TILA disclosures must be based on the legal obligation, which is determined by applicable state or other law, and not solely by the parties' written agreement. See comment 17(c)(1)–1. Comment 18(g)–5 has been revised to reflect this guidance.

Two commenters sought clarification that the rules for disclosing mortgage insurance premiums under TILA would not affect the rules for escrow accounts under the Real Estate Settlement Procedures Act (RESPA). The text of the final comment has been modified to allay those concerns; the comment in no way affects creditors' compliance with RESPA's aggregate escrow accounting rules.

Section 226.19—Certain Residential Mortgage Transactions

19(b) Certain Variable-Rate Transactions

A technical amendment to comment 19(b)(1)–2 is adopted, as proposed, to change the citation to comment 19(b)–5, as amended (65 FR 17129, March 31, 2000). No substantive change is intended.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage

Section 226.32 implements the Home Ownership and Equity Protection Act of 1994 (HOEPA), which is part of the Truth in Lending Act. HOEPA requires additional disclosures and provides substantive protections for certain home-secured loans carrying rates or fees above specified triggers. HOEPA covers mortgage loans for which the annual percentage rate (APR) exceeds the yield on Treasury securities with a comparable maturity by a specified number of percentage points (8 for first-lien loans, 10 for subordinate-lien loans). The APR is compared with the yield on Treasury securities as of the 15th day of the month immediately preceding the month of application.

Revisions to comment 32(a)(1)(i)–4 were proposed to clarify how creditors should determine the applicable yield on Treasury securities. The proposal provided that creditors should not use results of Treasury auctions. Instead, creditors should use yields on actively traded issues adjusted to constant maturities that are listed on the Board's

“Selected Interest Rates” (statistical release H-15). The H-15 is published daily and is posted on the Board’s Internet Web site at <http://www.federalreserve.gov/releases/h15>.

The proposed comment also clarified that for purposes of HOEPA’s rate-based trigger, creditors should compare the APR on 30-year loans (and other loans of 20 or more years) with the yield reported on the H-15 for a 20-year constant maturity. The Department of the Treasury recently ceased auctioning 30-year securities. Creditors asked for additional guidance since the H-15 lists a 20-year constant maturity and a long-term average of the yields for Treasury securities with terms to maturity of 25 or more years, and refers to a Treasury formula for estimating a 30-year yield.

Commenters generally supported the proposed revisions as enhancing uniformity and easing compliance. However, several credit unions that commented preferred having flexibility to use any figure on the H-15 comparable to a loan’s maturity, including the Treasury formula for estimating a 30-year yield. Other commenters, while concurring with the guidance to use 20-year constant maturities to calculate the APR trigger for 30-year loans, encouraged the Board to explore alternatives and make further revisions to the commentary if more suitable alternatives become available. One commenter requested guidance on the effect of an irregular first payment period on the loan’s maturity.

The comment has been adopted substantially as proposed, with a minor revision for clarification. Requiring that all creditors use the yields on the H-15 for Treasury constant maturities should ensure uniform application of HOEPA. The final comment clarifies that for purposes of determining a loan’s maturity under HOEPA’s rate-based trigger, creditors may rely on the rules in § 226.17(c)(4). Under the rule, creditors may ignore the effect of first payment periods that are slightly longer or shorter than other scheduled payment periods.

List of Subjects in 12 CFR Part 226

Consumer protection, Disclosures, Federal Reserve System, Truth in lending.

Text of Revisions

■ Comments are numbered to comply with **Federal Register** publication rules. For the reasons set forth in the preamble, the Board amends 12 CFR part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

- 2. In Supplement I to Part 226:
 - a. Under *Section 226.6—Initial Disclosure Statement*, under *6(b) Other charges*, paragraph 2. is revised.
 - b. Under *Section 226.12—Special Credit Card Provisions*, under *Paragraph 12(a)(2)*, paragraph 6. is revised.
 - c. Under *Section 226.18—Content of Disclosures*, under *18(g) Payment schedule*, paragraph 5. is revised.
 - d. Under *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, under *Paragraph 19(b)(1)*, paragraph 2. is amended by removing “comment 19(b)-4” and adding “comment 19(b)-5” in its place.
 - e. Under *Section 226.32—Requirements for Certain Closed-End Home Mortgages*, under *Paragraph 32(a)(1)(i)*, paragraph 4. is revised.

Supplement I To Part 226—Official Staff Interpretations

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Subpart B—Open-End Credit

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Section 226.6—Initial Disclosure Statement

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6(b) Other charges.

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2. *Exclusions.* The following are examples of charges that are not “other charges”:

- i. Fees charged for documentary evidence of transactions for income tax purposes.
- ii. Amounts payable by a consumer for collection activity after default; attorney’s fees, whether or not automatically imposed; foreclosure costs; post-judgment interest rates imposed by law; and reinstatement or reissuance fees.
- iii. Premiums for voluntary credit life or disability insurance, or for property insurance, that are not part of the finance charge.
- iv. Application fees under § 226.4(c)(1).
- v. A monthly service charge for a checking account with overdraft protection that is applied to all checking accounts, whether or not a credit feature is attached.
- vi. Charges for submitting as payment a check that is later returned unpaid (see commentary to § 226.4(c)(2)).
- vii. Charges imposed on a cardholder by an institution other than the card

issuer for the use of the other institution’s ATM in a shared or interchange system. (See also comment 7(b)-2.)

viii. Taxes and filing or notary fees excluded from the finance charge under § 226.4(e).

ix. A fee to expedite delivery of a credit card, either at account opening or during the life of the account, provided delivery of the card is also available by standard mail service (or other means at least as fast) without paying a fee for delivery.

x. A fee charged for arranging a single payment on the credit account, upon the consumer’s request (regardless of how frequently the consumer requests the service), if the credit plan provides that the consumer may make payments on the account by another reasonable means, such as by standard mail service, without paying a fee to the creditor.

* * * * *

Section 226.12—Special Credit Card Provisions

12(a) Issuance of credit cards.

* * * * *

Paragraph 12(a)(2).

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6. *One-for-one rule—exceptions.* The regulation does not prohibit the card issuer from:

i. Replacing a debit/credit card with a credit card and another card with only debit functions (or debit functions plus an associated overdraft capability), since the latter card could be issued on an unsolicited basis under Regulation E.

ii. Replacing an accepted card with more than one renewal or substitute card, provided that:

A. No replacement card accesses any account not accessed by the accepted card;

B. For terms and conditions required to be disclosed under § 226.6, all replacement cards are issued subject to the same terms and conditions, except that a creditor may vary terms for which no change in terms notice is required under § 226.9(c); and

C. Under the account’s terms the consumer’s total liability for unauthorized use with respect to the account does not increase.

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Subpart C—Closed-End Credit

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Section 226.18—Content of Disclosures

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18(g) Payment schedule.

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5. *Mortgage insurance.* The payment schedule should reflect the consumer’s

mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier. The payment schedule must reflect the legal obligation, as determined by applicable state or other law. For example, assume that under applicable law, mortgage insurance must terminate after the 130th scheduled monthly payment, and the creditor collects at closing and places in escrow two months of premiums. If, under the legal obligation, the creditor will include mortgage insurance premiums in 130 payments and refund the escrowed payments when the insurance is terminated, the payment schedule should reflect 130 premium payments. If, under the legal obligation, the creditor will apply the amount escrowed to the two final insurance payments, the payment schedule should reflect 128 monthly premium payments. (For assumptions in calculating a payment schedule that includes mortgage insurance that must be automatically terminated, see comments 17(c)(1)–8 and 17(c)(1)–10.)

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Subpart E—Special Rules for Certain Home Mortgage Transactions

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Section 226.32—Requirements for Certain Closed-End Home Mortgages

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*32(a) Coverage.
Paragraph 32(a)(1)(i).*

* * * * *

4. *Treasury securities.* To determine the yield on comparable Treasury securities for the annual percentage rate test, creditors may use the yield on actively traded issues adjusted to constant maturities published in the Board's "Selected Interest Rates" (statistical release H–15). Creditors must use the yield corresponding to the constant maturity that is closest to the loan's maturity. If the loan's maturity is exactly halfway between security maturities, the annual percentage rate on the loan should be compared with the yield for Treasury securities having the lower yield. In determining the loan's maturity, creditors may rely on the rules in § 226.17(c)(4) regarding irregular first payment periods. For example:

i. If the H–15 contains a yield for Treasury securities with constant maturities of 7 years and 10 years and no maturity in between, the annual percentage rate for an 8-year mortgage

loan is compared with the yield of securities having a 7-year maturity, and the annual percentage rate for a 9-year mortgage loan is compared with the yield of securities having a 10-year maturity.

ii. If a mortgage loan has a term of 15 years, and the H–15 contains a yield of 5.21 percent for constant maturities of 10 years, and also contains a yield of 6.33 percent for constant maturities of 20 years, then the creditor compares the annual percentage rate for a 15-year mortgage loan with the yield for constant maturities of 10 years.

iii. If a mortgage loan has a term of 30 years, and the H–15 does not contain a yield for 30-year constant maturities, but contains a yield for 20-year constant maturities, and an average yield for securities with remaining terms to maturity of 25 years and over, then the annual percentage rate on the loan is compared with the yield for 20-year constant maturities.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, March 28, 2003.

Robert deV. Frierson,
Deputy Secretary of the Board.

[FR Doc. 03–8022 Filed 4–2–03; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–52–AD; Amendment 39–13101; AD 2003–07–05]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. KG Models S10 and S10–V Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Stemme GmbH & Co. KG (Stemme) Models S10 and S10–V sailplanes. This AD requires you to modify the engine compartment fuel and oil system and firewall. This AD is the result of FAA's determination that the actions required in AD 2002–22–04 should also be accomplished on other sailplanes of similar type design. The actions specified by this AD are intended to reduce the potential for a fire to ignite in the engine compartment

and to increase the containment of an engine fire in the engine compartment. A fire in the engine compartment could lead to loss of control of the sailplane.

DATES: This AD becomes effective on May 22, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 22, 2003.

ADDRESSES: You may get the service information referenced in this AD from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–52–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, reported an incident of an in-flight fire on a Model S10–VT sailplane. The accident investigation revealed that the fire was not contained in the engine compartment. The manufacturer conducted a design review and determined that modifications to the fuel and oil system and the firewall design will significantly reduce the potential for a fire to ignite in the engine compartment and increase the containment of an engine fire in the engine compartment.

This condition caused us to issue AD 2002–22–04, Amendment 39–12928 (67 FR 66547, November 1, 2002). AD 2002–22–04 requires the following on certain Model S10–VT sailplanes:

- Modify the engine compartment fuel and oil system; and
- Modify the firewall by sealing all gaps.

Although Stemme Models S10 and S10–V sailplanes have a different engine installation (non-turbocharged), they are of similar type design as Stemme Model S10–VT sailplanes. We have determined that similar modifications should also be incorporated on these sailplanes. The LBA has determined that these modifications are not mandatory for

sailplanes registered outside of the United States.

What Is the Potential Impact if FAA Took No Action?

If this condition is not prevented, there is potential for a fire to ignite in the engine compartment and spread into the cockpit. Such a condition could lead to loss of control of the sailplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Stemme Models S10 and S10-V sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 14, 2003 (68 FR 1805). The NPRM proposed to require you to modify the engine compartment fuel and oil system and firewall.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We received one comment in support of the NPRM.

FAA's Determination

What Is FAA's Final Determination on This Issue?

We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

- Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

How Does the Revision to 14 CFR Part 39 Affect This AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Sailplanes Does This AD Impact?

We estimate that this AD affects 15 sailplanes in the U.S. registry.

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

We estimate the following costs to accomplish the modifications:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
10 workhours × \$60 per hour = \$600	\$620	\$1,220	\$1,220 × 15 = \$18,300.

What is the Compliance Time of This AD?

The compliance time of this AD is "within the next 50 hours time-in-service (TIS) or 6 months after the effective date of this AD, whichever occurs first."

Why Is the Compliance Time of This AD Presented in Both Hours TIS and Calendar Time?

The unsafe condition on these sailplanes is not a result of the number of times the sailplane is operated. Sailplane operation varies among operators. For example, one operator may operate the sailplane 50 hours TIS in 6 months while it may take another operator 12 months or more to accumulate 50 hours TIS. For this reason, the FAA has determined that the compliance time of this AD will be specified in both hours TIS and calendar time in order to ensure this condition is not allowed to go uncorrected over time.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and

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

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the

Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003-07-05 Stemme GmbH & Co. KG:
Amendment 39-13101; Docket No. 2002-CE-52-AD.

(a) *What sailplanes are affected by this AD?* This AD affects Models S10 and S10-V sailplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the sailplanes 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 reduce the potential for a fire to ignite in the engine compartment and to increase the containment of an engine fire in the engine compartment. A fire in the engine compartment could lead to loss of control of the sailplane.

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

Actions	Compliance	Procedures
Modify the firewall by sealing all gaps and modify the fuel and oil lines in the engine compartment.	Within the next 50 hours time-in-service (TIS) or 6 months after May 22, 2003 (the effective date of this AD), whichever occurs first.	Modify the firewall in accordance with Stemme Service Bulletin A31-10-057, dated June 7, 2001, as specified in Stemme Service Bulletin A31-10-063, dated September 11, 2002. Modify the fuel and oil lines in accordance with Stemme Service Bulletin A31-10-063, dated September 11, 2002, and Stemme Installation Instruction A34-10-063E, dated August 26, 2002.

(e) Can I comply with this AD in any other way? To use an alternative method of compliance or adjust the compliance time, use the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate. For information on any already approved alternative methods of compliance, contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4144; facsimile: (816) 329-4090.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Stemme Service Bulletin A31-10-057, dated June 7, 2001; Stemme Service Bulletin A31-10-063, dated September 11, 2002; and Stemme Installation Instruction A34-10-063E, dated August 26, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D-13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) *When does this amendment become effective?* This amendment becomes effective on May 22, 2003.

Issued in Kansas City, MO, on March 25, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-7744 Filed 4-2-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-CE-56-AD; Amendment 39-13099; AD 2003-07-03]

RIN 2120-AA64

Airworthiness Directives; Twin Commander Aircraft Corporation Models 690D, 695A, and 695B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Twin Commander Aircraft Corporation (TCAC) Models 690D, 695A, and 695B airplanes. This AD requires you to initially inspect and modify and repetitively inspect areas of the wing and fuselage structure for fatigue damage and modify or replace any damaged parts. This AD is the result of tests that show that the service life of certain airplane parts cannot be reached unless an inspection and modification program (with any necessary replacements or modifications if fatigue damage is found) is incorporated. The actions specified by this AD are intended to detect and correct fatigue damage in the wing and fuselage areas without reducing the service life of the airplane. Such undetected and uncorrected damage could result in structural failure with consequent loss of control of the airplane.

DATES: This AD becomes effective on May 16, 2003. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 16, 2003.

ADDRESSES: You may get the service information referenced in this AD from Twin Commander Aircraft Corporation, 19010 59th Drive NE., Arlington, Washington 98223-7832; telephone: (360) 435-9797; facsimile: (360) 435-1112. You may view this information at

the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-CE-56-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Della Swartz, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4065; telephone: (425) 687-4246; facsimile: (425) 687-4248.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received results of fatigue testing of the wing and fuselage structure on Models 690D, 695A, and 695B airplanes. These results reveal that fatigue damage could occur prior to the published service lives.

TCAC has developed an inspection and modification program to detect and correct fatigue damage in the wing and fuselage areas without reducing the service life of the airplanes.

What Is the Potential Impact if FAA Took No Action?

Such fatigue damage, if not detected and corrected, could result in structural failure with consequent loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain TCAC Models 690D, 695A, and 695B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 3, 2002 (67 FR 71904). The NPRM proposed to require you to repetitively inspect areas of the wing and fuselage structure for fatigue damage and modify or replace any damaged parts.

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

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject

presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 108 airplanes in the U.S. registry.

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

We estimate the following costs to do the inspection for TCAC Models 690D, 695A, and 695B airplanes:

Inspection only labor cost for each airplane	Total inspection cost on U.S. operators
Minimum 270 workhours × \$60 per hour = \$16,200	Minimum: \$1,749,600.
Maximum 416 workhours × \$60 each hour = \$24,960	Maximum: \$2,695,680.

We estimate the following costs to do any necessary modifications that will be

required based on the results of the inspection. We have no way of finding

out the number of airplanes that may need modifications:

Costs	Minimum	Maximum
Labor Costs	81 workhours × \$60 per hour = \$4,860	2,790 workhours × \$60 per hour = \$167,400.
Estimated Parts Cost	\$2,847	\$65,978.
Estimated Total Cost for Each Airplane	\$7,707	\$233,378.
Total Cost on U.S. Operators	\$832,356	\$25,204,824.

Compliance Time

Why Is the Initial Compliance Time Presented in Hours Time-in-Service (TIS) and Calendar Time?

Normally, fatigue problems carry a compliance time based solely upon hours TIS, e.g., upon accumulating a certain amount of hours TIS. However, the number of airplanes that still need to have the initial actions of this AD accomplished compared to the number of authorized repair centers justifies a compliance time of both hours TIS and calendar time, whichever occurs first.

TCAC estimates 125 airplanes worldwide (about 87 percent of the worldwide fleet) that still need to have the initial inspections accomplished. This 87 percent would amount to 94 of the 108 U.S.-registered airplanes with only 7 authorized service centers accredited to do the work. The FAA has worked with TCAC in establishing a compliance table that categorizes the airplanes based upon the amount of hours TIS each airplane has accumulated.

This will ensure that the service centers have adequate time to accomplish the actions required by this AD.

Regulatory Impact

Does This AD Impact Various Entities?

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

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:
Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

2003-07-03 Twin Commander Aircraft Corporation: Amendment 39-13099; Docket No. 2000-CE-56-AD.

(a) *What airplanes are affected by this AD?*
This AD affects the following Twin Commander Aviation Corporation (TCAC) airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
690D	15001 through 15036 and 15038 through 15040.
695A	96001 through 96062, 96065 through 96068, 96070, 96071, 96073, 96074, 96076, 96077, and 96079 through 96084, 96086, 96087, and 96089 through 96100.
695B	96063, 96069, 96075, 96078, 96085, and 96204 through 96208.

(b) *Who must comply with this AD?*

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

(c) *What problem does this AD address?*

The actions specified by this AD are intended to detect and correct fatigue damage in the wing and fuselage areas without reducing the service life of the airplane. Such undetected and uncorrected damage could result in structural failure with consequent loss of control of the airplane.

(d) *What must I do to address this problem?* To address this problem, you must initially inspect and modify the wing and fuselage areas (Part 1 Inspection/

Modifications as identified in Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000) and repetitively inspect with necessary modification or replacement of damaged parts (Part 2 Recurrent Inspections as identified in Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000) in accordance with the following schedules:

(1) *Part 1 Initial Inspections/Modifications:* Initially (unless already done) accomplish the Part 1 Inspections/Modifications at whichever compliance time in paragraph (d)(1)(i) or (d)(1)(ii) of this AD that occurs later:

(i) the compliance times presented in Part 1 Table 1 of Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000; Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 1, Release Date: April 19, 2000; and Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 2, Release Date: May 21, 2001; or
 (ii) the Table A compliance times presented on page 1 of the service information and replicated below:

Current airframe hours time-in-service (TIS)	Initial compliance time
(A) 0000 through 1,700	Upon accumulating 2,700 hours TIS or within the next 36 months after May 16, 2003 (the effective date of this AD), whichever occurs first.
(B) 1,701 through 2,500	Upon accumulating 3,400 hours TIS or within the next 36 months after May 16, 2003 (the effective date of this AD), whichever occurs first.
(C) 2,501 through 3,000	Upon accumulating 3,800 hours TIS or within the next 36 months after May 16, 2003 (the effective date of this AD), whichever occurs first.
(D) 3,001 through 5,000	Upon accumulating 5,500 hours TIS or within the next 30 months after May 16, 2003 (the effective date of this AD), whichever occurs first.
(E) 5,001 through 6,000	Upon accumulating 6,400 hours TIS or within the next 24 months after May 16, 2003 (the effective date of this AD), whichever occurs first.
(F) 6,001 through 7,500	Upon accumulating 7,800 hours TIS or within the next 18 months after May 16, 2003 (the effective date of this AD), whichever occurs first.
(G) Over 7,500	Within the next 12 months after May 16, 2003 (the effective date of this AD).

(2) *Part 2 Recurring Inspections:*

Repetitively inspect as referenced in Part 2 Recurring Inspections on page 62 of Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000; Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 1, Release Date: April 19, 2000; and Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 2, Release Date: May 21, 2001.

(3) *Mandatory Replacements and Modifications:* If any damage is found during any inspection required by paragraphs (d), (d)(1), and (d)(2) of this AD, prior to further flight, replace or modify the part as specified in the following:

(i) Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000;

(ii) Twin Commander Aircraft Corporation Service Publications revision notice to

Service Bulletin No. 214, Revision 1, Release Date: April 19, 2000; and

(iii) Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 2, Release Date: May 21, 2001.

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

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Della Swartz, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW, Renton, Washington 98055-4065; telephone: (425) 687-4246; facsimile: (425) 687-4248.

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

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000; Twin Commander Aircraft Corporation Service Bulletin No. 214, Revision 1, Release Date: April 19, 2000; and Twin Commander Aircraft Corporation Service Bulletin No. 214, Revision 2, Release Date: May 21, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Twin Commander Aircraft Corporation, 19010 59th Drive N.E., Arlington, Washington 98223-7832; telephone: (360) 435-9797; facsimile: (360) 435-1112. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on May 16, 2003.

Issued in Kansas City, MO, on March 25, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-7745 Filed 4-2-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-CE-56-AD; Amendment 39-13102; AD 2003-07-06]

RIN 2120-AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes. This AD requires you to inspect the steering jack piston rod for cracks and replace if necessary; measure the torque setting of the steering jack piston rod end fitting and stop bolt; and measure the thickness of the tab washers. This AD also requires you to calculate a new safe life limit for the steering jack piston rod based on the results of the inspection and the measurements. This AD is the result of mandatory continuing

airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to detect, correct, and prevent cracks in the steering jack piston rod, which could result in failure of the steering jack piston rod. Such failure could lead to loss of steering control of the airplane during takeoff, landing, and taxi operations.

DATES: This AD becomes effective on May 22, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 22, 2003.

ADDRESSES: You may get the service information referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-CE-56-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; facsimile: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

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

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

safe life limit for this part has been reduced.

What Is the Potential Impact if FAA Took No Action?

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

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 27, 2003 (68 FR 3832). The NPRM proposed to require you to inspect the steering jack piston rod for cracks and replace if necessary; measure the torque setting of the steering jack piston rod end fitting and stop bolt; and measure the thickness of the tab washers. The NPRM also proposed to require you to calculate a new safe life limit for the steering jack piston rod based on the results of the proposed inspection and the proposed measurements.

Was the Public Invited to Comment?

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

FAA's Determination

What Is FAA's Final Determination on This Issue?

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

- Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

How Does the Revision to 14 CFR Part 39 Affect This AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs

FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Does This AD Impact?

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

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

We estimate the following costs to accomplish the inspection:

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

We estimate the following costs to accomplish any necessary replacements of the steering jack piston rod that

would be required based on the results of the inspection and/or measurements. We have no way of determining the

number of airplanes that may need such replacement:

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

Compliance Time of This AD

What Will Be the Compliance Time of This AD?

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

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

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

Regulatory Impact

Does This AD Impact Various Entities?

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

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

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the

Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003-07-06 British Aerospace:

Amendment 39-13102; Docket No. 2002-CE-56-AD.

(a) *What airplanes are affected by this AD?* This AD affects Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes, all serial numbers, that are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect, correct, and prevent cracks in the steering jack piston rod, which could result in failure of the steering jack piston rod. Such failure could lead to loss of steering control of the airplane during takeoff, landing, and taxi operations.

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

Actions	Compliance	Procedures
<p>(1) Inspect the steering jack piston rod for cracks.</p> <p>(i) If cracks are found, replace the cracked steering jack piston rod. Install the new steering jack piston rod using a torque setting of 175 lbf (pound force) inch or 20 Nm (Newton meters) when tightening the end fitting and stop bolt.</p> <p>(ii) If no cracks are found, determine the torque setting of the steering jack piston rod end fitting and stop bolt.</p>	<p>Inspect within the next 90 days or 200 ground-air-ground (GAG) cycles after May 22, 2003 (the effective date of this AD), whichever occurs first. Replace cracked steering jack piston rods or determine torque settings prior to further flight.</p>	<p>In accordance with the procedures in APPH Ltd. Service Bulletin 32-76 (pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002), as referenced in British Aerospace Jetstream Mandatory Service Bulletin 32-JA020741, Original Issue: November 2, 2002.</p>
<p>(2) If the torque setting of the steering jack piston rod end fitting or stop bolt is greater than 175 lbf inch or 20 Nm and is equal to or less than 435 lbf inch or 49 Nm:</p> <p>(i) calculate the new safe life limit for the steering jack piston rod; and</p> <p>(ii) incorporate the following into the Aircraft Logbook: "In accordance with AD 2003-07-06, the steering jack piston rod is life limited to ___."</p>	<p>Prior to further flight after the inspection required in paragraph (d)(1) of this AD.</p>	<p>In accordance with the procedures in APPH Ltd. Service Bulletin 32-76, (pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002), as referenced in British Aerospace Jetstream Mandatory Service Bulletin 32-JA020741, Original Issue: November 2, 2002.</p>
<p>(3) If the torque setting of the steering jack piston rod end fitting or stop bolt is greater than 435 lbf inch or 49 Nm, measure the deformation thickness of the tab washers.</p> <p>(i) If the tab washer deformation thickness is greater than 0.001 inch and is equal to or less than 0.005 inch, calculate a new safe life limit for the steering jack piston rod, and incorporate the following into the Aircraft Logbook: "In accordance with AD 2003-07-06, the steering jack piston rod is life limited to ___."</p> <p>(ii) If the tab washer deformation thickness is greater than 0.005 inch, replace the steering jack piston rod using the torque settings specified in paragraph (d)(1) of this AD.</p>	<p>Prior to further flight after the inspection required in paragraph (d)(1) of this AD.</p>	<p>In accordance with the procedures in APPH Ltd. Service Bulletin 32-76, (pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002), as referenced in British Aerospace Jetstream Mandatory Service Bulletin 32-JA020741, Original Issue: November 2, 2002.</p>
<p>(4) Do not install any steering jack piston rod unless it has been inspected, determined to be free of cracks, and the safe life limit has been established.</p>	<p>As of May 22, 2003 (the effective date of this AD).</p>	<p>In accordance with the procedures in APPH Ltd. Service Bulletin 32-76, (pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002), as referenced in British Aerospace Jetstream Mandatory Service Bulletin 32-JA020741, Original Issue: November 2, 2002.</p>

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

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, use the procedures in 14 CFR 39.19. Send these requests to the Standards Office Manager, Small Airplane Directorate. For information on 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.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with

APPH Ltd. Service Bulletin 32-76 (pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002), as referenced in British Aerospace Jetstream Mandatory Service Bulletin 32-JA020741, Original Issue: November 2, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in British Aerospace Jetstream Mandatory Service Bulletin 32-JA020741, Original Issue: November 2, 2002. This service bulletin is

classified as mandatory by the United Kingdom Civil Aviation Authority (CAA).

(g) *When does this amendment become effective?* This amendment becomes effective on May 22, 2003.

Issued in Kansas City, Missouri, on March 25, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-7746 Filed 4-2-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2000-CE-59-AD; Amendment 39-13100; AD 2003-07-04]

RIN 2120-AA64

Airworthiness Directives; Air Tractor, Inc. Models AT-300, AT-400, AT-400A, AT-401, AT-401B, AT-402, AT-402A, AT-402B, AT-501, AT-502, and AT-502B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Air Tractor, Inc. (Air Tractor) Models AT-300, AT-400, AT-400A, AT-401, AT-401B, AT-402, AT-402A, AT-402B, AT-501, AT-502, and AT-502B airplanes. This AD requires you to repetitively inspect the vertical fin front spar fitting for cracks and replace any cracked fitting found. This AD also requires you to install a steel doubler as a terminating action for the repetitive inspections. This AD is the result of a report of failure of a 1/4-inch thick vertical fin front spar fitting. The actions specified by this AD are intended to prevent failure of the vertical fin front spar fitting, which could result in failure of the rear spar fitting. Such failures could lead to loss of directional control of the airplane.

DATES: This AD becomes effective on May 22, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 22, 2003.

ADDRESSES: You may get the service information referenced in this AD from Air Tractor, Inc., PO Box 485, Olney, Texas 76374. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-CE-59-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andy McAnaul, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0150; telephone: (817) 222-5156; facsimile: (817) 222-5960.

SUPPLEMENTARY INFORMATION:**Discussion***What Events have Caused This AD?*

The FAA received reports of two incidents, one in 1994 and one in 1995, in which the vertical fin front spar fitting and rear spar fitting failed, while in flight, on an Air Tractor Model AT-402 and a Model AT-502 airplane. Failure of the vertical fin front spar fitting causes the rear spar fitting to fail. These failures result in the vertical tail lying over against the elevator creating difficulty in controlling the airplane.

These vertical fin front spar fittings were made of 3/16-inch thick aluminum. Investigation revealed that Air Tractor models with the 3/16-inch front spar attach plates installed were subject to fatigue failure.

This unsafe condition was addressed in AD 95-20-06, Amendment 39-9384. AD 95-20-06 applied to airplanes with 3/16-inch thick and 1/4-inch thick aluminum fin front spar fittings installed.

In 1997, we issued AD 97-14-05, Amendment 39-10063, that supersedes AD 95-20-06. Further investigation revealed that only Air Tractor models with a 3/16-inch thick fin front spar fitting installed were developing cracks. Therefore, we issued AD 97-14-05 to remove Air Tractor models with a 1/4-inch thick fin front spar fitting installed from the applicability.

Recently, a Model AT-502 airplane was found with a cracked 1/4-inch thick fin front spar fitting. The crack was found during a routine inspection. The rear spar had not yet failed. This recent finding demonstrates that Air Tractor models with a 1/4-inch thick fin front spar fitting are subject to fatigue failure.

What Is the Potential Impact if FAA Took No Action?

This condition, if not detected and corrected, could result in structural failure of the vertical fin front spar fitting and eventually the rear spar fitting. Such failure could result in loss of directional control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Air Tractor Models AT-300, AT-400, AT-400A, AT-401, AT-401B, AT-402, AT-402A, AT-402B, AT-501, AT-502, and AT-502B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 27, 2002 (67 FR 79008). The NPRM proposed to require you to repetitively inspect the vertical fin front

spar fitting for cracks and replace any cracked fitting found. The NPRM also proposed to require you to install a steel doubler as a terminating action for the repetitive inspections.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comment received on the proposal and FAA's response:

Comment Issue: Change the Serial Number Applicability for Certain Affected Airplane Models*What Is the Commenter's Concern?*

The commenter states that the serial number affectivity for Air Tractor Models AT-401 and AT-401B should include the notation that specifically designates serial numbers that have been converted to turbine powerplants as specified in Snow Engineering Co. Service Letter #155, Revised November 27, 2002.

What Is FAA's Response to the Concern?

We concur with the commenter and will change the final rule AD action to incorporate this change.

FAA's Determination*What Is FAA's Final Determination on This Issue?*

We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

- Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

How Does the Revision to 14 CFR Part 39 Affect This AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 440 airplanes in the U.S. registry.

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

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 workhours × \$60 = \$240	No parts required	\$240	\$240 × 440 = \$105,600

We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per airplane
7 workhours × \$60 = \$420	Parts will be provided by Air Tractor at no charge to the customer	\$420

Regulatory Impact

Does This AD Impact Various Entities?

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

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the

Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003-07-04 Air Tractor, Inc.: Amendment 39-13100; Docket No. 2000-CE-59-AD.

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

Model	Serial Nos.
AT-300, AT-400, and AT-400A	All serial numbers with a turbine powerplant and is retrofitted with a 1/4inch thick aluminum vertical fin front spar fitting and an all-metal rudder.
AT-401 and AT-401B	401-0737 through 401-1015 and 401B-0737 through 401B-1015 that have been converted to turbine powerplants.
AT-402, AT-402A, and AT-402B	402-0737 through 402B-1015.
AT-501	501-0031 and subsequent that have been converted to turbine powerplants.
AT-502 and AT-502B	502-0031 through 502B-0398.

(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 failure of the vertical fin front spar fittings, which could result in failure of the

rear spar fitting. Such failures could lead to loss of directional control of the airplane.

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

Actions	Compliance	Procedures
(1) Inspect the vertical fin front spar fitting for cracks.	Upon the accumulation of 2,000 hours time-in-service (TIS) on the vertical fin front or spar fitting next 100 hours TIS after May 22, 2003 (the effective date of this AD), whichever occurs later. If no cracks are found, repetitively inspect thereafter at intervals not to exceed 100 hours TIS.	In accordance with Snow Engineering Co. Service Letter #155, Revised November 27, 2002.
(2) If cracks are found during any inspection required in paragraph (d)(1) of this AD, replace the vertical fin front spar fitting.	Prior to further flight after the crack is found. Continue with the repetitive inspection requirements in paragraph (d)(1) of this AD until the terminating action is accomplished.	In accordance with Snow Engineering Co. Service Letter #155, Revised November 27, 2002.
(3) Modify the vertical fin front spar fitting by installing a steel doubler.	Within the next 2,000 hours TIS after May 22, 2003 (the effective date of this AD). Installing the steel doubler is considered terminating action for the repetitive inspection requirements of this AD. The installation may be accomplished at any time provided the vertical fin front spar fitting is crack free.	In accordance with Snow Engineering Co. Service Letter #155, Revised November 27, 2002.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, use the procedures in 14 CFR 39.19. Send these requests to the Manager, Ft. Worth Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Andy McAnaul, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0150; telephone: (817) 222-5156; facsimile: (817) 222-5960.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Snow Engineering Co. Service Letter #155, Revised November 27, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) *When does this amendment become effective?* This amendment becomes effective on May 22, 2003.

Issued in Kansas City, Missouri, on March 25, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-7747 Filed 4-2-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NM-315-AD; Amendment 39-13104; AD 2003-07-08]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 757-200, 757-200CB, and 757-200PF Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 757-200, 757-200CB, and 757-200PF series airplanes. This action requires repetitive detailed inspections to detect horizontal or vertical movement of the shims at the joint of the mid-bulkhead and the upper link fittings, and corrective action if necessary; or certain alternative actions that will terminate the requirement for the repetitive inspections. This action is necessary to detect and correct migration of shims at the joint of the mid-bulkhead and the upper link fittings, which could result in cracking of the strut and consequent loss of the strut and engine.

DATES: Effective April 18, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 18, 2003.

Comments for inclusion in the Rules Docket must be received on or before June 2, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport

Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-315-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2002-NM-315-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6450; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION: The FAA has received several reports of cracking of the strut in the mid-bulkhead on certain Boeing Model 757-200, 757-200CB, and 757-200PF series airplanes. Investigation revealed that the shims at the joint of the mid-bulkhead and the upper link fittings had migrated out of position. The investigation also revealed that the shim's movement was possibly caused by movement of the fittings and

the installation of thin laminated shims at the joint. The holes in the fittings rely on the action of the sleevebolts for alignment. If complete alignment does not occur, the joint could move and cause the shim to delaminate, resulting in the shim migrating away from the joint. Such migration of the shims, if not corrected, could result in cracking of the strut and consequent loss of the strut and engine.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin (ASB) 757-54A0039, Revision 1, dated June 20, 2002. Part I of the Accomplishment Instructions of that ASB describes procedures for performing repetitive detailed inspections of the laminated shims at the joint of the mid-bulkhead and upper link fittings to detect any vertical or horizontal movement of the shims. Part II of the Accomplishment Instructions of the ASB describes follow-on corrective actions (Figure 3 of the ASB) for shims that have migrated within certain limits (e.g., replacing the laminated shims with new solid shims, replacing the existing sleevebolts with new oversized sleevebolts, performing visual and high frequency eddy current inspections (HFEC) to detect cracking and deformation in the sleevebolt holes and in the fittings, and corrective actions if necessary). The ASB recommends that operators contact Boeing if any shims cannot be removed. Additionally, Part III of the Accomplishment Instructions of the ASB describes procedures for performing a one-time HFEC inspection of the bolt holes (Figure 9 of the ASB) in the mid-bulkhead, and describes repair procedures for cracking.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct migration of shims at the joint of the mid-bulkhead and the upper link fittings, which could result in cracking of the strut and consequent loss of the strut and engine. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between the ASB and This AD

Revision 1 of the ASB recommends that operators who have accomplished the inspections and actions described in Boeing ASB 757-54A0039, November 2,

2000, perform a one-time non-destructive testing (NDT) and/or HFEC inspection to detect cracking of the mid-bulkhead as shown in Figure 9 of the ASB, and repair if necessary. Operators should note that this AD requires those operators to perform a detailed inspection to detect cracking rather than an NDT and/or HFEC inspection. We have determined that, for airplanes on which the inspections specified in Parts I and II of Boeing ASB 757-54A0039, dated November 2, 2000, have been previously accomplished, a detailed inspection to detect cracks, and repair if necessary, within 90 days of the effective date of this AD, are adequate to continue to provide an acceptable level of safety for this interim action.

Operators also should note that Boeing ASB 757-54A0039, Revision 1, dated June 20, 2002, does not specify procedures for operators to add previously recorded measurements of the shim movement to the current measurement of shim movement. However, this AD requires those actions to ensure that the cumulative or progressive movement is measured and recorded to encompass total movement of the shim.

Additionally, operators also should note that, although the ASB specifies that the manufacturer may be contacted for further instructions if a shim cannot be removed or for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Interim Action

This is considered to be interim action. We are currently considering requiring HFEC inspections for cracking in and around the bolt holes of the left and right side of the mid-bulkhead strut, and repair if necessary, which would constitute terminating action for the repetitive inspections required by this AD. However, the planned compliance time for the HFEC inspections is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM-315-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:

2003-07-08 Boeing: Amendment 39-13104. Docket 2002-NM-315-AD.

Applicability: Model 757-200, 757-200CB, and 757-200PF series airplanes, line numbers 1 through 735 inclusive, equipped with Rolls Royce Model RB211 engines, as listed in Boeing Alert Service Bulletin 757-54A0039, Revision 1, dated June 20, 2002; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct migration of shims at the joint of the mid-bulkhead and the upper link fittings, which could result in cracking of the strut and consequent loss of the strut and engine; accomplish the following:

Inspection for Movement of Shims and Corrective Actions

(a) With the exception of the airplanes specified in paragraph (e) of this AD: Within 90 days after the effective date of this AD, perform a detailed inspection to detect horizontal or vertical movement of the shims at the joint of the mid-bulkhead and the upper link fittings, per Boeing Alert Service Bulletin (ASB) 757-54A0039, Revision 1, dated June 20, 2002.

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

(b) If all laminated shims have not moved, or if all laminated shims have moved less than 0.25 inch, before further flight, perform the actions specified in either paragraph (b)(1) or (b)(2) of this AD, per Boeing Alert Service Bulletin (ASB) 757-54A0039, Revision 1, dated June 20, 2002.

(1) Perform the actions specified in paragraph 3.B.6 of the Accomplishment Instructions of the ASB (e.g., measure and record movement of the shim, cut the exposed plies, and seal adjacent surfaces and edges), and repeat the detailed inspections at intervals not to exceed 12,000 flight cycles or 72 months, whichever occurs first. At each inspection interval, the previously recorded measurement must be added to the current measurement so that the cumulative total movement of the shim is recorded. If the cumulative total movement exceeds 0.25 but is less than 0.90, before further flight, perform the actions specified in paragraph (c) of this AD. If the cumulative total movement measures 0.90 inch or more: Before further flight, perform the actions specified in paragraph (d) of this AD. Or,

(2) Perform the actions specified in paragraphs (g) and (h) of this AD.

(c) If any laminated shim has moved 0.25 inch or more but less than 0.90 inch: Before further flight, perform the actions specified in paragraph (c)(1) or (c)(2) of this AD, per Boeing Alert Service Bulletin (ASB) 757-54A0039, Revision 1, dated June 20, 2002.

(1) Before further flight, perform the actions specified in paragraph 3.B.6 of the Accomplishment Instructions of the ASB (e.g., measure and record movement of the shim, cut the exposed plies and seal adjacent surfaces and edges), and repeat the detailed inspections at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first. At each inspection interval, the previously recorded measurement must be added to the current measurement so that the

cumulative total movement of the shim is recorded. If the cumulative total movement measures 0.90 inch or more, before further flight, perform the actions specified in paragraph (d) of this AD. Or,

(2) Perform the actions specified in paragraphs (g) and (h) of this AD.

(d) If any laminated shim has moved 0.90 inch or more, before further flight, perform the actions specified in paragraphs (g) and (h) of this AD.

Inspection of Lower Mid-Spar Bolts

(e) For airplanes on which the actions specified in Boeing Alert Service Bulletin (ASB) 757-54A0039, dated November 2, 2000, have been accomplished prior to the effective date of this AD: Within 90 days after the effective date of this AD, perform a detailed inspection for cracking around the four bolt heads, nuts, washers, and radius fillers specified in Figure 9 of Boeing Alert Service Bulletin (ASB) 757-54A0039, Revision 1, dated June 20, 2002.

(1) If no cracking is found, repeat the detailed inspection at intervals not to exceed 3,000 flight cycles.

(2) If any cracking is found, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Optional Terminating Action

(f) Accomplishment of the actions specified in paragraphs (g) and (h) of this AD constitutes terminating action for the repetitive inspection requirements of this AD.

(g) Replace any laminated shim with a solid shim; replace existing sleevebolts with new, oversized sleevebolts; and perform a general visual and high-frequency eddy current (HFEC) inspection to detect cracking and deformation in the sleevebolt holes and in the fittings, as shown in Part II, Figure 3, of Boeing Alert Service Bulletin 757-54A0039, Revision 1, dated June 20, 2002. If any shim cannot be removed, or if any cracking or deformation is found: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair to be approved, the approval must specifically reference this AD. No further action is required by this paragraph.

(h) Perform a one-time HFEC inspection for cracking in and around the bolt holes of the left and right side of the mid-bulkhead strut as shown in Part III, Figure 9, of Boeing Alert Service Bulletin (ASB) 757-54A0039, Revision 1, dated June 20, 2002.

(1) If no cracking is found during any inspection specified in paragraph (h) of this AD, before further flight, install oversized

bolts per Figure 10 of the ASB. No further action is required by this AD.

(2) If any cracking is found during any inspection specified in paragraph (h) of this AD that is within the limits specified in the ASB: Before further flight, repair per the ASB.

(3) If any cracking is found during any inspection specified in paragraph (h) of this AD that is outside the limits specified by the ASB, and the ASB specifies to contact Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

(j) 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 accomplished.

Incorporation by Reference

(k) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 757-54A0039, Revision 1, dated June 20, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(l) This amendment becomes effective on April 18, 2003.

Issued in Renton, Washington, on March 26, 2003.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 03-7748 Filed 4-2-03; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003-CE-13-AD; Amendment 39-13150; AD 2003-07-09]

RIN 2120-AA64

Airworthiness Directives; Raytheon Aircraft Company Model 390 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Model 390 airplanes. This AD requires you to incorporate information into the FAA-approved Airplane Flight Manual (AFM) that would add requirements for "Landing Performance for Operation of the Airplane with Lift Dump Inoperative." This AD is the result of two accidents on the affected airplanes where a contributing factor was the lift dump spoilers failing to deploy when commanded after the initial landing. The actions specified by this AD are intended to require the use of necessary flight information to prevent runway overruns based on insufficient aerodynamic and wheel braking if the lift dump spoilers do not operate after landing touchdown. This could result in reduced or loss of control of the airplane.

DATES: This AD becomes effective on April 7, 2003.

The Director of the Federal Register approves the incorporation by reference of certain publications listed in the regulation as of April 7, 2003.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before May 17, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE-13-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: 9-ACE-7-Docket@faa.gov. Comments sent electronically must contain "Docket No. 2003-CE-13-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 the service information referenced in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201-0085; telephone: (800) 429-5372 or (316) 676-3140. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE-13-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Derek Morgan, Flight Test Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946-4172; facsimile: (316) 946-4407.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received information of an unsafe condition on Raytheon Model 390 airplanes. The current procedure for an annunciated lift dump failure is to increase landing distance by a factor of 1.53. In two recent accidents of these airplanes, the lift dump spoilers failed to deploy when commanded after touchdown.

Whether loss of lift dump is annunciated or unannunciated after touchdown, the pilot (in most instances) does not have enough time to take effective corrective action.

What Are the Consequences If the Condition Is Not Corrected?

Without requiring the use of necessary flight information, runway overruns based on insufficient aerodynamic and wheel braking could occur if the lift dump spoilers do not operate after landing touchdown. This could result in reduced or loss of control of the airplane.

Is There Service Information That Applies to This Subject?

Raytheon has issued Temporary Change to the FAA Approved Airplane Flight Manual P/N 390-590001-0003BTC5A1, revised March 24, 2003. This document:

- Replaces the existing landing distance and brake energy charts with ones that reflect landing performance without the effects of lift dump spoilers; and
- Modifies all operating limitations to specify the use of these landing charts in determining the maximum landing weight.

Raytheon is working toward a design that would eliminate the need for this Temporary AFM Change.

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

What Has FAA Decided?

The FAA has 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 Raytheon Model 390 airplanes of the same type design;
- The information specified in the previously-referenced service information should be incorporated into the FAA-approved AFM; and
- AD action should be taken in order to correct this unsafe condition.

What Does This AD Require?

This AD requires you to incorporate the previously-referenced service information into the FAA-approved AFM, which would add requirements for "Landing Performance for Operation of the Airplane with Lift Dump Inoperative."

As specified previously, Raytheon is working toward a design that would eliminate the need for these requirements. If completed, FAA will evaluate and determine whether additional regulatory action is necessary.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included, in the rulemaking docket, a discussion of any information that may have influenced this action.

How Does the Revision to 14 CFR Part 39 Affect This AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Because the owner/operator holding an appropriate pilot's license may accomplish the action of this AD and because the compliance time is 5 hours time-in-service (TIS) after the AD effective date, FAA is not allowing

special flight permits in this AD. We have included a paragraph in the AD to communicate this information.

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

Because the unsafe condition described in this document could result in reduced or loss of control of the airplane during landing operations, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the 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 specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

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

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

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003-CE-13-AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

Does This AD Impact Various Entities?

These regulations 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, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and 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 (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003-07-09 Raytheon Aircraft Company:
Amendment 39-13150; Docket No. 2003-CE-13-AD.

(a) *What airplanes are affected by this AD?*
This AD applies to Model 390 airplanes with the following serial numbers and are certificated in any category:

- (1) RB-4 through RB-17.
- (2) RB-25 through RB-59.
- (3) RB-64.

(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 require the use of necessary flight

information to prevent runway overruns based on insufficient aerodynamic and wheel braking if the lift dump spoilers do not

operate after landing touchdown. This could result in reduced or loss of control of the airplane.

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

Actions	Compliance
(1) Incorporate information into the FAA-approved Airplane Flight Manual (AFM) that would add requirements for "Landing Performance for Operation of the Airplane with Lift Dump Inoperative." Accomplish this action by inserting Raytheon Temporary Change to the FAA Approved Airplane Flight Manual P/N 390-590001-0003BTC5A1, revised March 24, 2003.	Within the next 5 hours time-in-service (TIS) after April 7, 2003 (the effective date of this AD).
(2) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may incorporate into the AFM the information specified in paragraphs (d)(1) of this AD. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Within the next 5 hours TIS after April 7, 2003 (the effective date of this AD).

(e) *Are special flight permits authorized for this AD?* Special flight permits are not authorized for this AD. On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. Part of this amendment to 14 CFR part 39 authorized special flight permits for all ADs, unless specified otherwise. Because the owner/operator holding an appropriate pilot's license may accomplish the action of this AD and the compliance time is 5 hours TIS after the AD effective date, FAA has determined that special flight permits are not necessary for this AD.

(f) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Wichita Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Derek Morgan, Flight Test Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946-4172; facsimile: (316) 946-4407.

(g) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Temporary Change to the FAA Approved Airplane Flight Manual P/N 390-590001-0003BTC5A1, revised March 24, 2003. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201-0085; telephone: (800) 429-5372 or (316) 676-3140. You may view this information at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) *When does this amendment become effective?* This amendment becomes effective on April 7, 2003.

Issued in Kansas City, Missouri, on March 27, 2003.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-8066 Filed 4-2-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NM-268-AD; Amendment 39-13103; AD 2003-07-07]

RIN 2120-AA64

Airworthiness Directives; Raytheon Model BAe.125 Series 800A, 800A (C-29A), 800A (U-125), and 800B Airplanes; Model BH.125 Series 400A Airplanes; Model DH.125 Series Airplanes; Model Hawker 800, 800 (U-125A), and 800XP Airplanes; and Model HS.125 Series F3B, F3B/RA, F400B, F403B, 1B, 1B-522, 1B/R-522, 1B/S-522, 3B, 3B/R, 3B/RA, 3B/RB, 3B/RC, 400B, 400B/1, 401B, 403A(C), and 403B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon airplanes, that requires inspection of the main landing gear (MLG) wheels to determine the part numbers of the tie-bolt nuts, and replacement of nuts that have the incorrect part number with nuts that have the correct part number. The actions specified by this AD are intended to prevent separation of an MLG wheel due to loose or missing tie-bolts or tie-bolt nuts, with consequent damage to airplane structure or systems, decompression, loss of full braking ability, or injury to personnel on the ground. This action is intended to address the identified unsafe condition.

DATES: Effective May 8, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 8, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Department 62, PO Box 85, Wichita, Kansas 67201-0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Ostrodka, Aerospace Engineer, Airframe Branch, ACE-118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946-4129; fax (316) 946-4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon airplanes was published in the **Federal Register** on January 3, 2003 (68 FR 322). That action proposed to require inspection of the main landing gear (MLG) wheels to determine the part numbers of the tie-bolt nuts, and replacement of nuts that have the incorrect part number with nuts that have the correct part number.

Comments

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

Conclusion

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

Cost Impact

There are approximately 166 airplanes of the affected design in the worldwide fleet. The FAA estimates that 84 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$5,040, or \$60 per airplane.

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

available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

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

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

Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003-07-07 Raytheon Aircraft Company:
Amendment 39-13103. Docket 2002-NM-268-AD.

Applicability: The following airplanes, certificated in any category:

TABLE—AIRPLANE MODELS, SERIAL NUMBERS, AND EQUIPMENT

Model—	Serial No.—	Equipped with—
BAe.125 series 800A	All	none.
BAe.125 series 800A (C-29A)	All	none.
BAe.125 series 800A (U-125)	All	none.
BAe.125 series 800B	All	none.
BH.125 series 400A	All	none.
DH.125 series airplanes	All	none.
Hawker 800	All	none.
Hawker 800 (U-125A)	Up to and including serial numbers 258493.	none.
Hawker 800XP	Up to and including serial numbers 258581.	Dunlop wheels part numbers AH51909, AH52075, AH52286, AH52206, AHA1287, AHA1606, or AHA1814.
HS.125 series F3B	All	none.
HS.125 series F3B/RA	All	none.
HS.125 series F400B	All	none.
HS.125 series F403B	All	none.
HS.125 series 1B	All	none.
HS.125 series 1B-522	All	none.
HS.125 series 1B/R-522	All	none.
HS.125 series 1B/S-522	All	none.
HS.125 series 3B	All	none.
HS.125 series 3B/R	All	none.
HS.125 series 3B/RA	All	none.
HS.125 series 3B/RB	All	none.
HS.125 series 3B/RC	All	none.
HS.125 series 400B	All	none.
HS.125 series 400B/1	All	none.
HS.125 series 401B	All	none.
HS.125 series 403A(C)	All	none.
HS.125 series 403B	All	none.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been

modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or

repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an

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

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of a main landing gear (MLG) wheel due to loose or missing tie-bolts or tie-bolt nuts, with consequent damage to airplane structure or systems, decompression, loss of full braking ability, or injury to personnel on the ground, accomplish the following:

Inspection

(a) Within 10 landings or 12 days after the effective date of this AD, whichever comes first, inspect the MLG wheels to determine the part numbers (P/Ns) of the tie-bolt nuts; per Raytheon Service Bulletin SB 32-3522, dated September 2002, excluding Service Bulletin/Kit Drawing Report Fax.

Replacement

(b) If any tie-bolt nut having P/N NAS1804 is found installed during the inspection required by paragraph (a) of this AD, before further flight, replace the tie-bolt nut with a new nut having P/N FN22A524, (or with a new tie-bolt nut having a Dunlop P/N H5227C-5CW, SN407C-054, or LH13318-5, which are P/Ns authorized by Raytheon); per Raytheon Service Bulletin SB 32-3522, dated September 2002, excluding Service Bulletin/Kit Drawing Report Fax.

Parts Installation

(c) As of the effective date of this AD, no person shall install any MLG wheel having a tie-bolt nut with P/N NAS1804, on any airplane.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(f) Unless otherwise provided by this AD, the actions shall be done per Raytheon Service Bulletin SB 32-3522, dated September 2002, excluding Service Bulletin/Kit Drawing Report Fax. 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 Raytheon Aircraft Company, Department 62, PO Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on May 8, 2003.

Issued in Renton, Washington, on March 28, 2003.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-8064 Filed 4-2-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2003-14657; Airspace Docket No. 03-ACE-26]

Modification of Class E Airspace; St. Louis, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for St. Louis, MO has revealed discrepancies in the Spirit of St. Louis Airport airport reference point used in the legal description for the St. Louis, MO Class E airspace. This action corrects the discrepancies by modifying the St. Louis, MO Class E airspace area. It also incorporates the revised Spirit of St. Louis Airport airport reference point in the St. Louis, MO Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003. Comments for inclusion in the Rules Docket must be received on or before May 15, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2003-14657/ Airspace Docket No. 03-ACE-26, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal,

any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at St. Louis, MO. It also brings the legal descriptions of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by

submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2003-14657/Airspace Docket No. 03-ACE-26." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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 noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 St. Louis, MO

Lambert-St. Louis International Airport, MO
(Lat. 38°44'52" N., long. 90°21'36" W.)
Spirit of St. Louis Airport, MO
(Lat. 38°39'44" N., long. 90°39'07" W.)
St. Louis Regional Airport, Alton, IL
(Lat. 38°53'25" N., long. 90°02'46" W.)
St. Charles County Smartt Airport, St. Charles, MO
(Lat. 38°55'47" N., long. 90°25'48" W.)
St. Louis VORTAC
(Lat. 38°51'39" N., long. 90°28'57" W.)
Foristell VORTAC
(Lat. 38°41'40" N., long. 90°58'17" W.)
ZUMAY LOM
(Lat. 38°47'17" N., long. 90°16'44" W.)
OBLIO LOM
(Lat. 38°48'01" N., long. 90°28'29" W.)
Civic Memorial NDB
(Lat. 38°53'32" N., long. 90°03'23" W.)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of the Lambert-St. Louis International Airport and within 4 miles southeast and 7 miles northwest of the Lambert-St. Louis International Airport Runway 24 ILS localizer course extending from the airport to 10.5 miles northeast of the ZUMAY LOM and within 4 miles southwest and 7.9 miles northeast of the Lambert-St. Louis International Airport Runway 12R ILS localizer course extending from the airport to 10.5 miles northwest of the OBLIO LOM and within 4 miles southwest and 7.9 miles northeast of the Lambert-St. Louis International Airport Runway 30L ILS localizer course extending from the airport to 8.7 miles southeast of the airport and within a 6.8 mile radius of Spirit of St. Louis Airport and within 2.6 miles each side of the 098° radial of the Foristell VORTAC extending from the 6.8-mile radius of Spirit of St. Louis Airport to 8.3 miles west of the airport and within a 6.4-mile radius of St. Charles County Smartt Airport and within a 6.9-mile radius of St. Louis Regional Airport and within 4 miles each side of the 014° bearing from the Civic Memorial NDB extending from the 6.9 mile radius of the St. Louis Regional Airport to 7 miles north of the airport and

within 4.4 miles each side of the 190° radial of the St. Louis VORTAC extending from 2 miles south of the VORTAC to 22.1 miles south of the VORTAC.

* * * * *

Issued in Kansas City, MO, on March 21, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 742, 762 and 774

[Docket No. 030213032-3032-01]

RIN 0694-AB87

Exports and Reexports of Explosives Detection Equipment and Related Software and Technology; Imposition and Expansion of Foreign Policy Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations to expand the scope of explosives detection equipment controlled under Export Classification Control Number (ECCN) 2A983, previously 2A993, to include equipment that detects the presence of explosives, explosive residue, or detonators. BIS is also expanding controls on the export and reexport of such explosives detection equipment by imposing regional stability (RS) controls and clarifying the previously-existing anti-terrorism (AT) controls on this equipment. BIS is also imposing RS and AT controls on related software and technology, previously EAR99, but now classified under newly created ECCNs 2D983 and 2E983. This rule makes available for most destinations the use of License Exception Servicing and Replacement of Parts and Equipment (RPL) for one-for-one replacement of parts, and servicing and replacement of explosives detection equipment controlled under ECCN 2A983 that was legally exported or reexported and related software controlled under ECCN 2D983. License Exception Technology and Software—Unrestricted (TSU) may also be used to export or reexport certain operation technology and software controlled under ECCNs 2D983 and 2E983. Special records must be maintained when utilizing such License

Exceptions. License Exception Governments, International Organizations, and International Inspections Under the Chemical Weapons Convention (GOV) also is available to export and reexport items controlled under ECCNs 2A983, 2D983 and 2E983 for official use by personnel and agencies of the U.S. Government.

DATES: Effective Date: This rule is effective April 3, 2003.

Comment Dates: Comments on this rule must be received on or before May 19, 2003.

ADDRESSES: Written comments on this rule should be sent to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044, or to E-mail address squarter@bis.doc.gov.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Controls Division, Office of Strategic Trade and Foreign Policy Controls, Bureau of Industry and Security, Telephone: (202) 482-0171, E-mail: jroberts@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

Imposition and Expansion of Foreign Policy Controls

The Bureau of Industry and Security (BIS), in this rule, amends the Export Administration Regulations (EAR) by expanding the scope of explosives detection equipment controlled under Export Control Classification Number (ECCN) 2A983, previously 2A993, to include equipment that detects the presence of explosives, explosive residue, or detonators. This rule also creates new ECCNs 2D983 and 2E983 for software and technology designed or modified for the "development", "production" or "use" of explosives detection equipment controlled under 2A983. This software and technology was previously classified as EAR99. The change in the second digit of the ECCN for explosives detection equipment, from 2A993 to 2A983, more accurately indicates the expanded number of countries to which BIS will control the equipment and related software and technology.

Regional Stability Controls

This rule imposes regional stability (RS) controls on exports and reexports of explosives detection equipment controlled under ECCN 2A983, as well as software and technology controlled under ECCNs 2D983 and 2E983, to all destinations except countries in Country Group A:1, The Czech Republic,

Hungary, Iceland, New Zealand and Poland. This is noted in the Country Chart, Supplement 1 to Part 738, by an X in RS column 2. Applications will be reviewed on a case-by-case basis, consistent with the licensing policy set forth for these items in section 742.6 of the EAR.

Anti-Terrorism Controls

Anti-terrorism controls for explosives detection equipment classified under ECCN 2A983, previously 2A993, remain in effect for Iran, North Korea, Sudan, Syria, Cuba and Libya. With the creation of new ECCNs 2D983 and 2E983, BIS is imposing new license requirements for exports or reexports of such related software and technology to Iran, North Korea, Sudan and Syria for anti-terrorism reasons. Controls are maintained on this software and technology with respect to Cuba and Libya, since these items, previously classified as EAR99, were controlled to these countries under part 746 of the EAR. Applications to export or reexport such items to Cuba, Libya, Iran, North Korea, Sudan, and Syria are subject to a general policy of denial. Applications to export items controlled for more than one reason are reviewed under all applicable licensing policies, as provided in § 742.1(f).

Respective Licensing Responsibilities of BIS and the Department of the Treasury

With regard to licensing jurisdiction and licensing responsibilities of BIS and the Department of the Treasury's Office of Foreign Assets Control (OFAC) for exports to embargoed countries, this rule does not affect exports to destinations subject to comprehensive export restrictions—Cuba, Libya, Iran, Iraq and Sudan—since a general policy of denial already applies to such exports. For most of these destinations, BIS and OFAC have allocated licensing responsibility so that exporters need to obtain a license from only one agency. Exporters need a license only from OFAC for exports and reexports to Iraq and Iran, and for exports to Libya. A license is required from both OFAC and BIS for exports and reexports of items controlled under 2A983, 2D983 and 2E983 to Sudan and reexports involving U.S. persons to Libya. Exporters need a license only from BIS for exports and reexports of items controlled under 2A983, 2D983 and 2E983 to Cuba and for reexports of such items by non-U.S. persons to Libya. Exporters need a license only from BIS for exports and reexports of items controlled under 2A983, 2D983 and 2E983 to North Korea and Syria, non-embargoed countries.

BIS will consider transactions involving contracts predating March 21, 2003 for exports or reexports of 2A983, 2D983 and 2E983 items to countries other than those in Country Group E (Supplement 1 to part 740) as set forth in section 742.6(c), as revised herein. For exports of such items to Iran, North Korea, Syria and Sudan, contract sanctity will apply as set forth in Supplement 2 of part 742.

Available License Exceptions—RPL, TSU and GOV

License Exception Servicing and Replacement of Parts and Equipment (RPL) may be used to export and reexport one-for-one replacement parts, and servicing and replacement of equipment to most destinations. The use of RPL, as provided in section 740.10, is restricted to the repair or servicing of explosives detection equipment controlled under ECCN 2A983 and related software controlled under ECCN 2D983 that were previously legally exported or reexported. As set forth in new section 740.10(a)(3)(v), the one-for-one replacement of parts provision set forth in section 740.10(a) may not be used for exports of explosives detection equipment controlled under ECCN 2A983 and related software controlled under ECCN 2D983 to countries in Country Group E:1. Also, as currently set forth in paragraph 740.10(b)(2)(iv), repaired equipment or software may not be exported or reexported to countries in Country Group E:1. Also note that as provided in paragraph 740.10(b)(3)(i)(D), shipments may not be made to Country Group E:1 or to any other destinations to replace defective or otherwise unusable equipment owned or controlled by, or leased or chartered to, a national of any E:1 country.

In addition, License Exception Technology and Software—Unrestricted (TSU), as provided in section 740.13(a), may be used to export and reexport operation technology and software controlled under ECCNs 2D983 and 2E983. This operation technology is the minimum technology necessary for the installation, operation, maintenance (checking), and repair of those products legally exported or reexported that are controlled under 2A983. TSU section 740.13(c) may be used to export and reexport software updates only to correct errors ("fixes" to "bugs") in software controlled under 2D983 legally exported or reexported (original software). The software updates may be exported or reexported only to the same consignee to whom the software was originally exported or reexported and the software updates may not enhance

the functional capabilities of the original software.

License Exception Governments, International Organizations, and International Inspections Under the Chemical Weapons Convention (GOV) may be used to export and reexport items controlled under ECCNs 2A983, 2D983 and 2E983. This exception is restricted to export and reexport of items for official use by U. S. Government personnel and agencies, as set forth in § 740.11(b)(2)(ii).

To ensure accountability while allowing practical maintenance, special records must be maintained when utilizing License Exception RPL to repair or service previously legally exported or reexported items controlled under ECCNs 2A983 and 2D983. The same requirement applies when utilizing License Exception TSU to export or reexport operation technology and software controlled under ECCNs 2D983 and 2E983. The special recordkeeping requirements are described in sections 740.10(c) and 740.13(f), respectively.

BIS is taking this action after consultation with, and upon the recommendation of, the Secretary of State. Consistent with the provisions of the Export Administration Act (EAA), as amended, BIS submitted a foreign policy report to Congress indicating the imposition of new foreign policy controls for regional stability reasons on March 21, 2003.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (66 FR 44025, August 22, 2001), as extended by Notice of August 14, 2002 (67 FR 53721, August 16, 2002), continues the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Saving Clause

Shipments of items removed from License Exception eligibility or No License Required (NLR) status as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on April 3, 2003, pursuant to actual orders for export to a foreign destination, may proceed to that destination under the previous License Exception eligibility or NLR status provisions so long as they have been exported from the United States before May 5, 2003. Any such items not actually exported before midnight on May 5, 2003 require a license in accordance with this regulation.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information approved by the Office of Management and Budget under control number 0694-0088, "Multi-Purpose Application," which carries a burden hour estimate of 40 minutes per electronic submission and 45 minutes for a manual submission. This burden hour estimate takes into consideration the reporting time for new license requirements for explosives detection equipment and related software and technology imposed through this final rule, and includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Public comment is sought regarding whether the proposed collection of information requirements are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimates; 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 the use of automated collection techniques or other forms of technology. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (*See* 5 U.S.C. 553(a)(1)). Further,

no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under Title 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is being issued in interim form and BIS will consider comments in the development of the final regulations.

Accordingly, the Department of Commerce (the Department) encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close May 19, 2003. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be available for public inspection.

The public record concerning this regulation will be maintained in the Bureau of Industry and Security Freedom of Information Records Inspection Facility, Room 6881, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of Title 15 of the

Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from the Bureau of Industry and Security Freedom of Information Officer, at the above address or by calling (202) 482-0500.

List of Subjects

5 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Foreign trade.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, parts 740, 742, 764 and 774 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

■ 1. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901-911, Pub. L. 106-387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

PART 740—[AMENDED]

■ 2. Section 740.2 is amended by adding paragraph (a)(8) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a) * * *

(8) The item is controlled under ECCNs 2A983, 2D983 or 2E983 and the License Exception is other than:

(i) RPL, under the provisions of § 740.10, including § 740.10(a)(3)(v), which prohibits exports and reexports of replacement parts to countries in Country Group E:1 (see Supplement 1 to part 740));

(ii) GOV, restricted to eligibility under the provisions of § 740.11(b)(2)(ii); or

(iii) TSU, under the provisions of § 740.13(a) and (c).

■ 3. Section 740.10 is amended:

■ a. By redesignating paragraph (a)(3)(v) as (a)(3)(vi) and by adding new paragraph (a)(3)(v) and

■ b. By adding new paragraph (c) to read as follows:

§ 740.10 Servicing and Replacement of Parts and Equipment (RPL).

* * * * *

(a) * * *

(3) * * *

(v) No replacement parts may be exported to countries in Country Group E:1 if the commodity to be repaired is explosives detection equipment controlled under ECCN 2A983 or related software controlled under ECCN 2D983.

* * * * *

(c) *Special recordkeeping requirements: ECCNs 2A983 and 2D983.*

(1) In addition to any other recordkeeping requirements set forth elsewhere in the EAR, exporters are required to maintain records, as specified in this section, for any items exported or reexported pursuant to License Exception RPL to repair or service previously legally exported or reexported items controlled under ECCNs 2A983 and 2D983. The following information must be specially maintained for each such export or reexport transaction:

(i) A description of the equipment replaced, repaired or serviced;

(ii) The type of repair or service;

(iii) Certification of the destruction or return of equipment replaced;

(iv) Location of the equipment replaced, repaired or serviced;

(v) The name and address of who received the items for replacement, repair or service;

(vi) Quantity of items shipped; and

(vii) Country of ultimate destination.

(2) Records maintained pursuant to this section may be requested at any time by an appropriate BIS official as set forth in § 762.7 of the EAR.

■ 4. Section 740.13 is amended by adding paragraph (f) to read as follows:

§ 740.13 Technology and Software—Unrestricted (TSU).

* * * * *

(f) *Special recordkeeping requirements: ECCNs 2D983 and 2E983.*

In addition to any other recordkeeping requirements set forth elsewhere in the EAR, exporters are required to maintain records, as specified in this paragraph, when exporting operation software or technology controlled under ECCNs 2D983 and 2E983, respectively, under License Exception TSU. Records maintained pursuant to this section may be requested at any time by an appropriate BIS official as set forth in § 762.7 of the EAR. The following information must be specially maintained for each export or reexport transaction, under License Exception TSU, of operation software and technology controlled by ECCNs 2D983 and 2E983:

(1) A description of the software or technology exported or reexported,

including the ECCN, as identified on the CCL;

(2) A description of the equipment for which the software or technology is intended to be used, including the ECCN, as identified on the CCL;

(3) The intended end-use of the software or technology;

(4) The name and address of the end-user;

(5) The quantity of software shipped; and

(6) The location of the equipment for which the software or technology is intended to be used, including the country of destination.

■ 5. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901-911, Pub. L. 106-387; Sec. 221, Pub. L. 107-56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of November 9, 2001, 66 FR 56965, 3 CFR, 2001 Comp., p. 917; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

PART 742—[AMENDED]

■ 6. Section 742.6 is amended:

■ a. By revising paragraph (a)(2);

■ b. By adding paragraph (b)(3); and

■ c. By revising paragraph (c) to read as follows:

§ 742.6 Regional stability.

(a) * * *

(2) As indicated in the CCL and in RS Column 2 of the Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to any destination except countries in Country Group A:1 (see Supplement No. 1 to part 740 of the EAR), The Czech Republic, Hungary, Iceland, New Zealand and Poland for items described on the CCL under ECCNs 2A983, 2D983 and 2E983, and for military vehicles and certain commodities (specially designed) used to manufacture military equipment, described on the CCL in ECCNs 0A018.c, 1B018.a, 2B018, and 9A018.a and .b.

* * * * *

(b) * * *

(3) For terrorist-designated countries, the applicable licensing policies are found in parts 742 and 746 of the EAR.

* * * * *

(c) *Contract sanctity date:* March 21, 2003. This contract sanctity date applies only to items controlled under ECCNs 2A983, 2D983 and 2E983 destined for

countries not listed in Country Group E (Supplement 1 to part 740). See parts 742 and 746 for the contract sanctity requirements applicable to exports and reexports to countries listed in Country Group E.

* * * * *

■ 7. Section 742.8 is amended by revising the phrase “through (c)(43)” in paragraph (a)(4)(ii) to read “through (c)(44)”.

■ 8. Section 742.9 is amended:

■ a. By revising the phrase “through (c)(43)” in paragraph (a)(3)(ii) to read “through (c)(44)”;

■ b. By revising paragraph (b)(1)(vi);

■ c. By redesignating paragraph (b)(1)(vii) as (b)(1)(ix) and (b)(1)(viii) as (b)(1)(x); and

■ d. By adding new paragraphs (b)(1)(vii), (b)(1)(viii) and (b)(1)(xi) to read as follows:

§ 742.9 Anti-terrorism: Syria.

(b) * * *

(1) * * *

(vi) Explosives detection equipment controlled under ECCN 2A983.

(vii) “Software” (ECCN 2D983) specially designed or modified for the “development”, “production” or “use” of explosives detection equipment controlled by 2A983.

(viii) “Technology” (ECCN 2E983) specially designed or modified for the “development”, “production” or “use” of explosives detection equipment controlled by 2A983.

* * * * *

(xi) Technology for the production of Chemical Weapons Convention (CWC) Schedule 2 and 3 chemicals controlled under ECCN 1E355.

■ 9. Section 742.10 is amended:

■ a. By revising the phrase “through (c)(43)” in paragraph (a)(4)(ii) to read “through (c)(44)”;

■ b. By revising paragraph (b)(1)(vi);

■ c. By redesignating (b)(1)(vii) as (b)(1)(ix), (b)(1)(viii) as (b)(1)(x) and (b)(1)(ix) as (b)(1)(xi); and

■ d. By adding new paragraphs (b)(1)(vii) and (b)(1)(viii) to read as follows:

§ 742.10 Anti-terrorism: Sudan.

* * * * *

(b) * * *

(1) * * *

(vi) Explosives detection equipment controlled under ECCN 2A983.

(vii) “Software” (ECCN 2D983) specially designed or modified for the “development”, “production” or “use” of explosives detection equipment controlled by 2A983.

(viii) “Technology” (ECCN 2E983) specially designed or modified for the

“development”, “production” or “use” of explosives detection equipment controlled by 2A983.

* * * * *

■ 10. Section 742.19 is amended:

■ a. By revising the phrase “(c)(6) through (c)(44)” in paragraph (a)(3)(ii) to read “(c)(6) through (c)(45)”;

■ b. By revising paragraph (b)(1)(xi);

■ c. By redesignating paragraphs (b)(1)(xii) through (b)(1)(xviii) as (b)(1)(xiv) through (b)(1)(xx);

■ d. By adding new paragraphs (b)(1)(xii), (b)(1)(xiii) and (b)(1)(xxi); and

■ e. By revising the phrase “and (c)(44)” in paragraph (b)(3) to read “and (c)(45)” to read as follows:

§ 742.19 Anti-terrorism: North Korea.

* * * * *

(b) * * *

(1) * * *

(xi) Explosives detection equipment controlled under ECCN 2A983.

(xii) “Software” (ECCN 2D983) specially designed or modified for the “development”, “production” or “use” of explosives detection equipment controlled by 2A983.

(xiii) “Technology” (ECCN 2E983) specially designed or modified for the “development”, “production” or “use” of explosives detection equipment controlled by 2A983.

* * * * *

(xxi) Technology for the production of Chemical Weapons Convention (CWC) Schedule 2 and 3 Chemicals controlled under ECCN 1E355.

* * * * *

■ 11. Supplement No. 2 to part 742 is amended:

■ a. By revising paragraph (b)(3)(ii);

■ b. By revising paragraph (c)(39);

■ c. By adding a new paragraph (c)(40);

■ d. By redesignating paragraphs (c)(41) through (c)(44) as (c)(42) through (c)(45); and

■ e. By adding a new paragraph (c)(41) to read as follows:

Supplement No. 2 to Part 742—Anti-Terrorism Controls: Iran, North Korea, Syria and Sudan Contract Sanctity Dates and Related Policies

* * * * *

(b) * * *

(3) * * *

(ii) The following items to all end-users: for Iran, items in paragraphs (c)(6) through (c)(44) of this Supplement; for North Korea, items in paragraph (c)(6) through (c)(45) of this Supplement; for Sudan, items in paragraphs (c)(6) through (c)(14), and (c)(16) through (c)(44) of this Supplement; for Syria, items in paragraphs (c)(6) through (c)(8), (c)(10) through (c)(14), (c)(16) through

(c)(19), and (c)(22) through (c)(44) of this Supplement.

* * * * *

(c) * * *

(39) Explosives detection equipment described in ECCN 2A983.

(i) Explosives detection equipment described in ECCN 2A983, controlled prior to April 3, 2003 under ECCN 2A993.

(A) Iran. Applications for all end-users in Iran of these items will generally be denied. Contract sanctity date: January 19, 1996.

(B) Syria. Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: January 19, 1996.

(C) Sudan. Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date: January 19, 1996.

(D) North Korea. Applications for all end-users in North Korea of these items will generally be denied.

(ii) Explosives detection equipment described in ECCN 2A983, not controlled prior to date April 3, 2003 under ECCN 2A993.

(A) Iran. Applications for all end-users in Iran of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(B) Syria. Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: March 21, 2003.

(C) Sudan. Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(D) North Korea. Applications for all end-users in North Korea of these items will generally be denied. Contract sanctity date: March 21, 2003.

(40) “Software” described in ECCN 2D983 specially designed or modified for the “development”, “production” or “use” of explosives detection equipment.

(i) Iran. Applications for all end-users in Iran of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(ii) Syria. Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: March 21, 2003.

(iii) Sudan. Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(iv) North Korea. Applications for all end-users in North Korea of these items

will generally be denied. Contract sanctity date: March 21, 2003.

(41) "Technology" described in ECCN 2E983 specially designed or modified for the "development", "production" or "use" of explosives detection equipment.

(i) *Iran*. Applications for all end-users in Iran of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(ii) *Syria*. Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: March 21, 2003.

(iii) *Sudan*. Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(iv) *North Korea*. Applications for all end-users in North Korea of these items will generally be denied. Contract sanctity date: March 21, 2003.

* * * * *

■ 12. The authority citation for part 762 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

PART 762—[AMENDED]

■ 13. Section 762.2 is amended:

By redesignating paragraphs (b)(4) through (41) as (b)(6) through (43) and by adding new paragraphs (b)(4) and (5) to read as follows:

§ 762.2 Records to be retained.

* * * * *

(b) * * *

(4) § 740.10(c), Servicing and replacement of parts and equipment (RPL);

(5) § 740.13(f), Technology and software—unrestricted (TSU);

* * * * *

■ 14. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

PART 774—[AMENDED]

■ 15. In Supplement No. 1 to part 774, the Commerce Control List, Category 2

(Materials Processing, Chemicals, Microorganisms, and Toxins), is amended by removing Export Control Classification Number (ECCN) 2A993 and adding a new ECCN 2A983 reading as follows:

2A983 Explosives or detonator detection equipment, both bulk and trace based, consisting of an automated device, or combination of devices for automated decision making to detect the presence of different types of explosives, explosive residue, or detonators; and parts and components, n.e.s.

License Requirements

Reason for Control: RS, AT

Control(s)	Country chart
RS applies to entire entry	RS Column 2
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: Equipment in number

Related Controls: N/A

Related Definitions: (1) For the purpose of this entry, automated decision making is the ability of the equipment to detect explosives or detonators at the design or operator-selected level of sensitivity and provide an automated alarm when explosives or detonators at or above the sensitivity level are detected. This entry does not control equipment that depends on operator interpretation of indicators such as inorganic/organic color mapping of the items(s) being scanned. (2) Explosives and detonators include commercial charges and devices controlled by 1C018 and 1C992 and energetic materials controlled by ECCNs 1C011, 1C111, 1C239 and 22 CFR 121.1 Category V.

Items:

Note: Explosives or detonation detection equipment in 2A983 includes equipment for screening people, documents, baggage, other personal effects, cargo and/or mail.

a. Explosives detection equipment for automated decision making to detect and identify bulk explosives utilizing, but not limited to, x-ray (*e.g.*, computed tomography, dual energy, or coherent scattering), nuclear (*e.g.*, thermal neutron analysis, pulse fast neutron analysis, pulse fast neutron transmission spectroscopy, and gamma resonance absorption), or electromagnetic techniques (*e.g.*, quadropole resonance and dielectrometry).

b. Explosives detection equipment for automated decision making to detect and identify the presence of explosive residues utilizing, but not limited to, explosives trace detection techniques (*e.g.*, chemiluminescence, ion mobility spectroscopy and mass spectroscopy).

c. Detonator detection equipment for automated decision making to detect and identify initiation devices (*e.g.*, detonators, blasting caps) utilizing, but not limited to, x-ray (*e.g.*, dual energy or computed tomography) or electromagnetic techniques.

■ 16. In Supplement No. 1 to part 774, the Commerce Control List, Category 2 (Materials Processing, Chemicals, Microorganisms, and Toxins), is amended by adding new Export Control Classification Number (ECCN) 2D983 reading as follows:

2D983 "Software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 2A983.

License Requirements

Reason for Control: RS, AT

Control(s)	Country chart
RS applies to entire entry	RS Column 2
AT applies to entire entry	AT Column 1

License Exceptions

CIV: N/A

TSR: N/A

List of Items Controlled

Unit: \$ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

■ 17. In Supplement No. 1 part 774, the Commerce Control List, Category 2 (Materials Processing, Chemicals, Microorganisms, and Toxins), is amended by revising the heading of Export Control Classification Number (ECCN) 2E001 reading as follows:

2E001 "Technology" ACCORDING TO THE GENERAL TECHNOLOGY NOTE FOR THE "DEVELOPMENT" OF EQUIPMENT OR "SOFTWARE" CONTROLLED BY 2A (EXCEPT 2A983, 2A991, OR 2A994), 2B (EXCEPT 2B991, 2B993, 2B996, 2B997, OR 2B998), OR 2D (EXCEPT 2D983, 2D991, 2D992, OR 2D994).

* * * * *

■ 18. In Supplement No. 1 part 774, the Commerce Control List, Category 2 (Materials Processing, Chemicals, Microorganisms, and Toxins), is amended by revising the heading of Export Control Classification Number (ECCN) 2E002 reading as follows:

2E002 “Technology” according to the General Technology Note for the “production” of equipment controlled by 2A (except 2A983, 2A991, or 2A994), or 2B (except 2B991, 2B993, 2B996, 2B997, or 2B998).

* * * * *

■ 19. In Supplement No. 1 to part 774, the Commerce Control List, Category 2 (Materials Processing, Chemicals, Microorganisms, and Toxins), is amended by adding new Export Control Classification Number (ECCN) 2E983 reading as follows:

2E983 “Technology” specially designed or modified for the “development”, “production” or “use” of equipment controlled by 2A983, or the “development” of software controlled by 2D983.

License Requirements

Reason for Control: RS, AT

Control(s)	Country chart
RS applies to entire entry	RS Column 2
AT applies to entire entry	AT Column 1

License Exceptions

CIV: N/A
TSR: N/A

List of Items Controlled

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

Dated: March 24, 2003.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 03-7696 Filed 4-2-03; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 423

RIN 1006-AA46

Public Conduct on Bureau of Reclamation Lands and Projects; Extension of Expiration Date

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule.

SUMMARY: This rule extends the expiration date for the rule governing public conduct on Reclamation lands and projects to April 17, 2005. The rule is currently set to expire on April 17,

2003. The additional time will allow the Bureau of Reclamation to prepare and publish a more comprehensive rule.

EFFECTIVE DATE: Effective April 3, 2003, the expiration date of 43 CFR part 423, Public Conduct on Bureau of Reclamation Lands and Projects, is extended from April 17, 2003, to April 17, 2005.

ADDRESSES: Address any questions concerning this rule to Larry Todd, Director, Security, Safety, and Law Enforcement, Bureau of Reclamation, 6th and Kipling, Building 67, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: Gary Anderson, Safety, and Law Enforcement, Bureau of Reclamation, 6th and Kipling, Building 67, Denver, CO 80225. Telephone (303) 445-2891

SUPPLEMENTARY INFORMATION:

I. Background

On September 11, 2001, terrorists launched attacks on targets within the United States. Following the terrorist attacks, on November 12, 2001, Congress enacted Public Law 107-69 (now codified at 43 U.S.C. 373b and 373c), for the purpose of providing law enforcement authority within Reclamation projects and on Reclamation lands. Section 1(a) of Public Law 107-69 law requires Reclamation to “issue regulations necessary to maintain law and order and protect persons and property within Reclamation projects and on Reclamation lands.” Pursuant to that statutory requirement, Reclamation issued a final rule, 43 CFR part 423, Public Conduct on Bureau of Reclamation Lands and Projects, on April 17, 2002 (now codified at 43 CFR 423.1-423.10). That rule’s preamble set the rule to expire on April 17, 2003, based on Reclamation’s intent to develop a more comprehensive public conduct rule by that date.

A more comprehensive rule is currently under development, but additional time is needed to complete that rulemaking. In order to avoid a period during which no rule is in place addressing public conduct on our lands and facilities, Reclamation has decided to extend the expiration date of the existing rule from April 17, 2003, to April 17, 2005.

II. Procedural Requirements

A. Determination To Issue Final Rule Without Notice and Comment, and Effective in Less Than 30 Days

The Administrative Procedure Act (APA) generally requires agencies to provide advance notice and an opportunity to comment on agency

rulemakings. However, the APA allows an agency to promulgate rules without notice and comment when an agency, for good cause, finds that notice and public comment are “impracticable, unnecessary, or contrary to the public interest.” (5 U.S.C. 553(b)(3)(B)). To the extent that 5 U.S.C. section 553 applies to the rule, good cause exists to exempt this rulemaking from advance notice and comment.

Allowing a period for advance notice could result in the expiration of the existing rule before this rule, which extends the expiration date, goes into effect. A period without a rule in place addressing public conduct on Reclamation lands and projects would result in a serious disruption in the protection of Reclamation facilities and property, with accompanying confusion to employees and the public. Such disruption and confusion would be contrary to public and national security interests.

We expect to issue a comprehensive rule that would supersede the existing rule in the near future. Establishing a public comment period for the extension of the existing rule’s expiration date is likely to create significant public confusion in that such a comment period might closely coincide with the comment period on the proposed comprehensive rule.

Finally, the existing rule which was issued on April 17, 2002, generated virtually no public reaction. Despite our request for comments on the rule, we received only one nonsubstantive comment. Therefore, it is not reasonable to expect that mere extension of the rule’s expiration date would result in substantive comments from the public.

For the foregoing reasons, we conclude it is impracticable, unnecessary, and contrary to the public interest to request public comment on this rule.

We have also determined that good cause exists to waive the requirement of publication 30 days in advance of the rule’s effective date under 5 U.S.C. 553(d)(3). As discussed above, it is essential that the existing rule’s expiration date be extended before the rule expires. If the rule expired without any additional action, Reclamation would face a situation in which no rule exists governing public conduct on Reclamation facilities and property. Such a situation would be harmful to the security of Reclamation facilities and property and therefore not in the public interest, as well as national security interests. Also, a period during which no rule was in effect would create both legal and public confusion. Finally, even if the 30-day period were

to end prior to the existing rule's expiration date, the effective result would be identical to having the expiration date removed immediately. Because an immediate effective date will sustain security, reduce the opportunity for legal and public confusion, and have no negative consequences, good cause exists for making this rule effective immediately as allowed by 5 U.S.C. 553(d)(3).

B. Review Under Procedural Statutes and Executive Orders

We have reviewed this final rule under the following statutes and executive orders governing rulemaking procedures: the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*; the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*; the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.*; the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*; the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*; Executive Order 12630 (Takings); Executive Order 12866 (Regulatory Planning and Review); Executive Order 12988 (Civil Justice Reform); Executive Order 13132 (Federalism); Executive Order 13175 (Tribal Consultation); and Executive Order 13211 (Energy Impacts). Since this rule merely extends the expiration date of the existing 43 CFR part 423, the information in the compliance statements that we published on April 17, 2002, with the existing rule continue to apply.

List of Subjects in 43 CFR part 423

Dams, Security measures, Irrigation.

Dated: March 27, 2003.

R. Thomas Weimer,

Deputy Assistant Secretary, Water and Science.

[FR Doc. 03-8110 Filed 4-2-03; 8:45 am]

BILLING CODE 4310-MN-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

RIN 9991-AA35

[OST Docket No. OST-1999-6189]

Organization and Delegation of Powers and Duties; Delegation to the Administrator, Maritime Administration

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) delegates to the Maritime Administrator the

authority to implement section 109 of the Maritime Transportation Security Act of 2002, which requires the Secretary, not later than 6 months after the date of enactment, to develop standards and curriculum to allow for the training and certification of maritime security professionals. Training opportunities provided under section 109 may be available to any Federal, State, local, and private law enforcement or maritime security personnel in the United States or to personnel employed in foreign ports used by a vessel with United States citizens as passengers or crewmembers. An annual report is to be submitted to the Senate Committee on Commerce, Science and Transportation, and the House of Representatives Committee on Transportation and Infrastructure on the expenditure of appropriated funds and the training under this section. The Maritime Administrator may further redelegate this authority.

EFFECTIVE DATE: This rule is effective on April 3, 2003.

FOR FURTHER INFORMATION CONTACT: Christine Gurland, Office of the Chief Counsel, MAR-225, (202) 366-5724, Department of Transportation, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590. Linda Lasley, Office of the General Counsel, (202) 366-9314, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

You can view and download this document by going to the webpage of the Department's Docket Management System (<http://dms.dot.gov/>). On that page, click on "search." On the next page, type in the last four digits of the docket number shown on the first page of this document. Then click on "search." You may also download an electronic copy of this document by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

Background

The Secretary is delegating to the Maritime Administrator the authority under section 109 of the Maritime Transportation Security Act of 2002, Public Law 107-295, 116 Stat. 2064, at 2090 to develop standards and

curriculum to allow for the training and certification of maritime security professionals. The Maritime Administration (MARAD) has the expertise and staff to develop and implement a program for the training and certification of maritime security professionals within its area of responsibility and to make funding decisions in accordance with the statutory requirements. The standards for training and certification established shall include training and certification of maritime security professionals in accordance with accepted law enforcement and security guidelines, policies, and procedures; training of students and instructors in all aspects of prevention, detection, investigation, and reporting of criminal activities in the international maritime environment; and the provision of off-site training and certification courses and certified personnel at United States and foreign ports used by U. S.-flagged vessels, or by foreign-flagged vessels with U.S. citizens as passengers or crew members, to develop and enhance security awareness and practices. MARAD may make the training opportunities provided under this section available to any Federal, State, local, and private law enforcement or maritime security personnel in the United States or to personnel employed in foreign ports used by vessels with United States citizens as passengers or crewmembers.

Since this amendment relates to Departmental organization, procedure, and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b). Efficient execution of section 109 is instrumental to the timely development and implementation of training for maritime security professionals. Thus, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for this final rule to be effective on the date of publication in the **Federal Register**.

Regulatory Evaluation

Regulatory Assessment

This rulemaking is a non-significant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that Order. This rule is also not significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Collection of Information

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

Federalism Assessment

This proposed rule has been reviewed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it is determined that this action does not have a substantial direct effect on the States, or a relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule will not limit the policymaking discretion of the States nor preempt any State law or regulation.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

■ In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended, effective upon publication, to read as follows:

PART 1—[AMENDED]

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

Authority: Pub. L. 107-295.

■ 2. In § 1.66, add paragraph (ff) to read as follows:

§ 1.66 Delegations to Maritime Administrator.

* * * * *

(ff) Carry out the functions and exercise the authority vested in the Secretary by section 109 of the Maritime Transportation Security Act of 2002, Public Law 107-295, 116 Stat. 2064, provide training for maritime security professionals. This authority may be redelegated.

Issued on: March 26, 2003.

Norman Y. Mineta,
Secretary of Transportation.

[FR Doc. 03-8132 Filed 4-2-03; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 635**

[I.D. 082902A]

Atlantic Highly Migratory Species; Swordfish Quota Adjustment

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

ACTION: Adjustment of annual catch quotas; correction.

SUMMARY: NMFS is correcting a document published March 24, 2003, concerning the North Atlantic swordfish quota for the 2002 fishing year. A paragraph containing the total quota amount for the fishing year was inadvertently omitted. This document provides the total adjusted swordfish quota and how it is allocated for the 2002 fishing year.

DATES: Effective April 3, 2003.

FOR FURTHER INFORMATION CONTACT: Tyson Kade at 301-713-2347; Fax: 301-713-1917.

SUPPLEMENTARY INFORMATION:**Correction**

In the **Federal Register** issue of March 24, 2003, on page 14168, in the first column, following the second paragraph and before the South Atlantic Swordfish heading, add the following paragraph: "The underharvest from the 2000 and 2001 fishing years, 1,144.5 mt dw, can be added to the base 2002 fishery quota of 2,219.0 mt dw for an adjusted North Atlantic swordfish quota of 3,363.5 mt dw. The reserve category is allocated 139.1 mt dw, the incidental category is allocated 300 mt dw, and the remaining quota is divided into two equal semiannual quotas of 1,462.2 mt dw for the periods of June 1, 2002, through November 30, 2002, and December 1, 2002, through May 31, 2003. In 2002, the dead discard allowance is 120 mt dw."

Classification

This action is taken under 50 CFR 635.27(c)(3)(ii) and (c)(3)(iii) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: March 28, 2003.

Richard W. Surdi,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03-8120 Filed 4-2-03; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 68, No. 64

Thursday, April 3, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA-2003-14825; Notice No. 03-06]

RIN 2120-AH90

Standard Airworthiness Certification of New Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The FAA seeks public comments in advance of a specific proposal to amend the regulations for issuing a standard airworthiness certificate to certain new aircraft manufactured in the United States. The proposal would address a concern that under the current regulations, certain new aircraft are eligible for a standard airworthiness certificate without meeting the requirements of a type certificate and without having been manufactured under an FAA production approval. The intended effect is to increase efficiency by ensuring that all new aircraft manufactured in the United States receive a standard airworthiness certificate only after the aircraft have been type certificated and manufactured under an FAA production approval.

DATES: Send your comments to reach us by June 2, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 7th Street, SW., Washington, DC 20590-0001. You must identify the docket number at the beginning of your comments, and you should send two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also send comments through the Internet to <http://dms.dot.gov>. You may review the public docket

containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Frank P. Paskiewicz, Production and Airworthiness Division, AIR-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8361.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. We also invite comments about the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of this advance notice, explain the reason for any recommendation, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about this advance notice. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this advance notice. The docket is open between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before issuing a notice of proposed rulemaking or taking other rulemaking action, we will consider all comments we receive before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal because of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this advance notice, include with your comments a preaddressed, stamped

postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

- Searching the Department of Transportation's electronic Docket Management System (DMS) web page (<http://dms.dot.gov/search>);
- Visiting the Office of Rulemaking's web page at <http://www.faa.gov/avr/arm/index.cfm>; or
- Accessing the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number or notice number of this advance notice.

Background

14 CFR 21.183(d), Other aircraft

Section 21.183(d) applies to applicants for standard airworthiness certificates for aircraft not covered by § 21.183(a), (b), or (c). An applicant under § 21.183(d) is entitled to a standard airworthiness certificate if he or she presents evidence the aircraft conforms to a type design approved under a type certificate or a supplemental type certificate and to applicable Airworthiness Directives. The Administrator must also find, after inspection, that the aircraft conforms to the type design and is in condition for safe operation. The aircraft covered by paragraphs (a) and (b) of § 21.183 are (a) new aircraft manufactured under a production certificate and (b) new aircraft manufactured under a type certificate only.¹

The requirements of § 21.183(d) were originally adopted in 1959 as an amendment to § 1.67(d) of the Civil Air Regulations (CAR), which were issued by the FAA's predecessor, the Federal Aviation Agency. CAR Amendment 1-2,

¹ Section 21.183(c) applies to airworthiness certificates for import aircraft. Although such aircraft are not produced under a U.S. type certificate/production certificate process, they are produced under similar regulations and processes enacted by the countries in which the aircraft were manufactured, which establishes similar assurances of compliance with airworthiness standards.

dated September 1, 1959 (24 FR 7065), added a new paragraph (d), entitled "Other aircraft." Amendment 1-2 provided for the airworthiness certification of aircraft that were used in military service and later released for civil use, and for other aircraft that had not had their airworthiness status maintained. The amendment stated that the regulation was created for other than newly manufactured aircraft. Section 21.183(d) has remained substantially unchanged since 1959.

The plain language of the regulation, however, does not limit the applicability of § 21.183(d) to surplus military aircraft, aircraft that have not had their airworthiness status maintained, or other than newly manufactured aircraft. Limited data and historical records show that, until recently, only a few newly manufactured aircraft have received standard airworthiness certificates on a case-by-case basis under § 21.183(d). These newly manufactured aircraft "arrive" at the airworthiness certification process as new aircraft that were not produced under an FAA production approval. On the other hand, the practice of issuing standard airworthiness certificates to surplus military aircraft released for civil use and aircraft that have not had their airworthiness status maintained has been ongoing for many years. Surplus military aircraft and aircraft that have not had their airworthiness status maintained "arrive" at the airworthiness certification process as used aircraft (those that have had time in service).

In 1966, the FAA proposed to amend § 21.183 by separating newly manufactured aircraft not manufactured under a type certificate or a production certificate from paragraph (d). See 31 FR 8075, June 8, 1966. Public comments received in response to the proposal showed a misunderstanding of the proposal's intent. Commenters mistakenly believed the FAA intended a broad change to past certification practices of issuing airworthiness certificates to surplus military aircraft and aircraft that had not had their airworthiness status maintained. Since the FAA did not intend such a broad change, and since few new aircraft fell within the intended scope of the change, the FAA decided to abandon the proposed change. See 32 FR 14925, Oct. 28, 1967. The FAA did state that although we would not adopt the proposed change, we would continue to issue standard airworthiness certificates to newly manufactured aircraft under § 21.183(d).

The System for Production of New Duplicate Aircraft

For the FAA to have confidence in the certification system of new aircraft manufactured in the United States, and the authenticity of their production, the FAA has created a three-step system of type certification, production certification, and airworthiness certification based on Title 49 of the United States Code. Type certification examines the basic design of the aircraft against the applicable airworthiness standards. Issuance of a type certificate (TC) is FAA approval that the design meets the applicable airworthiness standards of the Code of Federal Regulations. Production certification examines whether the system used to produce duplicate aircraft will result in products² that meet the design provisions of the pertinent TC. Issuance of a production certificate (PC) is a finding by the FAA that the quality control system of a manufacturer will reliably produce duplicate versions of a product that conforms to an approved type design. The FAA issues a standard airworthiness certificate to individual aircraft after finding that the aircraft conforms to the type design and is in condition for safe operation.

Safety Benefits Assumed by the Linkage of the Type Certificate and the Production Certificate

A connection between the TC and the PC provides an individual and a cumulative benefit. The individual benefit applies to an aircraft produced for initial airworthiness certification. For these aircraft, any deviation from the approved type design that is found during the conformity inspection can be evaluated by comparison to the supporting data that supports issuance of the TC and any changes made after the initial TC issuance. This evaluation assures the standard airworthiness certificate means the individual aircraft satisfies all the airworthiness standards identified by the TC.

The cumulative benefit applies to evaluating the cumulative effect of changes made after the initial issuance of the TC. The linkage of the PC to the TC supporting data enables the aircraft manufacturer to evaluate the cumulative effect of many changes made over time. The manufacturer can also determine that a changed aircraft presented for original airworthiness certification continues to comply with the airworthiness standards identified in the TC. The FAA requests comments from manufacturers on how, for an

aircraft presented for original standard airworthiness certification, they evaluate the interactive and cumulative effect of changes on the aircraft's compliance with all the airworthiness standards identified in the TC.

The Level of Safety Assumed for Newly Manufactured Aircraft

Nearly all new aircraft manufactured in the United States are eligible for airworthiness certificates since they are produced under the TC and PC processes that ensure the aircraft conform to a type design and are in condition for safe operation. The FAA, the manufacturer, civil aviation authorities of other countries, and the public rely on the TC and PC processes to accurately produce multiple copies of an aircraft that meet airworthiness standards. Paragraphs (a) and (b) of § 21.183 recognize this process in issuing standard airworthiness certificates to aircraft produced in this manner. Also, as stated in the next section of this advance notice, entitled "Discussion," the TC and PC holders have certain responsibilities connected with holding these privileges.

New aircraft presented for standard airworthiness certification under § 21.183(d) do not have the same level of certitude as newly manufactured aircraft produced under the TC and PC processes. Section 21.183(d) aircraft presented for airworthiness certification do not have the advantage of prior examination and approval by the FAA of a production quality system, and a finding by the FAA of accurate reproduction is difficult. The applicant for an airworthiness certificate must make a detailed, aircraft-by-aircraft showing to support the entitlement to individual airworthiness certificates, placing a great burden on both the applicant and the FAA.

Discussion

Readers should note that we are directing this Discussion section and the issues and proposals described in this advance notice at aircraft that are issued standard airworthiness certificates. We do not intend for this advance notice to apply to the proposed category of light-sport aircraft, which is the subject of a recent notice of proposed rulemaking (67 FR 5368, February 5, 2002).

The FAA's Aircraft Certification Service has recently learned that people are, or plan to be, engaged in manufacture or assembly of new aircraft, intending to obtain standard airworthiness certificates under 14 CFR 21.183(d). The builders of these aircraft do not hold a TC, supplemental type certificate (STC), or a PC, nor would

² The term "products" means aircraft, engines, propellers, or appliances.

they have authorization from the original TC holder to use the TC in the manufacture of new aircraft. These people intend to build aircraft that match a type design under a previously approved TC, but without the permission of the TC holder to use the design, and without a PC.

Because these aircraft builders do not hold a PC, the FAA has no assurance preceding issuance of a standard airworthiness certificate that the individual aircraft produced conforms to the type design. Each aircraft must be individually evaluated, compared to type design data, and determined to be in condition for safe operation, which is often difficult to do. Even assuming the builder can meet this burden for each aircraft produced, the resulting burden on the FAA to make the evaluations is significant. Given the limited resources available to the FAA, such a process is unworkable.

Also, since the builder does not hold a TC, several of the regulatory responsibilities of a TC holder do not apply. For example, without a TC, builders of new aircraft who apply for standard airworthiness certificates under paragraph (d) do not have to:

1. Have access to the supporting data originally used to show compliance to the airworthiness standards;
2. Provide instructions for continued airworthiness;
3. Establish and maintain an FAA production approval;
4. Report failures, malfunctions, or defects; and
5. Develop design changes to address safety issues identified by an Airworthiness Directive.

As a result, safety may be compromised, or an undue burden placed on the FAA to oversee or independently fulfill these functions which legitimately should remain with the builder of the aircraft.

Obtaining type and production certificates for manufacturing new products is a fundamental concept in the regulatory framework. Inherent in this concept is the entitlement for a PC holder to obtain a standard airworthiness certificate without further showing to the FAA. However, building new aircraft for the issuance of standard airworthiness certificates under § 21.183(d) is not consistent with the regulatory framework or with the requirements for obtaining standard airworthiness certificates under § 21.183(a), New aircraft manufactured under a production certificate or § 21.183(b), New aircraft manufactured under type certificate only.

As mentioned in the "Background" discussion, the FAA recognized this

issue in 1966 when it first proposed a change to § 21.183(d) to remove newly manufactured aircraft from its scope. In part, the FAA ended the 1966 rulemaking because the size of the problem was insignificant. But recent applications for standard airworthiness certificates for newly built aircraft under § 21.183(d) show that the FAA must now address the issue.

Lastly, another issue involves Annex 8 to the Convention on International Civil Aviation (ICAO Annex 8). Each standard airworthiness certificate issued to an aircraft contains the statement that the aircraft meets ICAO Annex 8 requirements allowing them to be eligible for export. ICAO Annex 8, Section 2.2.3, states, "When approving production of aircraft or aircraft parts, a Contracting State shall ensure that it is performed in a controlled manner including the use of a quality system so that construction and assembly are satisfactory." The FAA is considering whether production and standard airworthiness certification of new aircraft under § 21.183(d) meets ICAO quality system requirements. A change to § 21.183(d), using the formal FAA production approval process, might be necessary to definitively ensure new aircraft production tracks this ICAO provision and the aircraft produced are eligible for export.

Proposed Definitions, Regulations, and Policy Changes

This advance notice proposes the following new definitions and regulation and policy changes:

Definitions

The FAA seeks public comments on the definitions of the following terms:

Manufacturer means the person who holds (or has a license or similar rights to) the approved type certificate and who controls the quality of the product (aircraft, engine, propeller, or appliance) or article produced (or to be produced, in the case of an application), including the parts of them or any processes or services related to them that are procured from an outside source; and who holds a production approval issued by the FAA.

New aircraft means an aircraft may be considered new as long as the manufacturer, distributor, or dealer retains ownership; if there are no intervening private owner, lease, or time-sharing arrangements; and the aircraft has not been used in any Armed Force, pilot school, or air taxi operation. Aircraft operated for conducting flight tests to meet the requirements for production flight testing are considered new.

Spare part means an accessory, appurtenance, or part of an aircraft, aircraft engine, propeller, or appliance that is to be installed at a later time in an aircraft, aircraft engine, propeller, or appliance. An aircraft engine, propeller, or appliance is not considered a spare part to the next higher level assembly. A spare part must be produced under an appropriate FAA production approval.

Surplus part means an accessory, appurtenance, or part of an aircraft, aircraft engine, propeller, or appliance that has been released as surplus by the military, manufacturer, owner/operator, repair facility, or any other parts supplier. An aircraft engine, propeller, or appliance is not considered a surplus part to the next higher level assembly. A surplus part must be produced under an appropriate FAA production approval or have been produced under contract to the Armed Forces.

Used aircraft means aircraft with "time in service" that have held an airworthiness certificate or have been operated by the Armed Forces. "Time in service" does not include operations for the purpose of conducting production flight testing. Used aircraft do not include aircraft that have been classified as "demolished" on the National Transportation Safety Board (NTSB) Form 6120.1/2, Pilot/Operator Aircraft Accident Report.

Regulations and Policy Changes

The FAA seeks public comments on the following possible changes. The FAA also seeks suggestions on other methods to address the problem.

1. Amend 14 CFR part 21 to require a person to hold a TC (or license to it) and a production approval to be eligible for a standard airworthiness certificate for new aircraft manufactured in the United States. Standard airworthiness certificates will only be issued to these aircraft under existing § 21.183(a), New aircraft manufactured under a production certificate, or § 21.183(b), New aircraft manufactured under type certificate only.

2. Amend 14 CFR part 21 to specify that only used aircraft will be eligible for standard airworthiness certificates under § 21.183(d). Used aircraft that are eligible and would continue to be eligible under § 21.183(d) include: a. Surplus military aircraft; and b. Used aircraft that have not had their airworthiness status maintained, which includes aircraft reassembled from spare and surplus parts.

3. Revise the associated FAA policy and guidance to reflect the proposed changes in #1 and #2 above.

These proposed changes would ensure the proper assignment of type

certificate and production approval holder responsibilities to the manufacturers of new aircraft produced in the United States. This advance notice does not propose any changes to § 21.183(a), New aircraft manufactured under a production certificate, § 21.183(b), New aircraft manufactured under type certificate only, or § 21.183(c), Import aircraft.

Economic Impact

Proposed changes to Federal regulations must undergo several economic analyses. Executive Order 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the intended regulations justify its cost. In addition, the Regulatory Flexibility Act of 1980, as amended, required agencies to analyze the economic impact of regulatory changes on small entities. Other analyses are also required.

To aid the FAA in performing these analyses in the event that we propose a regulation, we request responses to the following questions:

1. If you are manufacturing or assembling in the United States new aircraft that received standard airworthiness certification under § 21.183(d), or if you expect to apply for airworthiness certification under § 21.183(d) to produce new aircraft'

- What is the name of your company?
- How many people does your company employ?
- How many new aircraft certificated under § 21.183(d) do you expect to produce in the future? If possible, give annual production estimates.

2. If you are producing or plan to produce new aircraft that are or would be airworthiness certificated under § 21.183(d), what do you estimate the cost of airworthiness certification under § 21.183(a) or (b) would be relative to airworthiness certification under § 21.183(d)? Please be as specific as possible in identifying additional required tests, analyses, and demonstrations and their estimated costs.

3. If you are producing or plan to produce new aircraft airworthiness certificated under § 21.183(d), what do you estimate the cost of manufacture (per aircraft) would be if the aircraft were airworthiness certificated under § 21.183(a) or (b) compared with airworthiness certification under § 21.183(d)? Please be as specific as possible in identifying required changes in equipment, materials, and manufacturing methods and their estimated costs.

4. If you are producing or plan to produce new aircraft airworthiness certificated under § 21.183(d), and you had to wait for the FAA to issue the airworthiness certificate for each aircraft, what do you estimate the cost would be (per day) once the aircraft was ready for certification?

5. Please provide any other specific information, data, or analyses that you believe may be useful in estimating the costs associated with a potential rulemaking action to preclude the standard airworthiness certification of new aircraft under § 21.183(d).

Issued in Washington, DC, on March 31, 2003.

John J. Hickey,

Director, Aircraft Certification Service, AIR-1.

[FR Doc. 03-8124 Filed 4-2-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003-CE-11-AD]

RIN 2120-AA64

Airworthiness Directives; Iniziative Industriali Italiane S.p.A. Models Sky Arrow 650 TC and 650 TCN 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 Iniziative Industriali Italiane S.p.A. (3I) Models Sky Arrow 650 TC and 650 TCN airplanes. This proposed AD would require you to modify the nose gear support bulkhead (STA600). This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this proposed AD are intended to prevent failure of the nose gear support bulkhead (STA600). Such failure could lead to loss of control of the airplane during landing or take-off.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before May 9, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE-11-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location

between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: 9-ACE-7-Docket@faa.gov. Comments sent electronically must contain "Docket No. 2003-CE-11-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 Iniziative Industriali Italiane S.p.A., Corso Trieste, n. 150, 00198 Rome, Italy; telephone: 06 84.15.821; facsimile: 06 855.71.62. 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-11-AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Ente Nazionale per l'Aviazione Civile (ENAC), which is the airworthiness authority for Italy, recently notified FAA that an unsafe condition may exist on certain Iniziative Industriali Italiane S.p.A. (3I) Models Sky Arrow 650 TC and 650 TCN airplanes. The ENAC reports that data collected on in-service airplanes show that cracks have been detected on the nose gear support bulkhead (STA600) of several airplanes with high operating time on grass airfields and at flight schools where activity of hard landings have occurred.

What Are the Consequences if the Condition Is Not Corrected?

If not corrected, the nose gear support bulkhead (STA600) could fail. Such failure could lead to loss of control of the airplane during landing or take-off.

Is There Service Information That Applies to This Subject?

Iniziativa Industriali Italiane S.p.A. (3I) has issued 3i Service Bulletin SB-C No. 02/02, dated October 15, 2002.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for modifying the nose gear support bulkhead (STA600).

What Action Did the ENAC Take?

The ENAC classified this service bulletin as mandatory and issued Italian AD Number 2002-591, dated November 29, 2002, in order to ensure the continued airworthiness of these airplanes in Italy.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in Italy 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 ENAC 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 ENAC; 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 Iniziative Industriali Italiane

S.p.A. (3I) Models Sky Arrow 650 TC and 650 TCN airplanes of the same type design that are on the U.S. registry;

- The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
- AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 10 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 modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators.
19 workhours × \$60 = \$1,140	\$100	\$1,240	\$12,400.

The proposed modification to the nose gear support bulkhead (STA600) would require 39 hours for cure and post cure time.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

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

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

location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

Iniziativa Industriali Italiane S.P.A.:
Docket No. 2003-CE-11-AD.

airplanes that are certificated in any category:

§ 39.13 [Amended]

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

(a) *What airplanes are affected by this AD?* This AD affects the following

Model	Serial No.
Sky Arrow 650 TC	C001 through C004, C006 through C008, and C011. CN001 through CN006 and CN008.
Sky Arrow 650 TCN	

(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.

AD are intended to prevent failure of the nose gear support bulkhead (STA600). Such failure could lead to loss of control of the airplane during landing or take-off.4

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

(c) *What problem does this AD address?* The actions specified by this

Actions	Compliance	Procedures
Modify the nose gear support bulkhead (STA600).	Within the next 100 hours time-in-service (TIS) after the effective date of this AD.	In accordance with Iniziativa Industriali Italiane S.p.A. 3i Service Bulletin SB-C No. 02-02, dated October 15, 2002.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate, For information on 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003-CE-10-AD]

RIN 2120-AA64

Airworthiness Directives; Iniziativa Industriali Italiane S.p.A. Models Sky Arrow 650 TC and 650 TCN Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Iniziativa Industriali Italiane S.p.A. (3I) Models Sky Arrow 650 TC and 650 TCN airplanes. This proposed AD would require you to repetitively inspect the engine mount for cracks and modify or replace the engine mount if cracks are found. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this proposed AD are intended to detect and correct cracks in the engine mount, which could result in failure of the engine mount. Such failure could lead to separation of the engine from the airplane.

Counsel, Attention: Rules Docket No. 2003-CE-10-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: 9-ACE-7-Docket@faa.gov. Comments sent electronically must contain "Docket No. 2003-CE-10-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 Iniziativa Industriali Italiane S.p.A., Corso Trieste, n. 150, 00198 Rome, Italy; telephone: 06 84.15.821; facsimile: 06 855.71.62. 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

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Iniziativa Industriali Italiane S.p.A., Corso Trieste, n. 150, 00198 Rome, Italy; telephone: 06 84.15.821; facsimile: 06 855.71.62. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note: The subject of this AD is addressed in Italian AD Number 2002-591, dated November 29, 2002.

Issued in Kansas City, Missouri, on March 26, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-8047 Filed 4-2-03; 8:45 am]

BILLING CODE 4910-13-P

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-10-AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Ente Nazionale per l'Aviazione Civile (ENAC), which is the airworthiness authority for Italy, recently notified FAA that an unsafe condition may exist on all Iniziative Industriali Italiane S.p.A. (3I) Models Sky Arrow 650 TC and 650 TCN airplanes. The ENAC reports that data collected on in-service airplanes shows that cracks have been detected on the engine mount of several airplanes with high operating time on grass airfields and at flight schools where activity of hard landings have occurred.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not detected and corrected, could result in failure of the

engine mount. Such failure could lead to separation of the engine from the airplane.

Is There Service Information That Applies to This Subject?

Iniziativa Industriali Italiane S.p.A. has issued 3i Service Bulletin SB-C No. 01/02, dated October 15, 2002.

What Are the Provisions of This Service Information?

- The service bulletin includes procedures for:
- Repetitively inspecting the engine mount for cracks; and
 - Modifying the engine mount if cracks are found.

What Action Did the ENAC Take?

The ENAC classified this service bulletin as mandatory and issued Italian AD Number 2002-590, dated November 29, 2002, in order to ensure the continued airworthiness of these airplanes in Italy.

Was This in Accordance With the Bilateral Airworthiness Agreement?

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

Pursuant to this bilateral airworthiness agreement, the ENAC has kept FAA informed of the situation described above.

What Are the Differences Between This Proposed AD, the ENAC AD, and the Service Information?

The ENAC AD and the service information requires (on Italian-registered airplanes) inspection within the next 10 hours time-in-service (TIS) after the effective date of the AD. We propose a requirement that you inspect within the next 50 hours TIS after the effective date of this proposed AD. We do not have justification to require this action within the next 10 hours TIS.

We use compliance times such as 10 hours TIS when we have identified an urgent safety of flight situation. We believe that 50 hours TIS will give the owners or operators of the affected airplanes enough time to have the

proposed actions accomplished without compromising the safety of the airplanes.

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 ENAC; 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 Iniziative Industriali Italiane S.p.A. (3I) Models Sky Arrow 650 TC and 650 TCN airplanes of the same type design that are on the U.S. registry;
- The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
- AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

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

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

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × \$60 = \$60	No parts required	\$60	\$60 × 10 = \$600.

We estimate the following costs to accomplish the necessary modification:

Labor cost	Parts cost	Total cost per airplane
14 workhours × \$60 = \$840	\$100	\$940

We estimate the following costs to accomplish any necessary replacements that would be required based on the

results of the proposed inspection. We have no way of determining the number

of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
11 workhours × \$60 = \$660	\$500	\$1,160

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:

Iniziativa Industriali Italiane S.P.A.: Docket No. 2003-CE-10-AD.

(a) *What airplanes are affected by this AD?* This AD affects Models Sky Arrow 650 TC and 650 TCN airplanes, all serial numbers, that are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the engine mount, which could result in failure of the engine mount. Such failure could lead to separation of the engine from the airplane.

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

Actions	Compliance	Procedures
(1) Inspect the engine mount for cracks	Initially inspect within the next 50 hours time-in-service (TIS) after the effective date of this AD. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until the modification or replacement specified in paragraph (d)(2) or (d)(3) of this AD is incorporated.	In accordance with Iniziativa Industriali Italiane S.p.A. 3i Service Bulletin SB-C No. 01-02, dated October 15, 2002.
(2) If cracks are found during any inspection required in paragraph (d)(1) of this AD and the cracks are 20 millimeters (mm) or less in size, modify the engine mount.	Prior to further flight after the inspection in which the cracks are found. Incorporating the manufacturer's modification kit terminates the repetitive inspection requirements of this AD.	In accordance with Iniziativa Industriali Italiane S.p.A. 3i Service Bulletin SB-C No. 01-02, dated October 15, 2002.
(3) If cracks are found during the inspection required in paragraph (d)(1) of this AD and the cracks are more than 20 millimeters in length, the engine mount must be replaced with a new, already modified engine mount.	Prior to further flight after the inspection in which the cracks are found. Replacing the engine mount with a new, already modified engine mount terminates the repetitive inspection requirements of this AD.	In accordance with Iniziativa Industriali Italiane S.p.A. 3i Service Bulletin SB-C No. 01-02, dated October 15, 2002.

Actions	Compliance	Procedures
(4) After any inspection required in paragraph (d)(1) of this AD, and no cracks are found, you may incorporate the modification or install a new, already modified engine mount as referenced in paragraph (d)(2) and (d)(3) of this AD. This modification terminates the repetitive inspection requirements of this AD.	N/A	In accordance with Iniziativa Industriali Italiane S.p.A. 3i Service Bulletin SB-C No. 01-02, dated October 15, 2002.
(5) Do not install any engine mount unless it has been modified as specified in paragraph (d)(2) of this AD.	As of the effective date of this AD	Not applicable.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate. For information on 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.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Iniziativa Industriali Italiane S.p.A., Corso Trieste, n. 150, 00198 Rome, Italy; telephone: 06 84.15.821; facsimile: 06 855.71.62. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note: The subject of this AD is addressed in Italian AD Number 2002-590, dated November 29, 2002.

Issued in Kansas City, Missouri, on March 26, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-8048 Filed 4-2-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NM-02-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A330 and A340 series airplanes. This proposal would require

revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate life limits for the servo-controls located on the ailerons and replacement of the servo-controls with new servo-controls when they have reached their operational life limits. This action is necessary to prevent hydraulic leakage and failure of the servo-controls due to cracks in the end caps and along the barrel, which could result in loss of the ailerons and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 5, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-02-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2002-NM-02-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

FOR FURTHER INFORMATION CONTACT:

Todd Thompson, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1175; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as

they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM-02-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-02-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the

airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus A330 and A340 series airplanes. The DGAC advises that the operational life limits for the servo-controls located on the ailerons, which are listed in Revision 8, chapter 05-11-00, configuration 1, of the Aircraft Maintenance Manual (AMM), dated September 15, 1999, are not addressed by section 9 of the Airworthiness Limitations Section (ALS), which replaces chapter 05-11-00 of the AMM. When the servo-controls have reached their operational life limits, it is necessary to remove and replace them with new servo-controls to prevent hydraulic leakage and failure due to cracks in the end caps and along the barrel, which could result in loss of the ailerons and consequent reduced controllability of the airplane.

Explanation of Action Taken by the DGAC

The DGAC issued French airworthiness directives 2001-529(B) and 2001-530(B), both dated November 14, 2001, to require operational life limits for the inboard and outboard aileron servo-controls operating in the active mode. The French airworthiness directives also require the replacement of the servo-controls with new servo-controls when the operational life limits have been reached.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a revision to the ALS of the Instructions for Continued Airworthiness to incorporate life limits for servo-controls located in the ailerons and replacement of the servo-controls with new servo-controls when the operational life limits have been reached.

Clarification of Compliance Time

French airworthiness directives 2001-529(B) and 2001-530(B) both include a note that provides a formula for calculating the remaining life (in the present configuration) for parts that have been used in several airplane models or type configurations. This proposed AD mirrors the compliance times specified in paragraphs (A) and (B) of the French airworthiness directives, but does not provide the formula specified in the note of the French airworthiness directives. However, we would consider a request for approval to use the specified formula, under the provisions of paragraph (d) of this proposed AD, provided that appropriate substantiating data accompany the request.

Cost Impact

The FAA estimates that 9 Model A330 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Required parts would be provided to the operators at no cost. Based on these figures, the cost impact of the proposed AD on U.S. operators of Model A330 series airplanes is estimated to be \$2,700, or \$300 per airplane.

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

Currently, there are no Airbus Model A340 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 5 work hours to accomplish the proposed actions, at an average labor rate of \$60 per work hour. Required parts would be provided to the operators at no cost. Based on these figures, the cost impact of this AD for Model A340 operators would be \$300 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct

effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 2002-NM-02-AD.

Applicability: All Model A330 and A340 series airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR part 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR part 91.403(c), the operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided

guidance for this determination in Advisory Circular (AC) 25-1529.

Compliance: Required as indicated, unless accomplished previously.

To prevent hydraulic leakage and failure of the servo-controls located on the ailerons due to cracks in the end caps and along the

barrel, which could result in loss of the ailerons and consequent reduced controllability of the airplane, accomplish the following:

Airworthiness Limitations Revision and Replacement of Servo-Control Units

(a) Within 30 days after the effective date of this AD, revise the Airworthiness

Limitations Section (ALS) of the Instructions for Continued Airworthiness by inserting a copy of this AD into the ALS.

(b) Replace the servo-control units operating in the active mode at the times specified in the following table, counted from the date of initial installation on the airplane, as applicable:

TABLE—PART NUMBERS AND REPLACEMENT LIFE LIMITS

For model—	Replace servo-controls having the following part numbers with new parts having the same part numbers:	Replace before
(1) A330 series airplanes.	(i) 3337457-21, -22, and -23 (inboard) ..	6,000 flight hours.
	(ii) 3337457-25, -26, and -27 (inboard)	18,000 flight hours.
	(iii) 3337457-30, -31, -34, -35, -36, -37, and -38 (inboard).	21,000 flight cycles or 32,000 flight hours, whichever occurs first.
	(iv) 3337457-59 and -60 (inboard)	60,000 flight hours. This is a temporary and life limit; if the operator wants to use the parts beyond 60,000 flight hours the accumulated flight hours of the parts since their origin must be tracked and a request submitted for an alternative method of compliance in accordance with paragraph (d) of this AD.
	(v) 3337458-30, -31, -34, -35, -36, -37, and -38 (outboard).	21,000 flight cycles or 32,000 flight hours, whichever occurs first.
	(vi) 3337458-59 and -60 (outboard)	60,000 flight hours. This is a temporary life limit; if the operator wants to use the parts beyond 60,000 flight hours the accumulated flight hours of the parts since their origin must be tracked and a request submitted for an alternative method of compliance in accordance with paragraph (d) of this AD.
(2) A340 series airplanes.	(i) 3337457-21, -22, and -23 (inboard) ..	9,000 flight hours.
	(ii) 3337457-25, -26, and -27 (inboard)	27,000 flight hours.
	(iii) 3337457-30, -31, -34, -35, -36, -37, and -38 (inboard).	16,400 flight cycles or 65,600 flight hours, whichever occurs first.
	(iv) 3337457-59 and -60 (inboard)	80,000 flight hours. This is a temporary and life limit; if the operator wants to use the parts beyond 80,000 flight hours the accumulated flight hours of the parts since their origin must be tracked and a request submitted for an alternative method of compliance in accordance with paragraph (d) of this AD.
	(v) 3337458-30, -31, -34, -35, -36, -37, and -38 (outboard).	16,400 flight cycles or 65,600 flight hours, whichever occurs first.
	(vi) 3337458-59 and -60 (outboard)	80,000 flight hours. This is a temporary and life limit and if the operator wants to use the parts beyond 80,000 flight hours must track the accumulated flight hours of the parts since their origin and request approval for an alternative method of compliance in accordance with paragraph (d) of this AD.

(c) Except as provided by paragraph (d) of this AD: After the actions specified in paragraphs (a) and (b) of this AD have been accomplished, no alternative life limits may be approved for the components specified in paragraph (b) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Operations 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

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197

and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directives 2001-529(B) and 2001-530(B), both dated November 14, 2001.

Issued in Renton, Washington, on March 28, 2003.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-8065 Filed 4-2-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2003-14608; Airspace Docket No. 03-AAL-2]

Proposed Amendment of Class E Airspace; Ambler, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Class E airspace at Ambler, AK. Two new Standard Instrument Approach Procedures (SIAP) are being published for the Ambler Airport. Existing Class E airspace at Ambler is insufficient to contain aircraft executing the new SIAPs. The new approach procedure design will require a Terminal Arrival Area (TAA). Adoption of this proposal would result in the

addition of 1,200 ft. Class E airspace at Ambler, AK.

DATES: Comments must be received on or before May 19, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2003-14608/Airspace Docket No. 03-AAL-2, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL-530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513-7587.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL-538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513-7587; telephone number (907) 271-2796; fax: (907) 271-2850; e-mail: Derril.CTR.Bergt@faa.gov. Internet address: <http://www.alaska.faa.gov/at>.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2003-14608/Airspace Docket No. 03-AAL-2." The postcard

will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

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

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

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71) by adding to Class E airspace at Ambler, AK. The intended effect of this proposal is to extend Class E airspace, from 1,200 feet above the surface, to contain Instrument Flight Rules operations at Ambler, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Ambler Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Z Runway (RWY) 36, original; and (2) RNAV (GPS) Y Runway 36, original. New Class E controlled airspace extending upward from 1,200 feet above the surface within a 47 mile radius of the Ambler Airport would be created by this action. This amount of Class E airspace is needed to provide for a Terminal Arrival Area (TAA) and to

eliminate small portions of unusable Class G airspace that have been created by past rule-making actions. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures for the Ambler Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation

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

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Ambler, AK [Amended]

Ambler Airport, AK
(Lat. 67°06'23" N., long. 157°51'27" W.)
Ambler NDB
(Lat. 67°06'24" N., long. 157°51'29" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Ambler Airport and within 3.5 miles each side of the 193° bearing of the Ambler NDB extending from the 6.3 mile radius to 7.2 miles southwest of the airport; and that airspace extending upward from 1,200 feet above the surface within a 47 mile radius of the Ambler Airport.

* * * * *

Issued in Anchorage, AK, on March 26, 2003.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03-8143 Filed 4-2-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2003-14673; Airspace Docket No. 03-ASO-2]

Proposed Establishment of Class E2 Airspace; Elizabeth City, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E2 airspace at Elizabeth City, NC. The Elizabeth City Coast Guard Air Station has requested to conduct Special Visual Flight Rules (VFR) operations at the Elizabeth City CGAS/Municipal Airport. The Elizabeth City Airport Traffic Control Tower is a part time facility. In order to conduct these operations when the control tower is closed, Class E2 surface area must be established. This action would establish Class E2 surface area airspace with a 4.1 mile-radius of the airport.

DATES: Comments must be received on or before May 5, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of

Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2003-14673/Airspace Docket No. 03-ASO-2, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1-800-647-5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT:

Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2003-14673/Airspace Docket No. 03-ASO-2." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned

with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://dms.dot.gov>. Recently published rulemaking documents can also be accessed through the FAA's web page at <http://www.faa.gov> or the Superintendent of Document's web page at <http://www.access.gpo.gov/nara>. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA-400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E2 airspace at Elizabeth City, NC. Class E airspace designations for airspace areas designated as surface areas are published in paragraph 6002 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASO MS E2 Elizabeth City [NEW]

Elizabeth City CGAS/Municipal Airport, NC (Lat. 36°15'38" long. 76°10'29")

That airspace extending upward from the surface within a 4.1-mile radius of the Elizabeth City CGAS/Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on March 24, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–8127 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA 2003–14268; Airspace Docket No. 03–ASO–1]

Proposed Establishment of Class E Airspace; Tunica, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E5 airspace at Tunica, MS. A Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 35 Standard Instrument Approach Procedure (SIAP) has been developed for Tunica Municipal Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and other Instrument Flight Rules (IFR) operations at Tunica Municipal Airport. The operating status of the airport would change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: Comments must be received on or before May 5, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14268/ Airspace Docket No. 03–ASO–1, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket FAA–2003–14268/Airspace Docket No. 03–ASO–01.” The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://dms.dot.gov>. Recently published rulemaking documents can also be accessed through the FAA’s web page at <http://www.faa.gov> or the Superintendent of Document’s web page at <http://www.access.gpo.gov/nara>. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM’s should contact the FAA’s Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Tunica, MS. Class E airspace designations for airspace areas extending upward 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an

established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11035; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO MS E5 Tunica, MS [NEW]

Tunica Municipal Airport, MS
(Lat. 36°24'47" long. 83°30'00")

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Tunica Municipal Airport.

* * * * *

Issued in College Park, Georgia, on March 24, 2003.

Walter R. Cochran,

*Acting Manager, Air Traffic Division,
Southern Region.*

[FR Doc. 03–8129 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Proposed rule and proposed conditional exemption.

SUMMARY: The Federal Trade Commission ("Commission") seeks public comment on a proposed rule change and exemption request submitted by the Association of Home Appliance Manufacturers ("AHAM") related to certain testing and labeling requirements of the Appliance Labeling Rule for clothes washers.

DATES: Written comments on the proposed exemption and the proposed rule must be submitted on or before May 5, 2003.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned "16 CFR part 305—Appliance Labeling Rule." To encourage prompt and efficient review and dissemination of the comments to the public, comments should also be submitted, if possible, in electronic form to: *appliance@ftc.gov*. AHAM's request and written public comments will be posted to the extent possible on the Commission's Web site (*www.ftc.gov*) and will otherwise be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations on normal business days from 8:30 a.m. to 5 p.m. at the Federal Trade Commission, 6th St. and Pennsylvania Ave., NW., Room 130, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202–326–2889).

SUPPLEMENTARY INFORMATION:

I. Background

A. FTC Requirements

The Commission issued the Appliance Labeling Rule in 1979, 44 FR 66466 (Nov. 19, 1979) ("Rule"), in response to a directive in the Energy Policy and Conservation Act of 1975 ("EPCA") (42 U.S.C. 6294). EPCA also requires the Department of Energy ("DOE") to develop test procedures that measure how much energy certain appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

The Rule covers, among other things, eight categories of major household appliances: refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, furnaces, and central air conditioners. The Rule requires manufacturers of all covered appliances to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an "EnergyGuide" label and in catalogs. The Rule requires manufacturers to include, on labels, an energy consumption or efficiency figure and a "range of comparability." This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models similar to the labeled model.

The Rule requires manufacturers, after filing an initial report, to report annually the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. 16 CFR 305.8(b). Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the database from which the ranges of comparability are calculated is constantly changing. Under § 305.10 of the Rule, to keep the required information on labels consistent with these changes, the Commission publishes new ranges (but not more often than annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission publishes a statement that the prior ranges remain in effect for the next year.

B. New DOE Test Procedure and Energy Standards for Clothes Washers

New energy conservation standards and a new DOE test procedure for clothes washers will become effective on January 1, 2004. The new energy

conservation standard requires that all new residential clothes washers manufactured after January 1, 2004 be 22% more efficient than today's minimally compliant clothes washer.¹ Accordingly, the 2004 energy standard will render a substantial portion of the existing clothes washer market obsolete.

The new DOE test procedure for clothes washers, which also will become effective on January 1, 2004, is found at 10 CFR part 430, Subpart B, Appendix J1.² Application of the new test procedure (sometimes referred to as the "J1" test or the "Modified Energy Factor" test) will likely produce energy consumption figures different from those yielded by the old ("J") test procedure (10 CFR part 430, subpart B, Appendix J).³ Because these test results are used to determine energy use information that appears on the FTC EnergyGuide label, consumers may not be able effectively to compare the energy performance of clothes washers if the labels are based on the two different test procedures.

II. AHAM's Request

To ease the transition to the new energy efficiency standard and new (J1) test procedure, AHAM⁴ wrote to FTC staff on February 7, 2003, requesting permission to begin using that test for labeling clothes washers during 2003, before the test becomes effective. In addition, AHAM's letter requests that the Commission allow its members to provide special wording on the EnergyGuide labels for these models to help consumers in distinguishing washers tested under the new (J1) procedure from those tested under the old (J) procedure (see Prototype Label 2 at the end of this document). AHAM's proposed label would display a banner across the top stating: "This Model has

¹ 66 FR 3314, 3315 (Jan. 12, 2001). A second amended energy efficiency standard, slated to take effect on January 1, 2007, requires that all new residential clothes washers manufactured after that date be 35% more efficient than today's minimally compliant clothes washer.

² The EnergyStar program, run by DOE and the U.S. Environmental Protection Agency, already requires use of the new (J1) test to certify clothes washers under that program.

³ According to AHAM, the clothes washer test procedures were revised to better reflect current usage habits by incorporating updated temperature utilization factors that are more appropriate for today's designs.

⁴ The manufacturers identified in AHAM's request are Alliance Laundry Systems, Electrolux Home Products, Fisher & Paykel Ltd., GE Appliances, Maytag Appliances, Miele Corp., and Whirlpool Corp. Subsequently, AHAM informed Commission staff that BSH, Gonrenje, and Asko also are participating in AHAM's request. According to AHAM, these manufacturers produce roughly 98% of the clothes washers sold in the United States.

been Tested to the 2004 Test Procedure. Compare only with Models with this Notice." AHAM requested that the Commission allow its members to begin using the new (J1) test and modified labels on May 1, 2003, and that the labeling changes be made "permanent."⁵ To grant AHAM's request, the Commission would have to grant an exemption from certain EnergyGuide testing and labeling requirements for the remainder of this year and issue Rule amendments to make the requested labeling changes a permanent requirement for all manufacturers after January 1, 2004.

AHAM submitted its request because it asserts that the transition to clothes washers compliant with the new 2004 energy efficiency standard and new test procedure, with respect to testing and labeling, could be unduly burdensome to manufacturers and confusing to consumers. According to AHAM, there will be hundreds of new energy efficient models introduced throughout the course of 2003. Under current requirements, manufacturers will have to test and rate these new models first under the old (J) procedure for 2003, and then again under the new (J1) procedure in order to distribute them in 2004. AHAM stated that, since several samples of each basic model need to be tested to determine statistically valid ratings, such duplicative testing would result in tremendous laboratory and manufacturer staff resources for hundreds of new models. Also, AHAM states that retail floor models are not changed frequently. Thus, without action by the FTC, retail display units for new models introduced this year will have energy labels based on the old (J) test well into 2004 and beyond. AHAM is concerned that these display units could be very confusing and misleading as consumers seek to compare units tested under different procedures in a single showroom without any notice that differences exist.

III. Discussion

AHAM's request raises two procedural matters: (1) A request for an exemption from certain testing and labeling requirements for clothes washers from May through December 31, 2003 (to permit testing and labeling pursuant to the new (J1) test); and (2) a proposed "permanent" rule change, effective January 1, 2004, to conform existing

⁵ AHAM also requested that the Commission change the reporting date in the Rule from March 1 to October 1 for each year. The Commission has already addressed the requested date change for data submission in an earlier **Federal Register** document (see 68 FR 8448 (Feb. 21, 2003)).

label content and format requirements to label changes permitted by the 2003 exemption. The Commission is seeking public comment on both the exemption request and the proposed rule.

A. Proposed Conditional Exemption for 2003

AHAM's request implicates several provisions of the Appliance Labeling Rule. The Rule requires that, for the purposes of the EnergyGuide label, manufacturers use the estimated annual energy consumption as derived from the DOE clothes washer test procedures in 10 CFR part 430 (see 16 CFR 305.5(a) and 305.11(a)(5)(i)(E)). Because the new (J1) test for clothes washers will not become effective until January 1, 2004, the Rule does not authorize the use of that test for energy consumption information on EnergyGuide labels until that date. By granting the requested exemption, the Commission would allow manufacturers to begin using the new test results on EnergyGuide labels before 2004. In addition, the Rule does not allow any marks or identification other than those specified in the Rule to appear on the label except for some limited exceptions not applicable here (see 16 CFR 305.11(a)(5)(i)(K)). Accordingly, absent an exemption, the Rule does not allow the kind of explanatory information proposed by AHAM (e.g., "Compare the Energy Use of this Clothes Washer only with other Models tested to the 2004 Test Procedure").

Because most consumers use the showroom models for EnergyGuide information, the Commission believes that there are benefits to allowing manufacturers to begin changing over to the new labels and test results sooner. First, as AHAM indicates, this would allow manufacturers to avoid testing their new products multiple times pursuant to two test procedures. It is the Commission's understanding that AHAM's members intend to test new models under the new (J1) test procedure and use limited testing under the old (J) procedure to develop data for the purposes of DOE and FTC reporting requirements during the remainder of 2003. Under this proposal, consumers would obtain information based on the new test sooner. The Commission also believes that AHAM's proposed label changes would minimize consumer confusion resulting from the use of the new test in 2003 by alerting consumers that the energy use information on some models is derived from a new test procedure.

The Commission proposes to grant AHAM's request for an exemption from the requirements in 16 CFR 305.5(a) and

305.11(a) only to the extent required to allow manufacturers to:

(1) Use the test procedure in 10 CFR part 430, subpart B, Appendix J1 for determining the energy use figure printed on EnergyGuide labels of clothes washers distributed between May 1 and December 31, 2003; and

(2) For such models, use EnergyGuide labels that contain the following modifications to the format and content requirements in 16 CFR 305.11, as illustrated in Prototype Label 2 at the end of this document:

(a) The use of the statement "Compare the Energy Use of this Clothes Washer only with other Models tested to the 2004 Test Procedure" in lieu of the statement "Compare the Energy Use of this Clothes Washer with Others Before You Buy";

(b) the use of the statement "This Model has been Tested to the 2004 Test Procedure. Compare only with Models with this Notice." at the top of the label; and

(c) the use of a label 8 inches (20.32 cm.) in length to accommodate statements specified in (b) above instead of the 7³/₈ inch (18.73 cm.) currently required by § 305.11(a)(1) of the Rule.

The Commission proposes to grant the exemption on the following conditions: (1) That any manufacturers using this exemption must use it for all clothes washer models introduced between May 1, 2003 and December 31, 2003 (they may use it for existing models that meet the new conservation standard), and (2) that the modified EnergyGuide label must be used if the new (J1) test is used to derive energy use information on the EnergyGuide label for clothes washers. The manufacturers would remain obliged to comply with all other Rule requirements. Manufacturers not specifically named in AHAM's request would be able to use this exemption as long as they follow the conditions specified by the Commission.

The Commission is seeking comment on the exemption proposal. In particular, the Commission would like input on whether the differences between the results yielded by the new and the old DOE tests for clothes washers are significant enough to warrant AHAM's proposed label change. In addition, the Commission seeks comment on whether AHAM's proposed label changes are appropriate and will help consumers in their purchasing decisions. For instance, it is possible that the reference to the year "2004" in referring to the test procedure will confuse consumers who are reading the label in subsequent years (e.g., 2005 or 2006). The Commission has offered alternative language and specific

questions for comment in Section IV below.⁶

B. Proposed Rule Change for EnergyGuide Labels for 2004 and Beyond

If the Commission grants AHAM's exemption request, it is probable that many new clothes washers distributed for sale in the United States for the remainder of 2003 will have labels containing the proposed advisory language that "This Model has been Tested to the 2004 Test Procedure. Compare only with Models with this Notice." Once this change is made to EnergyGuide labels on units distributed in 2003, a return to the conventional label in the future may cause consumer confusion because the units with the modified label will stay on showroom floors into 2004 and beyond. Given these considerations, AHAM has asked the Commission to make its proposed label changes permanent. The Commission is seeking public comment on a proposed rule change that would incorporate AHAM's suggested label changes (see Prototype Label 2 and Sample Label 3) and require these changes for all clothes washers distributed for sale in the United States beginning January 1, 2004. The Commission's proposed amendments to this effect appear at the end of this document.

The Commission believes that it is preferable that any permanent changes to the EnergyGuide label match the label modifications used during the exemption period. It could be confusing to consumers to allow advisory language on the label during the exemption period that is different from advisory language required by the Rule after January 1, 2004. Accordingly, the Commission believes that, if the exemption is granted and the Rule is also amended, the modified label language should be identical in both instances. The Commission seeks comment on alternatives to the label language proposed by AHAM. Section IV contains some possible alternatives and specific questions regarding these proposed amendments.

IV. Request for Comment

The Commission requests that interested persons submit written comments on any issue of fact, law or policy that may bear upon the proposed rule and conditional exemption. Although the Commission welcomes comments on any aspect of these

⁶ Given the limited duration of this proposed exemption, the Commission does not plan to incorporate the exemption into the text of the Rule (see § 305.19).

matters, the Commission is particularly interested in comments on the questions listed in this section. All written comments should state clearly the question or issue, or the specific condition, that the commenter wishes to address.

The Commission requests that commenters provide representative factual data in support of their comments. Experiences of individual firms are relevant to the extent they typify industry experience in general or the experience of similar-sized firms. Comments opposing the proposed conditional exemption and proposed Rule amendments should, if possible, suggest specific alternatives. Proposals for alternative conditions should include reasons and data that indicate why the alternatives would better serve the requirements of the Appliance Labeling Rule. The Commission is particularly interested in comments addressing the following questions and issues:

1. Should the Commission grant the requested exemption and permit manufacturers to begin testing and labeling clothes washers to the new (J1) test in 2003? Are there alternatives to the proposed conditional exemption and rule change that would better accomplish the same objectives?

2. Are the differences between the results yielded by the new (J1) and old (J) tests significant enough to warrant special advisory language on the EnergyGuide labels? Are the differences unbiased, or does one test yield consistently higher or lower results than the other?

3. If the Commission grants AHAM's exemption request, should the Commission amend the rule to incorporate label changes as a permanent requirement?

4. Are AHAM's proposed changes to the label, such as the content, size, and placement of the modified language on the EnergyGuide, appropriate? Will the proposed language on the EnergyGuide label help consumers in their purchasing decisions or will it cause undue confusion? Will the reference to the year "2004" on the label create confusion in subsequent years if the proposed change becomes a permanent fixture on the label? Should the explanatory language be required on both the top and the bottom of the label?

5. Are there additional, or different, changes that should be made to the label related to AHAM's request?

6. Would either of the following alternatives be preferable to the language proposed by AHAM:

Alternative 1: Statement at Top of Label—"This Model has been Tested to

the "J1" Test Procedure. Compare only with Models displaying this Notice." Statement at the Middle of Label—"Compare the Energy Use of this Clothes Washer only with other Models tested to the J1 Test Procedure."

Alternative 2: Statement at Top of Label—"This Model has been Tested to the Modified Energy Factor Test Procedure. Compare only with Models displaying this Notice." Statement at the Middle of Label—"Compare the Energy Use of this Clothes Washer only with other Models tested to the Modified Energy Factor Test Procedure."

7. Would the implementation of AHAM's proposal cause consumer confusion for those units with EnergyGuide labels adjoining energy labels required by Mexico or Canada?

8. Are the conditions under which the Commission proposes the exemption appropriate? Are there additional, or different, conditions that also would be appropriate?

9. What would be the economic impact on manufacturers of the proposed exemption, each of the proposed conditions for use of the exemption, and proposed rule?

10. What would be the benefits of the proposed conditional exemption and the proposed rule? Who would receive those benefits?

11. What would be the benefits and economic impact of the proposed exemption, each of the proposed conditions, and the proposed rule change on small businesses?

V. Preliminary Regulatory Analysis and Regulatory Flexibility Act Requirements

Under section 22 of the FTC Act, 15 U.S.C. 57b, the Commission must issue a preliminary regulatory analysis for a proceeding to amend a rule only when it: (1) Estimates that the amendment will have an annual effect on the national economy of \$100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission has preliminarily determined that the proposed exemption and amendments to the Rule will not have such effects on the national economy, on the cost of covered products, or on covered parties or consumers. The Commission, however, requests comment on the economic effects of the proposed amendments.

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-12, requires that

the agency conduct an analysis of the anticipated economic impact of the proposed amendments on small businesses. The purpose of a regulatory flexibility analysis is to ensure that the agency considers impact on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA, 5 U.S.C. 605, provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

There are approximately 20 manufacturers of clothes washers sold in the United States. Most of these manufacturers are very large. Because the clothes washer requirements of the Appliance Labeling Rule cover a limited number of manufacturers, most of which are large, the Commission does not believe the proposed amendments or exemption will affect a substantial number of small businesses. In addition, the proposed amendments and exemptions are unlikely to have a significant economic impact upon such entities. Specifically, the proposed rule and exemption involve minor text changes to labels already required by the Rule. The content of these labels must be changed in response to new ranges of comparability published by the Commission from time to time. In the Commission's view, the proposed amendments and exemption should not have a significant or disproportionate impact on the costs of small manufacturers and retailers.

Based on available information, therefore, the Commission certifies that amending the Appliance Labeling Rule as proposed and granting the requested exemptions will not have a significant economic impact on a substantial number of small businesses. To ensure that no significant economic impact is being overlooked, however, the Commission requests comments on this issue. The Commission also seeks comments on possible alternatives to the proposed amendments (and exemptions) to accomplish the stated objectives. After reviewing any comments received, the Commission will determine whether a final regulatory flexibility analysis is appropriate.

VI. Paperwork Reduction Act

In a 1988 notice (53 FR 22113), the Commission stated that the Rule contains disclosure and reporting requirements that constitute "information collection requirements" as defined by 5 CFR 1320.7(c), the

regulation that implements the Paperwork Reduction Act.⁷ The Commission noted that the Rule had been reviewed and approved in 1984 by the Office of Management and Budget ("OMB") and assigned OMB Control No. 3084-0068. OMB has again reviewed the Rule and extended its approval for its recordkeeping and reporting requirements until September 30, 2004. The exemptions approved here do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements and, therefore, do not require further OMB clearance.

VII. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Rule 1.18(c) of the Commission's Rules of Practice, 16 CFR 1.18(c), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. *Written communications*, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. *Oral communications*, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized, at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications. *Oral communications from members of Congress* shall be transcribed or summarized, at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications.

List of Subjects in 16 CFR part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

VIII. Proposed Rule Language

For the reasons set out in the preamble, 16 CFR part 305 is proposed to be amended as follows:

⁷ 44 U.S.C. 3501-3520.

PART 305—[AMENDED]

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Amend § 305.11 by revising paragraphs (a)(1) and (a)(5)(i)(A) and adding paragraph (a)(5)(i)(L) to read as follows:

§ 305.11 Labeling for covered products.

(a) * * * (1) *Layout.* All energy labels for each category of covered product shall use one size, similar colors and typefaces with consistent positioning of headline, copy and charts to maintain uniformity for immediate consumer recognition and readability. Trim size dimensions for all labels shall be as follows: width must be between 5¼ inches and 5½ inches (13.34 cm. and 13.97 cm.); length must be 7⅜ inches (18.73 cm.) except for clothes washer labels, which must be 8 inches (20.32

cm.) in length. Copy is to be set between 27 picas and 29 picas and copy page should be centered (right to left and top to bottom). Depth is variable but should follow closely the prototype labels appearing at the end of this part illustrating the basis layout. All positioning, spacing, type sizes and line widths should be similar to and consistent with the prototype labels.

* * * * *

(5) * * *

(i) * * *

(A) Headlines and texts, as illustrated in the Prototype Labels in Appendix L to this Part, are standard for all labels except clothes washer labels, which must have the text and features described in paragraph (a)(5)(i)(L) of this section.

* * * * *

(L) Clothes washer labels must have the headlines and texts as illustrated in Prototype Label 2 of Appendix L of this

Part. In particular, clothes washer labels must have the following headline as illustrated in Prototype Label 2: “Compare the Energy Use of this Clothes Washer only with other Models tested to the 2004 Test procedure.” In addition to the requirements for other labels, clothes washer labels must have a 10/16 inch (1.59 cm.) in height, process black bar across the top which contains the following text in process yellow as illustrated in Prototype Label 2: “This Model has been Tested to the 2004 Test Procedure. Compare only with Models displaying this Notice.”

* * * * *

4. Appendix L to part 305 is amended by revising Prototype Label 2 and Sample Label 3 to read as follows:

Appendix L to Part 305—Sample Labels

* * * * *

BILLING CODE 6750-01-U

All copy Arial Narrow Regular or Bold as below.
Helvetica Condensed series typeface or other equivalent also acceptable.

All copy x 28 pt.

10/16 inches
(1.59cm)

10/12
Arial
Narrow

12/14
Arial
Narrow
Bold

14/14
Arial
Narrow

1pt. Rule
24pt. Rule

10/12
Arial Narrow
Use bold
where indicated

1pt. Rule

18Arial
Narrow
Bold

10/12
Arial Narrow

6/8
Arial Narrow

This Model has been Tested to the 2004 Test Procedure.
Compare only with Models with this Notice.

Based on standard U.S. Government tests

ENERGYGUIDE

↓

Clothes Washer
Capacity: Standard

XYZ Corporation
Model(s) Mr328, XL12, NAA83

**Compare the Energy Use of this Clothes Washer only
with other Models tested to the 2004 Test Procedure.**

This Model Uses
873kWh/year

Energy use (kWh/year) range of all similar models

Uses Least Energy **177** Uses Most Energy **1298**

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use.
Your utility company uses it to compute your bill. Only standard size clothes washers
are used in this scale.

Clothes washers using more energy cost more to operate.
This model's estimated yearly operating cost is:

\$70

when used with an electric water heater

\$33

when used with a natural gas water heater

Based on eight loads of clothes a week and a 2000 U.S. Government national average cost of
8.03¢ per kWh for electricity and 68.8¢ per therm for natural gas. Your actual operating cost will
vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

13.5/14
Arial
Narrow
Bold
Yellow

12/14
Arial
Narrow
Bold

16.5/19
Arial
Narrow
Bold

10 Arial
Narrow

16 Arial
Narrow
Bold

14/14
Arial
Narrow
Bold

14/14
Arial
Narrow
Bold

Box:
24 pt. Tall

Prototype Label 2

This Model has been Tested to the 2004 Test Procedure.
Compare only with Models with this Notice.

Based on standard U.S. Government tests

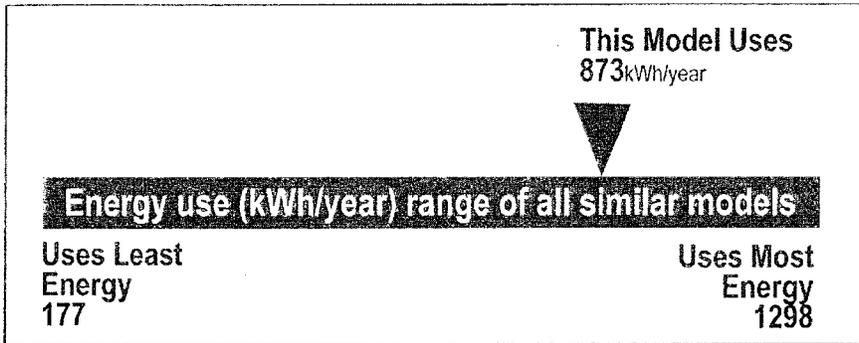
ENERGYGUIDE

Clothes Washer
Capacity: Standard

XYZ Corporation
Model(s) Mr328, XL12, NAA83



Compare the Energy Use of this Clothes Washer only
with other Models tested to the 2004 Test Procedure.



kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only standard size clothes washers are used in this scale.

Clothes washers using more energy cost more to operate.
This model's estimated yearly operating cost is:

\$70

when used with an electric water heater

\$33

when used with a natural gas water heater

Based on eight loads of clothes a week and a 2000 U.S. Government national average cost of 8.03¢ per kWh for electricity and 68.8¢ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Sample Label 3

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By direction of the Commission.
Donald S. Clark,
Secretary.

[FR Doc. 03-7933 Filed 4-2-03; 8:45 am]

BILLING CODE 6750-01-C

FEDERAL TRADE COMMISSION**16 CFR Part 310****Telemarketing Sales Rule Fees**

AGENCY: Federal Trade Commission.

ACTION: Revised notice of proposed rulemaking and request for public comment.

SUMMARY: The Federal Trade Commission (the "Commission" or "FTC") is issuing a Revised Notice of Proposed Rulemaking ("Revised Fee NPRM") to amend the FTC's Telemarketing Sales Rule ("TSR") by adding a new section that would impose fees on entities accessing the national do-not-call registry. This Revised Fee NPRM invites written comments on the issues raised by the proposed changes, and seeks answers to the specific questions set forth in Section X.

The Commission is also announcing that full compliance with § 310.4(b)(1)(iii)(B), the "do-not-call" registry provision of the Amended TSR, will be required on October 1, 2003.

DATES: Written comments will be accepted until May 1, 2003. Time is of the essence to promulgate the proposed fees. Thus, the Commission does not anticipate providing any extension to this comment period.

ADDRESSES: The Commission encourages comments to be submitted electronically to the following e-mail address: feerule@ftc.gov. Alternatively, commenters may submit an original plus two paper copies of their comments to the Office of the Secretary, Room 159, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all paper comments should also be submitted, if possible, in electronic form, on a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs should be submitted in ASCII text format to be accepted.) Individual members of the public filing comments need not submit multiple copies or comments in electronic form.

All comments and any electronic versions (*i.e.*, computer disks) should be identified as "Telemarketing Rulemaking—Revised Fee NPRM Comment. FTC File No. R411001." The Commission will make this NPRM and, to the extent possible, all comments received in electronic form in response to this NPRM, available to the public

through the Internet at the following address: <http://www.ftc.gov>.

Comments on proposed revisions bearing on the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, Washington, DC 20503, ATTN.: Desk Officer for the Federal Trade Commission, as well as to the FTC Secretary at the address above.

FOR FURTHER INFORMATION CONTACT: David M. Torok, (202) 326-3075, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:**Background**

On January 30, 2002, the FTC published a Notice of Proposed Rulemaking to amend the FTC's TSR and to request public comment on the proposed changes. 67 FR 4492 (Jan. 30, 2002) ("the Rule NPRM"). Among other provisions, the Rule NPRM proposed to establish a national do-not-call registry, to be maintained by the FTC, that would permit consumers who prefer not to receive telemarketing calls to contact one centralized registry to effectuate this preference. On May 29, 2002, the FTC published another Notice of Proposed Rulemaking to further amend the TSR by imposing user fees on sellers and telemarketers for their access to the proposed national do-not-call registry. 67 FR 37362 (May 29, 2002) ("the User Fee NPRM"). In issuing the User Fee NPRM, the Commission was guided by the Independent Offices Appropriations Act of 1952, 31 U.S.C. 9701, and the Office of Management and Budget Circular No. A-25. The Commission received 34 comments submitted in response to the User Fee NPRM.¹

The Commission issued final amendments to the TSR on December 18, 2002. 68 FR 4580 (Jan. 29, 2003). Among the changes made to the TSR, the Commission adopted the proposal to establish a national do-not-call registry, permitting consumers to register, via either a toll-free telephone number or the Internet, their preference not to receive telemarketing calls. When full

¹ A list of commenters to the User Fee NPRM and the Rule NPRM, and the acronyms used to identify those entities, was included in Attachment B to the Statement of Basis and Purpose for the Amendments to the TSR, 68 FR 4677-78 (Jan. 29, 2003) ("TSR SBP"). Comments submitted in response to the User Fee NPRM will be cited in this Notice as "[Name of Commenter]-User Fee at [page number]." Comments submitted in response to the Rule NPRM will be cited as "[Name of commenter]-Rule NPRM at [page number]."

compliance with the do-not-call provisions of the Amended TSR is required, on October 1, 2003, telemarketers will be required to refrain from calling consumers who have placed their numbers on this registry. 16 CFR 310.4(b)(1)(iii)(B). To ensure compliance with this requirement, telemarketers will be required to access the national registry at least once every three months in order to remove from their telemarketing lists those consumers who have placed their telephone numbers on the national registry. 16 CFR 310.4(b)(3)(iv). When it issued the Amended TSR, the Commission reserved its decision on the issues raised in the User Fee NPRM, stating that it would issue a revised Notice of Proposed Rulemaking to seek further comment on the issues raised in that proceeding. See 68 FR 4580, 4640 n. 716.

On February 20, 2003, the President signed into law the Consolidated Appropriations Resolution of 2003, Public Law 108-7 (2003) ("the Appropriations Act"), which appropriated funds for the operation of the FTC during fiscal year 2003. In the same Act, Congress also authorized the agency to collect fees sufficient to implement and enforce the do-not-call provisions of the TSR. Congress further estimated the costs for fiscal year 2003 at \$18,100,000. *Id.* at Division B, Title II. See also The Do-Not-Call Implementation Act, Public Law 108-10 (2003) ("the Implementation Act") at section 2. Pursuant to the Appropriations Act and the Implementation Act, as well as the Telemarketing Fraud and Abuse Prevention Act, 15 U.S.C. 6101-08 ("the Telemarketing Act"), the FTC is issuing this Revised Fee NPRM.²

² Many commenters to the User Fee NPRM claimed that the FTC lacked the authority to impose a user fee based on the Independent Offices Appropriations Act of 1952. *See, e.g.*, ABA-User Fee at 1-3; Ameriquest-User Fee at 1-5; Discover-User Fee at 1-4; DMA-User Fee at 1-7 ("If the FTC wants to collect fees for its regulation of non-deceptive and non-abusive telemarketing, it must obtain approval from Congress to do so"). DMA's comments were supported by ERA, PMA, and MPA. Other commenters suggested that consumers should be charged the fee necessary to implement the national registry. *See, e.g.*, ARDA-User Fee at 1-4; ATA-User Fee at 3-6; Idaho Realtors-User Fee at 1-2; Infocision-User Fee at 4; ITC-User Fee at 3-5; MBNA-User Fee at 3; NEMA-User Fee at 2-3; SBC-User Fee at 2-5. But see NASUCA-User Fee at 2; NCL-User Fee at 1; TRA-User Fee at 3. Still other commenters suggested that the User Fee NPRM was premature, and that they had insufficient information available to properly comment on the proposal. *See, e.g.*, CBA-User Fee at 1; Household-User Fee at 3; MasterCard-User Fee at 1-3. With the passage of the Appropriations Act, the Implementation Act, and the Amended TSR, these comments are moot.

II. Access to the Do-Not-Call Registry

A. Entities That Are Allowed Access

In the User Fee NPRM, the Commission proposed limiting access to the national do-not-call registry to telemarketers in order to maintain the security of the information included in the registry.³ In addition, because the proposed amendments to the TSR prohibited the use of information in the national registry for any purpose other than compliance with the do-not-call provisions of the Proposed Rule, the Commission believed that only telemarketers would need to access that information.

A number of commenters stated that broader access to the national registry is necessary. In particular, some commenters suggested that sellers⁴ should be allowed to gain access to evaluate telemarketing campaigns run on their behalf and to evaluate telemarketers' Rule compliance.⁵ Others suggested that "outside compliance firms" and "list scrubbers" should be given access, since they provide a valuable service for telemarketers.⁶ Still others stated that telemarketers and sellers who are exempt from the FTC's jurisdiction would have no access to the list even if they want to voluntarily suppress calls. These commenters suggested that the FTC make the registry available to any entity provided that the information in the registry is used solely for the purpose of preventing telephone calls to numbers on that list.⁷

The Commission agrees that broader access to the national do-not-call registry may be necessary to effectuate more fully the primary purpose of the do-not-call regulations; namely, to enable consumers to stop unwanted telemarketing calls. Limiting access only to telemarketers, as defined by the Amended TSR, would prevent those entities that are exempt from the FTC's jurisdiction, but that want to scrub their calling lists as a matter of customer service, from obtaining the information necessary to do so. Such limited access also may prevent sellers from engaging in thorough Rule compliance, and may unnecessarily hinder the services provided to the telemarketing industry

³ User Fee NPRM at 37365 and proposed § 310.9(c).

⁴ The Amended TSR defines a "seller" as "any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration." 16 CFR 310.2(z).

⁵ See CBA-User Fee at 4; Discover-User Fee at 4-5; MasterCard-User Fee at 5.

⁶ See ARDA-User Fee at 5; NEMA-User Fee at 4.

⁷ See Discover-User Fee at 4-5; Household-User Fee at 5-6; MBNA-User Fee at 3.

by list brokers and others. At the same time, the Commission agrees with the comment of NASUCA that the information in the national registry should be used for no other purpose than to stop unwanted telemarketing calls.⁸ As a result, the Commission now proposes, at Section 310.8(e), to allow access to the national registry by telemarketers, sellers, others engaged in or causing others to engage in telephone calls for commercial purposes, and service providers acting on behalf of such persons.⁹ Prior to gaining such access, a person would be required to certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent calls to telephone numbers on the registry.

B. Entities That Are Required To Pay the Fee

The User Fee NPRM proposed requiring telemarketers who gained access to the national do-not-call registry to pay for that access. In addition, the User Fee NPRM proposed requiring telemarketers who engage in telemarketing on behalf of sellers or other telemarketers, or who use the information included in the registry to remove telephone numbers from the telemarketing lists of sellers and other telemarketers, to pay a fee for each such seller or telemarketer.¹⁰

A number of commenters criticized this provision, claiming that it would result in sellers, telemarketers, and list brokers paying the proposed user fee multiple times for the same information.¹¹ Some commenters pointed out that many sellers use more than one telemarketer in any given year, and such sellers would be required to

⁸ See NASUCA-User Fee at 7-8.

⁹ Proposed Section 310.8(e) also permits access to the national registry by any government agency that has the authority to enforce a federal or state do-not-call statute or regulation. Such agencies will access information in the national registry through a dedicated, secure website available only to them.

¹⁰ User Fee NPRM at 37363 and proposed § 310.9(a).

¹¹ DMA also maintained that the payment structure proposed in the User Fee NPRM may violate the Paperwork Reduction Act, 44 U.S.C. 3506 *et seq.* ("PRA"), which prohibits federal agencies from restricting or regulating the use, resale, or re-dissemination of public information by the public, and Section 105 of the Copyright Act, 17 U.S.C. 105, which expressly bars the federal government from copyrighting its own works. The Commission disagrees with the DMA's interpretations of these laws. First, the registry list of telephone numbers of consumers who express a preference not to be called by telemarketers is not "public information," as that term is used in the PRA. In fact, dissemination of the list to the public is a violation of the Amended TSR. See 16 CFR 310.4(b)(2). Second, the Commission is in no way attempting to copyright the information contained in the national registry.

purchase access to the national registry many times over.¹² As one commenter stated, a "seller who uses only one telemarketer all year for nationwide telemarketing campaigns should not be more favorably treated than another who uses several telemarketers to conduct similar campaigns."¹³ Other commenters maintained that telemarketers calling on behalf of multiple clients "should pay only one user fee and not a fee for every client on whose behalf they perform this service."¹⁴ On the other hand, NCL commented that if list brokers are allowed access to the registry, their payments should be based upon the number of clients they represent. "Charging them only for the total number of area codes they obtain would be unfair to telemarketers that do not use list brokers and would undermine the economic viability of the registry."¹⁵

The Commission does not intend to charge the same company multiple times for access to the national registry, and has gained much relevant and important information from comments on its original proposal. At the same time, the Commission is now guided by congressional authority permitting it to cover the costs of implementing and enforcing the do-not-call provisions of the Amended TSR, estimated at \$18.1 million this fiscal year. The Commission seeks to raise those funds as equitably as possible, to ensure that the burden of the fees is fairly divided among the entire business community that benefits from the making of outbound telephone calls.

To avoid billing entities twice for the same information, and to divide the fees among the industry in an equitable manner, the Commission is now proposing that each seller must pay, on an annual basis, the appropriate fee for accessing the national registry prior to initiating, or causing a telemarketer to initiate, an outbound telephone call.¹⁶

¹² See, e.g., MasterCard-User Fee at 5; CBA-User Fee at 4; Discover-User Fee at 4; Household-User Fee at 6; VISA-User Fee at 2.

¹³ CBA-User Fee at 4. See also ITC-User Fee at 6 ("Service bureaus like our company typically represent multiple clients. It is also typical for our clients to use multiple telemarketing companies as vendors. Therefore, several telemarketing companies would end up paying the fee several times for the same seller.")

¹⁴ MBNA-User Fee at 3-4. See also ABA-User Fee at 3-4 (separate fees for both sellers and telemarketers unnecessarily complicates the payment schedule); ARDA-User Fee at 4 (there is "no legitimate reason for each seller that uses a single telemarketer to pay the same fee for scrubbing against the same list").

¹⁵ NCL-User Fee at 1.

¹⁶ The TSR defines an "outbound telephone call" as "a telephone call initiated by a telemarketer to

After paying the appropriate fee each annual period,¹⁷ the seller will be provided with a unique account number, and can use that number to gain direct access to the national registry at any time during its annual period. In addition, the seller can provide its account number to any telemarketer or list broker with which it does business, which in turn will permit that telemarketer or list broker to gain access to the information to which the seller has subscribed.¹⁸ The Commission proposes that such a revised fee structure is more appropriate than its original proposal. Under this revised fee structure, each seller would be charged only one time annually for access to the information included in the national registry, and would be allowed to transfer its ability to access the national registry to whatever telemarketers or list brokers it wishes to employ on its behalf.

In a further effort to avoid requiring an entity to pay twice for access to the same information, the Commission now proposes that telemarketers who are not also sellers—*i.e.*, entities that engage in telemarketing only on behalf of others—should not have to pay a separate fee for their access to the national registry.¹⁹

induce the purchase of goods or services or to solicit a charitable contribution.” 16 CFR 310.2(u). A “telemarketer,” in turn, is “any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.” 16 CFR 310.2(bb). Finally, “telemarketing” is defined as a “plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones, and which involves more than one interstate telephone call.” 16 CFR 310.2(cc). Thus, sellers engaging in a plan, program, or campaign involving only intrastate telemarketing calls would not be required to pay a fee or access the national registry pursuant to the TSR. In addition, solicitations to induce charitable contributions via outbound telephone calls are not covered by the do-not-call requirements of the TSR. 16 CFR 310.6(a). As a result, sellers involved only in such solicitations similarly would not be required to pay a fee or access the national registry. Of course, entities engaged in conducting surveys are not seeking to induce the purchase of goods or services and therefore are not engaged in “telemarketing” nor subject to the TSR. Similarly, political fund raising is not “telemarketing” and is not covered.

¹⁷ The fee that would be charged for access to the national registry is discussed in Section III.D, below. A seller’s “annual period” is discussed in Section IV, below.

¹⁸ VISA suggested a similar type of pricing structure, in which the FTC could “license” the registry to individual sellers, which in turn could employ a telemarketer to use the registry, if they desire, subject to confidentiality and use restrictions. VISA-User Fee at 2.

¹⁹ Similarly, list brokers who develop and/or scrub the calling lists for their seller-clients would not have to pay for their individual access to the national registry. Instead, they also would have to certify that their seller-clients have paid for access to the national registry prior to gaining access to the national registry.

Charging such “pure” telemarketers for access in effect would cause their seller-clients to pay twice for access to the national registry. Instead, under the instant proposal, such telemarketers would be required to ensure that their seller-clients have paid for access to the national do-not-call registry prior to initiating outbound telephone calls on their behalf. Telemarketers would gain this assurance by obtaining and using the seller’s unique account number to the national registry.

As previously stated, the Commission seeks to spread the fee burden equitably across all entities that engage in telemarketing. Sellers are the ultimate beneficiaries of telemarketing campaigns, and all covered sellers must access the national registry to remain in compliance with the do-not-call provisions of the Amended TSR. As a result, all sellers should pay an appropriate fee for that access, but should pay that fee only one time during each annual period. The Commission does not agree with those commenters that suggested the agency should charge only telemarketers, and not their clients, for access to the national registry.²⁰ By only charging telemarketers for access to the national registry, and charging them only once for their access on behalf of multiple clients, the fee structure would unfairly benefit those sellers that employ a telemarketer with multiple clients, since those sellers would pay less of a fee for access to the same information than sellers that engage in their own telemarketing without hiring a telemarketer. Thus, the Commission is proposing to charge sellers and not telemarketers or list brokers for access to the national registry.²¹

Proposed § 310.8(a) of the Rule would make sellers directly liable for initiating, or causing a telemarketer to initiate, an outbound telephone call without first paying the appropriate fee for access to the national registry. Proposed Section 310.8(b) would make telemarketers

²⁰ See, e.g., ABA-User Fee at 3–4; MBNA-User Fee at 3–4; ITC-User Fee at 6.

²¹ ABA stated that a single fee to telemarketers would enhance the privacy and security of the national registry by discouraging seller-clients from accessing the national registry individually in order to scrub their calling lists. Instead, sellers would allow their telemarketers to access the registry on their behalf. ABA-User Fee at 3–4. As stated above, the Commission believes that charging only telemarketers would be inequitable. The Commission also believes that the certification required of sellers who access the national registry, as discussed in Section II.A, above, will help to address the security and privacy concerns raised by ABA. Moreover, telemarketers would still be allowed to access the registry on behalf of their seller-clients under the current proposal, using their seller-clients’ account number.

directly liable for initiating an outbound telephone call on behalf of a seller without first ensuring that their seller-clients have paid for up-to-date access to the national do-not-call registry. The Commission proposes to impose this liability under the authority of the Appropriations Act and the Implementation Act, in addition to the Telemarketing Act, which provides the authority for the other portions of the Amended TSR. The Commission believes such direct liability on sellers and telemarketers is necessary to effectuate fairly the mandate of the Appropriations Act and the Implementation Act, which authorize the Commission to collect fees sufficient to cover the costs of implementing and enforcing the do-not-call provisions of the Amended TSR. Without such direct liability, the Commission is concerned that not all entities that obtain information from the national registry will pay their fair share of the fees for that registry, resulting in increased fees for those entities that do pay. As a result of the proposed imposition of this direct liability, the failure of a seller to pay the appropriate fee prior to initiating or causing another entity to initiate an outbound telephone call, and the failure of a telemarketer to ensure that a seller has paid the appropriate fee prior to initiating an outbound telephone call on its behalf, would be a violation of the Amended TSR, subject to all remedies available for such violations.

C. Corporate Divisions, Subsidiaries, and Affiliates

In the User Fee NPRM, the Commission proposed following the compliance guide for the original TSR by requiring that distinct corporate divisions of a single corporation be considered separate sellers for the purposes of payment of the annual fees. Factors used to determine if corporate divisions would be treated as separate sellers would include whether there is substantial diversity between the operational structure of the divisions, and whether the goods or services sold by the divisions are substantially different from each other.

In response to this proposal, some commenters suggested that the Commission treat divisions of the same corporation as one seller and allow the sharing of the registry among them.²² Another suggested the same treatment for a “family” of affiliated companies.²³ Wells Fargo stated that this treatment would allow a company to purchase a

²² See, e.g., ARDA-User Fee at 5; CBA-User Fee at 4.

²³ Household-User Fee at 2.

single copy of the list to maintain “a centralized scrub service that would be available to its affiliates. While this may reduce revenues somewhat, it would greatly increase compliance.”²⁴

The Commission is concerned that any such treatment of corporate divisions, subsidiaries, or affiliates could greatly diminish the number of entities that will pay for access to the national registry, provide an unfair advantage to larger, multi-divisional corporations, and potentially increase the fees required to be paid by smaller, less complex corporate entities. As a result, the Commission proposes to treat each separate division, subsidiary, or affiliate of a corporation as a separate seller for purposes of § 310.8. The Commission notes that such treatment will not diminish the effectiveness of corporate “centralized scrub services.” In effect, such centralized services can still be performed, provided that each corporate division, subsidiary, or affiliate has paid the appropriate fee for access to the national registry. It should be noted that divisions, subsidiaries, or affiliates of a seller that must pay for access to the national registry need not individually download the information in the registry on their own behalf. They need to pay only for the requisite access, and would be able to provide their unique account number to another division, subsidiary, or affiliate to perform the actual downloading of information and corporate list scrubbing. See section IV, below, for further discussion of the proposed operation of the fee collection system.

III. Calculation of Fees

A. Number of Entities Accessing the National Registry

To establish the appropriate fees to charge entities that access consumer telephone numbers included in the national registry, the Commission must first estimate the number of such entities that would be required to pay the proposed fee. As stated in the User Fee NPRM, this step is among the most difficult, given the dearth of information about the number of sellers currently in the marketplace who make outbound telemarketing calls to consumers.²⁵ In the User Fee NPRM, the Commission determined, after examining relevant industry literature and the record in this and past TSR rulemaking proceedings, that the most pertinent information for determining the number of firms that would be required to pay the proposed user fee would be the number of firms

that access state do-not-call registries. At that time, the most telemarketing firms that accessed any individual state registry was 2,932. Thus, in order to propose a realistic fee structure that would ensure sufficient funds would be collected to cover the costs of a national registry, the Commission estimated in the User Fee NPRM that 3,000 entities would pay for access to the information in the national registry.²⁶ The Commission sought comment and evidence to determine whether this estimate was realistic and appropriate.

Only one of the 34 comments received in response to the User Fee NPRM provided any information relevant to this inquiry.²⁷ That commenter, DialAmerica Marketing, Inc. (“DialAmerica”), stated that it has 700 clients for which it would have to obtain access to the entire national do-not-call registry.²⁸ In other words, DialAmerica’s client base would comprise over 23 percent of all entities that the Commission estimated would be required to access the national registry.²⁹ This information casts doubt on the original estimate. The Commission is therefore proposing a new estimate of the number of firms that will access the national registry, developed through a calculation using the limited information provided in the comments, combined with relevant industry-wide data that the Commission has been able to identify. This calculation makes a number of significant assumptions based on the best information available to the agency at this time. In Section X, below, the Commission asks specific questions about each of these assumptions, seeking information as to their reliability. The Commission asks commenters to provide any information they can about any and all of these

²⁶ The Commission previously had estimated, in the notice of amended application to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, that there were 40,000 telemarketing industry members affected by the TSR in the United States. See the Rule NPRM, 67 FR at 4534. As explained in the User Fee NPRM, the Commission does not believe that prior estimate is representative in the instant context. See User Fee NPRM at 37364, n. 7.

²⁷ The Commission also received some company-specific information from another commenter in response to the Rule NPRM. CDI-Rule NPRM at 1.

²⁸ DialAmerica—User Fee at 2. According to Customer Inter@ction Solutions, a monthly magazine of the teleservices industry, DialAmerica is the second-largest outbound teleservices agency in the United States. See <http://www.tmcnet.com/cis/0302/0302top50a.htm> (visited 4 February, 2003).

²⁹ Moreover, DialAmerica stated that its annual fees for obtaining access on behalf of all of its clients would result in that company alone paying for 70 percent of the total amount that was to be raised by the User Fee NPRM.

assumptions, including company-specific information and data that could help the agency to refine its estimates of the number of firms that will need to access the national registry.

Since scrubbing against the do-not-call registry is only required on outbound calls made to consumers,³⁰ the Commission begins its calculation with the assumption that DialAmerica has 700 clients for which it makes these types of calls. According to the Winterberry Group, DialAmerica has revenues of \$300 million per year, and outbound calls account for 90 percent of its call volume.³¹ Assuming that DialAmerica’s revenues per call are the same for inbound and outbound calls, its revenues from outbound calls would total \$270 million (90 percent of \$300 million).

According to Customer Inter@ction Solutions, 85 percent of DialAmerica’s business involves sales to consumers.³² If the Commission assumes that the 85 percent of DialAmerica’s business that involves sales to consumers is 90 percent outbound, consumer outbound sales calls would account for \$229.5 million in revenue (85 percent of \$270 million). If DialAmerica receives \$229.5 million in revenue from its 700 clients for whom it does outbound calling to consumers, this implies that the average revenue per client is about \$328,000 (\$229.5 million/700).

According to the Winterberry Group, total expenditures on teleservices were \$147.7 billion in 2000. Of this, 48.1 percent was spent on outbound calling, and 49.6 percent was spent on sales calls to consumers.³³ Assuming that the same percentage of expenditures on calls to businesses and calls to consumers are for outbound calls would imply that just under 24 percent of the total spent on teleservices is spent on outbound calls to consumers (48.1 percent × 49.6 percent = 23.9 percent).

Also, according to the Winterberry Group, total expenditures on third-party teleservices providers amounted to \$19.2 billion—13 percent of the \$147.7 billion total expenditures on such services—in 2000.³⁴ If the Commission

³⁰ See 16 CFR §§ 310.4(b)(1)(iii)(B); 310.6(b)(7).

³¹ Winterberry Group, Industry Map: Teleservice Industry—Multi-Channel Marketing Drives Universal Call Centers 16 (January 2001) (“Winterberry Group”). The Winterberry Group is a consulting firm that works with the direct marketing industry. See <http://www.winterberrygroup.com> (visited 25 March 2003).

³² Customer Inter@ction Solutions: Outsourcing, <http://www.tmcnet.com/cis/0302/0302top50a.htm> (visited 4 February, 2003).

³³ Winterberry Group at 2, 8, 9.

³⁴ *Id.* at 9.

²⁴ Wells Fargo—User Fee at 2.

²⁵ See User Fee NPRM at 37363–64.

assumes that, as with overall expenditures on teleservices, roughly 24 percent of expenditures on third-party providers was for outbound calling to consumers, expenditures on third-party outbound calls to consumers would total \$4.59 billion (23.9 percent of \$19.2 billion).

If the Commission assumes that the DialAmerica figure of \$328,000 in revenues per client is representative of third-party providers of outbound calls to consumers in general, this would imply that there are approximately 14,000 such telemarketer-client relationships ($\$4.59 \text{ billion} / \$328,000 = 13,994$).³⁵

If the Commission assumes that the average firm that uses third-party service providers uses three different providers for different campaigns over the course of a year, there would only be about 4,650 firms using such third-party providers ($13,965 \text{ firms} / 3 = 4,655$), and the average firm that uses third-party telemarketers would spend an average of \$984,000 per year on outbound telemarketing to consumers ($\$328,000 \times 3$).

None of these figures accounts for firms that do their calling using their own staff and their own in-house equipment, which account for \$128.5 billion—87 percent of total expenditures—spent on teleservices.³⁶ Again assuming that roughly 24 percent of expenditures by companies using

³⁵ The only other comment providing any information of assistance in determining the number of entities that would pay a fee to access the national registry came from CDI. CDI stated that it specializes in outbound calling for daily and weekly newspapers ranging in size from 5,000 subscribers to over 1 million subscribers, makes calls on behalf of 140 different clients each month, and employs over 400 people. CDI-Rule NPRM at 1. Unlike DialAmerica, however, the Commission was unable to discover any information about CDI's revenues, making its company-specific information less useful in formulating assumptions regarding the number of industry members. However, by comparing CDI's 400 employees to the 11,000 people employed by DialAmerica (approximately 3.6 percent of the size of DialAmerica), and assuming that sales per employee are the same for the two firms, one might estimate CDI's revenues are around \$11 million (approximately 3.6 percent of DialAmerica's \$300 million in annual revenue). If CDI has revenues around \$11 million and calls on behalf of 140 clients during the entire year, their per-client revenues would be only about \$78,500 per year. (Of course, the fact that CDI calls on behalf of 140 clients each month does not mean that they have only 140 clients during the entire year. They may have different clients each month, which would make the revenue per client even lower.) If the figures for CDI are representative of a significant share of the telemarketing industry and if, as a result, the average revenue per firm is significantly lower than what DialAmerica realizes, the estimated number of telemarketer-client relationships would increase proportionally. This NPRM is specifically seeking information and comment about these figures from the industry.

³⁶ See Winterberry Group at 2.

their own resources to make calls are for outbound calling to consumers, total expenditures on these services would be \$30.71 billion (23.9 percent of \$128.5 billion). These firms are probably larger on average—and probably do more telemarketing—than the firms that use third-party service providers. If the Commission assumes that they spend, on average, five times as much as firms that use third-party telemarketers, they would be spending \$4.92 million per firm ($\$984,000 \times 5$). This would suggest that there are another 6,250 firms who do their own telemarketing ($\$30.71 \text{ billion} / \$4.92 \text{ million} = 6,242 \text{ firms}$).

In total, this would suggest that there are some 10,900 firms doing outbound calling to consumers—4,650 firms using third-party telemarketers, plus 6,250 doing their own calling. Of course, some of these firms would not be required to scrub against the FTC list because they are either engaged in charitable solicitations or are calling on behalf of an industry that is exempt from FTC regulation. Other firms that make only intrastate calls would likewise not need to obtain the list. The firms that only make intrastate calls are likely to be the smaller firms that tend to use third-party providers to make their calls.

If the Commission assumes that 40 percent of firms that use third-party providers and 25 percent of firms that do their own telemarketing are exempt from coverage,³⁷ approximately 2,800 firms that use third party providers (60 percent of 4,655 = 2,793) and 4,700 firms that do their own telemarketing (75 percent of 6,231 = 4,682) would be required to access the national do-not-call registry. Thus, the total number of firms accessing the registry would be 7,500.

B. Amount of Information for Which an Entity Would Be Charged

In the User Fee NPRM, the Commission proposed a fee structure based on the number of different area codes of data that an entity wished to use annually.³⁸ The Commission proposed charging for access to the registry per area code because that charge most closely approximated the cost of operating the national registry. The Commission also determined that

³⁷ Firms that are exempt from coverage include those engaged only in intrastate telemarketing or in making solicitations to induce charitable contributions. See footnote 16, above. In addition, firms outside of the FTC's jurisdiction that make their own telemarketing calls, such as common carriers, banks, savings and loans, as well as companies that engage in the business of insurance, are also exempt from coverage and not included in our estimate of the number of firms that will have to access the national registry.

³⁸ See User Fee NPRM at 37364.

many telemarketers and sellers engage in regional rather than nationwide calling campaigns, and therefore would not need consumer registration data for the entire nation.

A number of commenters that addressed this issue supported using area codes as a basis for assessing the fee.³⁹ In fact, SBA noted that the flexibility inherent in allowing entities to access the national registry by area code “would be beneficial to small businesses.”⁴⁰ On the other hand, other commenters suggested that imposing fees based on the number of area codes accessed, rather than imposing a flat fee, would create “unnecessary administrative complications.”⁴¹ However, the Commission has determined that it is not overly complex, from a system implementation prospective, to provide access to and collect fees for the national registry by area code. In fact, providing the entire national registry to every entity that seeks access, even if that entity will not need all of that information, would put a significantly larger strain on the resources necessary to deliver that information, resulting in an unnecessary increase in system costs. Another commenter stated that the “management of tracking user fees for area codes that each individual client calls for a sales campaign would be an extremely burdensome task for larger telemarketers.”⁴² The Commission acknowledges that charging for access to the national registry by area code may entail some complexity for large telemarketers. On balance, however, the Commission believes that the countervailing benefits of allowing access to the registry by area code outweigh any potential costs. As a result, the Commission continues to propose providing access to the national registry based on the number of area codes of information sought.⁴³

³⁹ See ARDA-User Fee at 4; NCL-User Fee at 1; AARP-User Fee at 2.

⁴⁰ SBA-User Fee at 4.

⁴¹ ABA-User Fee at 3. Accord Household-User Fee at 4; ITC-User Fee at 6; MBNA-User Fee at 2; TRA-User Fee at 3.

⁴² DialAmerica-User Fee at 2.

⁴³ One commenter requested clarification that if access to the entire registry is requested, the requestor will not have to input a list of all area codes. Household at 6. That is correct. An entity seeking access to the entire national registry will simply have to check a box indicating that preference, without having to list any area codes. In addition, the registry will offer the same access capabilities for the area codes within each state, so that entities will be able to select all area codes within a certain state simply by requesting access to information for that state.

C. Small Business Access

In the User Fee NPRM, the Commission proposed providing free registry access to any firm wishing to obtain data from only one to five area codes.⁴⁴ The Commission proposed such free access to limit the burden placed on small businesses that only require access to a small portion of the national registry. The Commission noted that its proposal was consistent with the mandate of the Regulatory Flexibility Act, 5 U.S.C. 601, which requires that to the extent, if any, a rule is expected to have a significant economic impact on a substantial number of small entities, agencies should consider regulatory alternatives to minimize such impact.⁴⁵

A number of commenters supported this small business exemption.⁴⁶ Others opposed it for various reasons. Household stated that any fee should be assessed to all entities obtaining access to the national registry because there is no rational basis to do otherwise, and “telemarketers and sellers should not have to subsidize the telemarketing activities of other telemarketers or sellers, regardless of their size.”⁴⁷ ITC stated that the number of area codes purchased is a poor indicator of the extent of actual use, and a structure without exemptions is simpler and easier to administer.⁴⁸ TRA stated that “the area or population served by five or fewer area codes could be enormous,” and that all telemarketers should be required to help defray the cost of the national registry.⁴⁹ SBSC maintained that the five area code exemption does not provide sufficient protections for small businesses, since many small businesses are located in geographic areas with many area codes, and some small businesses may actually be national in scope.⁵⁰ Finally, NASUCA expressed concern that telemarketers may “game” the system to avoid paying for access—especially by treating “distinct corporate divisions of a single corporation” as separate entities, thus allowing each division to gather five area codes and pool the numbers among themselves. NASUCA also stated that there can be variations in the number of customers within an

area code and the number of area codes within a state, creating inconsistencies in the amount of data for which a telemarketer will be paying.⁵¹

After evaluating these comments, the Commission still believes that it is appropriate to provide access to a small portion of the data in the national registry for free. The Commission agrees with the comments that stated the imposition of fees may be unduly burdensome, and could have a disproportionate impact, on small businesses.⁵² The Commission is attempting to alleviate that burden to the greatest extent possible, while still collecting the necessary fees in as equitable manner as possible. By providing free access to a small portion of the national registry, the Commission is attempting to alleviate some of the disproportionately heavier burdens faced by small businesses. The Commission recognizes that not all small businesses will be able to enjoy the benefits of this proposal, since some small businesses may engage in telemarketing in a geographic area larger than five area codes. However, the Commission believes that most entities that will benefit from this proposal will be small businesses. Moreover, providing this free access does not significantly increase the complexity of implementing the national registry.⁵³

The Commission also believes its proposal will prevent companies from “gaming” the system to gain free access

⁵¹ NASUCA-User Fee at 3–6.

⁵² See ICTA-User Fee at 1–2; Ameriquest-User Fee at 6; Celebrity Prime Foods-User Fee at 1.

⁵³ In the Commission’s view, an alternative approach that would provide small business with exemptive relief more directly tied to size status would not balance the private and public interests at stake any more equitably or reasonably than the approach currently proposed by the Commission. For example, an across-the-board exemption from all fees for small businesses, no matter how many area codes they access, would shift the entire cost of the registry to larger businesses and require assessing them even higher access fees, while giving the small business community access to the registry without any cost-sharing responsibility whatsoever. Compared to the Commission’s current proposal, which requires small businesses that telemarket beyond five area codes to pay access fees, a categorical small-business exemption would not be as consistent with the general legislative mandate that the Commission recover the registry’s costs from those telemarketing entities obtaining access to the registry. Alternatively, it might be argued that allowing small businesses to pay reduced rates across the entire fee schedule could achieve substantially the same level and balance of exemptive relief and cost recoupment as the current proposal to provide free access to five area codes or fewer. A reduced fee schedule based on small business size, however, would still ultimately require a certification and determination of that status to implement and enforce, and thus would present greater administrative, technical, and legal costs and complexities than the Commission’s current exemptive proposal, which does not require any proof or verification of that status.

on a large scale. It would be a violation of the proposed fee rule for a telemarketer, or a seller to cause a telemarketer, to initiate outbound telephone calls in an area of the country for which it did not pay for access to the national registry. Thus, distinct corporate divisions of the same company that acquire only five area codes of data could not make outbound telephone calls outside of those five area codes without violating the proposed rule. As a practical matter, it is unlikely that any company would organize its divisions by limiting each division’s telemarketing to five area codes, just to avoid the proposed fee. The Commission believes that the costs associated with trying to “game” the system in such a manner would be much larger than the benefits of avoiding the proposed fees.

While the Proposed Rule provides free access to a small portion of the national registry, the Commission continues to seek comment on other alternatives that would balance the burdens faced by small businesses with the need to raise appropriate fees to fund the registry in an equitable manner.

As for the appropriate level of free access, the Commission continues to seek comment on this issue as well.⁵⁴ Absent evidence to the contrary, the Commission believes that five area codes is an appropriate compromise between the goals of equitably and adequately funding the national registry, on the one hand, and providing appropriate relief for small businesses, on the other. While the Commission understands that five area codes could provide free access to a significant geographic area, the Commission also is attempting to address those small businesses that work in large metropolitan areas, which often have multiple area codes within a relatively small geographic area. Furthermore, while the Commission is mindful of the possible variations in the number of telephone numbers included in each area code, the Commission believes the only more equitable way to divide access to the national registry, other than by area code, might be by individual telephone number. Such a fine gradation, assuming its feasibility,

⁵⁴ SBA commented that it had insufficient information to determine whether five area codes is an appropriate level of free access, and recommended that the FTC contact small telemarketers to inquire how many area codes they commonly access in a given year during the course of business. SBA-User Fee at 4. ICTA suggested that the number of area codes of data that could be acquired without paying a fee be increased from five to ten, but provided no rationale for this suggestion. ICTA-User Fee at 1–2.

⁴⁴ See User Fee NPRM at 37364.

⁴⁵ But see section IX, below, where the Commission determines that the instant proposed Rule would not have a significant economic impact on a substantial number of small entities.

⁴⁶ See, e.g., NCL-User Fee at 1; SBA-User Fee at 1, 4; AARP-User Fee at 2.

⁴⁷ Household-User Fee at 3–4.

⁴⁸ ITC-User Fee at 6.

⁴⁹ TRA-User Fee at 6.

⁵⁰ Small Business Survival Committee (“SBSC”)-User Fee at 2.

would significantly increase the complexity of the system, both in terms of accessing and delivering the data. The Commission believes the increase in the complexity weighs against such an approach. Thus, the Commission continues to propose that access to five or fewer area codes of data in the national registry be provided for free.

D. Fees for Access

As previously discussed, both the Appropriations Act and the Implementation Act authorize the Commission to raise fees sufficient to cover the costs of implementing and enforcing the do-not-call provisions of the Amended TSR, estimated at \$18.1 million for fiscal year 2003. The Commission anticipates that it will need to raise the entire estimated \$18.1 million authorized to cover the costs associated with those efforts in this fiscal year. Costs fall primarily in three broad categories. First are the actual estimated contract costs along with associated agency costs to develop and operate the do-not-call registry. These cover things like the registration procedures and handling of complaints, the transfer of registration information from state lists to the registry, telemarketer access to the registration information, and the management and operation of law enforcement access to appropriate information. The second category of costs relates to enforcement efforts. These costs will include law enforcement initiatives, both domestic and international, to identify targets and challenge alleged violators. Enforcement costs also include consumer and business education, which are critical complements to enforcement in securing compliance with the do-not-call provisions. The third category of costs covers agency infrastructure and administration costs, including information technology structural supports. In particular, the Consumer Sentinel system (the agency's repository for all consumer fraud-related complaints) and its attendant infrastructure must be upgraded to handle the anticipated increased demand from state law enforcers for access to do-not-call complaints. Further, the Consumer Sentinel system will require substantial changes so that it may handle the significant additional volume of complaints that are expected.

In order to raise \$18.1 million this fiscal year, and assuming that 7,500 firms will pay for that access, the Commission proposes charging an annual fee of \$29 for each area code of

data accessed.⁵⁵ There would be no fee charged for access to five or fewer area codes of data. In addition, the Commission continues to propose placing a cap on the maximum annual fee that would be charged an entity that wants access to the entire national database. That maximum fee would be \$7,250, which would be charged for using 250 area codes of data or more. As a result of this revised proposed fee schedule, there would be no charge for obtaining only five area codes of data; six area codes of data would cost \$174; twenty-five area codes would cost \$725; two hundred area codes would cost \$5,800; and access to the data from all area codes would be capped at \$7,250 annually.

As stated above, these proposed fees are based on certain assumptions and estimates.⁵⁶ The Commission anticipates that whatever fees may be adopted would be reexamined periodically and would likely need to be adjusted, in future rulemaking proceedings, to reflect actual experience with operating the registry.

IV. Operation of the National Registry for the Telemarketing Industry

The Commission is developing a fully-automated, secure Web site dedicated to providing members of the telemarketing industry with access to the registry's list of telephone numbers, sorted by area code. The first time a company accesses the system, it will be asked to provide certain limited identifying information, such as company name and address, company contact person, and the contact person's telephone number and e-mail address. If an entity is accessing the registry on behalf of a client-seller, the entity will also need to identify that client.

The only consumer information that companies will receive from the national registry is a registrant's telephone number.⁵⁷ Those telephone

⁵⁵ Only two commenters responded to questions in the User Fee NPRM as to whether an annual or a monthly fee would be a more preferable, efficient, and appropriate method of fee collection. Both supported the use of an annual fee, as opposed to monthly one. See Household-User Fee at 4; MBNA-User Fee at 4.

⁵⁶ In addition to the assumptions set forth in Section III.A, above, concerning the number of firms that will access the national registry, the Commission continues to assume that, on average, sellers will pay to obtain information from 83 area codes in the national registry. See User Fee NPRM at 37368, question 5.

⁵⁷ In fact, that is the only personal identifying information submitted by consumers that will be maintained in the national registry. The registry will also maintain other information about the registration for law enforcement purposes, such as the date and method of registration, but that information will not be available to companies accessing the registry.

numbers will be sorted and available by area code. Companies will be able to access as many area codes as desired, by selecting, for example, all area codes within a certain state. Of course, companies will also be able to access the entire national registry, if desired. In addition, after providing the required identifying information and paying the appropriate fee, if any, companies will be allowed to check, via interactive Internet pages, a small number of telephone numbers (less than ten) at a time to permit small volume callers to observe the do-not-call requirements of the TSR without having to download a potentially large list of all telephone numbers within a particular area.

When a seller first submits an application to access registry information, the company will be asked to specify the area codes that it wants to access. As discussed above, each seller accessing the registry data will be required to pay an annual fee for that access, based on the number of area codes of data the seller accesses. Fees will be payable via credit card (which will permit the real-time transfer of data) or electronic funds transfer (which will require the seller to wait approximately one day for the funds to clear before data access will be provided). A seller must pay these fees prior to gaining access to the registry.

Sellers will be able to access data as often as they like during the course of one year (defined as their "annual period") for those area codes that are selected with the payment of the related annual fee.⁵⁸ If, during the course of the year, sellers need to access data from more area codes than those initially selected, they would be required to pay for access to those additional area codes. For purposes of these additional payments, the annual period is divided into two semi-annual periods of six-months each. Obtaining additional data from the registry during the first semi-annual, six-month period will require a payment of \$29 for each new area code. During the second semi-annual, six-month period, the charge of obtaining data from each new area code requested during that six-month period is \$15. These payments for additional data would provide sellers access to those additional areas of data for the remainder of their initial annual term.

After payment is processed, the seller will be given a unique account number and permitted access to the appropriate portions of the registry. That account number will be used in future visits to

⁵⁸ To protect system integrity, a company will be permitted to download the entire national registry only once in any 24-hour period.

the Web site, to shorten the time needed to gain access. On subsequent visits to the Web site, sellers will be able to download either an entire updated list of numbers from their selected area codes, or a more limited list, consisting only of additions to or deletions from the registry that have occurred since the company's last download. This would limit the amount of data that a company needs to download during each visit.

Telemarketers, list brokers, and other entities working on behalf of sellers will need to submit their client-seller's account number to gain access to the national registry. The extent of their access will be limited by the area codes requested and paid for by their client-sellers. They also will be permitted to access the registry as often as they wish for no additional cost, once the annual fee has been paid by their client-sellers.⁵⁹ As indicated in the Rule NPRM discussion of section 310.4(b)(3)(iv), however, the Rule requires a seller or telemarketer to employ a version of the do-not-call registry obtained from the Commission no more than three months prior to the date any telemarketing call is made.

V. Date By Which Full Compliance With the Do-Not-Call Provisions of the Amended TSR Will Be Required

In the Statement of Basis and Purpose to the Amended TSR, the Commission stated that it would announce at a future time the date by which full compliance with § 310.4(b)(1)(iii)(B), the do-not-call registry provision, would be required.⁶⁰ At that time, the Commission anticipated that full compliance with the do-not-call provision would be required approximately seven months from the date a contract is awarded to create the national registry.

On March 1, 2003, the Commission awarded the contract to create the national do-not-call registry to AT&T Government Solutions, Inc. Accordingly, the Commission is now announcing that full compliance with § 310.4(b)(1)(iii)(B), the "do-not-call" registry provision of the Amended TSR, will be required on October 1, 2003.

Companies will be able to begin accessing the national do-not-call registry on September 1, 2003. As a result, to remain in compliance with the do-not-call provisions of the Amended TSR, all covered sellers will be required to access the national registry for the first time between September 1–30, 2003. During that same time frame, all

covered sellers or entities working on their behalf must download the portions of the national registry for those areas of the country in which they will either initiate an outbound telephone call or cause a telemarketer to initiate an outbound telephone call on their behalf.

VI. Invitation to Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments concerning these proposed changes to the Commission's Telemarketing Sales Rule. The Commission invites written comments to assist it in ascertaining the facts necessary to reach a determination as to whether to adopt as final the proposed changes to the Rule. The Commission encourages comments to be submitted electronically to the following e-mail address:

feerule@ftc.gov. Alternatively, commenters may submit an original plus two paper copies of their comments to the Office of the Secretary, Room 159, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. All comments must be submitted on or before May 1, 2003. Time is of the essence to promulgate these proposed fees. Thus, the Commission does not anticipate providing any extension to this comment period.

Comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission Rules of Practice, on normal business days between the hours of 9 a.m. and 5 p.m. at the Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission will make this NPRM and, to the extent possible, all comments received in response to this NPRM, available to the public through the Internet at the following address: *http://www.ftc.gov*.

VII. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. See 16 CFR 1.26(b)(5).

VIII. Paperwork Reduction Act

This Revised Fee NPRM does not involve any new collection of information requirements that were not already proposed in the User Fee

NPRM. However, the Commission has raised its estimate of the number of firms subject to this collection of information, which increases accordingly the cumulative paperwork burden presented by this proposed revision. The Commission informed the Office of Management and Budget about this proposed burden increase.

The Commission continues to propose requiring those firms that access the national do-not-call registry to submit minimal identifying information that the operator of the registry deems necessary to collect the proposed fee, as outlined in section IV, above. The information to be collected from those firms, and the frequency of that collection, has not changed from the User Fee NPRM.⁶¹ The Commission estimated, in the User Fee NPRM, that it should take no longer than two minutes for each firm to submit this basic information, and that each firm would have to submit the information annually.⁶² Given current estimates that there are approximately 7,500 firms that will have to access the information in the national registry, the Commission estimates that this revised proposal will result in 250 burden hours (7,500 firms x 2 minutes per firm = 15,000 minutes, or 250 hours). In addition, the Commission continues to estimate that possibly one-half of those firms may need, during the course of their annual period, to submit their identifying information more than once in order to obtain additional area codes of data. This would result in an additional 125 burden hours (3,750 telemarketers x 2 minutes per telemarketer = 7,500 minutes, or 125 hours). Thus, the Commission estimates that the revised fee provision will impose a total paperwork burden of approximately 375 hours per year.

The Commission anticipates that clerical employees (or other low-level administrative personnel) of affected entities will fulfill the function of supplying company-identifying information to the registry contractor. Assuming a clerical hourly wage of \$10 per hour, the cumulative annual labor cost to respondents to provide the requisite information is \$3,750 (375 hours x \$10 per hour).

⁶¹ See User Fee NPRM at 37365–66.

⁶² *Id.* at 37366. As stated in the User Fee NPRM, this estimate is likely to be conservative for PRA purposes. The OMB regulation defining "information" generally excludes disclosures that require persons to provide facts necessary simply to identify themselves, e.g., the respondent, the respondent's address, and a description of the information the respondent seeks in detail sufficient to facilitate the request. See 5 CFR 1320.3(h)(1).

⁵⁹ Telemarketers, list brokers, and other entities working on behalf of sellers will also be limited to downloading the entire national registry only once in any 24-hour period.

⁶⁰ See 68 FR at 4664.

The Commission once again invites comment that will enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
2. Evaluate the accuracy of the Commission's estimates of the burdens of the proposed collections of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and validity of the information to be collected; and
4. Minimize the burden of the collections 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.

IX. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 604(a), requires an agency either to provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule, or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The FTC does not expect that the final rule concerning fees will have the threshold impact on small entities. As discussed in section III.C, above, this NPRM specifically proposes charging no fee for access to data included in the registry from one to five area codes. As a result, the Commission anticipates that many small businesses will be able to access the national registry without having to pay any annual fee. Thus, it is unlikely that there will be a significant burden on small businesses resulting from the adoption of the proposed fees.

The Commission reached a similar conclusion in the User Fee NPRM.⁶³ Nonetheless, the Commission determined that it was appropriate to publish an IRFA in the User Fee NPRM, in order to inquire into the impact on small entities of both the amendments to the TSR proposed in the User Fee NPRM, as well as the proposed amendments to the TSR set forth in the Rule NPRM. The Commission welcomed comment on any significant alternatives that would further minimize the impact on small entities, consistent with the objectives of the Telemarketing Act, the proposed amendments to the TSR set forth in the

Rule NPRM, and the requirements of the User Fee Statute.

In response to this request for comment, SBA commended the FTC on its regulatory flexibility analysis and supported permitting small firms to access a limited number of area codes per year without a charge, but noted that overlapping federal and state do-not-call registries may create undue burdens for small businesses.⁶⁴ SBA included a number of suggestions to minimize the impact of multiple do-not-call registries on small businesses.⁶⁵ As indicated in the TSR SBP, the Commission is working with the states to develop a single, national do-not-call registry—a "one-stop shop" for consumers to register their preference not to receive telemarketing calls, and for sellers and telemarketers to gain access to that registration information.⁶⁶ To further those goals, the Commission will allow all states, and the DMA if it so desires, to download into the national registry—at no cost to the states or the DMA—the telephone numbers of consumers who have registered with them their preference not to receive telemarketing calls. Telemarketers and sellers will be allowed to access that data through the national registry as the information is received. Such harmonization will decrease significantly any burdens imposed by the multiple do-not-call registries that currently exist.

The Commission continues to welcome comment on any significant alternatives to those proposed in the instant NPRM that would further minimize the impact on small entities, consistent with the objectives stated herein and with the Amended TSR, the

⁶⁴ See SBA-User Fee at 1. See also Section III.C, above, for a discussion of other comments the Commission received on its approach to minimizing the impact of this rulemaking on small businesses.

⁶⁵ *Id.* at 5–6. SBA also responded to our request for information concerning the number of small businesses that might be subject to the proposed User Fee Rule by provided information from the North American Industry Classification System ("NAICS"). According to the NAICS, there are 2,305 firms identified as "Telemarketing Bureaus" (NAICS Code 561422), 1,279 of which qualify as a small business (one with annual receipts of \$5 million or less). SBA also noted "that 1,127 telecommunications firms have receipts under \$1 million, which makes them particularly small and vulnerable to burdensome costs of Federal regulations." *Id.* at 3. The FTC appreciates this information. However, as discussed in Section II.B, above, "telemarketing bureaus" no longer would be required to pay a fee to access the national registry. Instead, sellers would be required to pay the fee. Therefore, to determine the number of small businesses affected by the instant NPRM, the Commission is seeking information on the number of small business sellers that engage in outbound telemarketing and that are subject to the FTC's jurisdiction. Unfortunately, the NAICS does not provide this level of detailed industry classification.

⁶⁶ See TSR SBP at 4641.

Appropriations Act, and Implementation Act.

X. Questions for Comment on the Proposed Rule

The Commission seeks comment on the various aspects of the proposed revisions to the TSR set forth in this NPRM. Without limiting the scope of issues on which it seeks comment, the Commission is particularly interested in receiving comments on the questions that follow. In responding to these questions, include detailed, factual supporting information whenever possible.

1. This Revised Fee NPRM estimates that there are 7,500 firms that will access the national do-not-call registry. Is that estimate realistic and appropriate? What evidence, if any, do you have concerning the number of sellers that either directly engage in, or hire telemarketers to engage in, "outbound telephone calls" to consumers?

2. In estimating the number of firms that will access the national do-not-call registry, the Commission made a number of assumptions, including the following:

a. The average revenue per client for telemarketers making outbound telemarketing calls to consumers is about \$328,000;

b. It is reasonable to estimate the level of expenditures on outbound calls to consumers by taking the product of published figures on the percentage of total telemarketing expenditures that involve outbound calls—including both calls to consumers and to businesses—and published figures on the percentage of expenditures that are for calls to consumers—including both inbound and outbound calling. This figure, approximately 24 percent, can then be used to estimate the level of outbound calling to consumers both by (1) firms that use third-party telemarketers to do their calling and (2) those firms that do their own calling;

c. Sellers that use third-party telemarketers on average employ three different telemarketers to make outbound calls to consumers over the course of a year;

d. Sellers using their own resources to make telemarketing calls spend, on average, five times as much on telemarketing as do firms that use third-party telemarketers;

e. Approximately 40 percent of sellers that use third-party telemarketers and 25 percent of sellers that engage in their own telemarketing will not be required to access the national do-not-call registry, either because they are engaged in charitable solicitations, are making

⁶³ See User Fee NPRM at 37366–67.

only intrastate calls, or are calling on behalf of an industry that is exempt from FTC jurisdiction.

Are these estimates, and others used in arriving at a figure for the number of firms that will be required to access to the national do-not-call registry, realistic and appropriate? What evidence can you provide to support the view that these estimates are reasonable or that they should be different?

3. How many area codes of data will the average firm accessing the national do-not-call registry purchase? How many firms will require access to 250 of more area codes of data? How many will need access to 5 or fewer area codes?

4. Is it appropriate to require each separate corporate division, subsidiary, and affiliate that engages in outbound telemarketing to pay a separate fee to access the national registry? Why or why not? If a separate fee is not appropriate, what is a better way to differentiate between large and small enterprises? Would that alternative method maintain the fairness of the fee collection system while not significantly decreasing the number of entities that will pay for access to the national registry?

List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices.

XI. Proposed Rule

Accordingly, for the reasons set forth in the preamble, the Commission proposes to amend part 310 of title 16 of the Code of Federal Regulations as follows:

PART 310—TELEMARKETING SALES RULE

1. The authority citation for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101–6108.

2. Add § 310.8 to read as follows:

§ 310.8 Fee for access to do-not-call registry.

(a) It is a violation of this Rule for any seller to initiate, or cause any telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller first has paid the annual fee, required by § 310.8(c), for access to telephone numbers within that area code that are included in the national do-not-call registry maintained by the Commission under § 310.4(b)(1)(iii)(B).

(b) It is a violation of this Rule for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone number is within a given area code unless that

seller first has paid the annual fee, required by § 310.8(c), for access to the telephone numbers within that area code that are included in the national do-not-call registry.

(c) The annual fee, which must be paid prior to obtaining access to the do-not-call registry, is \$29 per area code of data accessed, up to a maximum of \$7,250; provided, however, that if a seller obtains no more than five (5) area codes of data annually, there shall be no charge for this information.

(d) After a seller pays the fees set forth in § 310.8(a), the seller will be provided a unique account number which will allow that seller, or an entity designated by that seller, to access the registry data for the selected area codes at any time for twelve months following the first day of the month in which the seller paid the fee (“the annual period”). To obtain access to additional area codes of data during the first six months of the annual period, the seller must first pay \$29 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, the seller must first pay \$15 for each additional area code of data not initially selected. The payment of the additional fee will permit the seller or the seller’s designee to access the additional area codes of data for the remainder of the annual period.

(e) Access to the do-not-call registry is limited to telemarketers, sellers, others engaged in or causing others to engage in telephone calls for commercial purposes, service providers acting on behalf of such persons, and any government agency that has the authority to enforce a federal or state do-not-call statute or regulation. Prior to accessing the do-not-call registry, a person must provide the identifying information required by the operator of the registry to collect the fee, and must certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent telephone calls to telephone numbers on the registry. If the person is accessing the registry on behalf of other sellers, that person also must identify each of the other sellers on whose behalf it is accessing the registry, must provide each seller’s unique account number for access to the national registry, and must certify, under penalty of law, that the other sellers will be using the information gathered from the registry solely to comply with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 03–7932 Filed 4–2–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA76

TRICARE Program; Inclusion of Anesthesiologist’s Assistants as Authorized Providers; Coverage of Cardiac Rehabilitation in Freestanding Cardiac Rehabilitation Facilities

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes a new category of provider as an authorized TRICARE provider, and it increases the settings where cardiac rehabilitation can be covered as a TRICARE benefit. It recognizes anesthesiologist’s assistants as authorized providers under certain circumstances. It also authorizes cardiac rehabilitation services, which are already a covered TRICARE benefit when provided by hospitals, to be provided in freestanding cardiac rehabilitation facilities.

DATES: Public comments must be received by June 2, 2003.

ADDRESSES: Forward comments to: TRICARE Management Activity (TMA), Medical Benefits and Reimbursements Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Medical Benefits and Reimbursement Systems, TMA, (303) 676–3572.

SUPPLEMENTARY INFORMATION:

A. Inclusion of Anesthesiologist’s Assistants as Authorized Providers

At present only two types of anesthesia providers may provide services to TRICARE beneficiaries— anesthesiologists and certified registered nurse anesthetists (CRNAs). In some areas of the country, anesthesiologist’s assistants, after completing the specified training, being accredited, and being licensed by the state also provide anesthesia services. The Centers for Medicare and Medicaid Services (CMS) already recognizes anesthesiologist’s assistants as authorized providers (42 CFR 410.69).

We propose to recognize anesthesiologist's assistants as authorized providers under the same conditions applied by CMS. That is:

(1) They must work only under the direct supervision of an anesthesiologist;

(2) They must comply with all applicable requirements of state law and be licensed, where applicable, by the state in which they practice; and

(3) They must have completed the appropriate educational requirements. This includes graduation from a Master's level medical school-based anesthesiologist's assistant program that is accredited by the Committee on Allied Health Education and Accreditation and includes approximately two years of appropriate specialized basic science and clinical education in anesthesia. This program must build on a premedical undergraduate science background.

Recognition of anesthesiologist's assistants will not increase the costs of anesthesia to the Program. This is, payment for anesthesia services provided by an anesthesiologist and an anesthesiologist's assistant under the anesthesiologist's direct supervision will never exceed what would have been paid if the services were provided only by the anesthesiologist.

Since anesthesiologist's assistants may not practice independently, they also may not bill independently for their services. All claims for their services must be submitted by their employer, whether it is a hospital, a physician, or some other similar entity. Such claims must indicate that the services were provided by an anesthesiologist's assistant.

B. Coverage of Cardiac Rehabilitation in Freestanding Cardiac Rehabilitation Centers

On October 19, 1990, the Office of the Secretary of Defense published a final rule in the **Federal Register** (55 FR 42366) establishing cardiac rehabilitation as a TRICARE benefit when used in the treatment of certain cardiac events. The following rationale was provided for limiting cardiac rehabilitation services to TRICARE authorized hospitals:

As a national program, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) strives for uniformity and equity in benefits to ensure beneficiary safety. Toward this end, CHAMPUS relies on the existing nationwide infrastructure for accreditation and professional regulatory oversight. With the large variety of freestanding cardiac rehabilitation clinics throughout the country, it is incumbent upon CHAMPUS to seek out national standards to

provide a clear line of demarcation on CHAMPUS requirements. Currently, there is no organized national accreditation agency for accrediting freestanding cardiac rehabilitation clinics, nor does there appear to be standardized state licensure, or certification procedures in existence which address standards for freestanding cardiac rehabilitation clinics. Since OCHAMPUS does not have the resources to conduct its own accreditation activities, the requirement for national accreditation is at least a minimum assurance that a facility or specialized treatment facility meets some standards of quality.

However, since incorporation of this restriction (*i.e.*, cardiac rehabilitation services being restricted to hospital based facilities/programs) there has been an evolution of alternative freestanding delivery programs whose efficacy and safety have been recognized by the medical community and other third-party payers. Freestanding cardiac rehabilitation programs are examples of this evolutionary trend. With the establishment of standardized licensure and accreditation procedures, many of these freestanding programs have been recognized and approved for participation under TRICARE.

Currently TRICARE provides coverage/payment for inpatient or outpatient services and/or supplies provided in connection with a cardiac rehabilitation program when provided by a TRICARE authorized hospital. Outpatient cardiac rehabilitation treatment programs affiliated with TRICARE authorized hospitals are reimbursed an all-inclusive allowable charge per session that includes all related professional services provided during a rehabilitation session. Inpatient programs are paid based upon the reimbursement system in place for the hospital where the services are provided. Separate cost-sharing is allowed for initial evaluation and testing and related professional services.

Since hospital based cardiac rehabilitation is already an established benefit under TRICARE, its benefit and reimbursement structure can be applied to freestanding cardiac rehabilitation programs. Claims for freestanding outpatient cardiac rehabilitation treatment will be reimbursed in the same manner as outpatient cardiac rehabilitation treatment programs affiliated with TRICARE authorized hospitals. That is, they will be reimbursed based upon an all inclusive allowable charge per session that includes all related professional services provided during the rehabilitation session.

Regulatory Procedures

Executive Order (EO) 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one which would result in an annual effect of \$100 million or more on the national economy or which would have other substantial impacts.

The Regulatory Flexibility Act requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule is not economically significant and will not significantly affect a substantial number of small entities.

"This rule has been designated as significant and has been reviewed by the Office Management and Budget as required under the provisions of E.O. 12866."

Paperwork Reduction Act

This rule imposes no burden as defined by the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

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

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.4 is proposed to be amended by revising paragraph (e)(18)(iv) as follows:

§ 199.4 Basic program benefits.

(e) * * *

(18) * * *

(iv) *Providers.* A provider of cardiac rehabilitation services must be a TRICARE authorized hospital (*see* Section 199.6 paragraph (b)(4)(i)) or a freestanding cardiac rehabilitation facility that meets the requirements of Section 199.6 paragraph (f). All cardiac rehabilitation services must be ordered by a physician.

* * * * *

3. Section 199.6 is proposed to be amended by redesignating paragraph (c)(3)(iii)(I) as paragraph (c)(3)(iii)(J) and adding a new paragraph (c)(3)(iii)(I) as follows:

§ 199.6 Authorized Providers.

(c) * * *

(3) * * *
(iii) * * *

(I) *Anesthesiologist's Assistant*. An anesthesiologist's assistant may provide covered anesthesia services, if the anesthesiologist's assistant:

(1) Works under the direct supervision of an anesthesiologist, and the anesthesiologist bills for the services;

(2) Is in compliance with all applicable requirements of state law, including any licensure requirements the state imposes on nonphysician anesthetists; and

(3) Is a graduate of a Master's level medical school-based anesthesiologist's assistant educational program that:

(i) Is accredited by the Committee on Allied Health Education and Accreditation; and

(ii) Includes approximately two years of specialized basic science and clinical education in anesthesia at a level that builds on a premedical undergraduate science background.

* * * * *

Dated: March 28, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03-8014 Filed 4-2-03; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

32 CFR Part 312

Office of the Inspector General; Privacy Act; Implementation

AGENCY: Office of the Inspector General, DoD.

ACTION: Proposed rule.

SUMMARY: The Inspector General, DoD is proposing to exempt an existing system of records in its inventory of systems of records pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

The exemptions are needed because during the course of a Freedom of Information Act (FOIA) and Privacy Act action, exempt materials from other systems of records may in turn become part of the case records in the system. To the extent that copies of exempt records from those "other" systems of records are entered into the Freedom of Information Act and/or Privacy Act case records, the Inspector General, DoD, hereby claims the same exemptions for the records from those "other" systems that are entered into this system, as claimed for the original primary systems of records which they are a part. Therefore, the Inspector General, DoD is

proposing to add exemptions to an existing system of records.

DATES: Comments must be received on or before June 2, 2003 to be considered by this agency.

ADDRESSES: Send comments to the Chief, Freedom of Information Act/ Privacy Act Office, 400 Army Navy Drive, Room 201, Arlington, VA 22202-4704.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Caucci at (703) 604-9786.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Office of the Inspector General of the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Office of the Inspector General of the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Office of the Inspector General of the Department of Defense.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Office of the Inspector General of the Department of Defense impose no information requirements beyond the Office of the Inspector General and that the information collected within the Office of the Inspector is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

It has been determined that the Privacy Act rulemaking for the Office of

the Inspector General of the Department of Defense does not involve 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 and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Office of the Inspector General of the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 312

Privacy.

1. The authority citation for 32 CFR part 312 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 312.3 is revised to read as follows:

§ 312.3 Procedure for requesting information.

Individuals should submit written inquiries regarding all OIG files to the Administration and Logistics Services Directorate, ATTN: FOIA/PA Office, 400 Army Navy Drive, Arlington, VA 22202-4704. Individuals making a request in person must provide acceptable picture identification, such as a current driver's license.

3. Section 312.9 paragraph (a) is revised read as follows:

§ 312.9 Appeal of initial amendment decision.

(a) All appeals on an initial amendment decision should be addressed to the Administration and Logistics Services Directorate, ATTN: FOIA/PA Office, 400 Army Navy Drive, Arlington, VA 22202-4704. The appeal should be concise and should specify the reasons the requester believes that the initial amendment action by the OIG was not satisfactory. Upon receipt of the appeal, the designated official will review the request and make a determination to approve or deny the appeal.

* * * * *

4. Section 312.12 is amended by adding paragraph (h) to read as follows:

§ 312.12, Exemptions.

* * * * *

(h) *System Identifier:* CIG 01.

(1) *System name*: Privacy Act and Freedom of Information Act Case Files.

(2) *Exemption*: During the processing of a Freedom of Information Act (FOIA) and Privacy Act (PA) request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those other systems of records are entered into this system, the Inspector General, DoD, claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the original primary system of which they are a part.

(3) *Authority*: 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(4) *Reasons*: Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: March 25, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03-8018 Filed 4-2-03; 8:45 am]

BILLING CODE 5001-08-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02-278, FCC 03-62]

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on The Do-Not-Call Implementation Act (Do-Not-Call Act), which requires the Federal Communications Commission (FCC or Commission) to issue final rules in the Telephone Consumer Protection Act (TCPA) proceeding within 180 days, to maximize consistency with the Federal Trade Commission's (FTC) rules, and to issue reports to Congress within 45 days of the promulgation of final rules, and annually thereafter.

DATES: Comments are due May 5, 2003 and reply comments are due May 19, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW-A325, Washington, DC 20554. See supplementary information for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Erica H. McMahon or Richard D. Smith, Policy Division, Consumer & Governmental Affairs Bureau, (202) 418-2512.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in CG Docket No. 02-278, FCC 03-62, released March 25, 2003. The full text of this document is available on the Commission's Electronic Comment Filing System at <http://www.fcc.gov/e-file/ecfs.html>, and for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554.

Synopsis of Further Notice of Proposed Rulemaking

1. On March 11, 2003, the Do-Not-Call Act was signed into law requiring the Commission to issue a final rule in the above-captioned proceeding within 180 days of March 11, 2003, and to consult with the FTC to maximize consistency with the rule promulgated by the FTC in 2002. The Do-Not-Call Act also requires the Commission to issue reports to Congress within 45 days after the promulgation of final rules in this

proceeding, and annually thereafter. In this FNPRM, we seek comment on these requirements.

2. On December 20, 1991, Congress enacted the Telephone Consumer Protection Act of 1991 (TCPA) in an effort to address a growing number of telephone marketing calls and certain telemarketing practices thought to be an invasion of consumer privacy and even a risk to public safety. The statute restricts the use of automatic telephone dialing systems, artificial and prerecorded messages, and telephone facsimile machines to send unsolicited advertisements. The TCPA specifically authorizes the Commission to "require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations." In 1992, the Commission adopted rules implementing the TCPA but declined to create a national database of telephone subscribers who do not wish to receive calls from telemarketers. The Commission opted instead to implement an alternative scheme—one involving company-specific do-not-call lists. In 1995 and 1997, the Commission released orders (60 FR 42068, August 15, 1995; 62 FR 19686, April 23, 1997) addressing petitions for reconsideration of the *TCPA Order* (57 FR 48333, October 23, 1992).

3. On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) and Memorandum Opinion and Order (67 FR 62667, October 8, 2002) seeking comment on whether the Commission's rules need to be revised in order to carry out more effectively Congress's directives in the TCPA. Specifically, we sought comment on whether to revise or clarify our rules governing unwanted telephone solicitations and the use of automatic telephone dialing systems, prerecorded or artificial voice messages, and telephone facsimile machines. We also sought comment on the effectiveness of company-specific do-not-call lists. In addition, we sought comment on whether to revisit the option of establishing a national do-not-call list and, if so, how such action might be taken in conjunction with the FTC's proposal to adopt a national do-not-call list and with various state do-not-call lists. In considering ways in which we might improve our TCPA rules, our goal is to enhance consumer privacy protections while avoiding imposing unnecessary burdens on the telemarketing industry, consumers, and regulators. Lastly, we sought comment on the effect proposed policies and rules would have on small business entities,

including *inter alia* those who engage in telemarketing activities and those who rely on telemarketing as a method to solicit new business.

4. On December 18, 2002, the FTC released an order establishing a national do-not-call registry and making other changes to its Telemarketing Sales Rule (68 FR 4580, January 29, 2003). Congress approved funding for the FTC's do-not-call registry as part of the 2003 omnibus budget. Furthermore, the FTC has announced that it will begin to take registrations for a do-not-call registry on July 1, 2003, and that the registry will go into effect on October 1, 2003.

5. In the Do-Not-Call Act, Congress requires this Commission to issue final rules in the above-captioned proceeding by September 7, 2003. The Do-Not-Call Act provides that the FCC shall consult and coordinate with the FTC to maximize consistency with the rule promulgated by the FTC. Congress also requires the Commission to transmit a report on regulatory coordination to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation. The Commission is required to provide:

(1) An analysis of the telemarketing rules promulgated by both the Federal Trade Commission and the Federal Communications Commission;

(2) An analysis of any inconsistencies between the rules promulgated by each Commission and the effect of any such inconsistencies on consumers, and persons paying for access to the registry; and

(3) Proposals to remedy any such inconsistencies.

The Do-Not-Call Act also requires the Commission to file an annual report to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science and Transportation, which includes:

(1) An analysis of the effectiveness of the "do-not-call" registry as a national registry;

(2) The number of consumers who have placed their telephone numbers on the registry;

(3) The number of persons paying fees for access to the registry and the amount of such fees;

(4) An analysis of the progress of coordinating the operation and enforcement of the "do-not-call" registry with similar registries established and maintained by the various States;

(5) An analysis of the progress of coordinating the operation of the "do-not-call" registry with the enforcement activities of the Commission pursuant to the TCPA; and

(6) A review of the enforcement proceedings by the Commission under the TCPA.

6. As stated above, the Do-Not-Call Act requires the FCC, in the course of the above-captioned proceeding, to "maximize consistency" with the FTC's recent amendments to its Telemarketing Sales Rule. We seek comment on how the FCC can maximize consistency with the FTC's rules. We encourage commenters to review the rules promulgated by the FTC and to comment on how the FCC should consider amending its rules, given the new statutory directive. We seek comment on how the goals and principles identified in the Do-Not-Call Act should affect our implementation of the Act and how to harmonize the requirements of the Do-Not-Call Act with our statutory mandate in the TCPA. We also seek comment on how the FCC can best fulfill the reporting requirements contained in the statute. On December 20, 2002, the Consumer & Governmental Affairs Bureau issued a Public Notice (67 FR 78763, December 26, 2002) extending the reply comment period in the TCPA proceeding until January 31, 2003, to ensure that all interested parties had ample opportunity to comment on possible Commission action in light of the FTC's new rules. Parties are advised not to reiterate comments previously filed in this proceeding because any previously filed comments will be duly considered.

Procedural Issues

A. *Ex Parte* Presentations

7. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that presentations are disclosed as provided in the Commission's rules.

B. *Filing of Comments and Reply Comments*

8. We invite comment on the issues and questions set forth above. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before May 5, 2003, and reply comments on or before May 19, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings* (63 FR 24121, May 1, 1998).

9. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of

an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties also should send four (4) paper copies of their filings to Kelli Farmer, Federal Communications Commission, Room 4-C740, 445 12th Street, SW., Washington, DC 20554.

10. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin of the Consumer & Governmental Affairs Bureau, at (202) 418-7426, TTY (202) 418-7365, or at bmillin@fcc.gov.

Ordering Clauses

11. The Further Notice of Proposed Rulemaking is adopted.

List of Subjects in 47 CFR Part 64

Telephone.

Federal Communications Commission.
William F. Caton,
Deputy Secretary.
[FR Doc. 03-8077 Filed 4-2-03; 8:45 am]
BILLING CODE 6712-01-P

Notices

Federal Register

Vol. 68, No. 64

Thursday, April 3, 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.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on April 28, 2003, from 8:30 am to 5 pm.

ADDRESSES: The meeting will be held at the Mercer Human Resource Consulting, at 1166 Avenue of the Americas, Conference Room, 30th Floor, New York, NY.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202-694-1891.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at the Mercer Human Resource Consulting, 1166 Avenue of the Americas, Conference Room, 30th Floor, New York, NY on Monday, April 28, 2003, from 8:30 am to 5 pm.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: March 25, 2003.

Patrick W. McDonough,
Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 03-8028 Filed 4-2-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farmland Protection Program

AGENCY: Commodity Credit Corporation, Department of Agriculture (USDA).

ACTION: Notice of request for proposals.

SUMMARY: Section 2503 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) amended the Food Security Act of 1985 to include the Farmland Protection Program (FPP), providing up to \$100 million in financial assistance in fiscal year 2003, for the purposes described in FPP. Congress delegated authority for FPP to the Chief of the Natural Resources Conservation Service (NRCS). NRCS, on behalf of the Commodity Credit Corporation (CCC) and using its authorities, requests proposals from Federally recognized Indian tribes, States, units of local government, and nongovernmental organizations to cooperate in the acquisition of conservation easements on farms and ranches. Eligible land includes farm and ranch land that has prime, unique, or other productive soil, or that contains historical or archaeological resources. These lands must also be subject to a pending offer from eligible entities for the purpose of protecting topsoil by limiting conversion of that land to nonagricultural uses.

DATES: Proposals must be received in the NRCS State Office within May 19, 2003.

ADDRESSES: Written proposals should be sent to the appropriate NRCS State Conservationist, Natural Resources Conservation Service, USDA. The telephone numbers and addresses of the NRCS State Conservationists are in the appendix of this notice.

FOR FURTHER INFORMATION CONTACT: Denise Coleman, NRCS; phone: (202) 720-9476; fax: (202) 720-0745; or e-mail: denise.coleman@usda.gov; Subject: FPP or consult the NRCS Web

site at: <http://www.nrcs.usda.gov/programs/farmland/2002/PubNotc.html>.

SUPPLEMENTARY INFORMATION:

Background

Urban sprawl continues to threaten the Nation's farm and ranch land, as social and economic changes over the past three decades have influenced the rate at which land is converted to non-agricultural uses. Population growth, demographic changes, preferences for larger lots, expansion of transportation systems, and economic prosperity have contributed to increases in agricultural land conversion rates.

The amount of farm and ranch land lost to development and the quality of farmland being converted are significant concerns. In most States, prime farmland is being converted at two to four times the rate of other, less-productive agricultural land.

There continues to be an important national interest in the protection of farmland. Land use devoted to agriculture provides an important contribution to environmental quality, protection of the Nation's historical and archaeological resources, and scenic beauty.

Availability of Funding

Effective on the publication date of this notice, NRCS announces the availability of up to \$100 million for FPP, until September 30, 2003. The NRCS State Conservationist must receive proposals for participation within 45 days of the date of this notice. State, Tribal, and local government entities and nongovernmental organizations may apply. Selection will be based on the criteria established in this notice, and additional criteria developed by the applicable State Conservationist. Pending offers by an eligible entity must be for acquiring an easement for perpetuity, except where State law prohibits a permanent easement.

Under the Farmland Protection Program, NRCS may provide up to 50 percent of the appraised fair market value of the conservation easement. Landowner donations up to 25 percent of the appraised fair market value of the conservation easement may be considered part of the entity's matching offer. For the entity, two cost-share options are available when providing its matching offer. One option is for the

entity to provide in cash at least 25 percent of the appraised fair market value of the conservation easement. The second option is for the entity to provide at least 50 percent of the purchase price in cash, of the conservation easement. The second option may be preferable to an entity in the case of a large bargain sale by the landowner. If the second option is selected, the NRCS share cannot exceed the entity's contribution.

The following two examples illustrate how these two cost-share options may function. Under Option 1 where 25 percent of the appraised fair market value is selected by the entity, the total appraised fair market value of the conservation easement is \$1 million. The landowner chooses to donate 40 percent of the appraised fair market value, resulting in the actual easement purchase price being \$600,000. In this case, the cooperating entity contributes \$250,000 and NRCS contributes \$350,000. Option 2, where 50 percent of the purchase price is selected, would occur when a landowner makes a large charitable donation, where 25% of the appraised fair market value exceeds 50 percent of the purchase price. For example, the total appraised fair market value of the conservation easement is \$1 million. The landowner chooses to donate 60 percent of the appraised fair market value, resulting in the actual easement purchase price being \$400,000. In this case, NRCS and the cooperating entity both contribute \$200,000.

Definitions

For the purposes of this notice, the following definitions apply:

Chief means the Chief of NRCS, USDA.

Conservation plan is the document that—

- Applies to highly erodible cropland;
- Describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules; and
- Is approved by the local soil conservation district in consultation with the local committees as established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) and by NRCS for purposes of compliance with 7 CFR part 12.

Eligible entities means Federally recognized Indian tribes, States, units of local government, and nongovernmental organizations that have pending offers for acquiring conservation easements for

the purpose of protecting agricultural use.

Eligible land is land on a farm or ranch that has prime, unique, State-wide, or locally important soil, or contains historical or archaeological resources, and is subject to a pending offer by an eligible entity. Eligible land includes cropland, rangeland, grassland, pastureland, and forest land that is an incidental part of an agricultural operation. Other incidental land that would not otherwise be eligible, but when considered as part of a pending offer, may be considered eligible if inclusion of such land would significantly augment protection of the associated eligible farmland. Eligible land must be owned by landowners who certify that they do not exceed the adjusted gross income limitation eligibility requirements set forth in section 1604 of the Farm Security and Rural Investment Act of 2002. As defined by section 1604 of the Farm Security and Rural Investment Act of 2002, a landowner's adjusted gross income cannot exceed \$2.5 million for the three tax years immediately preceding the payment disbursement, which occurs when the conservation easement deed is executed.

Fair market value of the conservation easement is ascertained through standard real property appraisal methods. Fair market value is the amount in cash for which in all probability the easement would have sold on the effective date of the appraisal, after a reasonable exposure of time on the open competitive market, given a willing and reasonably knowledgeable seller and a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal.

Field Office Technical Guide (FOTG) contains the official NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. The FOTG contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Historic and archaeological resources are:

- Listed in the National Register of Historic Places established under the National Historic Preservation Act (NHPA), 16 U.S.C. 470, *et seq.*, or
- Formally determined eligible for listing in the National Register of Historic Places by the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and the Keeper of the National Register

in accordance with section 106 of the NHPA, or

- Formally listed in the State or Tribal Register of Historic Places of the SHPO that is designated under section 101(b)(1)(B) of the NHPA, or the THPO that is designated under section 101(d)(1)(C) of the NHPA.

Land Evaluation and Site Assessment (LESA) system is a land evaluation site assessment system, approved by the NRCS State Conservationist, used to rank land for farm and ranchland protection purposes. The ranking is based on soil potential for agriculture, as well as social and economic factors, such as location, access to markets, and adjacent land use.

Nongovernmental organization is any organization that:

- Is organized for, and at all times since the formation of the organization, has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986; and
- Is an organization described in section 501(c)(3) of that Code that is exempt from taxation under 501(a) of that Code; and
- Is described in section 509(a)(2) of that Code; or
- Is described in section 509(a)(3) of that Code and is controlled by an organization described in section 509(a)(2) of that Code.

Pending offer is a written bid, contract, commitment, or option extended to a landowner by one or more eligible entities to acquire a conservation easement for the purpose of protecting topsoil by limiting nonagricultural uses of the land.

Prime soils are soils that have the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, without intolerable soil erosion, as determined by the Secretary.

Soils that are of Statewide or local importance are soils used to produce food, feed, fiber, forage, or oilseed crops. The appropriate State or local government agency determines statewide or locally important farmland with concurrence from the Secretary.

State conservationist refers to an NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, (Puerto Rico and the Virgin Islands) or the Pacific Basin Area (Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

Unique soils are soils other than prime soils that are used for the

production of specific high-value food and fiber crops, as determined by the Secretary. They have a special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in section 1540(c)(1) of the Farmland Protection Policy Act (Public Law 97-98) (7 U.S.C. 4201, *et seq.*) and 7 CFR part 658.

Overview of the Farmland Protection Program

The CCC, acting through NRCS, will accept proposals submitted to the NRCS State Offices from eligible entities, including Federally recognized Indian tribes, States, units of local government, and nongovernmental organizations that have pending offers for acquiring conservation easements for the purposes of protecting topsoil by limiting nonagricultural use of the land and/or protecting historical and archaeological sites on farm and ranch lands. Reference information regarding the FPP can be found in the "Catalog of Federal Domestic Assistance #10.913."

All proposals must be submitted to the appropriate NRCS State Conservationist within 45 days from the date of this notice. The NRCS State Conservationist may consult with the State Technical Committee (established pursuant to 16 U.S.C. 3861) to evaluate the merits of the proposals.

The NRCS State Conservationist will review and evaluate the proposals based on State, Tribal or local government or nongovernmental organization eligibility, land eligibility, and the extent to which the proposal adheres to the objectives outlined in the NRCS State FPP plan. Proposals must provide adequate proof of a pending offer for the subject land. Adequate proof includes a written bid, contract, commitment, or option extended to a landowner. Pending offers based upon appraisals completed and signed by State-certified or licensed appraisers will receive higher priority for FPP funding. Proposals submitted directly to the NRCS National Office will not be accepted, and will be returned to the submitting entity.

Development of the State Farmland Protection Program Plan

Funding awards to participants will be based on National and State criteria.

FPP will be available in those States for which an NRCS State Office submits a State FPP Plan to the NRCS National Office. At a minimum, the State FPP Plan contains the following:

- Acreage of prime and important farm and ranch land estimated to be protected;
- Acreage of prime and important farm and ranch land converted to nonagricultural uses;
- Number or acreage of historic and archaeological sites estimated to be protected on farm or ranch lands;
- Degree of development pressure;
- Percentage of funding guaranteed to be provided by cooperating entities;
- History of cooperating entities' commitments to conservation planning and implementing conservation practices;
- Participating entities' histories of acquiring, managing, holding, and enforcing easements (including average annual farmland protection expenditures over the past five years, accomplishments, and staff);
- Amount of FPP funding requested; and
- Participating entities' estimated unfunded backlog of conservation easements on prime, unique, and important farmland acres.

At the State level, each State Conservationist will develop a State FPP Plan to submit to NRCS National Office. This State FPP Plan may be completed in consultation with the State Technical Committee, and it will include ranking considerations used by the State, including the above-mentioned NRCS National criteria and other NRCS State ranking criteria. The following examples of NRCS State ranking criteria may be used to evaluate and rank specific parcels, including but not limited to proximity to protected clusters, viability of the agricultural operations, parcel size, type of land use, maximum cost expended per acre, an entity's commitment to assuring farm and ranch succession and transfer to viable farming operations, and percentage of funding guaranteed to be provided by cooperating entities. State ranking criteria will be developed on a State-by-State basis and will be available to interested participating entities before proposal submission. Interested entities should contact their State Conservationist for a complete listing of applicable National and State ranking criteria.

The National Office will allocate funds to States based on the information provided in the State FPP Plan. Within 30 days after the Request for Proposal deadline has closed, the NRCS State Conservationist may make awards to

eligible entities based on the funds provided. Once selected, eligible entities must work with the appropriate NRCS State Conservationist to finalize and sign cooperative agreements, incorporating all FPP requirements.

The conveyance document (*i.e.*, conservation easement deed or conservation easement deed template) used by the eligible entity must be reviewed and approved by the USDA Office of General Counsel before being recorded. Since title to the easement is held by an entity other than the United States, the conveyance document must contain a clause that all rights conveyed by the landowner under the document will become vested in the United States should the Federally recognized Indian tribe, State, local unit of government, or nongovernmental organization (*i.e.*, the participant(s) abandon, fail to enforce, or attempt to terminate the conservation easement). As a condition of participation, all highly erodible land in the easement shall be included in a conservation plan. The conservation plan will be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12, unless otherwise determined by the State Conservationist, in partnership with the eligible entity. The conservation plan will be implemented in a timely manner, as determined by the State Conservationist, following FPP enrollment.

Organization and Land Eligibility Selection Criteria

To be eligible, a Federally recognized Indian tribe, State, unit of local government, or nongovernmental organization must have a farmland protection program that purchases conservation easements for the purpose of protecting prime, unique, or other productive soil or historical and archaeological resources by limiting conversion of farm or ranch land to nonagricultural uses.

Criteria for Proposal Evaluation

Proposals must contain the information set forth below in order to receive consideration for assistance:

1. *Organization and programs:* Eligible entities must describe their farmland protection program and their record of acquiring and holding permanent agricultural land protection easements or other interests. Information provided in the proposal should:

(a) Demonstrate a commitment to long-term conservation of agricultural lands through the use of voluntary easements or other interests in land that

protect farmland from conversion to nonagricultural uses;

(b) Demonstrate the capability to acquire, manage, and enforce easements;

(c) Demonstrate the number and ability of staff that will be dedicated to monitoring easement stewardship;

(d) Demonstrate the availability of funds. The purchase price may not exceed the appraised fair market value of the conservation easement. If a landowner donation is included in the entity's match, the entity must demonstrate the availability of 25 percent of the appraised fair market value or 50 percent of the purchase price; and

(e) Include pending offer(s). A pending offer is a written bid, contract, commitment, or option extended to a landowner by an eligible entity to acquire a conservation easement that limits nonagricultural uses of the land before the legal title to these rights has been conveyed. The primary purpose of the pending offers must be for protecting topsoil by limiting conversion to nonagricultural uses. Pending offers having appraisals completed and signed by State-certified general appraisers will receive higher funding priority by the NRCS State Conservationist. Appraisals completed and signed by a State-certified or licensed general appraiser must contain a disclosure statement by the appraiser. The disclosure statement should include at a minimum the following: The appraiser accepts full responsibility for the appraisal, the enclosed statements are true and unbiased, the value of the land is limited by stated assumptions only, the appraiser has no interest in the land, and the appraisal conforms to the Uniform Standards of Professional Appraisal Practice, the Uniform Appraisal Standards for Federal Land Acquisitions, or another land valuation system used by the State, where the land transaction will occur, in purchasing real estate.

2. *Lands to be acquired:* The proposal must describe the lands to be acquired with assistance from FPP. Specifically, the proposal must include the following:

(a) A map showing the proposed protected area(s);

(b) The amount and source of funds currently available for each easement to be acquired;

(c) The criteria used to set the acquisition priorities; and

(d) A detailed description of the land parcels, including:

(i) The priority of the offers;

(ii) The names of the landowners;

(iii) The address and location maps of the parcels;

(iv) The size of the parcels, in acres;

(v) The acres of the prime, unique, or State-wide and locally important soil in the parcels;

(vi) The number or acreage of historical or archaeological sites, if any, proposed to be protected, and a brief description of the sites' significance;

(vii) A map showing the location of other protected parcels in relation to the land parcels proposed to be protected;

(viii) Estimated cost of the easement(s): The consideration to be paid to any landowners for the conveyance of any lands or interests in lands cannot be more than the fair market value of the land or interests conveyed, as determined by an appraiser licensed in the State.

(ix) An example of the cooperating entity's proposed easement deed used to prevent agricultural land conversion;

(x) Indication of the accessibility to markets;

(xi) Indication of an existing agricultural infrastructure, on- and off-farm, and other support system(s);

(xii) Statement regarding the level of threat from urban development;

(xiii) A description of the eligible entity's farmland protection strategy and how the FPP proposal submitted by the entity corresponds to the entity's strategic plan;

(xiv) Other factors from an evaluation and assessment system used to set priorities. If the eligible entity used the LESA system or a similar land evaluation system as its tool, include the scores for the land parcels slated for acquisition;

(xv) Other partners involved in acquisition of the easement and their estimated financial contribution; and

(xvi) Other information that may be relevant as determined by the NRCS State Conservationist.

Ranking Considerations

When the NRCS State Office has assessed organization eligibility and the merits of each proposal, the NRCS State Conservationist will determine whether the farm or ranch land is eligible for financial assistance from FPP. NRCS will use the National, as well as State criteria, which may include a LESA system or other similar system, to evaluate the land and rank the parcels.

NRCS will only consider enrolling eligible land in the program that is of sufficient size and has boundaries that allow for efficient management of the area. The land must have access to markets for its products and an infrastructure appropriate for agricultural production. NRCS will not enroll land in FPP that is owned in fee title by an agency of the United States,

is publicly-owned land, or land that is already subject to an easement or deed restriction that limits agricultural viability. NRCS will not enroll otherwise eligible lands if NRCS determines that the protection provided by the FPP would not be effective because of onsite or offsite conditions. For example, a proposal may nominate an agricultural parcel surrounded by a developed area or a parcel that contains hazardous material, or a parcel that lies within a local government's long-term plan earmarking the parcel for future development. The parcel's isolation from other farms and the local government's position, expressed in either its land use plan or zoning, may cause NRCS to determine that the use of FPP funds is not appropriate.

NRCS will place a priority on acquiring easements that provide permanent protection from conversion to nonagricultural use. NRCS will place a higher priority on easements acquired by entities that have extensive experience in managing and enforcing easements. NRCS may place a higher priority on lands and locations that help create a large tract of protected area for viable agricultural production and that are under increasing urban development pressure. NRCS may place a higher priority on lands and locations that correlate with the efforts of Federal, State, Tribal, local, or nongovernmental organizations' efforts that have complementary farmland protection objectives (e.g., open space or watershed and wildlife habitat protection). NRCS may place a higher priority on lands that provide special social, economic, and environmental benefits to the region. A higher priority may be given to certain geographic regions where the enrollment of particular lands may help achieve National, State, and regional goals and objectives, or enhance existing government or private conservation projects.

Cooperative Agreements

The CCC, through NRCS, enters into a cooperative agreement with a selected eligible entity to document participation in FPP. The cooperative agreement will address, among other subjects—

(1) The easement type, terms and conditions;

(2) The management and enforcement of the rights acquired;

(3) The role and responsibilities of NRCS and the cooperating entity;

(4) The responsibilities of the easement manager on lands acquired with FPP assistance; and

(5) Other requirements deemed necessary by the CCC, acting through

NRCS, to protect the interests of the United States.

The cooperative agreement will also include an attachment listing the pending offers accepted in FPP, landowners' names, addresses, location map(s), and other relevant information. An example of a cooperative agreement may be obtained from the NRCS State Conservationist.

Signed in Washington, DC, on March 17, 2003.

Bruce I. Knight,

Vice President, Commodity Credit Corporation, and Chief, Natural Resources Conservation Service.

NRCS State Conservationists

Alabama: Robert N. Jones, 3381 Skyway Drive, Post Office Box 311, Auburn, AL 36830; phone: (334) 887-4500; fax: (334) 887-4552; robert.jones@al.usda.gov.

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California: Charles W. Bell, Suite 4164, 430 G Street, Davis, California 95616-4164; phone: (530) 792-5600; fax: (530) 792-5790; charles.bell@ca.usda.gov.

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Rhode Island: Judith Doerner, Suite 46, 60 Quaker Lane, Warwick, RI 02886-0111; phone: (401) 828-1300; fax: (401) 828-0433; judith.doerner@ri.usda.gov.

South Carolina: Walter W. Douglas, Strom Thurmond Federal Building, Room 950, 1835 Assembly Street, Columbia, SC 29201-2489; phone: (803) 253-3935; fax: (803) 253-3670; walt.douglas@sc.usda.gov.

South Dakota: Janet L. Oertly, Federal Building, Room 203, 200 Fourth Street, SW., Huron, SD 57350-2475; phone: (605) 352-1200; fax: (605) 352-1288; janet.oertly@sd.nrcs.usda.gov.

Tennessee: James W. Ford, 675 U.S. Courthouse, 801 Broadway, Nashville, TN 37203-3878; phone: (615) 277-2531; fax: (615) 277-2578; jford@tn.nrcs.usda.gov.

Texas: Lawrence Butler, W.R. Poage Building, 101 South Main Street, Temple, TX 76501-7682; phone: (254) 742-9800; fax: (254) 742-9819; larry.butler@tx.usda.gov.

Utah: Phillip J. Nelson, W.F. Bennett Federal Building, Room 4402, 125 South State Street, Salt Lake City, UT 84138, Post Office Box 11350, Salt Lake City, UT 84147-0350, phone: (801) 524-4550, fax: (801) 524-4403, skip.nelson@ut.usda.gov.

Vermont: Francis M. Keeler, 69 Union Street, Winooski, VT 05404-1999; phone: (802) 951-6795; fax: (802) 951-6327; fran.keeler@vt.usda.gov.

Virginia: M. Denise Doetzer, Culpeper Building, Suite 209, 1606 Santa Rosa Road, Richmond, VA 23229-5014; phone: (804) 287-1691; fax: (804) 287-1737; denise.doetzer@va.usda.gov.

Washington: Raymond L. "Gus" Hughbanks, Rock Pointe Tower II, Suite 450, W. 316 Boone Avenue, Spokane, WA 99201-2348; phone: (509) 323-2900; fax: (509) 323-2909; raymond.hughbanks@wa.usda.gov.

West Virginia: Lillian Woods, Room 301, 75 High Street, Morgantown, WV 26505; phone: (304) 284-7540; fax: (304) 284-4839; lillian.woods@wv.usda.gov.

Wisconsin: Patricia S. Leavenworth, Suite 200, 6515 Watts Road, Madison, WI 53719-2726; phone: (608) 276-8732; fax: (608) 276-5890; pat.leavenworth@wi.usda.gov.

Wyoming: Lincoln E. Burton, Federal Building, Room 3124, 100 East B Street, Casper, WY 82601-1911; phone: (307) 261-6453; fax: (307) 261-6490; ed.burton@wy.usda.gov.

[FR Doc. 03-8029 Filed 4-2-03; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Province Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette Province Advisory Committee (PAC) will meet in Salem, Oregon. The purpose of the meeting is to discuss issues pertinent to the implementation of the Northwest Forest Plan and to provide advice to federal land managers in the Province. The specific topics to be covered at the meeting include background information of the Northwest Forest Plan for new members and updated on the on-going revisions to the NFP.

DATES: The meeting will be held April, 17, 2003.

ADDRESSES: The meeting will be held at the Salem District Office of the Bureau of Land Management, 1717 Farby Road, Salem, Oregon. Send written comments to Neal Forrester, Willamette Province Advisory Committee, c/o Willamette National Forest, P.O. Box 106078, Eugene, Oregon 97440, (541) 225-6436 or electronically to nforrester@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Neal Forrester, William National Forest, (541) 225-6436.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to PAC members. However, persons who wish to bring matters to the attention of the Community may file written statements with the PAC staff before or after the meeting. A public forum will be provided and individuals will have the opportunity to address the PAC. Oral comments will be limited to three minutes.

Dated: March 27, 2003.

Dallas J. Emich,

Forest Supervisor, Willamette National Forest.

[FR Doc. 03-8061 Filed 4-2-03; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Lingle-Ft. Laramie Water Quality Project, Goshen County, WY

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lingle-Ft. Laramie Water Quality Project, Goshen County, Wyoming.

FOR FURTHER INFORMATION CONTACT:

Lincoln E. Burton, State Conservationist, Natural Resources Conservation Service, Room 3124, Federal Building, 100 East B Street, Casper, Wyoming 82601, telephone (307) 261-6453.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the human environment. As a result of these findings, Lincoln E. Burton, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes have been changed to include Wildlife Habitat Improvement. Project purposes are: (1) *Agricultural Water Management*—the on-site treatment of agricultural related pollutants for off-site benefits. The planned works of improvement include accelerated technical assistance for land treatment, accelerated financial assistance to treat 8,300 acres to reduce the amount of nitrogen available to be leached to the groundwater, 25 animal waste management facilities, and 35 abandoned wells will be decommissioned. (2) *Wildlife Habitat Improvement*—on-site treatment will increase wildlife habitat units by about 1,100 units.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency (EPA) and to various federal, state, and local agencies, and interested parties. A limited number of copies of the FONSI is available to fill

single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Lincoln E. Burton.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**. The Environmental Assessment will then be signed and funding authorization requested. All plans will be written within five years, and implementation will continue for up to ten years.

Dated: March 21, 2003.

Lincoln E. Burton,
State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under NO. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials.)

Finding of No Significant Impact for Lingle-Ft. Laramie Water Quality Project; Goshen County, Wyoming

Introduction

The Lingle-Ft. Laramie Water Quality Project is a federally assisted action authorized for planning under Pub. L. 83-566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of the watershed plan. This assessment was conducted in consultation with local, state, and federal agencies, including section 7(a)(2) of the Endangered Species Act of 1973, as amended (50 CFR 402.13) consultation, as well as with interested organization and individuals. Data developed during the assessment is available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, Room 3124 Federal Building, 100 East B Street, Casper, Wyoming 82601-1969.

Recommended Action—Alternative 2: Accelerated Land Treatment

Proposed is the development of about 48 conservation plans that will provide for land treatment and wildlife habitat improvement measures to be applied on farms for the reduction of the agricultural contribution to nitrate contamination of the groundwater and habitat improvement. The proposed plan will treat 8,300 acres with increased irrigation efficiency to reduce the amount of nitrogen available to be leached to the groundwater. Twenty-five animal waste management facilities and application practices will be installed in

the watershed. Thirty-five abandoned wells will be decommissioned. Wildlife habitat units will be increased by 1,100 units.

Costs were updated from 2000 Draft EA to 2003 costs, due to a change in discount rates. Federal cost share will be at 65 percent for a total financial assistance of \$3,534,020. Average annual benefits equals \$1,017,170, with average annual costs equal to \$801,333, for a benefit: cost ratio of 1.27:1. FT 2003 Water Resources discount rate at 5.785 percent.

Effect of Recommended Action

The recommended action will improve groundwater quality, improve human health and safety, improve irrigation efficiency, reduce irrigation labor, and increase wildlife habitat. Nitrates available for leaching will be reduced through installation of fertilizer injection systems, nutrient management, and irrigation water management.

The proposed action will reduce the amount of nitrogen available to be leached. It is estimated at full implementation, there will be a 33 percent reduction of nitrate leached below the root zone, which equals about 81 pounds of nitrate per acre each year over the entire project area at a 60 percent participation rate. Nitrogen reduction is considered not to be a controversial issue.

The proposed action will install 25 animal waste management systems to collect and store run-off from feed lots until it can be safely applied to the agricultural fields.

The proposed action will improve on farm irrigation efficiency, which will increase the water available to meet crop consumptive use.

The proposed action will increase the number of wildlife habitat units by about 1,100 units as treatments are installed.

A literature review and search of the State Historic Preservation Office (SHPO) records were conducted for the project area. The effect of project installation will be determined for each individual project contract according to Natural Resource Conservation Service, Northern Plains Region procedures.

It is likely that more sites will be discovered during the planning and installation of the accelerated land treatment practices. Since project practices will be installed on a "voluntary participation" basis, location of ground disturbances is presently unknown. Most surface disturbances below the plow zone will occur as a result of installing ag waste facilities, pipelines, land leveling, grading, and shaping. NRCS cultural resources

procedures, as described in the NRCS Northern Plains Region procedures, will be followed when ground disturbances are planned.

Compliance with National Environmental Policy Act (NEPA) protection rules for each farm will follow the procedures in the NRCS General Manual, Section 190 and 420, respectively.

The proposed action will have little or no effect on wetlands. With on farm improved irrigation efficiencies some reduction in tail water run-off will occur, but with the sandy soils in the watershed most of the run-off has gone to groundwater and not surface water. Wetland restoration, creation and enhancement will increase a total of about 24 acres as operator's contracts are developed. A 2 acre-foot depletion will be offset by a debit from the National Fish and Wildlife Foundation account.

No wilderness areas are in the watershed.

There is potential habitat for the threatened Ute ladies' tresses (*Spiranthes diluvialis*) and Preble's meadow jumping mouse (*Zapus hudsonius preblei*), but none have been identified within the watershed, the determination of "may affect, but not likely to adversely affect" for both species, was arrived at with section 7(a)(2) of the Endangered Species Act of 1973, as amended (50 CFR 402.13) consultation. The habitat will not be adversely impacted. There are no known resident threatened or endangered animals within the watershed area.

The proposed action will increase vegetative cover suitable for wildlife as a result of the application of conservation practices that include vegetative components. Wildlife habitat units will increase by about 1,100 units. Fish habitat will not be effected.

The proposed action will not disproportionately affect any protected groups.

No significant adverse environmental impacts will result from installation of the proposed action.

Alternatives

Based on the above summary of effects (as discussed in the EA), I have determined the alternative that I have selected, will not have significant affect on the human environment. For that reason, no environmental impact statement needs to be prepared.

The planned action is the most practical means of reducing the agricultural contribution of nitrate to the groundwater. Because no significant adverse environmental impacts will

result from the installation of the on farm conservation measures, no other alternatives, other than the no action alternative, were considered.

Consultation—Public Participation

On June 17, 1996, the North Platte Valley Conservation District, and the Lingle-Fort Laramie Conservation District Boards of Supervisors, filed an application for Pub. L. 83-566 assistance in developing a plan for the Goshen County, Lingle-Ft. Laramie Water Quality Project. The State of Wyoming Governor's Office referred the application to the Wyoming Board of Agriculture for ranking and approval. On September 18, 2000, the board gave the project a ranking of high and approved the request to be submitted to the NRCS. Acceptance was acknowledged by the State Conservationist, and appropriate agencies and Sponsors were notified. The town of Torrington and the Goshen County Commissioners were later added to the list of Sponsors.

The Sponsors held two interagency and two public meetings to determine the extent of the problem. The Sponsors requested that NRCS analyze alternative solutions and prepare a preliminary investigation report. In September 2000, a preliminary investigation report was completed for the Lingle-Ft. Laramie Water Quality Project.

Numerous newspaper articles, newsletters, and radio public service announcements have been aired in order to provide public information. Public meetings, with the news media in attendance, were held to gain public input and inform the public.

On October 24, 1996, an interagency meeting was held to determine concerns of the other agencies.

June 14, 2000, a public scoping meeting was held to determine public concerns and opinions. A public response analysis was completed on the responses.

On October 18, 2000, another public meeting was held to review the alternatives developed and obtain further public input.

On June 11, 2001, the Sponsors met to review the Draft Plan-EA.

On July 25, 2002, the Sponsors held a public meeting to begin the Public/Interagency review of the Draft Plan-EA. Written comments were requested from agencies, organizations, and groups identified in the planning process as interested. The comments were reviewed and responses prepared on each comment. The comments and responses are contained in the Final Plan Environmental Assessment.

Written comments were requested from 70 agencies, organizations, and groups identified in the planning process.

Agency consultation and public participation to date have shown no unresolved conflicts with the implementation of the selected plan. Section 7(a)(2) of the Endangered Species Act of 1973, as amended (50 CFR 402.13) consultation has been completed and incorporated.

Conclusion

The Environmental Assessment summarized above indicates that this federal action will not cause significant local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the Lingle-Ft. Laramie Water Quality Project Plan is not required.

Additional Information or questions can be directed to: George W. Cleek IV, Assistant State Conservationist, USDA-NRCS, 100 East B Street, Room 3124, Casper, WY 82601-1969, Phone: 307-261-6457, e-mail: george.cleek@wy.usda.gov.

Dated: March 21, 2003.

Lincoln E. Burton,
State Conservationist.

[FR Doc. 03-8030 Filed 4-2-03; 8:45 am]

BILLING CODE 3410-16-P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: April 8, 2003; 2 p.m.-3 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: March 31, 2003.

Carol Booker,
Legal Counsel.

[FR Doc. 03-8188 Filed 4-1-03; 9:39 am]

BILLING CODE 8230-01-M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting; Public Hearing; Kaltech Industries Group, Inc. Incident

AGENCY: Chemical Safety and Hazard Investigation Board (CSB).

ACTION: Notice announcing Sunshine Act public hearing and requesting public comment and participation.

SUMMARY: The CSB will hold a public hearing to examine findings and preliminary conclusions resulting from its investigation into a building fire explosion at Kaltech Industries Group, Inc., an architectural sign manufacturer located at 123 West 19th Street, New York City. The explosion that occurred April 26, 2002, injured 31 people, including 14 persons who were not employed by Kaltech. This notice provides information regarding the CSB investigation into the chemical incident, a request for comments on specific issues raised by the investigation, and the date, time, location and agenda for the public hearing. At the end of the staff and panel presentations, the Board has also allocated time to take comments from the public.

DATES: The Public Hearing will be held on Wednesday April 16, 2003, from 9 a.m. to 1 p.m. at the Fashion Institute of Technology (SUNY), 7th Avenue at 27th Street, New York City, New York.

Pre-Registration: The event is open to the public and there is no fee for attendance. However, attendees are strongly encouraged to pre-register, to ensure adequate seating arrangements. If you would like to provide oral comments to the Board, please state your intention to do so when pre-registering. Time for public comments is limited. Speakers will be limited to approximately 4 minutes. Those unable to present oral testimony because of time restrictions are urged to file written comments. To pre-register, please e-mail

your name and affiliation by April 11, 2003, to Don.Holmstrom@csb.gov.

Written Comments: The public is encouraged to submit written comments to the Chemical Safety Board. Individuals, organizations, businesses, or local, state or federal government agencies may submit written comments. Such comments must be filed on or before May 5, 2003. For further instructions on submitting comments, please see the "Form and Availability of Comments" section below.

ADDRESSES: Written comments and requests to provide oral comments at the Public Hearing should be submitted to: Mr. Don Holmstrom, U.S. Chemical Safety and Hazard Investigation Board, 2175 K Street, NW., Washington, DC 20037. Alternatively, they may be e-mailed to Don.Holmstrom@csb.gov.

FOR FURTHER INFORMATION CONTACT: Steve Selk, Office of Investigations and Safety Programs, 202.261.7622.

SUPPLEMENTARY INFORMATION:

- A. Introduction
- B. Background
- C. Key Questions
- D. Request for comments
- E. Agenda
- F. Sunshine Act Notice

A. Introduction

The CSB is an independent federal agency established in 1998 with the mission to protect workers, the public, and the environment by investigating and preventing chemical accidents. The CSB determines the root causes of these accidents and makes safety recommendations to government agencies, companies, and other organizations.

The CSB is nearing completion of its investigation into an incident on April 26, 2002, involving an explosion and fire that occurred in a 10-story mixed use building in the Chelsea district in Manhattan, New York City. A public hearing will be held on April 16, 2003, at 9 a.m., at the Fashion Institute of Technology (SUNY), 7th Avenue at 27th Street, New York City, New York. CSB staff will present preliminary findings and conclusions from this investigation to the Board. Major issues involved in this investigation include hazard communication, hazardous waste handling, and municipal oversight. The hearing provides a forum for interested parties to provide input prior to CSB's formulation of final recommendations and issuance of a report. Interested parties will provide presentations to the Board, and at the conclusion of these formal presentations, there will be an opportunity for public comment.

B. Background

On April 26, 2002, an explosion and fire occurred in a 10-story mixed-use commercial building in the Chelsea district of Manhattan, New York City. The structure was built in 1902. It was occupied by a variety of tenants, including commercial, professional service, and manufacturing firms. At the time of the incident, Kaltech Industries Group Inc. occupied the basement of the building and portions of the mezzanine and first floor. Kaltech had leased space in the building for about ten years. The incident originated in the basement space leased by Kaltech Industries Group Inc.

Kaltech typically accumulated waste chemicals onsite and arranged for them to be picked up periodically by a hazardous waste disposal contractor. The day of the incident, Kaltech employees had just finished consolidating hazardous waste from smaller containers into two larger drums, when a violent chemical reaction started to take place in one of the 55-gallon drums. An explosion occurred seconds later. The highly confined environment of the basement offered limited pathways for the explosion to vent. The blast was partially relieved via the building's center hall stairway and the freight elevator. The explosion injured 31 people, including 14 persons who were not employed by Kaltech. Following the explosion, the New York City Building Department issued an order to vacate the building pending a structural evaluation. A few days later the structure was determined to be sound and tenants were permitted to return. Operations at Kaltech, however, remained suspended. The Fire Marshall retained control of Kaltech space while a hazardous environment remediation contractor analyzed and removed the chemicals and decontaminated the area.

Because of the serious nature of this incident and the fact that a chemical reaction was probably involved, the U.S. Chemical Safety & Hazard Investigation Board (CSB) initiated an investigation to determine the root and contributing causes of the incident and to issue recommendations to help prevent similar occurrences.

At the Public Hearing on April 16th, the CSB staff will present preliminary findings regarding causes of this incident. No factual analyses, conclusions or findings should be considered final.

After the Hearing the Board will allow time for public comment. This comment period will close on May 5, 2003. Following the conclusion of the public

comment period, the CSB will review and carefully consider all comments. The staff will then submit a final report on this incident for Board consideration, including specific recommendations targeted to prevent a similar accident like this from occurring elsewhere.

The Board will carefully review the report from the staff and will vote either in open public session or in a notation memorandum to accept the report, its findings and recommendations. When a report and its recommendations are approved, this will begin CSB's process for disseminating the findings and recommendations of the report not only to the recipients of recommendations but also to other public and industry sectors. The CSB believes that this process will ultimately lead to the adoption of recommendations and the growing body of safety knowledge in the industry, which, in turn, should save future lives and property.

C. Key Questions

Questions for Panel Presenters

(1) How does the New York City Fire Prevention Code function to control the handling of incompatible materials such as nitric acid and flammable liquids? What are the requirements of the Code's permitting provisions, and are they sufficient to prevent the mixing of incompatible materials?

(2) In light of the Kaltech incident are there changes to the New York City Fire Prevention Code that would enhance the safe handling of hazardous materials such as nitric acid? If so, what areas should be addressed? In responding, consider the following topics:

- a. Hazardous material identification and labeling.
- b. Permitting requirements such as the submission of management plans and inventory statements.
- c. MSDS availability to the workforce.
- d. Worker training.
- e. The safe separation of incompatible materials in manufacturing facilities.

(3) Do model fire codes such as the International Code Council's International Fire Code and National Fire Protection Association's National Fire Code present a more comprehensive approach to hazardous materials management in these areas? Are there other cities or states that have adopted more effective hazardous material provisions in their fire code? How do the requirements of the New York State Uniform Fire Prevention and Building Code Act affect the fire code obligations of New York City?

(4) By what means do the New York City Fire Department and the Department of Environmental Protection

exchange information concerning facilities' use and storage of hazardous materials? Are there ways in which they can communicate more effectively concerning hazardous material inventory and labeling requirements?

Comments should address the questions listed above. CSB will accept verbal comments at the public hearing. Verbal comments must be limited to 4 minutes. Those wishing to make verbal comments should pre-register by April 11, 2003. To pre-register, send your name and a brief outline of your comments to the person listed in ADDRESSES.

D. Request for Comments

The CSB requests that interested parties submit written comments on the above questions to facilitate greater understanding of the issues. Comments should indicate the number(s) of the specific question(s) being answered, provide responses to questions in numerical order, and use a separate page for each question answered. Comments should be captioned "Kaltech Incident—Comments," and must be filed on or before May 5, 2003.

Parties sending written comments should submit an original and two copies of each document. To enable prompt review and public access, paper submissions should include a version on diskette in PDF, ASCII, or Microsoft Word format. Diskettes should be labeled with the name of the party, and the name and version of the word processing program used to create the document. Alternatively, comments may be mailed to Don.Holmstrom@csb.gov. Written comments will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and CSB regulations.

E. Agenda (9 a.m.–1 p.m.)

- I. CSB Introduction (1 hour)
- II. New York City panel (1 hour)
- III. Fire Safety Experts' panel (1hour)
- IV. Comments from interested parties and the public (1 hour)

F. Sunshine Act Notice

The United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Hearing beginning on Wednesday April 16, 2003, from 9 a.m. to 1 p.m. at the Fashion Institute of Technology (SUNY), 7th Avenue at 27th Street, New York City, New York. Topics will include: CSB's investigation of the Kaltech Industries Group. The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, 10 business days prior to the

public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board's Office of Congressional and Public Affairs, 202–261–7600, or visit our Web site at: www.csb.gov.

Christopher W. Warner,
General Counsel.

[FR Doc. 03–8182 Filed 3–31–03; 4:15 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on April 23 & 24, 2003, 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

April 23

Public Session

1. Comments or presentations by the public.
2. Discussion on Category 3B (electronics—test, inspection and production equipment) controls and proposed study.
3. Discussion on oscilloscope controls and suggested changes.
4. Discussion on Ultra-Wide Band equipment proposal.

April 23 & 24

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to the address listed below:

Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, U.S. Department of Commerce, 15th St. & Pennsylvania Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 7, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of these Committees and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

For more information, contact Lee Ann Carpenter on 202–482–2583.

Dated: March 31, 2003.

Lee Ann Carpenter,
Committee Liaison Officer.

[FR Doc. 03–8101 Filed 4–2–03; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012903A]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Conducting Oil and Gas Exploration Activities in the Gulf of Mexico

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

ACTION: Notice of extension of comment deadline.

SUMMARY: Under the Marine Mammal Protection Act (MMPA), on March 3, 2003, NMFS published a notice of receipt of an application for the harassment of marine mammals incidental to conducting seismic surveys by the U.S. oil and gas industry in the Gulf of Mexico. By this document, NMFS announces an extension of the comment deadline.

DATES: Comments and information must be postmarked no later than April 16, 2003.

ADDRESSES: Comments should be addressed to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West

Highway, Silver Spring, MD 20910–3226. A copy of the application and a list of references used in this document may be obtained by writing to this address, or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**). Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, 301–713–2055, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

On March 3, 2003 (68 FR 9991), NMFS announced that it had received a request from the U.S. Minerals Management Service of the Department of the Interior, for authorization to harass small numbers of marine mammals, principally the sperm whale, incidental to conducting seismic surveys in the GOM. As a result of that request, NMFS is considering whether to propose regulations that would govern the incidental taking of small numbers of marine mammals under Letters of Authorization (LOAs) issued to members of the seismic industry that might have interactions with sperm whales. In order to promulgate regulations and issue LOAs, NMFS must determine that these takings will have a negligible impact on the affected species and stocks of marine mammals. By this document, NMFS extends the comment period on the preliminary application and suggestions on the content of the regulations comment until April 16, 2003.

Dated: March 28, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–8119 Filed 3–31–03; 3:45 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032703G]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Receipt of application for renewal of scientific research permit 1027 and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for renewal of scientific research permit 1027 from U.S. Fish and Wildlife Service (USFWS) in Sacramento, CA. The permit would affect federally endangered Sacramento River winter-run Chinook salmon. This document serves to notify the public of the availability of the permit renewal application for review and comment.

DATES: Written comments on the permit applications must be received at the appropriate address or fax number (see ADDRESSES) no later than 5 p.m. Pacific Standard Time on May 5, 2003.

ADDRESSES: Written comments on this request should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review by appointment, for permit 1027: Protected Resources Division, NMFS, 650 Capitol Mall, Suite 8-300, Sacramento, CA 95814 (ph: 916–930–3600, fax: 916–930z63629). Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 3226 (301 713 1401).

FOR FURTHER INFORMATION CONTACT: Rosalie del Rosario at phone number 916-930-3600, or e-mail: Rosalie.delRosario@noaa.gov.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531 1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and

policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to the federally endangered Sacramento River Winter-run Chinook salmon (*Oncorhynchus tshawytscha*).

Applications Received

USFWS requests a renewal of permit 1027, a 5-year permit that authorized take of adult and juvenile endangered Sacramento River winter-run Chinook salmon ESU associated with artificial production and captive broodstock programs. The broodstock collection target for winter-run Chinook is 15 percent of the estimated upriver escapement, up to a maximum of 120 natural-origin winter-run Chinook broodstock per brood year (i.e., run sizes >800). In that effort, up to 400 winter-run Chinook may be captured annually and the remaining 280 adults will be tagged and returned to the Sacramento River to spawn naturally. To maintain genetic diversity, no fewer than 20 adults will be taken for the broodstock collection regardless of run size (i.e., run sizes <135). Based on three years of trapping data (e.g., 2000–2002), mortality is expected to be <2 percent of total captured, and pre-spawning mortality is expected to be <10 percent of 120 fish retained for spawning. To minimize potential negative effects resulting from natural selection in the hatchery (i.e., domestication), the number of hatchery-origin winter-run Chinook incorporated as broodstock will not exceed 10 percent of the total number of winter-run Chinook spawned (not including captive broodstock crosses). No more than 250,000 pre-smolt winter-run Chinook will be released annually. Post-release contribution potential of progeny derived from captive broodstock adults that were reared to maturity is also

being evaluated. The effects of the artificial production and captive broodstock programs on federally threatened Central Valley spring-run Chinook salmon and threatened Central Valley steelhead are being considered under ESA section 7 interagency consultation on Coleman National Fish Hatchery and Livingston Stone National Fish Hatchery actions.

Dated: March 28, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03-8121 Filed 4-2-03; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability of Environmental Assessment for the Air Force Memorial

AGENCY: Washington Headquarters Services, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of Defense (DoD) Washington Headquarters Services (WHS) announces that an Environmental Assessment (EA) for the Air Force Memorial is available for public review and comment within 30 days of the date of this publication. The Memorial is planned for the Naval Annex Site, Columbia Pike and Southgate Road, near the Pentagon in Arlington, VA. The Naval Annex is also known as the Navy Annex, Arlington Annex, and Federal Office Building No. 2 (FOB2).

The EA documents an evaluation of the environmental effects of the proposed Memorial in accord with the National Environmental Policy Act of 1969, as amended (NEPA, 42 U.S.C. 4321 to 4370b), Council of Environmental Quality (CEQ) implementing regulations (Title 40, Code of Federal Regulations parts 1500-1508), and DoD Instruction 4715.9, Environmental Planning and Analysis. The EA identifies the proposed action, purpose and need for the project, project alternatives, affected environment, environmental consequences, and proposed mitigation measures. Environmental consequences examined include potential impacts on socio-economic conditions, cultural and visual resources, transportation systems, physical and biological resources, utilities and infrastructure, and cumulative impact.

The Air Force Memorial Foundation (AFMF) proposes to establish the Air

Force Memorial on three acres of the Naval Annex Site, as authorized by Congress, to honor the men and women who have served in the U.S. Air Force and its predecessors. The main element of the Memorial would be three curving vertical spires, from 200 to 270 feet high, that symbolize Air Force core values, people, and key mission ingredients. At the base of the spires, complementary elements would include an Honor Guard Sculpture, Contemplation Chamber, Air Force Members Chamber, seating area, pedestrian walkways, and parking area. The proposed action, as directed by Congress, requires demolition of Wing 8 of FOB2.

The EA is available on the Internet at <http://www.dtic.mil/ref/Safety/index.htm> and <http://www.airforcememorial.org> and in paper copy at the following libraries:

- Arlington County Central Library, 1015 N. Quincy Street, Arlington, VA 22201.
- Aurora Hills Library, 735 S. 18th St., Arlington, VA 22202.
- Columbia Pike Library, 816 S. Walter Reed Dr., Arlington, VA 22204.
- Shirlington Library, 2786 S. Arlington Mill Dr., Arlington, VA 22206.

For those with access or escort, copies are also available in the FOB2 Building Managers Office, Room 1030, and in the Pentagon Library Reference Center on the Pentagon Concourse.

DATES: Public comments are invited and must be either e-mailed or postmarked on or before May 5, 2003.

ADDRESSES: To request a copy of the EA or provide comments, contact Dr. Brian Higgins at telephone: 703-697-5066, e-mail: bhiggins@ref.whs.mil, or WHS Real Estate and Facilities Directorate, 1155 Defense Pentagon, Room 3B200, Washington, DC 20301-1155. Individuals also may download the EA from the Web sites

FOR FURTHER INFORMATION CONTACT: For additional information on the EA, contact Dr. Brian Higgins at telephone: 703-697-5066, or e-mail: bhiggins@ref.whs.mil.

Dated: March 27, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03-8015 Filed 4-2-03; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Office of the Inspector General; Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Inspector General, DoD is proposing to alter an existing system of records in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration consists of adding exemptions to the existing system of records CIG 01, entitled "Privacy Act and Freedom of Information Act Case Files".

The exemptions are needed because during the course of a Freedom of Information Act (FOIA) and Privacy Act action, exempt materials from other systems of records may in turn become part of the case records in the system. To the extent that copies of exempt records from those "other" systems of records are entered into the Freedom of Information Act and/or Privacy Act case records, the Inspector General, DoD, hereby claims the same exemptions for the records from those "other" systems that are entered into this system, as claimed for the original primary systems of records which they are a part. Therefore, the Inspector General, DoD is proposing to add exemptions 5 U.S.C. 552a(j)(2), (k)(1) through (k)(7) to an existing system of records.

DATES: This proposed action will be effective without further notice on May 5, 2003, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Room 201, Arlington, VA 22202-4704.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph E. Caucci at (703) 604-9786.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General, DoD notice for system of records subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 20, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, "Federal

Agency Responsibilities for Maintaining Records About Individuals,” dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 25, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG-01

SYSTEM NAME:

Privacy Act and Freedom of Information Act Files (February 22, 1993, 58 FR 10213).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with “Privacy Act and Freedom of Information Act Case Files.”

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with “All individuals who submit Freedom of Information Act (FOIA) and Privacy Act (PA) requests and administrative appeals to the Office of the Inspector General (OIG), DoD and other activities receiving administrative FOIA and Privacy Act support from the OIG; individuals whose FOIA and Privacy Act requests and/or records have been referred by other Federal agencies to the OIG for release to the requester; attorneys representing individuals submitting such requests and appeals, individuals who are the subjects of such requests and appeals, and/or the OIG personnel assigned to handle such requests and appeals.”

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with “Records created or compiled in response to FOIA and Privacy Act requests and administrative appeals, *i.e.*, original requests and administrative appeals; responses to such requests and administrative appeals; all related memoranda, correspondence, notes, and other related or supporting documentation; and copies of requested records and records under administrative appeal.”

* * * * *

PURPOSE(S):

Delete entry and replace with “Information is being collected and maintained for the purpose of processing FOIA and Privacy Act requests and administrative appeals; for participating in litigation regarding agency action on such requests and appeals; for amendment to records made

under the Privacy Act and to document OIG actions in response to these requests; and for assisting the Office of the Inspector General, DoD in carrying out any other responsibilities under the FOIA.

Also, information may be provided to the appropriate OIG element when further action is needed to verify assertions of the requester or to obtain permission to release information obtained from sources.”

* * * * *

RETRIEVABILITY:

Delete entry and replace with “Retrieved by individual’s name, subject matter, date of document, and request number.”

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with “FOIA and Privacy Act paper records that are granted in full are destroyed 2 years after the date of reply. Paper records that are denied in whole or part, no records responses, responses to requesters who do not adequately describe records being sought, do not state a willingness to pay fees, and records which are appealed or litigated, are destroyed 6 years after final FOIA action and 5 years after final Privacy Act action, or three years after final adjudication by courts, whichever is later. Electronic records are deleted within 180 or when no longer needed to support office business needs.”

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with “During the course of a FOIA and Privacy Act action, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those “other” systems of records are entered into this FOIA or Privacy Act case record, Office of the Inspector General hereby claims the same exemptions for the records from those “other” systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 312. For additional information contact the system manager.”

* * * * *

CIG-01

SYSTEM NAME:

Privacy Act and Freedom of Information Act Case Files.

SYSTEM LOCATION:

Freedom of Information and Privacy Act Office, Administrative Services Division, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202-4704.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who submit Freedom of Information Act (FOIA) and Privacy Act (PA) requests and administrative appeals to the Office of the Inspector General (OIG), DoD and other activities receiving administrative FOIA and Privacy Act support from the OIG; individuals whose FOIA and Privacy Act requests and/or records have been referred by other Federal agencies to the OIG for release to the requester; attorneys representing individuals submitting such requests and appeals, individuals who are the subjects of such requests and appeals, and/or the OIG personnel assigned to handle such requests and appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records created or compiled in response to FOIA and Privacy Act requests and administrative appeals, *i.e.*, original requests and administrative appeals; responses to such requests and administrative appeals; all related memoranda, correspondence, notes, and other related or supporting documentation; and copies of requested records and records under administrative appeal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 552a, as amended; DoD 5400.11-R, Department of Defense Privacy Program; 5 U.S.C. 552, The Freedom of Information Act, as amended; and DoD 5400.7-R, DoD Freedom of Information Act Program.

PURPOSE(S):

Information is being collected and maintained for the purpose of processing FOIA and Privacy Act requests and administrative appeals; for participating in litigation regarding agency action on such requests and appeals; for amendment to records made under the Privacy Act and to document OIG actions in response to these requests; and for assisting the Office of the Inspector General, DoD in carrying out any other responsibilities under the FOIA.

Also, information may be provided to the appropriate OIG element when

further action is needed to verify assertions of the requester or to obtain permission to release information obtained from sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from this system may be provided to other Federal agencies and state and local agencies when it is necessary to coordinate responses or denials.

The DoD "Blanket Routine Uses" set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

Retrieved by individual's name, subject matter, date of document, and request number.

SAFEGUARDS:

Records are stored in locked security containers accessible only to authorized personnel.

RETENTION AND DISPOSAL:

FOIA and Privacy Act paper records that are granted in full are destroyed 2 years after the date of reply. Paper records that are denied in whole or part, no records responses, responses to requesters who do not adequately describe records being sought, do not state a willingness to pay fees, and records which are appealed or litigated, are destroyed 6 years after final FOIA action and 5 years after final Privacy Act action, or three years after final adjudication by courts, whichever is later. Electronic records are deleted within 180 or when no longer needed to support office business needs.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Freedom of Information Act and Privacy Act Office, Administrative Services Division, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202-4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves

is contained in this system should address written inquiries to the Chief, Freedom of Information Act and Privacy Act Office, Administrative Services Division, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202-4704.

Please include full information regarding the previous request such as date, subject matter, and if available, copies of the previous OIG reply.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Freedom of Information Act and Privacy Act Office, Administrative Services Division, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202-4704.

Please include full information regarding the previous request such as date, subject matter, and if available, copies of the previous OIG reply.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individuals on whom records are maintained and official records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a FOIA and Privacy Act action, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those "other" systems of records are entered into this FOIA or Privacy Act case record, Office of the Inspector General hereby claims the same exemptions for the records from those "other" systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 312. For additional information contact the system manager.

[FR Doc. 03-8017 Filed 4-2-03; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Program Comment for Capehart and Wherry Era Army Family Housing and Associated Structures and Landscape Features (1949-1962), from the Advisory Council on Historic Preservation

AGENCY: Department of the Army, DoD.

ACTION: Notice of comment.

SUMMARY: This provides notice of the Advisory Council on Historic Preservation's Program Comment to the Department of the Army for Capehart and Wherry Era Army Family Housing and Associated Structures and Landscape Features (1949-1962), in accordance with 36 CFR 800.14(e)(5)(i), "Protection of Historic Properties; Final Rule."

ADDRESSES: To obtain copies of the Program Comment, contact the U.S. Army Environmental Center, ATTN: SFIM-AEC-PA (Mr. Robert DiMichele), Aberdeen Proving Ground, MD 21010-5401.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Foster, 703-693-0675.

SUPPLEMENTARY INFORMATION: On May 31, 2002, the Advisory Council on Historic Preservation approved and issued to the Department of the Army, Program Comment for Capehart and Wherry Era Army Family Housing and Associated Structures and Landscape Features (1949-1962). The Program Comment pertains to all Army family housing constructed between 1949 and 1962 (i.e., the Capehart and Wherry Era), and includes treatment measures for the following undertakings for Capehart and Wherry Era housing, associated structures, and landscape features: maintenance and repair; rehabilitation; layaway and mothballing; renovation, demolition; demolition and replacement; and transfer, sale or lease out of Federal control. The Department of the Army has taken into account the Advisory Council on Historic Preservation's Program Comment for Capehart and Wherry Era (1949-1962) Army Family Housing, Associated Structures, and Landscape Features, and accepts and adopts that Program Comment. The Department of the Army ensures that the effects of these undertakings on this category of historic property is taken into account by execution of the steps identified as treatment measures in the Program Comment, Section II.b. Treatment measures include an expanded Historic Context of Capehart and Wherry Era Army Family Housing, Neighborhood

Design Guidelines, and Video Documentation. The full text of the Program Comment can be found in the Council's Notice of Approval, published in the **Federal Register** on June 7, 2002, Vol. 167, No. 110, pp. 39332–39335.

Dated: March 25, 2002.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I&E).

[FR Doc. 03–8122 Filed 4–2–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.354A]

Office of Innovation and Improvement; Credit Enhancement for Charter School Facilities Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: This program will provide grants to eligible entities to permit them to enhance the credit of charter schools so that they can access private-sector and other non-Federal capital to acquire, construct, and renovate facilities at a reasonable cost. Grant projects awarded under this program will be of sufficient size, scope, and quality to enable the grantees to implement effective strategies.

Eligible Applicants: (A) A public entity, such as a State or local governmental entity; (B) A private, nonprofit entity; or (C) A consortium of entities described in (A) and (B).

Applications Available: April 3, 2003.

Deadline for Transmittal of Applications: June 3, 2003.

Deadline for Intergovernmental Review: August 2, 2003.

Estimated Available Funds: \$25,000,000.

Estimated Range of Awards: \$2.5 million–\$10 million.

Estimated Average Size of Awards: \$8.3 million.

Estimated Number of Awards: 3–5.

The Secretary will make, if possible, at least one award in each of the three categories of eligible applicants.

Note: The Department is not bound by any estimates in this notice.

Project Period: From the start date indicated on the grant award document until the Federal funds and earnings on those funds have been expended for the grant purposes or until financing facilitated by the grant has been retired, whichever is later.

Page Limit: We have found that reviewers are able to conduct the highest-quality review when

applications are concise and easy to read. Applicants are encouraged to limit their applications to no more than 50 double-spaced pages (not including the required forms and tables), to use a 12-point or larger-size font with one-inch margins at the top, bottom, and both sides, and to number pages consecutively. Furthermore, applicants are strongly encouraged to include a table of contents that specifies where each required part of the application is located.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99.

SUPPLEMENTARY INFORMATION:

Application Content

Each Credit Enhancement for Charter School Facilities Program application must include the following specific program elements:

1. A statement identifying the activities proposed to be undertaken with grant funds (the “grant project”) and the timeline for the activities, including how the applicant will determine which charter schools will receive assistance, how much and what types of assistance these schools will receive, the type of schools to be served, and what procedures the applicant will use for documenting grant project procedures and results.

2. A description of the involvement of charter schools in the application’s development and design of the proposed grant project.

3. A description of the applicant’s expertise in capital markets financing and its organizational capacity to implement the proposed grant project successfully. (Consortium applicants must list information for each of the participating organizations.)

4. A description of how the proposed grant project will leverage the maximum amount of private-sector and other non-Federal capital relative to the amount of Credit Enhancement for Charter School Facilities Program funding used, the definition of “leverage” the applicant has used in developing that description, the type of assistance to be provided, how the assistance would sufficiently reduce the costs that charter schools face so that it would enable them to obtain or improve school facilities that they would not be able to obtain or improve absent the assistance, and how the proposed activities will otherwise enhance credit available to charter schools.

5. In the case of an application submitted by a State governmental entity, a description of current and

planned State funding policy and other forms of financial assistance that will help charter schools meet their facility needs.

Use of Funds

Grant recipients, in accordance with State and local law, directly or indirectly, alone or in collaboration with others, must deposit the grant funds received under this program (other than funds used for administrative costs) in a reserve account established and maintained by the grantee for this purpose. Amounts deposited in such account shall be used by the grantee for one or more of the following purposes in order to assist charter schools in accessing private-sector and other non-Federal capital:

(1) Guaranteeing, insuring, and reinsuring bonds, notes, evidences of debt, loans, and interests therein.

(2) Guaranteeing and insuring leases of personal and real property.

(3) Facilitating financing by identifying potential lending sources, encouraging private lending, and other similar activities that directly promote lending to, or for the benefit of, charter schools.

(4) Facilitating the issuance of bonds by charter schools, or by other public entities for the benefit of charter schools, by providing technical, administrative, and other appropriate assistance (such as the recruitment of bond counsel, underwriters, and potential investors and the consolidation of multiple charter school projects within a single bond issue).

Funds received under this program and deposited in the reserve account must be invested in obligations issued or guaranteed by the United States or a State, or in other similarly low-risk securities. Investments must be designed to preserve principal.

Any earnings on funds, including fees, received under this program must be deposited in the reserve account and be used in accordance with the requirements of this program.

An eligible entity receiving a grant under this program must use the funds deposited in the reserve account to assist multiple charter schools in accessing capital to accomplish one or both of the following objectives:

(1) The acquisition (by purchase, lease, donation, or otherwise) of an interest (including an interest held by a third party for the benefit of a charter school) in improved or unimproved real property that is necessary to commence or continue the operation of a charter school.

(2) The construction of new facilities, or the renovation, repair, or alteration of

existing facilities, necessary to commence or continue the operation of a charter school.

Grantees must ensure that all costs incurred using funds from the reserve account are reasonable. The burden of proof is upon the grantee, as a fiduciary under its agreements with the Secretary, to establish that costs are reasonable. Each grantee must also clearly indicate with respect to each financial obligation it enters into pursuant to this grant program that the full faith and credit of the United States is not pledged to the payment of funds under such obligation.

Grantee Performance Agreements and Reporting Requirements

Applicants that are selected to receive an award must enter into a written Performance Agreement with the Department prior to drawing down funds, unless the grantee receives written permission from the Department in the interim to draw down a specific limited amount of funds. A key element of the Performance Agreement is the performance goals for the grant. These performance goals will include the program's two performance indicators: (1) The amount of funding grantees leverage for charter schools to acquire, construct, and renovate school facilities and (2) the number of charter schools served. In developing performance goals, Department staff and each applicant will rely on the applicant's annual projections submitted under the Business/Organizational Capacity section of the application and the objectives established in the approved application. The Performance Agreement will also describe the ways in which the Department and the grantee will work together to accomplish the purposes of the program.

The Secretary, in accordance with chapter 37 of title 31, United States Code, will collect all of the funds in the reserve account established with grant funds (including any earnings on those funds) if the Secretary determines that the grantee has permanently ceased to use all or a portion of the funds in such account to accomplish the purposes described in the authorizing statute and the Performance Agreement or, if not earlier than two years after the date on which the entity first received these funds, the entity has failed to make substantial progress in undertaking the grant project.

During each fiscal year that the grantee's obligation to the Federal Government remains in effect, grantees will submit reports (as detailed below) to the Department. The grantee's

commitment continues for the duration of the project period.

Applicants selected for funding will be required to submit the following reports to the Department:

1. An annual report that includes—
 - a. A copy of the most recent financial statements and any accompanying opinion on such statements prepared by the independent public accountant reviewing the financial records of the grantee;
 - b. A copy of any report made on an audit of the financial records of the grantee conducted during the reporting period;
 - c. An evaluation by the grantee of the effectiveness of its use of the Federal funds in leveraging private-sector and other non-Federal funds;
 - d. A description of the characteristics of lenders and other financial institutions participating in the activities undertaken by the grantee during the reporting period;
 - e. A narrative description of the grantee's activities in support of the objectives of the program and its performance goals, including a listing and description of the charter schools served during the reporting period; and
 - f. Such other information as the Secretary may require.

2. Semiannual reports that include internal financial statements and other information as the Secretary may require in the Performance Agreement.

Grantees must also cooperate and assist the Department with any periodic financial and compliance audits of the grantee, as determined necessary by the Department. The specific Performance Agreement between the grantee and the Department may contain additional reporting requirements.

Grantees must maintain and enforce standards of conduct governing the performance of their employees, officers, directors, trustees, and agents engaged in the selection, award, and administration of contracts or agreements related to this grant. The standards of conduct must, at a minimum, require disclosure of direct and indirect financial or other interests, mandate disinterested decision-making, and indicate corrective actions to be taken in the event of violation.

Limitation on Administrative Costs

A grantee may use not more than 0.25 percent (one quarter of one percent) of the grant funds for the administrative costs of the grant.

Charter Schools Eligible to Benefit From This Program

The charter schools that a grantee selects to benefit from this program

must meet the definition of a charter school, as defined in the Public Charter Schools Program authorizing statute in section 5210(1) of the Elementary and Secondary Education Act of 1965 (ESEA). This definition is repeated as follows in this application notice for the convenience of the applicant.

(1) A charter school is a public school that—

(A) In accordance with a specific State statute authorizing the granting of charters to schools, is exempted from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph [paragraph (1) of ESEA section 5210];

(B) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(C) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(D) Provides a program of elementary or secondary education, or both;

(E) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(F) Does not charge tuition;

(G) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and part B of the Individuals with Disabilities Education Act;

(H) Is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;

(I) Agrees to comply with the same Federal and State audit requirements as do other elementary and secondary schools in the State, unless such requirements are specifically waived for the purpose of this program [the Public Charter Schools Program];

(J) Meets all applicable Federal, State, and local health and safety requirements;

(K) Operates in accordance with State law; and

(L) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments

mutually agreeable to the authorized public chartering agency and the charter school.

Competitive Preference Priority

Under 34 CFR 75.105(c)(2)(i) the Secretary awards additional points to an application that proposes to increase the capacity of charter schools to offer public school choice in those communities with the greatest need for this choice. The Secretary awards up to an additional 15 points to an application, depending on how well the application addresses the following factors:

- The extent to which the applicant would target services to geographic areas in which a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring under Title I of the Elementary and Secondary Education Act as amended by the No Child Left Behind Act;
- The extent to which the applicant would target services to geographic areas in which a large proportion of students perform poorly on State academic assessments; and
- The extent to which the applicant would target services to communities with large proportions of low-income students.

Selection Criteria: In evaluating applications for grants under this competition, the Secretary will use the following project selection criteria. The Secretary gives distinct weight to the listed criteria. Within each criterion, the Secretary evaluates each factor equally.

The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is indicated in parenthesis.

The selection criteria address two important questions:

A. Does the applicant have the ability to carry out the proposed grant project?

B. Has the applicant proposed a grant project that will make a significant contribution toward meeting the purpose of the Credit Enhancement for Charter School Facilities Program and thereby increase charter schools' access to facilities financing?

A. The selection criteria related to the applicant's capacity to carry out the proposed grant project include:

1. *The business and organizational capacity of the applicant to carry out the grant project (35 points).*

- The amount and quality of experience the applicant has in carrying out the activities it proposes to undertake in its application, such as enhancing the credit on debt issuances, guaranteeing leases, and facilitating financing;

- The applicant's financial stability;
- The adequacy of the applicant's policies and procedures regarding loan underwriting, portfolio monitoring, and financial management to protect against unwarranted risk;

- The adequacy of the applicant's standards of conduct and organizational structure to prevent conflicts of interest; and

- The resources to be contributed by each co-applicant (consortium member), partner, or other grant project participant to the implementation and success of the grant project.

- For State governmental entities, the extent to which steps have or will be taken to help charter schools within the State obtain adequate facilities.

2. *The grant project team (15 points).*

- The qualifications, including relevant training and experience, of the project manager and other members of the grant project team, including consultants or subcontractors; and
- The adequacy and appropriateness of the applicant's staffing plan for the grant project.

- For non-profits only, an IRS Form 990 and the qualifications, including relevant training and experience, and independence of members of the board of directors.

B. The selection criteria related to the potential contribution of the proposed grant project to achieving the purpose of the Credit Enhancement for Charter School Facilities Program include:

1. *The quality of the design and potential significance of the proposed grant project (35 points).*

- The extent to which the grant project goals, objectives, and timeline are clearly specified, measurable, and appropriate for the purpose of the Credit Enhancement for Charter School Facilities Program;
- The extent to which the grant project implementation plan and activities, including the partnerships established, are likely to achieve the objectives sought by the project;

- The extent to which the proposed grant project is likely to produce results that will be documented and helpful to others nationally in providing facilities financing assistance to charter schools;
- The extent to which the grant project will use appropriate criteria for selecting charter schools for assistance and for determining the type and amount of assistance to be given;

- The importance or magnitude of the results or outcomes likely to be attained by the proposed grant project (*e.g.*, the number and variety of charter schools assisted that would not have been able to meet their school facility needs

absent the assistance and the amount of capital leveraged); and

- The extent to which the requested grant amount and the project costs are reasonable in relation to the objectives, design, and potential significance of the proposed grant project.

2. *The quality of the services (15 points).*

- The extent to which the services to be provided by the proposed grant project reflect the needs of the charter schools to be served;

- The extent to which charter schools and chartering agencies were involved in the design of, and demonstrate support for, the grant project;

- The extent to which the technical assistance and other services to be provided by the proposed grant project involve the use of cost-effective strategies for increasing charter schools' access to facilities financing; and

- The extent to which the services to be provided by the proposed grant project are focused on assisting quality charter schools that have the greatest needs for assistance under the program.

Waiver of Proposed Rulemaking: It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, allows the Secretary to exempt from rulemaking requirements rules governing the first grant competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). This program authority was substantially revised under the No Child Left Behind Act of 2001 and this would be the first grant competition under that revised authority. The Secretary, in accordance with section 437(d)(1) of GEPA, has decided to forego public comment in order to ensure timely grant awards. These rules would apply to the FY 2003 grant competition only.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794-1398. Telephone (toll free): 1-877-433-7827. FAX: (301) 470-1244. If you use a telecommunications device for the deaf (TDD) you may call (toll free): 1-877-576-7734.

You may also contact ED Pubs at its Web site: <http://www.ed.gov/pubs/edpubs.html>.

Or you may contact ED Pubs at its e-mail address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.354A.

FOR FURTHER INFORMATION CONTACT: Jim Houser, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C140, Washington, DC 20202-6140. Telephone: (202) 401-0307 or via Internet: Jim.Houser@ed.gov.

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 the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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The Department intends to offer further information about the program at the following Internet site: <http://www.ed.gov/offices/OII/portfolio/facilities.html>.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: <http://www.access.gpo.gov/nara/index.html>.

Program Authority: Elementary and Secondary Education Act of 1965, title V, part B, subpart 2, as amended by the No Child Left Behind Act, 2001 (20 U.S.C. 7223-7223j).

Dated: March 31, 2003.

Nina S. Rees,

Deputy Under Secretary for Innovation and Improvement.

[FR Doc. 03-8133 Filed 4-2-03; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[CFDA No. 84.069]

Federal Student Aid; Leveraging Educational Assistance Partnership and Special Leveraging Educational Assistance Partnership Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for receipt of State applications for Award Year 2003-2004 funds.

SUMMARY: This is a notice of the closing date for receipt of State applications for Award Year 2003-2004 funds under the Leveraging Educational Assistance Partnership (LEAP) and Special Leveraging Educational Assistance Partnership (SLEAP) programs.

The LEAP and SLEAP programs, authorized under Title IV, Part A, Subpart 4 of the Higher Education Act of 1965 as amended (HEA), assist States in providing aid to students with substantial financial need to help them pay for their postsecondary education costs through matching formula grants to States. Under section 415C(a) of the HEA, a State must submit an application to participate in the LEAP and SLEAP programs through the State agency that administered its LEAP Program as of July 1, 1985, unless the Governor of the State has subsequently designated, and the Department has approved, a different State agency to administer the LEAP Program.

DATES: To receive an allotment under the LEAP and SLEAP programs for Award Year 2003-2004, applications submitted electronically must be received by 11:59 p.m. (Eastern time) May 30, 2003. Paper applications must be received by May 23, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Gerrans, LEAP Program Manager, Financial Partners, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., Room 111H1, Washington, DC 20202. Telephone: (202) 377-3304.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

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Individuals with disabilities also may obtain a copy of the application in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative

format the standard forms included in the application package.

SUPPLEMENTARY INFORMATION: Only the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands may submit an application for funding under the LEAP and SLEAP programs.

State allotments for each award year are determined according to the statutorily mandated formula under section 415B of the HEA and are not negotiable. A State may also request its share of reallocation, in addition to its basic allotment, which is contingent upon the availability of such additional funds.

In Award Year 2002-2003, 47 States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands received funds under the LEAP Program. Additionally, 34 States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands received funds under the SLEAP Program.

On-Line Application Submitted Electronically: The Financial Partners Channel within Federal Student Aid has automated the LEAP and SLEAP application process in the Financial Management System (FMS). Applicants are encouraged to use the web-based form (Form 1288-E OMB 1845-0028) which is available on the FMS LEAP on-line system at the following Internet address: <http://fms.sfa.ed.gov>

Paper Application Delivered by Mail: States or territories may request a paper version of the application (Form 1288 OMB 1845-0028) by contacting Mr. Greg Gerrans, LEAP Program Manager, at (202) 377-3304 or by E-mail at greg.gerrans@ed.gov. A paper version will be mailed to you. An application sent by mail must be addressed to: Mr. Greg Gerrans, LEAP Program Manager, Financial Partners, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., Room 111H1, Washington, DC 20202.

The Department of Education encourages applicants that are completing a paper application to use certified or at least first-class mail when sending the application by mail to the Department. Applications that are mailed must be received by the Department no later than May 23, 2003.

A late applicant cannot be assured that its application will be considered for Award Year 2003-2004 funding.

Paper Applications Delivered by Hand: Applications that are hand-delivered must be delivered to Mr. Greg Gerrans, LEAP Program Manager,

Financial Partners, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., Room 111H1, Washington, DC. Hand-delivered applications will be accepted between 8 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Applicable Regulations: The following regulations are applicable to the LEAP and SLEAP programs:

- (1) The LEAP and SLEAP Program regulations in 34 CFR part 692.
- (2) The Student Assistance General Provisions in 34 CFR part 668.
- (3) The Regulations Governing Institutional Eligibility in 34 CFR part 600.
- (4) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.60 through 75.62 (Ineligibility of Certain Individuals to Receive Assistance), part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)), part 86 (Drug-Free Schools and Campuses) and part 99 (Family Educational Rights and Privacy Act).

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Program Authority: 20 U.S.C. 1070c *et seq.*

Dated: March 31, 2003.

Theresa S. Shaw,
Chief Operating Officer Federal Student Aid.
[FR Doc. 03-8131 Filed 4-2-03; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.133S and 84.017S]

Office of Special Education and Rehabilitative Services (OSERS) and the Office of Postsecondary Education (OPE); Small Business Innovation Research (SBIR) Program—Phase I Notice Inviting Grant Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: The purpose of this program is to stimulate technological innovation in the private sector, strengthen the role of small business in meeting Federal research or research and development (R/R&D) needs, increase the commercial application of Department of Education (ED) supported research results, and improve the return on investment from Federally-funded research for economic and social benefits to the Nation.

For FY 2003, we encourage applicants to present activities that focus on the invitational priorities in the *Priorities* section of this application notice.

Eligible Applicants: Each organization submitting an application must qualify as a small business concern as defined by the Small Business Administration (SBA) at the time of the award. This definition is included in the application package.

Firms with strong research capabilities in educational and assistive technologies, science, or engineering in any of the priority areas listed are encouraged to participate. Consultative or other arrangements between these firms and universities or other non-profit organizations are permitted, but the small business must serve as the grantee.

If it appears that an applicant organization does not meet the eligibility requirements, we will request an evaluation by the SBA. Under circumstances in which eligibility is unclear, we will not make an SBIR award until the SBA makes a determination.

Applications Available: April 3, 2003.
Deadline for Transmittal of Applications: June 3, 2003.

Estimated Available Funds: Up to \$4,176,000 for new Phase I awards.

The estimated amount of funds available for new Phase I awards is based upon the estimated threshold SBIR allocation for OSERS and OPE, minus prior commitments for Phase II

continuation awards. The actual funds available could be less, should an office make any new Phase II awards in FY 2003.

Estimated Average Size of Awards: Up to \$75,000 for Priority 1 and \$60,000 for Priority 2.

Maximum Award: We will reject any application that proposes a budget exceeding \$75,000 for Priority 1 or \$60,000 for Priority 2 for a project period of up to 6 months.

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 6 months.

Page Limits: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit your application narrative to the equivalent of no more than 25 pages, excluding any documentation of prior multiple Phase II awards, if applicable; and required forms. The following standards should be used:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Single space all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). Standard black type should be used to permit photocopying.

- Draw all graphs, diagrams, tables, and charts in black ink. Do not include glossy photographs or materials that cannot be photocopied in the body of the application.

The application package will provide instructions for completing all components to be included in the application. Each application must include an application cover sheet (ED Standard Form 424); budget requirements (ED Form 524) and other required forms; an abstract, certifications, and statements; a technical content project narrative; and related application(s) or award(s) and documentation of multiple Phase II awards, if applicable.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Statutes and Regulations

(a) *Statutes.* The Small Business Reauthorization Act of 2000, Pub. L. 106-554 (15 U.S.C. 631 and 638); Title

II of the Rehabilitation Act of 1973, as amended, Pub. L. 105-220 (29 U.S.C. 760-764); Title VI, Section 605 of the Higher Education Act, as amended (20 U.S.C. 1125).

(b) *Regulations—General Applicability.* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, 97, and 98.

Note on Peer Review Procedures: OSERS and OPE will apply requirements that are contained in 29 U.S.C. 760 and 762(f).

Priorities

For FY 2003, we have selected 7 invitational priorities for the SBIR program. SBIR projects are encouraged to look to the future by exploring uses of technology to ensure equal access to education and promote educational excellence throughout the Nation.

The application package will include a number of examples to illustrate the kinds of activities that could be funded under each priority. Specific examples are listed only as examples of advanced applications or basic research of interest to us, and they are not to be interpreted as exclusive. We intend to provide sufficient flexibility to obtain the greatest degree of creativity and innovation possible, consistent with overall SBIR and ED program objectives.

An application must be limited to one priority listed in this notice. When an application is relevant to more than one priority, the applicant must decide which priority is most relevant and submit it under that priority only. However, there is no limitation on the number of different applications that an applicant may submit under this competition, even to the same priority. A firm may submit separate applications on different priorities, or different applications on the same priority, but each application should respond to only one priority. Duplicate applications will be returned without review.

Invitational Priorities

We are particularly interested in applications that meet one of the following priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets one of these priorities a competitive or absolute preference over other applications.

CFDA Number 84.133S: The Office of Special Education and Rehabilitative Services (OSERS)

Priority 1—This priority supports research to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society,

employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most significant disabilities; or improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

The following six invitational priorities relate to innovative research utilizing new technologies (including nanotechnologies and biotechnologies) to address the needs of individuals with disabilities and their families.

Invitational Priority 1—Development of Technology to Support Access or Promote Integration of Individuals with Disabilities in the Community, Workplace, or Educational Setting.

Invitational Priority 2—Development of Technology to Enhance Sensory or Motor Function of Individuals with Disabilities.

Invitational Priority 3—Development of Technology to Improve School to Work Transition and Employment Outcomes for Individuals with Disabilities.

Invitational Priority 4—Development of Technology to Promote Community Integration or Support Independent Living for Individuals with Disabilities.

Invitational Priority 5—Development of Technology to Support Early Intervention for Infants, Toddlers, and Small Children.

Invitational Priority 6—Development of Technology to Support Service Delivery, Training, or Evaluation of Interventions in the Clinical or Community-Based Rehabilitation Settings.

CFDA Number 84.017S: The Office of Postsecondary Education (OPE)

Priority 2—This priority supports research that contributes to achieving the purposes of part A of Title VI of the Higher Education Act—International Education Program.

Invitational Priority 7—Development of Interactive CD-ROMs in the Pashto and Farsi (Iranian) Languages with Glossaries, for use in Multi-Platforms (e.g., PC, Mac) at the 1 to 1+ Proficiency Levels according to the ACTFL—ILR Proficiency Scales. The language materials must include items drawn from native speakers and from mass information media, including recent events and authentic cultural materials. The overall objective would be the creation of highly practical communicative instruments for the two languages.

Selection Criteria: Under 34 CFR 75.210, we use the following selection criteria to evaluate applications for new grants under this competition. The

maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

- (a) Significance (25 points).
- (b) Quality of the Project Design (50 points).
- (c) Quality of Project Personnel (15 points).
- (d) Adequacy of Resources (10 points).

We will make awards based upon these selection criteria and the availability of funds. In the evaluation and handling of applications, we will make every effort to protect the confidentiality of the application and any evaluations.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998, (Pub. L. 105-277) and the Federal Financial Assistance Management Improvement Act of 1999, (Pub. L. 106-107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

We are requiring that applications for grants for FY 2003 under Phase I SBIR program be submitted electronically using e-Application available through the Education Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: <http://e-grants.ed.gov>.

Applicants who are unable to submit an application through the e-GRANTS system may apply for a waiver to the electronic submission requirement. To apply for a waiver, applicants must explain the reason or reasons that prevent them from using the Internet to submit their applications. The reasons must be outlined in a letter addressed to: Priority 1: Kristi Wilson, Office of Special Education and Rehabilitative

Services, U.S. Department of Education, 330 "C" Street, SW., room 3433—MES, Washington, DC 20202-2704; and, for Priority 2: José Martínez, Office of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., room 6016, Washington, DC 20006-8521. We must receive your letter no later than two weeks before the closing date.

Any application that receives a waiver to the electronic submission requirement will be given the same consideration in the review process as an electronic application.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The FY 2003 Phase I SBIR program [CFDA 84.133S and 84.017S] is one of the programs included in the pilot project. If you are an applicant under the Phase I SBIR program, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. The data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. (Submission of applications in paper format is only acceptable if a waiver is granted as described above.) When you enter the e-Application system, you will find information about its hours of operation.

- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

- Print ED 424 from e-Application.
- The institution's Authorizing Representative must sign this form.
- Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
- Fax the signed ED 424 to the Application Control Center at (202) 260-1349.

- We may request that you give us original signatures on all other forms at a later date.

- Closing Date Extension in Case of System Unavailability:** If you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

- You must be a registered user of e-Application, and have initiated an e-Application for this competition; and
- (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or
- (b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1-888-336-8930.

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

SUPPLEMENTARY INFORMATION:

Background

The Small Business Reauthorization Act (the "Act") of 2000 was enacted on December 21, 2000. The Act requires certain agencies, including the Department of Education, to establish SBIR programs by reserving a statutory percentage of their extramural research and development budgets to be awarded

to small business concerns for research or R&D through a uniform, highly competitive three-phase process.

The three phases of the SBIR program are:

Phase I: Phase I is to determine, insofar as possible, the scientific or technical merit and feasibility of ideas submitted under the SBIR program. The application should concentrate on research that will significantly contribute to proving the scientific or technical feasibility of the approach or concept and that would be prerequisite to further ED support in Phase II.

Phase II: Phase II is to expand on the results of and to further pursue the development of Phase I projects. Phase II is the principal research or R&D effort. It requires a more comprehensive application, outlining the effort in detail including the commercial potential. Phase II applicants must be Phase I awardees with approaches that appear sufficiently promising as a result of Phase I. Awards are for periods up to 2 years in amounts up to \$500,000 for Priority 1 awardees and \$300,000 for Priority 2 awardees.

Phase III: In Phase III, the small business must use non-SBIR capital to pursue commercial applications of the research or research and development. Also, under Phase III, Federal agencies may award non-SBIR follow-on funding for products or processes that meet the needs of those agencies.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: For General Information: Lee Eiden, U.S. Department of Education, 555 New Jersey Avenue, NW., room 508D, Washington, DC 20208-5644. Telephone (202) 219-2004 or via Internet: lee.eiden@ed.gov.

For Priority 1 (OSERS): Kristi Wilson, U.S. Department of Education, 330 "C" Street, SW., room 3433, Washington, DC 20202-2572. Telephone (202) 260-0988 or via Internet: kristi.wilson@ed.gov.

For Priority 2 (OPE): José Martínez, U.S. Department of Education, 555 New Jersey Avenue, NW., room 6016, 1990 K Street, NW., Washington, DC 20006-8521. Telephone (202) 502-7635 or via Internet: jose.martinez@ed.gov.

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Program Authority: Pub. L. 106-554 (The Small Business Reauthorization Act of 2000); Pub. L. 105-220 (Title II of the Rehabilitation Act of 1973, as amended, Title VI of the Higher Education Act).

Dated: March 31, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 03-8130 Filed 4-2-03; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03-10-000]

Atmos Energy Corporation Notice of Information Rate Filing

March 28, 2003.

Take notice that on March 14, 2003, Atmos Energy Corporation (Atmos) filed an information rate filing pursuant to the Commission's March 17, 2000 Order on Remand in Docket Nos. CP00-56-000 and CP00-60-000.

Atmos states that the purpose of the filing is to present information consistent with the Commission's authority under 15 U.S.C. 717i(a) in order to allow the Commission to monitor Atmos' jurisdictional rates

under section 5 of the Natural Gas Act. Atmos further states that it seeks no change in its existing rates and charges or the previously approved terms and condition upon which it provides service.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval 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 I the docket number field to access the document. For Assistant, call (202) 502-8222 or for TTY, (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03-8092 Filed 4-2-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03-63-000]

Boundary Gas, Inc.; Notice of Abbreviated Application for Authority to Abandon Service

March 27, 2003.

Take notice that on March 13, 2003, Boundary Gas, Inc. (Boundary), filed an abbreviated application in Docket No. CP03-63-000 pursuant to Section 7(b) of the Natural Gas Act (NGA) and part 157 of the Commission's Regulations for authority to abandon service effective January 15, 2003, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Boundary states that the purpose of this filing is to abandon service because the Phase 2 Gas Sales Agreement (Sales Agreement), the long term sales contract under which Boundary's customers purchased gas from Boundary, terminated in accordance with its terms on January 15, 2003, and none of Boundary's current customers have chosen to receive service from Boundary after January 15, 2003. Because the Sales Agreement is incorporated into Boundary's FERC Gas Tariff, Boundary has also made a separate filing to cancel its FERC Gas Tariff. Boundary states that, because Boundary is simply an administrative conduit and has never owned or operated any facilities in connection with its service under the Sales Agreement, it will not be abandoning any facilities and there will be no environmental impact as a result of this abandonment.

Boundary states that copies of this filing were served upon each of Boundary's customers and the state commissions in Connecticut, Massachusetts, New Hampshire, New Jersey, New York and Rhode Island.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov>

www.ferc.gov using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 10, 2003.

Magalie R. Salas,
Secretary.

[FR Doc. 03-8087 Filed 4-2-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03-312-000]

Calpine Energy Services, L.P., Complainant, v. Southern Natural Gas Company, Respondent; Notice of Complaint

March 28, 2003.

Take notice that on March 26, 2003, Calpine Energy Services, L.P. (CES) filed a Complaint against Southern Natural Gas Company (Sonat) requesting that the Federal Energy Regulatory Commission (Commission) find that (1) Sonat's collateral demands on CES regarding the South System II project contravene the terms of its Service Agreement with CES; (2) that Sonat's collateral demands contravene the Sonat tariff; (3) that Commission creditworthiness policies permit pipelines to demand collateral assurances up to twelve months of demand charges during the construction period under appropriate circumstances only if authorized by the pipeline's tariff or otherwise approved by the Commission; (4) that the Service Agreement and Sonat's tariff do not authorize collateral assurances in excess of three months of demand charges; (5) that, as described in the Commission's order approving the South System II project, the circumstances underlying the project do not justify collateral in excess of three months of demand charges; and (6) that the Service Agreement, Sonat's tariff, and Commission creditworthiness policies do not permit Sonat to demand collateral in excess of three months' demand charges once service has commenced.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: April 10, 2003.

Magalie R. Salas,
Secretary.

[FR Doc. 03-8097 Filed 4-2-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03-11-000]

Enbridge Pipelines (Louisiana Intrastate) LLC; Notice of Petition for Rate Approval

March 28, 2003.

Take notice that on March 19, 2003, Enbridge Pipelines (Louisiana Intrastate) LLC (Enbridge), formerly Creole Gas Pipeline Corporation, filed, pursuant to section 311 of the Natural Gas Policy Act and § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting a maximum interruptible transportation rate of \$0.1652 per Dth, plus an in-kind fuel rate of 2.25%.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval 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 I the docket number field to access the document. For Assistant, call (202) 502-8222 or for TTY, (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 17, 2003.

Magalie R. Salas,
Secretary.

[FR Doc. 03-8093 Filed 4-2-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00-462-004 and RP01-37-006]

Equitrans, L.P.; Notice of Compliance Filing

March 28, 2003.

Take notice that on December 11, 2002, Equitrans, L.P. (Equitrans)

tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute First Revised Sheet No. 268 to become effective on November 1, 2002:

Equitrans states that the purpose of this tariff filing is to comply with the Commission's Order issued October 10, 2002, on the compliance by Equitrans with Commission Order Nos. 637, 587-G and 587-L.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03-8095 Filed 4-2-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00-468-007, RP01-25-006, and RP03-175-001]

Texas Eastern Transmission, LP; Notice of Compliance Filing

March 28, 2003.

Take notice that on March 25, 2003, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the revised tariff sheets listed in appendices A and B, attached to the filing, reflecting effective dates of

April 1, 2003 and July 1, 2003, respectively.

Texas Eastern states that the purpose of this filing is to comply with the Commission's February 24, 2003, Order on Rehearing and Compliance Filings in Texas Eastern's Order No. 637 proceeding.

Texas Eastern states that copies of this filing have been mailed to all affected customers and interested state commissions, as well as to all parties on the service lists compiled by the Secretary of the Commission in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 7, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03-8096 Filed 4-2-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2525-051, 2546-068, 2560-047, 2522-074, and 2595-065]

Wisconsin Public Service Corporation; Notice of Telephone Conference

March 28, 2003.

- a. *Date of Meeting:* April 11, 2003.
- b. *Time of Meeting:* 10 a.m. to 12 p.m. (East Coast Time).
- c. *FERC Contact:* Jean Potvin at (202) 502-8928; jean.potvin@ferc.gov.

d. *Purpose of the Meeting:* The Federal Energy Regulatory Commission, the Wisconsin Historical Society, Wisconsin Department of Natural Resources, and the Wisconsin Public Service Corporation intend to discuss cultural resources issues related to Wisconsin Public Service Corporation's Application to Amend Licenses to Change Project Boundaries for five hydroelectric projects (Caldron Falls, P-2525-051; Sandstone Rapids, P-2546-068; Potato Rapids, P-2560-047; Johnson Falls, P-2522-074; and High Falls, 2595-065) located on the Peshtigo River in Marinette and Oconto Counties, Wisconsin.

e. All local, state, and Federal agencies, Indian Tribes, and interested parties, are hereby invited to attend this meeting as participants. If you want to participate by teleconference, please contact Jean Potvin at the number listed above no later than April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03-8089 Filed 4-2-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00-1737-004, et al.]

Virginia Electric and Power Company, et al.; Electric Rate and Corporate Filings

March 26, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Virginia Electric and Power Company

[Docket No. ER00-1737-004]

Take notice that, on March 24, 2003, Dominion Resources, Inc. (DRI) submitted a three-year market update for its regulated subsidiary, Virginia Electric and Power Company (Dominion Virginia Power), which has the authorization to sell power at market-based rates for sales outside its service territory. DRI asks that the next three-year update for Dominion Virginia Power be due three years from the date of acceptance of this filing.

Comment Date: April 14, 2003.

2. New York Independent System Operator, Inc.

[Docket No. ER03-18-001]

Take notice that on March 21, 2003, the New York Independent System

Operator, Inc. (NYISO) together with Astoria Generating Company, L.P. (Astoria) and Consolidated Edison Company of New York, Inc. (Con Edison) jointly tendered for filing a compliance filing in connection with the Commission's December 3, 2002, Order Rejecting Proposed Tariff in the above-referenced docket.

NYISO states that copies of this filing have been served on all parties listed on the official service list maintained by the Secretary of the Commission in these proceedings. The NYISO states that they have also served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission, and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: April 11, 2003.

3. Midwest Independent Transmission System Operator, Inc.

[Docket

Nos. ER03-366-003 and ER03-368-004]

Take notice that on March 24, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) proposed revisions to the Midwest ISO Open Access Transmission Tariff (Tariff), FERC Electric Tariff, Second Revised Volume No. 1, in compliance with the Commission's Order in Midwest Independent Transmission System Operator, Inc., 102 FERC ¶ 61,181. The Midwest ISO respectfully requests that the Commission grant the original effective date of January 1, 2003, for the proposed revisions to the Midwest ISO Tariff submitted herewith.

The Midwest ISO states it has served copies of its filing on all affected customers. In addition, the Midwest ISO also states, that it has electronically served a copy of this filing, without attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participant, as well as all state commissions within the region. In addition, Midwest ISO advises that the filing has been electronically posted on the Midwest ISO's Web site at <http://www.midwestiso.org> under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO states that it will provide hard copies to any interested parties upon request.

Comment Date: April 14, 2003.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03-422-002]

Take notice that on March 24, 2003, the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) tendered for filing proposed revisions to Schedule 10 (ISO Cost Recovery Adder) of the Midwest ISO Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1. The Midwest ISO requests an effective date of March 25, 2003.

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO states it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at <http://www.midwestiso.org> under the heading "Filings to FERC" for other interested parties in this matter.

Comment Date: April 14, 2003.

5. DTE East China, LLC; DTE Energy Trading, Inc.

[Docket No. ER03-470-001]

Take notice that on March 24, 2003, DTE East China, LLC and DTE Energy Trading, Inc., tendered for filing a compliance filing pursuant to the Commission's Order dated February 28, 2003, in the above-captioned docket.

Comment Date: April 14, 2003.

6. Westar Energy, Inc.

[Docket ER03-578-001]

Take notice that on March 24, 2003, Kansas Gas & Electric Company, Inc. and Westar Energy, Inc. (collectively Westar) submitted for filing First Revised Sheet No. 1 for Rate Schedule FERC Nos. 166, 167, 210, 212 and 246, in the format required by Order 614.

Westar states that copies of this filing were served on the City of Iola, Kansas; City of Fredonia, Kansas; City of Waterville, Kansas; City of Scranton, Kansas; City of Alma, Kansas and the Kansas Corporation Commission.

Comment Date: April 14, 2003.

7. Duke Energy St. Lucie, LLC

[Docket No. ER03-643-000]

Take notice that, on March 24, 2003, Duke Energy St. Lucie, LLC, tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, in order to reflect the cancellation of its market-

based rate tariff, designated as FERC Electric Tariff, Original Volume No. 1, originally accepted for filing in Docket No. ER00-2225-000.

Comment Date: April 24, 2003.

8. Southern California Edison Company

[Docket No. ER03-644-000]

Take notice that on March 24, 2003, Southern California Edison Company (SCE) tendered for filing a revised Reliability Management System Agreement (Revised RMS Agreement) between SCE and High Desert Power Project, LLC (HDPP). SCE respectfully requests the Revised RMS Agreement to become effective on April 18, 2003. SCE states that the Revised RMS Agreement supersedes in its entirety the Reliability Management System Agreement between SCE and High Desert Power Trust (HDPT) which previously has been accepted for filing by the Commission as FERC Electric Tariff, First Revised Original Volume No. 6, Service Agreement No. 14 (Existing RMS Agreement). SCE states that the only substantive difference between the Existing RMS Agreement and the Revised RMS Agreement is the contracting party.

SCE states that the Revised RMS Agreement sets forth terms and conditions intended to maintain the reliable operation of the Western Interconnection through the generator's commitment to comply with certain reliability standards. SCE also states, that copies of this filing were served upon the Public Utilities Commission of the State of California and HDPP.

Comment Date: April 14, 2003.

9. Duquesne Light Company

[Docket No. ER03-645-000]

Take notice that on March 24, 2003, Duquesne Light Company tendered for filing amendments to its Open Access Transmission Tariff to implement revised credit review procedures for transmission customers.

Comment Date: April 14, 2003.

10. MidAmerican Energy Company

[Docket No. ER03-646-000]

Take notice that on March 24, 2003, MidAmerican Energy Company (MidAmerican), filed with the Federal Energy Regulatory Commission (Commission) an amended Interconnection, Interchange and Joint Construction Agreement originally dated August 21, 1968, entered into by MidAmerican's predecessor, Iowa Power and Light Company, with Interstate Power and Light Company's predecessor, Iowa Southern Utilities Company, and amended by First

Amendment to the Agreement, dated November 21, 2002.

MidAmerican states it has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment Date: April 14, 2003.

11. Victory Garden Phase IV Partnership

[Docket No. QF90-43-006]

Take notice that on March 20, 2003, Victory Garden Phase IV Partnership (VGIV) filed with the Federal Energy Regulatory Commission (Commission) an application for recertification of a facility as a qualifying small power production facility pursuant to Section 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing. VGIV states that the facility is a 22 MW wind energy generating facility in the Tehachapi Mountains, Kern County, California. VGIV also states that the facility is interconnected with the Southern California Edison Company. VGIV further states that recertification is sought to reflect a change in the upstream ownership of the Facility.

Comment Date: April 21, 2003.

12. Sky River Partnership

[Docket No. QF91-59-007]

Take notice that on March 20, 2003, Sky River Partnership (Sky River) filed with the Federal Energy Regulatory Commission (Commission) an application for recertification of a facility as a qualifying small power production facility pursuant to section 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing. Sky River states that the facility is a 77.5 MW wind energy generating facility in the Tehachapi Mountains, Kern County, California. Sky River also states that the facility is interconnected with the Southern California Edison Company. Sky River further states that recertification is sought to reflect a change in the upstream ownership of the Facility.

Comment Date: April 21, 2003.

13. Cabazon Power Partners LLC

[Docket No. QF95-186-006]

Take notice that on March 20, 2003, Cabazon Power Partners LLC (Cabazon) filed with the Federal Energy Regulatory Commission (Commission) an application for recertification of a facility as a qualifying small power production facility pursuant to section 292.207 of the Commission's

regulations. No determination has been made that the submittal constitutes a complete filing. Cabazon states that the facility is a 39.75 MW wind energy generating facility in Cabazon, Riverside County, California. Cabazon also states that the facility is interconnected with the Southern California Edison Company. Cabazon further states that recertification is sought to reflect a change in the upstream ownership of the Facility.

Comment Date: April 21, 2003.

14. Victory Garden Power Partners I LLC

[Docket No. QF99-92-002]

Take notice that on March 20, 2003, Victory Garden Power Partners I LLC (VGI) filed with the Federal Energy Regulatory Commission (Commission) an application for recertification of a facility as a qualifying small power production facility pursuant to section 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing. VGI states that the facility is a 6.75 MW wind energy generating facility in the Tehachapi Mountains, Kern County, California. VGI also states that the facility is interconnected with the Southern California Edison Company. VGI further states that recertification is sought to reflect a change in the upstream ownership of the Facility.

Comment Date: April 21, 2003.

15. PJM Interconnection, L.L.C.

[Docket No. RT01-2-006]

Take notice that on March 20, 2003, PJM Interconnection, L.L.C. (PJM) tendered for filing with the Federal Energy Regulatory Commission (Commission) in compliance with the Commission's order of December 20, 2002, in the captioned proceeding, 100 FERC ¶ 61,345, (1) revised pages to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. and to the PJM Open Access Transmission Tariff, and (2) complete, revised volumes of the PJM Tariff, Operating Agreement, Reliability Assurance Agreement Among Load Serving Entities in the PJM Control Area and the PJM West Reliability Assurance Agreement.

PJM states that copies of this filing, excluding the full revised PJM Tariff, Operating Agreement, RAA and West RAA, have been served on all parties, as well as on all PJM Members and the state electric utility regulatory commissions in the PJM region. PJM states that it will promptly post the complete revised volumes of the PJM

Tariff, Operating Agreement, RAA and West RAA on PJM's Web site (<http://www.pjm.com>) and will deliver a hard copy of any or all of those documents to any person upon request. PJM requests that the Commission waive the service requirements of its Rule 2010(a), 18 CFR 385.2010(a), to the extent necessary to accommodate these arrangements.

Comment Date: April 21, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03-8088 Filed 4-2-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Alabama Power Company; Notice of Availability of Environmental Assessment

March 28, 2003.

In accordance with the National Environmental Policy Act of 1969 and

the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects' staff has prepared an Environmental Assessment (EA) for an application requesting Commission approval to permit Russell Lands, Inc. the use of project lands to renovate a golf course at Willow Point Golf and Country Club located at the Martin Dam Hydroelectric Project. The project is located on the Tallapoosa River in the counties of Coosa, Elmore, and Tallapoosa, Alabama. The Willow Point Golf and Country Club site does not involve federal or tribal lands.

The EA contains staff's analysis of the potential environmental impacts of the proposal and concludes that approval of the proposal would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the order, issued on March 28, 2003, and the EA are available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number (prefaced by P-) and excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

For further information, contact Jean Potvin at (202) 502-8928.

Magalie R. Salas,
Secretary.

[FER Doc. 03-8091 Filed 4-2-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02-434-000]

ANR Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Westleg Project

March 28, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by ANR Pipeline Company (ANR) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff

concludes that approval of the proposed project ("WestLeg Project"), with appropriate mitigating measures as recommended, would not constitute a major Federal action significantly affecting the quality of the human environment. The EA evaluates alternatives to the proposal, including the no-action alternative, major route alternatives, and route variations.

The EA assesses the potential environmental effects of the construction, operation, and abandonment of facilities in Illinois and Wisconsin. The purpose of the WestLeg Project is to increase ANR's capacity to supply gas to the Madison and Janesville, Wisconsin market areas by 220,000 dekatherms per day (Dth/d), with 86,500 Dth/d of this capacity used to replace volumes currently provided by Northern Natural Gas Company. ANR reports that 60,000 Dth/d would be made available to Wisconsin Power and Light Company to supply gas to fuel a new 600-megawatt power plant currently being constructed by Calpine Corporation in Beloit, Wisconsin.

The proposed project would install and/or replace the following facilities:

- **Madison Lateral Loop:** ANR's existing Madison Lateral easement contains two pipelines (a 10- and 12-inch-diameter pipeline). In the WestLeg Project, ANR would construct 26.3 miles of 30-inch-diameter loop within the existing easement. The Madison Lateral Loop would extend from McHenry County, Illinois, into Walworth and Rock Counties, Wisconsin.

- **Beloit Lateral Replacement:** ANR would abandon by removal two 6.5-mile-long, 4- and 6-inch-diameter laterals that parallel each other in Rock County. ANR would replace them with one new 20-inch-diameter lateral.

- ANR would also construct one new mainline valve on the Madison Lateral in Rock County; expand four existing valves on the Madison Lateral in McHenry, Walworth, and Rock Counties; expand one existing valve on the Beloit Lateral; construct one new meter station on the Beloit Lateral, and make minor modifications to two meter stations in Dane County, Wisconsin.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502-8371.

Copies of the EA have been mailed to Federal, state, and local agencies; public interest groups; interested individuals;

newspapers; libraries; and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please follow these instructions carefully to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426;

- Label one copy of the comments for the attention of Gas Branch 1, PJ-11.1;

- Reference Docket No. CP02-434-000; and

- Mail your comments so that they will be received in Washington, DC on or before May 2, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to be a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).¹ Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs,

¹ Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

at 1-866-208-FERC or on the FERC Internet Web site (<http://www.ferc.gov>) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Magalie R. Salas,
Secretary.

[FR Doc. 03-8086 Filed 4-2-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02-374-000, CP02-376-000, CP02-377-000 and CP02-378-000]

Hackberry LNG Terminal, L.L.C.; Notice of Availability of and Public Comment Meetings on the Draft Environmental Impact Statement for the Proposed Hackberry LNG Project

March 28, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (EIS) on the construction and operation of the liquified natural gas (LNG) import terminal and natural gas pipeline facilities proposed by Hackberry LNG Terminal, L.L.C (Hackberry LNG) in the above-referenced dockets.

The draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The draft EIS also evaluates alternatives to the proposal, including system alternatives, alternative sites for the LNG import terminal, and pipeline alternatives.

The draft EIS addresses the potential environmental effects of the construction and operation of the following facilities in Cameron, Calcasieu, and Beauregard Parishes, Louisiana:

- A ship unloading slip with two berths, each equipped with mooring and breasting dolphins, three liquid

unloading arms, and one vapor return arm;

- three LNG storage tanks, each with a usable volume of 1,006,000 barrels (3.5 billion standard cubic feet of gas equivalent);
- nine first-stage pumps, each sized for 250 million standard cubic feet per day (MMscf/d);
- ten second-stage pumps, each sized for 188 MMscf/d;
- twelve submerged combustion vaporizers, each sized for 150 MMscf/d;
- a boil-off gas compressor and condensing system;
- an LNG circulation system;
- a natural gas liquids recovery unit;
- ancillary utilities, buildings, and service facilities at the LNG terminal; and
- a 35.4-mile, 36-inch-diameter natural gas sendout pipeline.

The purpose of these facilities is to transport approximately 1.5 billion cubic feet per day of imported natural gas to the United States market. As part of the proposed project, Hackberry LNG plans to remove the existing liquefied petroleum gas facilities and associated dock at the proposed terminal site.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and are properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Reference Docket No. CP02-374-000;
- Label one copy of your comments for the attention of the Gas 1, PJ-11.1;
- Mail your comments so that they will be received in Washington, DC on or before May 19, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to

create an account by clicking on "Login to File" and then "New User Account."

In addition to or in lieu of sending written comments, we invite you to attend the public comment meeting that staff will conduct in the project area. The time and location for this meeting is listed below: April 22, 2003, 7 pm, Holiday Inn Express, 102 Mallard Street, Sulphur, Louisiana 70665, Telephone: (337) 625-2500.

Interested groups and individuals are encouraged to attend and present oral comments on the draft EIS. Transcripts of the meetings will be prepared.

After these comments are reviewed, any significant new issues are investigated, and necessary modifications are made to the draft EIS, a final EIS will be published and distributed by the staff. The final EIS will contain the staff's responses to timely comments received on the draft EIS.

Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (Title 18 Code of Federal Regulations, part 385.214).

Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as specified above. You do not need intervenor status to have your comments considered.

The draft EIS has been placed in the public files of the FERC and is available for public inspection at: Federal Regulatory Energy Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502-8371.

A limited number of copies of the draft EIS are available from the Public Reference and Files Maintenance Branch identified above. In addition, the draft EIS has been mailed to Federal, state, and local agencies; elected officials; public interest groups; affected landowners; public libraries; newspapers; parties to the proceeding; and individuals who requested a copy of the draft EIS.

Additional information about the proposed project is available from the Commission's Office of External Affairs at 1-866-208-FERC (1-866-208-3372) or on the FERC Web site (www.ferc.gov). Click on the "FERRIS" link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. The application and supplemental filings in these dockets are available for viewing on FERRIS. For

assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866)208-3676, or for TTY, contact (202)502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. 03-8085 Filed 4-2-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

March 28, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P-287-009.

c. *Date filed:* April 8, 2002.

d. *Applicant:* Midwest Hydro Inc.

e. *Name of Project:* Dayton Hydroelectric Project.

f. *Location:* On the Fox River, near the City of Dayton, in La Salle County, Illinois. The project does not affect any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Charles Alsberg, Executive Vice President, North American Hydro, PO Box 167, Neshkoro, WI 54960, (920) 293-4628 ext. 11.

i. *FERC Contact:* Tom Dean, (202) 502-6041, thomas.dean@ferc.gov.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18

CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The existing Dayton Hydroelectric Project consists of: (1) 594-foot-long arch-buttress uncontrolled fixed crest overflow concrete dam; (2) a 200-foot-long earthen embankment on the east side; (3) a 200 acre impoundment with a normal pool elevation of 498.90 msl; (4) a concrete head gate structure with four 15.5-foot-wide and 9.5 foot-high wooden gates located at the west abutment; (5) a 900-foot-long, 135-foot-wide, 10-foot-deep power canal; (6) a powerhouse containing three turbines with a total installed capacity of 3,680 kW; (7) a 150-foot-long, 2.4 kV transmission line; and (8) appurtenant facilities. The average annual generation is 14,200 megawatthours.

m. A copy of the application 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, contact FERC Online Support at

FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

n. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. The EA will have at least a 30 day period for entities to file comments, and will take into consideration all comments received on the EA before final action is taken on the license application. If any person or organization objects to this proposal, they should file comments during the comment period stipulated in item j above, briefly explaining the basis for their objection. *Issue Scoping Document:* April 2003. *Notice that application is ready for environmental analysis:* June 2003. *Notice of the availability of the EA:* October 2003. *Ready for Commission decision on the application:* December 2003.

o. Anyone may submit a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. 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 protests or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) Bear in all capital letters the title "PROTEST" or "Motion to Intervene;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,
Secretary.

[FR Doc. 03-8090 Filed 4-2-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98-1-000]

Regulations Governing Off-the-Record Communications Public Notice

March 28, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in

reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. *Exempt:*

Docket No.	Date filed	Presenter or requester
1. CP03-1-000	3-10-03 ..	Jennifer Kerrigan.
2. Project No. 1927-008.	3-25-03 ..	John Smith.

Magalie R. Salas,
Secretary.

[FR Doc. 03-8094 Filed 4-2-03; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[OW-2003-0009, FRL-7476-4]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Pretreatment Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): National Pretreatment Program (OMB Control No. 2040-0009; EPA ICR No. 0002.11), expiring 09/30/2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 2, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Tracy Hudak, Office of Water, Office of Wastewater Management, Water Permits Division, Mail code: 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202-564-0651; fax number: 202-564-6431; email address: hudak.tracy@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OW-2003-0009, which is available for public viewing at the Office of Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Office of Water Docket is (202) 566-2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at <http://www.epa.gov/edocket>. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method); (2) by email to OW-Docket@epamail.epa.gov; or, (3) by mail to: EPA Docket Center, Environmental Protection Agency, Office of Water Docket, Mail code: 4101T, 1200

Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to www.epa.gov/edocket.

Affected entities: Entities potentially affected by this action are those subject to the regulations under 40 CFR part 403, including private industries and State, local and Federal governments.

Title: National Pretreatment Program (OMB Control Number 2040-0009; EPA ICR Number 0002.11), expiring 09/30/2003.

Abstract: This Information Collection Request (ICR) calculates the burden and costs associated with managing the National Pretreatment Program, mandated by sections 402(a) and (b) and 307(b) of the Clean Water Act. This ICR is a renewal of the Revision of the Information Collection Request for the National Pretreatment Program (OMB Control No. 2040-009, EPA ICR No. 0002.09).

EPA's Office of Wastewater Management (OWM) in the Office of Water (OW) is responsible for the management of the pretreatment program. The Clean Water Act requires EPA to develop national pretreatment standards to control discharges from Industrial Users (IUs) into Publicly Owned Treatment Works (POTWs). These standards limit the level of certain pollutants allowed in non-domestic wastewater that is discharged to a POTW. EPA administers the pretreatment program through the National Pollutant Discharge Elimination System (NPDES) permit program. Under the NPDES permit program, EPA may approve State or individual POTW implementation of the pretreatment standards at their

respective levels. Data collected from IUs during implementation of the pretreatment program include the mass, frequency, and content of IU discharges and IU schedules for installing pretreatment equipment. Data also include actual or anticipated IU discharges of wastes that violate pretreatment standards, have the potential to cause problems at the POTW, or are considered hazardous under the Resource Conservation and Recovery Act (RCRA). OWM uses the data collected under the pretreatment program to monitor and enforce compliance with the pretreatment regulations, as well as to authorize program administration at the State or local (POTW) level. States and POTWs applying for approval of their pretreatment programs submit data concerning their legal, procedural, and administrative bases for establishing such programs. This information may include surveys of IUs, local limits for pollutant concentrations, and schedules for completion of major project requirements. IUs and POTWs submit written reports to the approved state or EPA. These data may then be entered into the NPDES databases by the approved state or by EPA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The information collection would involve an estimated 32,675 respondents at an annual cost of \$95,126,953 to those respondents. The total annual cost to both respondents and government (excluding Federal

government) is estimated at \$99,022,998. The annual number of responses would be 248,539 or 7.61 responses per respondent. The time required for a response ranges from 15 minutes to 400 hours, with an average response time of approximately 10.0 hours per year. An estimated 32,675 respondents would be required to keep records at an average annual burden of 6.80 hours per record keeper. The pretreatment program would entail 222,217 hours of record keeping, 2,107,586 hours of reporting, 114,706 hours for government (excluding Federal government) administration and 11,262 hours for EPA as users of the data, for a total of 2,485,770 burden hours at a cost of \$99,387,774. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 28, 2003.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 03-8156 Filed 4-2-03; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

DATE AND TIME: Tuesday, April 8, 2003 at 10 a.m.

PLACE: 999 E Street NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

Note: The open meeting scheduled for Thursday, April 10, 2003, has been prescheduled to Wednesday, April 9, 2003.

DATE AND TIME: Wednesday, April 9, 2003 at 10 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Legislative Recommendations for 2003.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION:

Mr. Ron Harris, Press Officer,
Telephone: (202) 694-1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03-8223 Filed 4-1-03; 11:34 am]

BILLING CODE 6715-01-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 April 17, 2003.

A. Federal Reserve Bank of Chicago
(Phillip Jackson, Applications Officer)
230 South LaSalle Street, Chicago,
Illinois 60690-1414:

1. *Francis E. Powers*, Defiance, Iowa; to acquire voting shares of Union Bancorporation, Defiance, Iowa, and thereby indirectly acquire voting shares of Defiance State Bank, Defiance, Iowa.

Board of Governors of the Federal Reserve System, March 28, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03-8023 Filed 4-2-03; 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 April 28, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Midwest Banc Holdings, Inc.*, Melrose Park, Illinois; to acquire 100 percent of the voting shares of CoVest Bانشares, Inc., Des Plaines, Illinois, and thereby indirectly acquire voting shares of CoVest Banc, National Association, Des Plaines, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. *Pulaski Investment Corporation*, Little Rock, Arkansas; to acquire 100 percent of the voting shares of The Munford Union Bank, Munford, Tennessee.

Board of Governors of the Federal Reserve System, March 28, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03-8024 Filed 4-2-03; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-03-56]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498-1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Assessment of Exposure to Arsenic through Household Water, OMB No. 0920-0472—

Extension—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background

Arsenic is a naturally occurring element present in food and water as both organic and inorganic complexes. Epidemiologic evidence shows a strong link between ingestion of water containing inorganic arsenic and an increase in certain cancers (*e.g.*, bladder cancer, lung cancer). Although consumption of arsenic-contaminated food is the major source of arsenic exposure for the majority of U.S. citizens, in some areas of the United States, elevated levels of arsenic occur frequently in water. In such areas, ingestion of water can be the primary source of arsenic exposure. Currently, point-of-use (POU) devices are the preferred method of treatment of private domestic well water containing elevated levels of arsenic. Bottled water and POU treatment systems are considered effective means of managing arsenic exposure based on the assumption that people's other water exposures, such as bathing, brushing of teeth, cooking, and drinking occasionally from other taps, contribute relatively minor amounts to a person's total daily intake of arsenic. We propose to conduct a study to methodically test the validity of the commonly made assumption that secondary water exposures, such as bathing, will not result in a significant increase in arsenic exposure above background dietary levels. Specifically, we are interested in assessing total urine arsenic levels and levels of organic and inorganic arsenic species among people in areas in which ingestion of arsenic-containing water is controlled by either POU treatment or use of bottled water. Potential participants who are interested in being part of the study will be interviewed by telephone. Recruited participants will be asked to participate in a survey interview about potential exposures to arsenic. Participants in the study will use short-term diaries to record diet, water consumption, and bathing frequency. In addition, we will assess long-term arsenic exposure by analyzing toenail samples for total arsenic.

This request is for a 4-year extension. There are no costs to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Prescreening postcard completion	12,850	1	5/60	1071
Initial recruiting postcard completion	2,955	1	5/60	246

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Recruiting telephone interview	975	1	15/60	244
Survey interview (in person)	780	1	30/60	390
Short-term diary completion	780	1	15/60	195
Biologic specimen collection	780	1	10/60	130
Toenail analysis phone call	260	1	5/60	22
Toenail analysis consent form	260	1	5/60	22
Total				2,320

Dated: March 27, 2003.
Thomas Bartenfeld,
Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.
 [FR Doc. 03-8043 Filed 4-2-03; 8:45 am]
BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY-33-03]

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: National Coal Workers' Autopsy Study (NCWAS) Consent Release and History Form 0920-0021—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention.

Background

Under the Federal Coal Mine Health and Safety Act of 1977, Pub. L. 91-173 (amended the Federal Coal Mine and Safety Act of 1969), the Public Health Service has developed a nationwide autopsy program (NCWAS) for underground coal miners. The NCWAS is a service program to aid surviving relatives in establishing eligibility for black lung compensation. The Consent Release and History Form is primarily used to obtain written authorization from the next-of-kin to perform an autopsy on the deceased miner. Because a basic reason for the post-mortem examination is research (both

epidemiological and clinical), a minimum of essential information is collected regarding the deceased miners, including occupational history and smoking history. The data collected will be used by the staff at NIOSH for research purposes in defining the diagnostic criteria for coal workers' pneumoconiosis (black lung) and pathologic changes that will be correlated with x-ray findings.

It is estimated that only 5 minutes is required for the pathologist to put a statement on the invoice affirming that no other compensation is received for the autopsy. From past experience, it is estimated that 15 minutes is required for the next-of-kin to complete the Consent Release and History Form. Since an autopsy report is routinely completed by a pathologist, the only additional burden is the specific request of abstraction of the terminal illness and final diagnosis relating to pneumoconiosis. Therefore, only 5 minutes of additional burden is estimated for the autopsy report. The annual burden for this data collection is 21 hours, a decrease of 41 hours.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hrs.)
Pathologist Invoice	50	1	5/60
Pathologist Report	50	1	5/60
Next-of-Kin	50	1	15/60

Dated: March 27, 2003.
Thomas Bartenfeld,
Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.
 [FR Doc. 03-8044 Filed 4-2-03; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY-34-03]

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: 2004 National Health Interview Survey: 2004 Basic Module with Topical Module, (0920-0214)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

The annual National Health Interview Survey (NHIS) is a basic source of

general statistics on the health of the U.S. population. In accordance with the 1995 initiative to increase the integration of surveys within the Department of Health and Human Services, respondents to the NHIS serve as the sampling frame for the Medical Expenditure Panel Survey. This survey is conducted by the Agency for Healthcare Research and Quality. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, AIDS, and childhood immunizations. Journalists use its data to inform the general public. It will continue to be a leading source of data

for the Congressionally mandated "Health US" and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, "Healthy People 2010."

Because of survey integration and changes in the health and health care of the U.S. population, demands on the NHIS have changed and increased, leading to a major redesign of the annual core questionnaire, or Basic Module, and a shift from paper questionnaires to computer assisted personal interviews (CAPI). These redesigned elements were partially implemented in 1996 and fully

implemented in 1997. This clearance is for the eighth full year of data collection using the core questionnaire on CAPI, for the implementation of a supplement on children's mental health, and for a software field test to evaluate a switch from CASES software to Blaise software. The field test for the new software is scheduled for June 2003. The data collection for the full survey is planned for January–December 2004, and will result in publication of new national estimates of health statistics, release of public use micro data files, and a sampling frame for other integrated surveys. The total annual burden for this data collection is 39,870 hours.

Questionnaire (respondents)	Number of respondents	Number of responses/ respondent	Average burden per response (in hrs.)
Family Core (Adult Family Member)	39,000	1	21/60
Adult Core and Topical Module (sample adult)	32,000	1	42/60
Child Core and Topical Module (adult family member)	13,000	1	15/60
Re-interview Survey	3,250	1	5/60
Software and Systems Field Test	300	1	60/60

Dated: March 27, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–35–03]

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: Minimum Data Elements (MDEs)/System for Technical Assistance Reporting (STAR) for the National Breast and Cervical Cancer Early Detection Program (NBCCEDP)

OMB No. 0920–0571—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

The NBCCEDP was established in response to the Congressional Breast and Cervical Cancer Mortality Prevention Act of 1990. This act mandates a program that will provide early detection of breast and cervical cancer screening services for underserved women.

CDC proposes to aggregate breast and cervical cancer screening, diagnostic and treatment data from NBCCEDP grantees at the state, territory and tribal level. These aggregated data will include demographic information about women served through funded programs. The proposed data collection will also include infrastructure data about grantee management, public education and outreach, professional education, and service delivery.

Breast cancer is a leading cause of cancer-related death among American women. The American Cancer Society estimates that 203,500 new cases will be diagnosed among women in 2002, and 39,600 women will die of this disease. Mammography is extremely valuable as an early detection tool because it can detect breast cancer well before the woman can feel the lump, when it is still in an early and more treatable stage. Women older than age 40 that receive

annual mammography screening reduce their probability of breast cancer mortality and increase their treatment options.

Although early detection efforts have greatly decreased the incidence of invasive cervical cancer during the last four decades, an estimated 13,000 new cases will be diagnosed in 2002 and 4,100 women will die of this disease. Papanicolaou (Pap) tests effectively detect precancerous lesions in addition to invasive cervical cancer. The detection and treatment of precancerous lesions can prevent nearly all cervical cancer-related deaths.

Because breast and cervical cancer screening, diagnostic and treatment data are already collected and aggregated at the state, territory and tribal level, the additional burden on the grantees will be small. Implementation of this program will require grantees to report a minimum data set (MDE) on screening and follow-up activities electronically to the CDC on a semi-annual basis. The program will require grantees to report infrastructure data (STAR) to the CDC annually using a web-based system. Information collected will be used to obtain more complete breast and cervical cancer data, promote public education of cancer incidence and risk, improve the availability of screening and diagnostic services for underserved women, ensure the quality of services provided to women, and develop outreach strategies for women that are

never or rarely screened for breast and cervical cancer. The annual burden for this data collection is 2,343 hours.

Report	Number of respondents	Responses per respondent	Average burden per response (in hours)
Infrastructure Report (STAR)	71	1	25
Screening and Follow-up (MDE)	71	2	4

Dated: March 27, 2003.
Thomas Bartenfeld,
Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.
 [FR Doc. 03-8046 Filed 4-2-03; 8:45 am]
BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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 2003 funds for a cooperative agreement program to support public health conferences was published in the **Federal Register** dated January 10, 2003, Volume 68, Number 7, pages 1463-1467. The notice is amended as follows:

Page 1466, first column, section "G. Submission and Deadline," remove the sentence, "Expected Award date: July 1, 2003."

Page 1466, first column, subsection "Deadline," remove the sentence, "There will be one conference support review this year and awards will be made in the month of July, 2003."

Dated: March 28, 2003.
Sandra R. Manning,
Director, Procurement and Grants Office, Centers for Disease Control and Prevention.
 [FR Doc. 03-8063 Filed 4-2-03; 8:45 am]
BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03034]

Public Health Laboratory Biomonitoring Implementation Program; Notice of Availability of Funds

Application Deadline: July 2, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 317 of the Public Health Service Act, 42 U.S.C. 241 and 247b, as amended. The catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for cooperative agreements to establish or expand state public health laboratory biomonitoring capacity. This program addresses the "Healthy People 2010" focus areas of Environmental Health and Public Health Infrastructure. This program builds upon biomonitoring planning conducted by State public health laboratories during FY 2001 and FY 2002 under Program Announcement (PA) 01072, Public Health Laboratory Biomonitoring Planning Grant. PA 01072 can be viewed at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001_register&docid=01-11215-filed.

The purpose of this program is to implement and expand State laboratory-based biomonitoring programs to assess human exposure to environmental toxicants, help prevent disease resulting from exposure to toxic substances, and determine estimates of background exposure to naturally occurring and industrial chemicals that have the potential to cause harm.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for

the National Center for Environmental Health (NCEH):

1. Develop laboratory capacity to monitor human exposures to environmental chemicals.
2. Periodically determine the number of Americans exposed to environmental chemicals and the degree of their exposure.
3. Increase the capacity of State and local health departments to deliver environmental health services in their communities.

C. Eligible Applicants

Assistance will be provided only to public health laboratories of States or lead States of consortia that were recipients of CDC grants for biomonitoring planning in FY2001 and FY2002 under PA 01072 (see Attachment 3 as posted on the CDC Web site for a listing of funded grantees under PA 01072). No other applications are solicited.

Applications are only sought from those grantees under PA 01072, who have developed a biomonitoring plan and the necessary relationships and contacts to implement their plan. These grantees have spent two years on the development of their biomonitoring plans. New applicants would not have those plans in place, and therefore would not be ready to move into the implementation phase being funded by this new announcement.

States, territories, or protectorates that do not meet the preceding requirement may participate by entering into a consortium or other agreement with an eligible State or an eligible consortium of States.

Only one application per State or consortium may be submitted. A State may apply as an individual State or as the lead member of a consortium, but not both. Members of a consortium may not apply as individual States.

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. Funding

Availability of Funds

Approximately \$5,000,000 is available in FY 2003 to fund approximately ten awards. Funding will range from \$200,000, up to \$3,000,000 per award. Funding estimates may change. It is expected that the awards will begin on or about September 15, 2003, and will be made for an initial 9-month budget period, which will end on June 30, 2004. Future budget periods will be 12 months in duration for a total project period of up to four years and nine months.

Continuation awards within an approved project period will be made on the basis of the availability of funds and satisfactory progress as evidenced by required reports.

Funding will be awarded in two categories:

Individual States: Maximum award of up to \$1,000,000 for individual States.

Consortia: Maximum award of up to \$3,000,000 based upon the number of States within the consortium. A range of \$200,000–\$600,000 per State consortium member is anticipated.

Applications exceeding the foregoing maxima will be returned without review. Eligible applicants are only allowed to apply for one of the two categories described above.

Use of Funds

Funds may be used to develop and implement a biomonitoring program, conduct demonstration projects, purchase equipment and supplies, hire and train personnel, conduct appropriate and relevant travel, hire consultants, pay for services, and renovate or modify existing laboratory areas. Funds provided by CDC under this cooperative agreement may not be used for construction of new laboratory space. Funds may not be used to support activities otherwise funded, or eligible to be funded, through the Superfund Program or the Agency for Toxic Substances and Disease Registry. However, because toxicants from Superfund sites may contribute to the total exposures of a given population, funds may be used to assess the exposure status of populations not already addressed under Superfund.

Funding Preferences

Preference for awards will be given to ensure geographic diversity, distribution, and balance among laboratories which serve people living in various settings such as urban, rural, agricultural, and industrial communities; among laboratories that have various levels of expertise,

experience, capacity, and need for biomonitoring. Preference will be given to applications with the greatest need for biomonitoring expansion or implementation based on documented or suspected environmental toxicant exposures among persons living within the applicant's area of responsibility.

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 activities listed under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities:

a. Implement and apply biomonitoring laboratory capacity by following, as closely as possible, the biomonitoring plan(s) that the recipient developed with funding under PA 01072, Public Health Laboratory Biomonitoring Planning Grant.

b. Address the needs for, and proposed application of, biomonitoring within the community served by the applicant and distinguish between those needs that are single issue and those that exist on an on-going basis. Collaborate with other public health partners, including public health physicians and epidemiologists, in making this needs assessment. Special consideration should be given to evaluating exposures in under-served population groups that may be at increased risk from exposure. (*E.g.* minorities, the very young, and the elderly may have a greater risk of exposure or harmful effects.)

c. Incorporate the application of laboratory data to respond to important public health issues as listed in items 1. through 6. of Attachment 2, "Biomonitoring and Complementary Programs." Please see all attachments referenced in this announcement as posted with the full announcement on the CDC Web site: <http://www.cdc.gov/od/pgo/funding/grantmain.htm>. Uses may include population based or targeted health exposure surveys, health effects studies, sentinel monitoring of at-risk populations, case-control studies, studies involving analyses of stored specimens, or other recognized epidemiologic tools. The applicant must develop complete study protocols after award of a cooperative agreement and prior to commencing the study.

d. Meet requirements for local Institutional Review Board (IRB) or Human Subjects review and obtain approval for any such projects which constitute research as defined in 45 CFR

part 46. (*See* <http://ohrp.osophs.dhhs.gov/humansubjects/guidance/45cfr46.htm#46.102>)

e. Biomonitoring research projects that the applicant plans to undertake without substantial CDC involvement do not require CDC IRB approval. However, the applicant will be required to submit a copy of their proposed protocol and a copy of their IRB approval letter (and all subsequent approval renewals) to CDC. Research projects that applicants wish to undertake with substantial CDC involvement will require joint development of detailed protocols with CDC and approval from both CDC IRB and the applicant's local IRB. **Note:** CDC IRB may defer to the local IRB or the local IRB may defer to CDC IRB. Because funds currently available to support the biomonitoring implementation program under this cooperative agreement are limited and are primarily intended for biomonitoring capacity building, applicants are discouraged from relying on this agreement to fund complex and costly epidemiologic studies. Rather, activities should be limited to demonstration projects, pilot surveys, and preliminary investigations. More detailed and costly epidemiologic studies employing biomonitoring should be developed jointly and in detail among the interested laboratories, their epidemiology partners, and others with funding sought from other sources as stand-alone projects.

f. Implement the plan for developing (or expanding) and applying biomonitoring capacity in the public health laboratory. This implementation must follow the specific, measurable, and time-framed goals and objectives presented in the plan.

g. Develop an evaluation plan by which the recipient may conduct periodic and on-going assessments of progress in expanding the laboratory's biomonitoring capacity and to assess the impact of biomonitoring measurements on addressing the identified public health needs within the state(s) or community.

h. Participate in external proficiency testing and quality control programs, perform biomonitoring pilot and demonstration studies (including performance of biomonitoring analyses on previously collected samples), participate in the prospective planning and conduct of biomonitoring research projects or population exposure surveys, and perform other activities that enhance the recipient's ability to implement a biomonitoring program.

2. CDC Activities:

a. Provide technical assistance, guidance, and training in biomonitoring, including information about analytical methods and instrumentation used by CDC for biomonitoring.

b. Provide information about sources for reagents, supplies, standards, quality assurance materials, equipment, etc. These sources may include commercial vendors, other Federal, State, or international agencies, professional societies or standard-setting bodies, contractors to CDC, and CDC laboratories, as appropriate.

c. Provide analytical support as requested for biomonitoring studies initiated by the recipient (subject to availability and competing national priorities).

d. Assist in the development of a research protocol for projects in which CDC provides a staff member to serve as principal investigator or co-investigator or when CDC conducts sample analysis. IRB approval will be required from all institutions participating in the research. CDC IRB must review and approve the protocol initially and at least on an annual basis until the research project is completed. For those research projects that do not have a CDC staff member serving as the principal investigator or co-investigator, technical assistance in the form of advice, recommendations, and expert opinions will be provided.

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 one page, single-spaced, printed on one side, with one-inch margins, and un-reduced 12-point font. The LOI will be used for CDC planning purposes. The LOI must indicate whether the applicant plans to apply as an individual state applicant or as the lead member of a consortium and should identify the states that are anticipated to be consortium partners.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Content, 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 the program plan. The narrative should be no more than 25 pages, double-spaced, printed on one side, with one-inch margins, and un-reduced 12-point font.

The narrative should consist of, at a minimum, a Workplan, Objectives, Methods, Personnel, Evaluation Scheme, and Budget. A two- to three-page executive summary of the applicant's plan developed under PA 01072 shall be included preceding the narrative. The application must also include, as an attachment, a full copy of the plan from the planning grant. The page limitation is exclusive of the attached copy of the plan.

The application must also:

1. Discuss how the recipient will develop, implement, and apply biomonitoring laboratory capacity by following the biomonitoring plan that was developed with funding under PA 01072.

2. Outline how biomonitoring will be applied within the community served by the applicant and distinguish between those needs that are single issue and those that exist on an on-going basis. Describe how collaboration with other public health partners, including public health physicians and epidemiologists in making this needs assessment will be accomplished. Special consideration should be given to evaluating exposures in under-served population groups that may be at increased risk from exposure.

3. Discuss how the program will use biomonitoring laboratory data to answer the important public health questions as listed in items 1. through 6. of Attachment 2 as posted on the CDC Web site. The application should not include complete study protocols, as they will be developed after award of a cooperative agreement and prior to commencing the study.

4. Tell how requirements for local IRB or Human Subjects review will be met and how approval for any such projects which constitute research as defined in 45 CFR part 46 will be obtained. (See <http://ohrp.osophs.dhhs.gov/humansubjects/guidance/45cfr46.htm#46.102>.)

5. Provide an inventory of existing biomonitoring methods in use by the applicant, and for each method specify: Toxic substance(s) measured; method of measurement (e.g., GC-MS, atomic absorption); current instrumentation used; the limit of detection for each analyte (and how the limit of detection was determined); known interferences; description of method's quality control; any external proficiency testing program in which the laboratory currently participates for the method; an approximate sample throughput per day; and the approximate number of human specimens analyzed in the past 12 months. Emphasize in this section how the existing biomonitoring capacity

will be used to address needs identified in the paragraphs above. As part of this explanation, specify the collaborations with public health partners (State and local health officials, schools of public health, academic centers, community groups, etc.) who will work with the laboratory to use biomonitoring data to help address these public health needs. Include documentation from each public health partner of its willingness to collaborate. Acceptable documentation may be letters of support or formal agreements among partners.

6. For each new biomonitoring method needed, describe additional requirements for personnel, instrumentation, and facilities modification or expansion. Provide cost estimates for facilities modification or expansion, if applicable.

7. Describe specimen management and security protocols that are in place or that are to be implemented to support the biomonitoring program.

8. Describe the data management and communications resources and plans available or needed to support the biomonitoring program. The relationship (or lack thereof) with other public health data management and communications initiatives (e.g., National Electronic Disease Surveillance System, Health Alert Network, etc.) should be discussed.

9. Discuss requirements for compliance with the Clinical Laboratory Amendments of 1988 (CLIA).

10. Develop an evaluation plan to provide periodic and on-going assessment of progress in expanding the laboratory's biomonitoring capacity and to assess the impact of biomonitoring measurements on addressing the identified public health needs within the State(s) or community.

11. Applications from consortia must provide documentation from each member of the consortium of their willingness to collaborate, to share resources, and/or to perform work within the consortium under reciprocal arrangements, to pool data from each site in their proposed consortium as appropriate to the goals of the consortium, and to participate in periodic meetings (or conferences via electronic media) among consortium laboratories for the purpose of planning, conduct of consortium business, training, and technology transfer. Acceptable documentation may be letters of support or formal agreements among the consortium members.

12. Discuss anticipated problems with the implementation of the biomonitoring plan and outline proposed solutions. Potential problems might include state restrictions on

hiring of personnel, travel restrictions, and shortages of qualified personnel.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before May 5, 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 Form 5161—

1. 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 on July 2, 2003. Submit the application to: Technical Information Management—PA03034, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, 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 up to two weeks after the closing date, 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

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals as stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Understanding the Requirements for Implementing a Biomonitoring Plan (30 Percent)

Does the application reflect the biomonitoring plan developed by the applicant and is a copy of the biomonitoring plan included as an attachment? (**Note:** If the application is from a consortium that includes members previously funded as individual planning grantees, the application must reflect the planning of those consortium members and discuss how those plans will be integrated.) The extent to which the applicant describes the need for a biomonitoring program, and an understanding of the purpose of conducting exposure assessment by measurement of human biological samples (blood, hair, urine, saliva) to identify internal human dose from contact with hazardous environmental chemicals. The applicant's understanding of the analytical challenges associated with identifying the extent of exposure based on data obtained from human samples, especially challenges presented by the differences in physiological makeup of individuals, specimen collection, and pharmacokinetic and pharmacodynamic factors. The demonstration of understanding the problems related to estimating or extrapolating "internal dose" from "external dose" data, and the value of biomonitoring through direct measurement of samples from humans to provide information that is more meaningful.

2. Goals and Objectives (20 Percent)

The extent to which the applicant clearly states biomonitoring program goals and objectives which are consistent with the Purpose and Program Requirements sections as presented in this announcement, and

the degree to which the goals and objectives reflect an understanding of the need to reach beyond the laboratory to achieve balanced input from the broader public health community in implementation of the biomonitoring plan. These goals and objectives shall include a discussion of the implementation of biomonitoring laboratory capacity and application of this capacity to specific environmental chemical exposure problems.

3. Program and Methodology (20 Percent)

Describe in detail how the biomonitoring laboratory plan will be implemented. This must include a description of space allocation, staffing requirements and training, instrumentation and instrumentation maintenance, analytical methods, specimen storage and security, supply accession, facilities, quality assurance and quality control, logistical support and data management. The applicant shall provide a phased timeline of activities leading to implementation or expansion of a biomonitoring program by the applicant. Does this description of activities fully cover the anticipated four-year, nine-month period? Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes:

a. The proposed plan for the inclusion of both sexes and under-served populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. 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.

4. Collaborative Efforts (15 Percent)

Describe anticipated collaborative efforts related to this program among the applicant laboratory(ies), other components of the public health structure of the community, including epidemiologists, environmental health professionals, other state or local health agencies, health services providers, and academic institutions such as schools of public health, medicine, university departments of chemistry or biochemistry, community and citizens groups, and other interested parties. Letters of support from anticipated collaborators must be provided as

attachments to the application package. The page limitation is exclusive of the attached letters of support. The applicant must discuss how collaborators propose to employ biomonitoring to address public health issues/concerns. The applicant shall discuss complementary and competing programs if applicable, such as environmental testing programs, terrorism preparedness programs, environmental public health tracking programs, and other activities that may add to or detract from biomonitoring capacity.

5. Evaluation Plan (10 Percent)

The extent to which the applicant describes how progress towards achieving the applicant's goals and objectives will be evaluated, and how, during the implementation phase, new public health needs will be assessed and the program (and the underlying plan) will be modified to adjust to these changing public health needs and priorities. The application's approach to evaluating the impact of the program on environmental health and human exposure issues in the applicant's community will also be evaluated.

6. Staffing, Management System, and Facilities (5 Percent)

The extent to which the applicant describes the staff that is available or anticipated to conduct these activities and how they will be managed and evaluated. The applicant must describe the organizational setting and facilities available to support the biomonitoring program; to access, transport, store, inventory, process and manage biological specimens from people; and to accumulate, process, store, and analyze data and other information related to the implementation of this program. Applicants must also describe planning to provide IRB review when biomonitoring programs are implemented, and discuss the impact of the requirements of CLIA on their plan.

7. Budget (Not Scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and program activities.

You are encouraged to use Out-of-State travel funds to send one staff person to attend the sixth National Environmental Health Conference to be held on December 3–5, 2003, at the Hilton Atlanta, 255 Courtland Street, NE., Atlanta, GA. If additional written justification is needed to support attendance at the above meeting, please contact your project officer. Review the CDC/NCEH Web site for additional

information concerning the conference: <http://www.cdc.gov/nceh/default.htm>.

8. Human Subjects (Not Scored)

Does the application adequately address the requirements of title 45 CFR part 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.

I. Other Requirements

OMB Clearance Requirements

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as a non-competing continuation application, and must contain the following elements:
 - a. Current Budget Period Activities Objectives.
 - b. Current Budget Period Financial Progress.
 - c. New Budget Period Program Proposed Activity Objectives.
 - d. Detailed Line-Item Budget and Justification.
 - e. Additional Requested Information.
 2. 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.
- 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-7 Executive Order 12372 Review
- AR-9 Paperwork Reduction Act Requirements
- AR-10 Smoke-Free Workplace Requirements

- AR-11 Healthy People 2010
- AR-12 Lobbying Restrictions
- AR-22 Research Integrity

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 interested applicants, a telephone conference call for pre-application technical assistance will be held on April 21, 2003, at 1 p.m. eastern time. Potential applicants are requested to call in using only one telephone line. The conference can be accessed by calling 1-800-311-3437 or 404-639-3277 and entering conference code 824087 when prompted. The purpose of the conference call is to help potential applicants to:

1. Understand the scope and intent of the Program Announcement for the Public Health Laboratory Biomonitoring Implementation Program.

2. Be familiar with the Public Health Services funding policies and application and review procedures.

Participation in this conference call is not mandatory. At the time of the call, if problems are encountered accessing the conference call, please call 404-639-7550. For further information, please contact Charles Buxton at (770) 488-4160 or Barry E. Smith at (770) 488-7968.

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: Mildred S. Garner, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, (MS E-13), Atlanta, GA 30341-4146. Telephone: (770) 488-2745. E-mail address: mqg4@cdc.gov.

For program technical assistance, contact: Charles H. Buxton, MT(ASCP)SBB, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, NE. (MS F-20), Atlanta, GA 30341-3724. Telephone: (770) 488-4160. E-mail address: zpl1@cdc.gov.

Or:

Barry E. Smith, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, NE. (MS F-20),

Atlanta, GA 30341-3724. Telephone: (770) 488-7968. E-mail address: bas4@cdc.gov.

Dated: March 27, 2003.

Sandra R. Manning,

*Director, Procurement and Grants Office,
Centers for Disease Control and Prevention.*

[FR Doc. 03-8062 Filed 4-2-03; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Pharmacology Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Clinical Pharmacology Subcommittee of the Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 22, 2003, from 8:30 a.m. to 5 p.m. and April 23, 2003, from 8:30 a.m. to 12:30 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5600 Fishers Lane, Rockville, MD.

Contact Person: Kathleen Reedy, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301-827-7001, e-mail: REEDYK@cder.fda.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: On April 22, 2003, the subcommittee will discuss: (1) Quantitative risk-benefit analysis using exposure-response for determining dose adjustment for special populations; and (2) pediatric population pharmacokinetics study design template and analyses of the FDA pediatric database. On April 23, 2003, the subcommittee will discuss: (1)

Pharmacogenetics: improvement of existing drug treatments, and (2) drug interactions: metabolism and transport-based.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by April 15, 2003. Oral presentations from the public will be scheduled between approximately 12:45 p.m. and 1:15 p.m. on April 22, 2003, and 11:30 a.m. to 12 noon on April 23, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 15, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kathleen Reedy at least 7 days in advance of the meeting.

FDA regrets that it was unable to publish this notice 15 days prior to the Clinical Pharmacology Subcommittee of the Advisory Committee for Pharmaceutical Science meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Clinical Pharmacology Subcommittee of the Advisory Committee for Pharmaceutical Science were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 25, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03-8011 Filed 4-2-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D-1738]

Draft Guidance for Industry: Bioavailability and Bioequivalence Studies for Nasal Aerosols and Nasal Sprays for Local Action; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Bioavailability and Bioequivalence Studies for Nasal Aerosols and Nasal Sprays for Local Action." This draft document provides recommendations to applicants planning product quality studies to document bioavailability (BA) or bioequivalence (BE) in support of new drug applications (NDAs), or abbreviated new drug applications (ANDAs) for locally acting drugs in nasal aerosols (metered-dose inhalers) and nasal sprays (metered-dose spray pumps). The draft guidance was originally issued for comment on June 24, 1999. Since many substantive changes have been made to the guidance, it is being reissued for comment as a level 1 draft guidance.

DATES: Submit written or electronic comments on the draft guidance by July 2, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance for industry to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Wallace P. Adams, Center for Drug Evaluation and Research (HFD-350), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5651.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Bioavailability and Bioequivalence Studies for Nasal Aerosols and Nasal Sprays for Local Action." This draft guidance provides recommendations to applicants planning product quality studies to document BA or BE in support of NDAs or ANDAs for locally acting drugs in nasal aerosols and nasal sprays. This guidance addresses BA and BE studies of prescription corticosteroids, antihistamines, anticholinergic drug products, and the over-the-counter (OTC) mast-cell stabilizer cromolyn sodium. The guidance does not address studies of nasal sprays included in applicable OTC monographs or studies of: (1) Metered-dose products intended to deliver drugs systemically via the nasal route, or (2) drugs in nasal nonmetered dose atomizer (squeeze) bottles that require premarket approval.

Because many substantive changes were made to the guidance after it issued in 1999, the guidance is being reissued at this time for comment as a level 1 draft guidance. We encourage applicants to submit any evidence that supports or refutes the approaches outlined in this guidance to the docket number given in brackets in the heading of this document.

The changes made were based on the following: (1) Public comments submitted to the original docket, (2) the outcome of April 2000 and July 2001 meetings of the Orally Inhaled and Nasal Drug Products Subcommittee of the FDA Advisory Committee for Pharmaceutical Science (ACPS), (3) a July 2001 meeting of the ACPS, and (4) internal discussions within the Center for Drug Evaluation and Research. Changes include reduction in the recommended extent of in vitro testing, elimination of two of the three options for rhinitis study design, and elimination of the recommendation to demonstrate a dose-response relationship from the recommended rhinitis study design (traditional 2-week study). The latter two changes are based on ACPS recommendations. A section on reserve samples for BA and BE testing has also been added. The statistical information that was previously part of the original draft has now been consolidated into appendices that will be published at a later date.

This level 1 draft guidance is being issued consistent with FDA's good

guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on BA and BE product quality information related to nasal inhalation aerosols and nasal metered-dose spray pumps. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. Alternative approaches to documentation of BA and BE may be used if such approaches satisfy the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch written or electronic comments regarding this document. Submit a single copy of electronic comments to <http://www.fda.gov/dockets/ecomments> or two hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either <http://www.fda.gov/cder/guidance/index.htm> or <http://www.fda.gov/ohrms/dockets/default.htm>.

Dated: March 25, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03-8010 Filed 4-2-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for

review, call the HRSA Reports Clearance Office on (301) 443-1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Uniform Progress Report (UPR) for HRSA Continuation Training Grants (OMB No. 0915-0061)—Revision

The HRSA Progress Reports for Continuation Training Grants are used for the preparation and submission of continuation applications for Titles VII and VIII health professions and nursing education and training programs. The Uniform Progress Report measures grantee success in meeting (1) the objectives of the grant project and (2) the cross-cutting outcomes developed for the Bureau's education and training programs. Part I of the progress report is designed to collect information to determine whether sufficient progress has been made on the approved project objectives, as grantees must demonstrate satisfactory progress to warrant continuation of funding. Part II collects information on activities specific to a given program. Part III, Comprehensive Performance Management System, collects data on overall project performance related to the Bureau of Health Professions' strategic goals, objectives, outcomes and indicators. Progress will be measured based on the objectives of the grant project and outcome measures and indicators developed by the Bureau to meet requirements of the Government Performance and Results Act (GPRA).

To respond to the requirements of GPRA, the Bureau developed goals, outcomes and indicators that provide a framework for collection of outcome data for its Titles VII and VIII programs. An outcome-based performance system is critical for measuring whether program support is meeting national health workforce objectives. At the core of the performance measurement system are found cross-cutting goals with respect to workforce quality, supply, diversity and distribution of the health professions workforce. A demonstration project to assess availability of the data needed to support the indicators was conducted, and data from this project are currently being analyzed.

The grantees were able to obtain and submit progress reports electronically for fiscal year 2001.

The burden estimate is as follows:

Form	Number of respondents	Response per respondent	Total responses	Hours per response	Total burden hours
Progress Report	1,550	1	1,550	21.5	33,325

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 27, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03-8012 Filed 4-2-03; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given of the following meeting:

Name: National Advisory Council on Migrant Health.

Dates and Times: April 30, 2003, 9:30 a.m. to 5 p.m., May 1, 2003, 8:30 a.m. to 12 noon.

Place: San Carlos Hotel, 202 North Central Avenue, Phoenix, Arizona 85004, Phone: (602) 253-4121 Fax (602) 253-6668.

Status: The meeting will be open to the public.

Agenda: The agenda includes an overview of general Council business activities and priorities. Topics to be addressed will include orientation of new Council members and restructuring subcommittees. In addition, the Council will begin preliminary work on the 2003 recommendations to the Secretary. Finally, the Council will attend the National Association of Community Health Centers' 2003 National Farmworker Health Conference, which is also being held in Phoenix at this time. Agenda items are subject to change as priorities indicate.

For Further Information Contact: Anyone requiring information regarding the Council should contact: Benito Velazquez or Gladys Cate, Migrant Health Program, staff support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, Maryland 20814, Telephone (301) 594-4064.

Dated: March 27, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03-8013 Filed 4-2-03; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request: Request for Generic Clearance To Conduct Voluntary Customer/Partner Surveys

SUMMARY: Under the provisions of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Library of Medicine (NLM), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on, December 6, 2002, in Volume 67, No. 235, page 72692 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Library of Medicine may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Voluntary Customer Satisfaction Surveys.

Type of Information Collection Request: Extension. OMB Control No. 0925-0476, with an expiration date of March 31, 2003.

Need and Use of Information Collection: Executive Order 12962 directs agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. Additionally, since 1994, the NLM has been a "Federal Reinvention Laboratory" with a goal of improving its methods of delivering information to the public. An essential strategy in accomplishing reinvention goals is the ability to periodically receive input and

feedback from customers about the design and quality of the services they receive.

The NLM provides significant services directly to the public including health providers, researchers, universities, other federal agencies, state and local governments, and to others through a range of mechanisms, including publications, technical assistance, and web sites. These services are primarily focused on health and medical information dissemination activities. The purpose of this submission is to obtain OMB's generic approval to conduct satisfaction surveys of NLM's customers. The NLM will use the information provided by individuals and institutions to identify strengths and weaknesses in current services and to make improvements where feasible. The ability to periodically survey NLM's customers is essential to continually update and upgrade methods of providing high quality service.

Frequency of Response: Annually or biennially.

Affected Public: Individuals or households; businesses or other for profit; state or local governments; Federal agencies; non-profit institutions; small businesses or organizations.

Type of Respondents: Organizations, medical researchers, physicians and other health care providers, librarians, students, and the general public.

Annual reporting burden is as follows:
Estimated Number of Respondents: 18,400.

Estimated Number of Responses per Respondent: 1.

Average Burden Hours Per Response: .122.

Estimated Total Annual Burden Hours Requested: 2246.

The annualized cost to respondents is estimated at \$30,256. 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 are invited on 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; (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.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed collection of information contact: Ronald F. Stewart, National Library of Medicine, Building 38, Room 2N07, 8600 Rockville Pike, Bethesda, MD 20894, or call non-toll free number (301) 496-6491. you may also e-mail your request to: ron_stewart@mail.nlm.nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their effect if received within 30 days of the date of this publication.

Dated: March 26, 2003.

Jon G. Retzlaff,

Executive Officer, National Library of Medicine.

[FR Doc. 03-8058 Filed 4-2-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Pretesting of NCI Office of Communications Messages

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 Cancer Institute (NCI), 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: Pretesting of NCI Office of Communications Messages.

Type of Information Collection Request: EXTENSION (OMB# 0925-0046, expires 8/31/03).

Need and Use of Information Collection: In order to carry out NCI's legislative mandate to educate and

disseminate information about cancer prevention, detection, diagnosis, and treatment to a wide variety of audiences and organizations (e.g. cancer patients, their families, the general public, health providers, the media, voluntary groups, scientific and medical organizations), the NCI Office of Communications (OC) needs to pretest its communications strategies, concepts, and messages while they are under development. The primary purpose of this pretesting, or formative evaluation, is to ensure that the messages, communication materials, and information services created by OC have the greatest capacity of being received, understood, and accepted by their target audiences. By utilizing appropriate qualitative and quantitative methodologies, OC is able to (1) understand characteristics of the intended target audience—their attitudes, beliefs, and behaviors—and use this information in the development of effective communication tools and strategies; (2) produce or refine messages that have the greatest potential to influence target audience attitudes and behavior in a positive manner; and (3) expend limited program resource dollars wisely and effectively.

Frequency of Response: On occasion.

Affected Public: Individuals or households; businesses or other for profit; not-for-profit institutions; Federal Government; State, Local, or Tribal Government.

Type of Respondents: Adult cancer patients; members of the public; health care professionals; organizational representatives. The annual reporting burden is as follows:

Estimated Number of Respondents: 13,780;

Estimated Number of Responses per Respondent: 1;

Average Burden Hours Per Response: 1458, and

Estimated Total Annual Burden Hours Requested: 2,010.

There are no Capital Costs, Operating Cost, and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on 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 Ellen Eisner, Consumer Research Manager, OC Director's Office, NCI, NIH, Building 31, Room 10A03, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301) 435-7783 or e-mail your request, including your address to: eisnere@mail.nih.gov.

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: March 24, 2003.

Reesa Nichols,

Project Clearance Liaison, NCI.

[FR Doc. 03-8059 Filed 4-2-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting; Interagency Autism Coordinating Committee

The National Institutes of Health (NIH) hereby announces a meeting of the Interagency Autism Coordinating Committee (IACC) to be held on May 13, 2003 on the NIH campus in Bethesda, Maryland.

The Children's Health Act of 2000 (Pub. L. 106-310), title I, section 104, mandated the establishment of an Interagency Autism Coordinating Committee (IACC) to coordinate autism research and other efforts within the Department of Health and Human Services (DHHS). In April 2001, Secretary Tommy Thompson delegated the authority to establish the IACC to the National Institutes of Health (NIH). The National Institute of Mental Health (NIMH) at the NIH has been designated the lead for this activity.

The IACC meeting will be open to the public, 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.

Name of Committee: Interagency Autism Coordinating Committee.

Date: May 13, 2003.

Time: 8:30 a.m. to 5:15 p.m.

Agenda: Discussion of autism activities across Federal agencies.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10 (6th floor), Bethesda, MD 20892.

Contact Person: Ann Wagner, Ph.D., Division of Services and Intervention Research, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 7142, MSC 9633, Bethesda, MD 20892, E-mail: awagner@mail.nih.gov, Phone: (301) 443-4283.

Any member of the public interested in presenting oral comments to the committee may notify the contact person listed on this notice at least 5 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Presentations may be limited to 5 minutes; both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding his/her statement to the contact person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information about the meeting is also available on-line on the NIMH Home page at <http://www.nimh.nih.gov/iacc/index.cfm>.

Dated: March 26, 2003.

Raynard Kington,

Deputy Director, National Institutes of Health.

[FR Doc. 03-8057 Filed 4-2-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye 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 Eye Institute Special Emphasis Panel, R01 applications related to Melanosome Biogenesis and Ocular Albinism.

Date: April 2, 2003.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, Executive Plaza South, 6120 Executive Blvd., Suite 350, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Anne E Schaffner, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, 6120 Executive Blvd., Suite 350, Bethesda, MD 20892. 301-451-2020.

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. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: March 28, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03-8052 Filed 4-2-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., 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 Dental and Craniofacial Research Special Emphasis Panel 03-42, Review of R01s.

Date: April 23, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892. (301) 594-2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03-51, Review of R13s.

Date: May 6, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892. (301) 594-2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: March 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03-8049 Filed 4-2-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel, Developmental Neuroscience Program Review.

Date: April 24, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone conference call.)

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892-9529. 301-594-0635.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research

Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03-8051 Filed 4-2-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Messenger R&A Protection.

Date: April 30, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: DHHS/NIH/NIAID/DEA/SRP, 6700 B Rockledge Drive, 2156, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Cheryl K. Lapham, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700-B Rockledge Drive, MSC 7616, Room 2156, Bethesda, MD 20892-7616. (301) 402-4598. clapham@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 28, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03-8053 Filed 4-2-03; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/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 Institute of Environmental Health Sciences Special Emphasis Panel SBIR Phase II, Topic 87—Development of Novel Approaches to Proteomics.

Date: May 1, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexandra Drive, EC 3162, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC-30, Research Triangle Park, NC 27709, 919/541-0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of Conference Grant Applications (R13s).

Date: May 21, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 122, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC-30, Research Triangle Park, NC 27709, 919/541-0752.

(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 Hazardous 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: March 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03-8054 Filed 4-2-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Planning Grants for Regional Centers of Excellence for Biodefense & Emerging Infectious Diseases Research (P-RCE).

Date: April 30–May 1, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Adriana Costero, PhD, Scientific Review Administrator, NIAID/DEA, Scientific Review Program, 6700B Rockledge Drive, MSC07616, Room 2148, Bethesda, MD 20892-276, 301-451-4573, acostero@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03-8055 Filed 4-2-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 the following meeting.

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 portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: June 12-13, 2003.

Open: June 12, 2003, 9 a.m. to 11 a.m.

Agenda: Administrative reports and program discussions.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, Center Drive, Bethesda, MD 20814.

Closed: June 12, 2003, 11 a.m. to 5 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, Center Drive, Bethesda, MD 20814.

Closed: June 13, 2003, 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, Center Drive, Bethesda, MD 20814.

Contact Person: Sheldon Kotzin, MLS, Chief, Bibliographic Services Division, Division of Library Operations, National

Library of Medicine, 8600 Rockville Pike, Bldg 38A/Room 4N419, Bethesda, MD 20894.

Any interested person may file written comments with the Committee by forwarding the statement to the Contact Person listed on this Notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 03-8050 Filed 4-2-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings 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 meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine, Extramural Programs Subcommittee.

Date: May 12, 2003.

Closed: 4 PM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine Subcommittee on Outreach and Public Information.

Date: May 13, 2003.

Open: 7:30 AM to 8:45 AM.

Agenda: Outreach Activities for the National Library of Medicine.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine.

Date: May 13-14, 2003.

Open: May 13, 2003, 9:00 AM to 4:30 PM.

Agenda: Administrative Reports and Program Discussion.

Place: National Library of Medicine, Building 38, Board Room, 2E17, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: May 13, 2003, 4:30 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Board Room, 2E17, 8600 Rockville Pike, Bethesda, MD 20894.

Open: May 14, 2003, 9 AM to 12 PM.

Agenda: Administrative Reports and Program Discussion.

Place: National Library of Medicine, Building 38, Board Room, 2E17, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: <http://www.nlm.nih.gov/od/bor/bor.html>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 26, 2003.

LaVerne Y. Stringfield,

*Director, Office of Federal Advisory
Committee Policy.*

[FR Doc. 03-8056 Filed 4-02-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG-2003-14814]

Great Lakes Pilotage Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Great Lakes Pilotage Advisory Committee (GLPAC) will meet to discuss various issues relating to pilotage on the Great Lakes. The meeting will be open to the public.

DATES: The GLPAC will meet on Monday, May 5, 2003, from 2 p.m. to 5:30 p.m. and on Tuesday, May 6, 2003, from 8 a.m. to 4 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before May 1, 2003. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before May 1, 2003.

ADDRESSES: GLPAC will meet at the Maritime Institute of Technology Training and Conference Center, Room Deck A, 5700 Hammonds Ferry Road, Linthicum Heights, MD 21090. Send written material and requests to make oral presentations to Margie Hegy, Commandant (G-MW), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001. This notice is available on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Margie Hegy, Executive Director of GLPAC, telephone 202-267-0415, fax 202-267-4700.

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda

The agenda includes the following:

- (1) Ratemaking Methodology.
- (2) Pilot Attrition.
- (3) Briefing on Maritime Security on the Great Lakes.
- (4) Develop Notice for Public Input on Cost Saving Reform Strategies for Great Lakes Pilotage.

(5) Update on Coast Guard Great Lakes Pilotage Activities and Work List for Near Future.

(6) 2003 Shipping Season Issues.

(7) Briefing on Determining Pilotage Rate by Vessel Size.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than May 1, 2003. Written material for distribution at the meeting should reach the Coast Guard no later than May 1, 2003. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 10 copies to Margie Hegy at the address in the **ADDRESSES** section no later than April 28, 2003.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: March 27, 2003.

Paul J. Pluta,

*Rear Admiral, U.S. Coast Guard, Assistant
Commandant for Marine Safety, Security and
Environmental Protection.*

[FR Doc. 03-8134 Filed 4-2-03; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-3176-EM]

Connecticut; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Connecticut (FEMA-3176-EM), dated March 11, 2003, and related determinations.

EFFECTIVE DATE: March 11, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 11, 2003, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of Connecticut, resulting from the record/near record snow on February 17-18, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of Connecticut.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended by Executive Order 13286, James N. Russo of the Federal Emergency Management Agency is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Connecticut to have been affected adversely by this declared emergency:

Fairfield, Hartford, Litchfield, Middlesex, New Haven, New London, Tolland, and Windham Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Michael D. Brown,

*Acting Under Secretary, Emergency
Preparedness and Response.*

[FR Doc. 03-8069 Filed 4-2-03; 8:45 am]

BILLING CODE 6718-02-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****[FEMA-3178-EM]****District of Columbia; Emergency and Related Determinations**

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response, Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the District of Columbia of (FEMA-3178-EM), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: March 14, 2003.

FOR FURTHER INFORMATION CONTACT:

Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 14, 2003, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act), as follows:

I have determined that the impact in the District of Columbia, resulting from the record/near record snow on February 16-17, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (Stafford Act). I, therefore, declare that such an emergency exists in the District of Columbia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department

of Homeland Security, under Executive Order 12148, as amended by Executive Order 13286, Thomas Davies of the Federal Emergency Management Agency is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the District of Columbia to have been affected adversely by this declared emergency:

The District of Columbia for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03-8067 Filed 4-2-03; 8:45 am]

BILLING CODE 6718-02-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****[FEMA-1446-DR]****Guam; Amendment No. 4 to Notice of a Major Disaster Declaration**

AGENCY: Department of Homeland Security, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Territory of Guam, (FEMA-1446-DR), dated December 8, 2002, and related determinations.

EFFECTIVE DATE: March 14, 2003.

FOR FURTHER INFORMATION CONTACT:

Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the authority of Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (Stafford Act). Therefore, consistent with the Insular Areas Act, 48 U.S.C. 1469a(d), and the President's declaration letter dated December 8, 2002, Federal funds for Public Assistance, including direct Federal assistance, and Hazard Mitigation Grant Programs, and for Other Needs Assistance under the Individuals and Households Program are authorized at

90 percent of total eligible costs for the Territory of Guam.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03-8076 Filed 4-2-03; 8:45 am]

BILLING CODE 6718-02-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****[FEMA-3179-EM]****Maryland; Emergency and Related Determinations**

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Maryland (FEMA-3179-EM), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: March 14, 2003.

FOR FURTHER INFORMATION CONTACT:

Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 14, 2003, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of Maryland, resulting from the record/near record snow on February 14-17, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of Maryland.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as

you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended by Executive Order 13286, Thomas Davies of the Federal Emergency Management Agency is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Maryland to have been affected adversely by this declared emergency:

Allegany, Anne Arundel, Baltimore, Calvert, Caroline, Carroll, Cecil, Frederick, Garrett, Harford, Howard, Kent, Montgomery, Prince George's, Queen Anne's, Talbot, and Washington Counties, and the City of Baltimore for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03-8068 Filed 4-2-03; 8:45 am]

BILLING CODE 6718-02-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1449-DR]

Federated States of Micronesia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response, Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Federated States of Micronesia, (FEMA-1449-DR), dated January 6, 2003, and related determinations.

EFFECTIVE DATE: March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Federated States of Micronesia is hereby amended to include Categories C through G under the Public Assistance program for Chuuk State determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 2003:

Chuuk State for Categories C through G under the Public Assistance program (already designated for Categories A and B including direct Federal assistance at 75 percent Federal funding).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03-8074 Filed 4-2-03; 8:45 am]

BILLING CODE 6718-02-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-3177-EM]

New Hampshire; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New Hampshire (FEMA-3177-EM), dated March 11, 2003, and related determinations.

EFFECTIVE DATE: March 11, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 11, 2003, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of New Hampshire, resulting from the record/near record snow on February 17-18, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended by Executive Order 13286, James N. Russo of the Federal Emergency Management Agency is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New Hampshire to have been affected adversely by this declared emergency:

Cheshire, Hillsborough, Merrimack, Rockingham, and Strafford Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03-8070 Filed 4-2-03; 8:45 am]

BILLING CODE 6718-02-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-3173-EM]

New York; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Department of Homeland Security, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of New York, (FEMA-3173-EM), dated February 25, 2003, and related determinations.

EFFECTIVE DATE: March 11, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of February 25, 2003:

Rensselaer County for emergency protective measures (Category B) under the Public Assistance program for a period of 96 hours.

Schoharie County for emergency protective measures (Category B) under the Public Assistance program for a period of 96 hours (already designated for a 48-hour period).

Tioga County for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours. (The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs; 83.544, Public Assistance

Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03-8072 Filed 4-2-03; 8:45 am]

BILLING CODE 6718-02-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1447-DR]

Commonwealth of the Northern Mariana Islands; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Department of Homeland Security, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of the Northern Mariana Islands, (FEMA-1447-DR), dated December 11, 2002, and related determinations.

EFFECTIVE DATE: March 11, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the authority of Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (Stafford Act). Therefore, consistent with the Insular Areas Act, 48 U.S.C. 1469a(d), and the President's declaration letter dated December 11, 2002, Federal funds for Public Assistance, including direct Federal assistance, and Hazard Mitigation Grant Programs, and for Other Needs Assistance under the Individuals and Households Program are authorized at 90 percent of total eligible costs for the Commonwealth of the Northern Mariana Islands.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family

Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03-8073 Filed 4-2-03; 8:45 am]

BILLING CODE 6718-02-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1430-DR]

Commonwealth of the Northern Mariana Islands; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Department of Homeland Security, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of the Northern Mariana Islands, (FEMA-1430-DR), dated August 6, 2002, and related determinations.

EFFECTIVE DATE: March 11, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the authority of Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (Stafford Act). Therefore, consistent with the Insular Areas Act, 48 U.S.C. 1469a(d), and the President's declaration letter dated August 6, 2002, Federal funds for the Public Assistance and Hazard Mitigation Grant Programs are authorized at 90 percent of total eligible costs for the Commonwealth of the Northern Mariana Islands.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03-8075 Filed 4-2-03; 8:45 am]

BILLING CODE 6718-02-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1453-DR]

Ohio; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA-1453-DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: March 18, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective March 18, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03-8071 Filed 4-2-03; 8:45 am]

BILLING CODE 6718-02-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting, Board of Visitors for the National Fire Academy

AGENCY: Fire Administration (USFA), Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy.

Dates of Meeting: April 28-29, 2003.

Place: Building H, Room 300, National Emergency Training Center, Emmitsburg, Maryland.

Time: April 28, 2003, 10:30 a.m.-5 p.m., April 29, 2003, 8:30 a.m.-5 p.m.

Proposed Agenda: April 28-29, Review National Fire Academy Program Activities.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447-1117, on or before April 23, 2003.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the U.S. Fire Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

Dated: March 31, 2003.

R. David Paulison,

U.S. Fire Administrator, Director of the Preparedness Division.

[FR Doc. 03-8123 Filed 4-2-03; 8:45 am]

BILLING CODE 6718-08-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4815-N-15]

Notice of Submission of Proposed Information Collection to OMB: Home Mortgage Disclosure Act (HMDA) Loan/ Application Register

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 5, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502-0539) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395-6974; E-mail Lauren_Wittenberg@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708-2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork

Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including

number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Home Mortgage Disclosure Act (HMDA) Loan/ Application Register.

OMB Approval Number: 2502-0539.

Form Numbers: FR HMDA-LAR.

Description of the Need for the Information and Its Proposed Use:

This report collects information from mortgage lenders on application for, and originations and purchases of mortgage and home improvement loans. None-

depository mortgage lending institutions are required to use the report as a running log throughout the calendar year, and send the report to HUD by March 1 of the following calendar year.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion and annually.

REPORTING BURDEN

Number of respondents	Annual responses	×	Hours per response	=	Burden hours
1,800	1		98.6		177,777

Total Estimated Burden Hours: 177,777.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 28, 2003.

Wayne Eddins,

*Departmental Reports Management Officer,
Office of the Chief Information Officer.*

[FR Doc. 03-8027 Filed 4-2-03; 8:45 pm]

BILLING CODE 4210-72-P

INTER-AMERICAN FOUNDATION

Sunshine Act Meeting; Inter-American Foundation Meeting of the Board of Directors and Advisory Council

TIME AND DATE: April 24, 2003, 9:30 a.m. to 3 p.m.

PLACE: Inter-American Foundation, 901 N. Stuart Street, 10th Floor, Arlington, VA 22203.

STATUS: Open session.

MATTERS TO BE CONSIDERED

- Approval of the Minutes of the December 2, 2002, Meeting of the Board of Directors
- President's Report
- IAF 2002 Grant Results Report
- Investment Initiative
- Corporate Foundation Network

CONTACT PERSON FOR MORE INFORMATION: Carolyn Karr, General Counsel, (703) 306-4350.

Dated: March 27, 2003.

David Valenzuela,

President, Inter-American Foundation.

[FR Doc. 03-8246 Filed 4-1-03; 2:10 am]

BILLING CODE 7025-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Declaration for Importation or Exportation of Fish or Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (We) will submit the collection of information described below to OMB for approval under the provisions of the Paperwork Reduction Act of 1995. If you wish to obtain copies of the information collection requirements, related forms, or explanatory material, contact the Service Information Collection Clearance Officer at the address or telephone number listed below.

DATES: We will accept comments until June 2, 2003.

ADDRESSES: Mail your comments on this information collection renewal request to Anissa Craghead, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203; or e-mail Anissa_Craghead@fws.gov.

Form 3-177 (with instructions for its completion) is available for electronic submission at the following Web site: <https://edecs.fws.gov>.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requirements, related forms, or explanatory material, contact Anissa Craghead at telephone number (703) 358-2445, or electronically at Anissa_Craghead@fws.gov.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which

implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)).

We will submit a request to OMB to renew its approval of the collection of information included on Form 3-177, Declaration For Importation or Exportation of Fish or Wildlife. The current OMB control number for Form 3-177 is 1018-0012, and the OMB approval for this collection of information expires on October 31, 2003. This form (with instructions for its completion) is now available for electronic submission at the following Web site: <https://edecs.fws.gov>. We are requesting a three year term of approval for this information collection activity. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Endangered Species Act (16 U.S.C. 1531 *et seq.*) makes it unlawful to import or export fish, wildlife, or plants without filing a declaration or report deemed necessary for enforcing the Act or upholding the Convention on International Trade in Endangered Species (CITES) (see 16 U.S.C. 1538(e)). The U.S. Fish and Wildlife Service's Form 3-177, Declaration for Importation or Exportation of Fish or Wildlife, is the declaration form required of any business or individual importing into or exporting from the United States any fish, wildlife, or wildlife products. The information collected is unique to each wildlife shipment and enables us to accurately inspect the contents of the shipment; enforce any regulations that pertain to the fish, wildlife, or wildlife products contained in the shipment; and maintain records of the importation

and exportation of these commodities. Additionally, since the United States is a member of CITES, much of the collected information is compiled in an annual report that is forwarded to the CITES Secretariat in Geneva, Switzerland. Submission of an annual report on the number and types of imports and exports of fish, wildlife, and wildlife products is one of our treaty obligations under CITES. We also use the information obtained from Form 3-177 as an enforcement tool and management aid in monitoring the international wildlife market and detecting trends and changes in the commercial trade of fish, wildlife, and wildlife products. Our Division of Scientific Authority and Division of Management Authority use this information to assess the need for additional protection for native species. In addition, nongovernment organizations, including the commercial wildlife community, request information from us that we obtain from Form 3-177.

You must file Form 3-177 with us at the time and port where you request clearance of your wildlife import or export. In certain instances, Form 3-177 may be filed with the U.S. Customs Service. The standard information collection includes the name of the importer or exporter and broker, the scientific and common name of the fish or wildlife, permit numbers (if a permit is required), a description of the fish or wildlife, quantity and value of the fish or wildlife, and natural country of origin of the fish or wildlife. In addition, certain information, such as the airway bill or bill of lading number, the location of the fish or wildlife for inspection, and the number of cartons containing fish or wildlife, assists our wildlife inspectors if a physical examination of the shipment is required.

Title: Declaration for Importation or Exportation of Fish or Wildlife.

Approval Number: 1018-0012.

Service Form Number: 3-177.

Frequency of Collection: Whenever clearance is requested for an importation or exportation of fish, wildlife, or wildlife products.

Description of Respondents: Businesses or individuals that import or export fish, wildlife, or wildlife products; scientific institutions that import or export fish or wildlife scientific specimens; government agencies that import or export fish or wildlife specimens for various purposes.

Total Annual Responses: Approximately 116,000 individual Form 3-177s are filed with us in a fiscal year.

Total Annual Burden Hours: The total annual burden is approximately 22,601 hours. We estimate the reporting burden to average 14 minutes per response when completed by hand. We estimate that approximately one-third (33%) of responses received will be submitted electronically, with a reporting burden of about seven minutes per response for electronic submissions. The estimate of electronic responses we expect to receive is based upon a recent pilot program of the electronic declaration (eDecs) system. We anticipate that the use of the eDecs system will expand in the future, which would further reduce the burden on the public.

We invite comments concerning this renewal on: (1) Whether the collection of information is useful and necessary for us to do our job, (2) the accuracy of our estimate of the burden on the public to complete the form; (3) ways to enhance the quality and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. This information collection is part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There may also be limited circumstances in which we would withhold a respondent's identity from the rulemaking record, as allowable by law. If you wish us to withhold your name and/or address, you must state this clearly at the beginning of your comment. We will not consider anonymous comments. We generally make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: March 11, 2003.

Anissa Craghead,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 03-8102 Filed 4-2-03; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Revised Recovery Plan for the Southern Sea Otter (*Enhydra lutris nereis*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the final revision of the southern sea otter recovery plan. This species occurs along the central coast of California from Half Moon Bay south to Point Conception.

ADDRESSES: Copies of the final revised recovery plan are available by written request addressed to the Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003. Recovery plans may also be obtained from: Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814, 301-429-6403 or 1-800-582-3421. The fee for the plan varies depending on the number of pages of the plan. This final revised recovery plan will be made available on the World Wide Web at <http://www.r1.fws.gov/ecoservices/Endangered/recovery/default.htm>.

FOR FURTHER INFORMATION CONTACT: Carl Benz at the above Ventura address (telephone 805-644-1766).

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*). A species is considered recovered when the species' ecosystem is restored and/or threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of native biotic communities. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate the time and costs of implementing recovery actions.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. Information presented during the public

comment period has been considered in the preparation of this final revised recovery plan, and is summarized in the appendix to the plan. As we move forward to implement the final recovery plan, we welcome public input and comment regarding our implementation efforts.

The southern (California) sea otter was listed as threatened on January 14, 1977 (42 FR 2968). It is also recognized as a depleted population pursuant to the Marine Mammal Protection Act. Reduced range and population size, vulnerability to oil spills, and the oil spill risk from coastal tanker traffic were the primary reasons listing of the sea otter. The southern sea otter population contains about 2,150 individuals and ranges between Half Moon Bay and Point Conception, California. Approximately 27 otters, including pups, are at San Nicolas Island as a result of translocation efforts to establish an experimental population. After review of new biological information, we, with the assistance of the Southern Sea Otter Recovery Team, drafted a revised recovery plan for public review and comment in 1991. A second draft revision was released for public review in 1996. After review of public comments on those drafts, and review of new technical information regarding oil spill risk to southern sea otters, we, with the assistance of the Southern Sea Otter Recovery Team and technical consultants, completed a new draft revised recovery plan, which was released to the public for comment in January 2000. Public comments were reviewed by the Southern Sea Otter Recovery Team and us, and changes based on these comments are incorporated into this final revised recovery plan.

The objective of the final revised recovery plan is to delist the southern sea otter through implementation of a variety of recovery measures including: Monitoring otter populations; implementing plans to minimize the risk of, and impacts from, oil spills; minimizing incidental and intentional take of sea otters; assessing and minimizing other threats; evaluating the sea otter translocation program; improving captive management techniques; and implementing an outreach program and providing information to the public.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: January 29, 2003.

Daniel S. Walsworth,

Acting Manager, California/Nevada Operations Office, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 03-8060 Filed 4-2-03; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-020-01-1310-EI]

Notice of Intent to Prepare Planning Analyses/Environmental Assessments

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare Planning Analyses/Environmental Assessments.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM), Jackson Field Office, Eastern States intends to prepare Planning Analyses/Environmental Assessments (PA/EA) to consider leasing scattered tracts of Federal mineral estate for oil and gas exploration and development. The PA/EA will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

DATES: This notice initiates the public scoping process. Comments on issues and planning criteria can be submitted in writing to the address listed below. Due to the limited scope of this PA/EA process, public meetings are not scheduled. BLM will, however, consider requests for one or more public meetings.

ADDRESSES: Send comments to: Bureau of Land Management, Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, MS 39206.

FOR FURTHER INFORMATION CONTACT: John Reiss, Lead for PA/EA, Jackson Field Office, (601-977-5400).

SUPPLEMENTARY INFORMATION: The BLM has responsibility to consider nominations to lease Federal mineral estate for oil and gas exploration and development. An interdisciplinary team will be used in the preparation of the PA/EAs. Preliminary issues, subject to change as a result of public input, are (1) potential impacts of oil and gas exploration and development on the

surface resources and (2) consideration of restrictions on lease rights to protect surface resources. The number of separate analyses that will be prepared for the tracts will depend on their proximity to each other. Tract locations, along with acreage, are listed below.

Alabama, Fayette County, Huntsville Meridian

T16S, R9W,
Sec. 20, NWNE;
Sec. 23, SW;
Sec. 25, E2SW, SWSW;
Sec. 26, NESE, S2SW;
Sec. 30, SWNW;
Sec. 36, NENW, SESW.

T16S, R10W,
Sec. 1, SWNW;
Sec. 10, NESE;
Sec. 13, SWNW;
Sec. 24, NWNE.

Alabama, Lamar County, Huntsville Meridian

T 15S, R 15W,
Sec. 13, SESE.

Alabama, Tuscaloosa County, Huntsville Meridian

T17S, R9W,
Sec. 14, E2NW;
Sec. 34, NESE.

T17S, R10W,
Sec. 1, NENE;
Sec. 8, SESW;
Sec. 10, SENE.

T18S, R7W,
Sec. 7, NWNW.

T18S, R9W,
Sec. 3, NWNE, NESE.

Alabama, Walker County, Huntsville Meridian

T16S, R8W,
Sec. 21, NESW.

T17S, R7W,
Sec. 6, NWSW.

Arkansas, Franklin County, Fifth Principal Meridian

T10N, R26W,
Sec. 2, SESE, SESW, NENW, NWNE.

Louisiana, Bienville Parish, Louisiana Meridian

T16N, R10W,
Sec. 4, lots 5-8;
Sec. 5, lot 1;
Sec. 8, lots 1-6;
Sec. 9, lots 8-10;

Louisiana, Bossier Parish, Louisiana Meridian

T 16N, R 11W,
Sec. 14, W2NW, SENW, E2SW, NWSW.

MS Wayne Mississippi, Wayne County, St Stephens Meridian

T7N, R7W,
Sec. 2, W2NWNW, N2SWNW;
Sec. 3, E2NENE.

T8N, R9W,
Sec. 4, NWSW;

Sec. 19, SWNE.

Bruce E. Dawson,

Field Manager, Jackson Field Office.

[FR Doc. 03-8080 Filed 4-2-03; 8:45 am]

BILLING CODE 4310-GJ-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-030-02-1610-DR: GP 2-0358]

Notice of Availability of the Record of Decision for the Southeastern Oregon Resource Management Plan and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Vale District.

ACTION: Notice of availability of the Record of Decision (ROD) for the Southeastern Oregon Resource Management Plan (SEORMP) and Final Environmental Impact Statement (EIS).

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (40 CFR 1550.2), and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM) has issued a ROD for the Proposed SEORMP EIS. The ROD documents approval of BLM's plan to manage the public lands within the Jordan and Malheur Resource Areas of the Vale District during the next 15-20 years and beyond. The SEORMP establishes direction for management on approximately 4.6 million acres of BLM administered public lands in southeast Oregon. The SEORMP is the same as the Proposed SEORMP published in November 2001.

EFFECTIVE DATES: Two protests were submitted during the 30-day protest period for the Proposed SEORMP. Both of the protests were responded to and resolved by the Director of the BLM. Resolution of the protests, signing of the ROD, and publication of this notice allows for immediate implementation of the approved SEORMP.

ADDRESSES: The approved plan is being published and will be mailed to all persons or groups who are on the current RMP mailing list. Additional copies will be available upon request at the District Office. The document will also be available on line at <http://www.or.blm.gov/Vale/>, and on compact disks available at the Vale District Office, 100 Oregon Street, Vale, OR 97918.

FOR FURTHER INFORMATION CONTACT: Jerry Taylor, Jordan Field Manager; or Tom Dabbs, Malheur Field Manager by telephone at (541) 473-3144.

SUPPLEMENTARY INFORMATION: The SEORMP is a general land use plan that establishes guidance for managing a broad spectrum of land uses and allocations and contains resource objectives, land use allocations, management actions and direction needed to achieve program and multiple use goals. The Record of Decision documents selection of the preferred alternative as presented in the Proposed SEORMP and Final EIS issued November 2001, with associated Appendices, Tables and Maps, as the approved RMP.

The following are the major components of the approved RMP:

- Direction to meet or exceed Air Quality Standards.
- Provide opportunities for exploration and development of energy and mineral resources while protecting other sensitive resources.
- Provide for an appropriate management response on all wildfires, while providing for fire fighter and public safety and protecting resource values.
- Recognize and utilize fire as a critical natural process to protect, maintain, and enhance resources.
- Restore, protect, and enhance the diversity and distribution of desirable vegetation communities.
- Manage big sagebrush cover in seedings and on native rangeland to meet the life history requirements of sagebrush-dependent wildlife.
- Control the introduction and proliferation of noxious weed species and reduce the extent and density of established weed species to within acceptable limits.
- Manage ponderosa pine, Douglas fir, and western larch communities to emphasize forest health.
- Manage western juniper and aspen woodlands to restore and promote productivity.
- Manage public land to maintain, restore, or enhance populations and habitats of special status plant and animal species.
- Manage public lands by ensuring that surface water and ground water influenced by BLM activities comply with or are making progress toward achieving State of Oregon water quality standards for beneficial uses as established per stream by the Oregon Department of Environmental Quality.
- Manage riparian/wetland areas for the restoration, maintenance, or improvement of riparian vegetation, habitat diversity, and associated watershed function to achieve healthy and productive riparian areas and wetlands.

- Restore, maintain, or improve habitat to provide for diverse and self-sustaining communities of fishes and other aquatic organisms.
- Manage upland habitats so that the forage, water, cover, and structure necessary for wildlife are available on public land.
- Maintain and manage wild horse herds in seven established herd management areas (HMA's) of Vale District and Heath Creek-Sheephead HMA of Burns District at appropriate management levels (AML's) to ensure a thriving natural ecological balance between wild horse populations, wildlife, livestock, vegetation resources, and other resource values.
- Provide for a sustained level of livestock grazing consistent with other resource objectives and public land use allocations.
- Provide and enhance developed and undeveloped recreation opportunities, while protecting resources, to manage the increasing demand for resource-dependent recreation activities.
- Manage off-highway vehicle (OHV) use to protect resource values, promote public safety, provide OHV use opportunities where appropriate, and minimize conflicts among various users. Designate public lands for OHV use as "Open" on 2,615,066 acres, "Limited" on 2,004,369 acres, and "Closed" on 15,826 acres.
- Manage public land actions and activities in a manner to be consistent with visual resource management (VRM) class objectives. Designate and manage 1,308,297 acres as VRM Class I, 217,226 acres as VRM Class II, 639,657 acres as VRM Class III, and 2,469,509 acres as VRM Class IV.
- Retain and/or designate 26 areas totaling 206,257 acres as Areas of Critical Environmental Concern (ACECs).
- Manage the congressionally designated Main Owyhee (120 miles, 35,240 acres), West Little Owyhee (58 miles, 12,520 acres) and North Fork Owyhee (10 miles, 1,247 acres) components of the National Wild and Scenic Rivers System.
- Recommend and manage four river segments (42.5 miles) as administratively suitable for designation as wild and scenic rivers. Release from further wild and scenic river consideration 145.5 miles of eligible study river segments determined to be non-suitable for wild and scenic river designation.
- Continue managing 32 wilderness study areas (WSA's—1,273,015 acres) under BLM's "Interim Management Policy for Land under Wilderness Review" (IMPLWR).

- Manage public land and pursue partnerships to provide social and economic benefits to local residents, businesses, visitors, and future generations.
- Provide for the protection and conservation of cultural and paleontological resources.
- Consult and coordinate with American Indian groups to ensure their interests are considered and their traditional religious sites, landforms and resources are taken in to account.
- Meet public needs for use authorizations such as rights-of-way, leases and permits consistent with other resource objectives.
- Acquire and maintain legal public access to public land consistent with other resource objectives.
- Lands are identified for retention and acquisition to consolidate public land holdings while retaining and acquiring land with high and public resource values.

David R. Henderson,

District Manager.

[FR Doc. 03-8079 Filed 4-2-03; 8:45 am]

BILLING CODE 4310-33-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection; under review: extension of a currently approved collection; National Corrections Reporting Program.

The Department of Justice (DOJ), Office of Office of Justice Programs 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 the **Federal Register** volume 68, number 15, page 3273 on January 23, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 5, 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. Additionally, comments may be submitted to OMB via facsimile to (202) 395-7285.

Request 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) *Type of information collection:* Extension of a currently approved collection.

(2) *Title of the form/collection:* National Corrections Reporting Program. The collection includes the forms: Prisoner Admission Report (all States), Prisoner Release Report (all States), Parole Release Report (all States), and Prisoner in Custody at Year-end Report (only for States submitting data electronically).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form number(s): NCRP-1A, NCRP-1B, NCRP-1C, and NCRP-1D. Corrections Statistics Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The National Corrections Reporting Program (NCRP) is the only national data collection furnishing annual individual-level information for State prisoners admitted or released during the year, those in custody at year-end, and persons discharged from parole supervision. The NCRP collects data on sentencing, time served in prison and on parole, offense, admission/release type, and demographic information. BJS, the Congress, researchers, and criminal justice practitioners use these data to described annual movements of adult offenders through State correctional systems. Providers of the data are personnel in the State Departments of Corrections and Parole.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* BJS anticipates 44 respondents for report year 2003 with a total annual burden of 2,491 hours. Magnetic media or other electronic formats are expected from 41 respondents and 3 respondents are expected to report annually. The respondents who have an automated data system will require an estimated 24 hours of time supply the information for

their annual caseload and an additional 2 hours documenting or explaining the data. The estimate of respondent burden for these States includes time required for modifying computer programs, preparing input data, and documenting the tape format and record layout. The estimated average amount of time required to manually complete the NCRP-1A, NCRP-1B, and NCRP-1C questionnaire are 10 minutes, 5 minutes, and 3 minutes per inmate, respectively. The responded burden is directly related to the number of cases reported. For 2000, the three manually reporting States submitted about 3,100 completed questionnaire for the NCRP-1A, about 2,700 for the NCRP-1B, and about 580 for the NCRP-1C. The estimated total burden for these respondents who submitted data manually was 771 hours. We expect no additional manual reporters in the future; and we expect an insignificant amount of increase in the number of prison admissions, prison releases and parole exists in the three States that currently report manually.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,491 burden hours annually associated with this information collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: March 28, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03-8041 Filed 4-2-03; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 25, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin

King on (202) 693-4129 or e-mail: King.Darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for MSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395-7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- * Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

- * Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- * Enhance the quality, utility, and clarity of the information to be collected; and

- * Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Type of Review: Extension of a currently approved collection.

Title: Roof Control Plans.

OMB Number: 1219-0004.

Frequency: On occasion.

Type of Response: Recordkeeping and Reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 893.

Requirement	Annual responses	Average response time (hours)	Annual burden hours
New roof control plans	47	24	1,128
Revised roof control plans	957	5	4,785
Plotting unplanned roof or rib fall, and coal or rock burst on a mine map	1,753	.08	140
Total:	2,757	6,053

Total Annualized Capital/startup Costs: \$0.

Total Annual (operating/maintaining systems or purchasing services): \$5,020.

Description: MSHA standards located at 30 CFR 75.215, 75.220, 75.221, 75.222, and 75.223, require that a roof control plan and revisions thereof suitable to the roof conditions and mining system of each coal mine be approved by MSHA before implementation by the mine operator. Mine operators are also required to plot on a mine map each unplanned roof or rib fall and coal or rock burst that occurs in the active workings when certain criteria are met. These information collection requirements are necessary to protect the health and safety of underground coal miners.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03-8081 Filed 4-2-03; 8:45 am]

BILLING CODE 4510-23-M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 26, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202-693-4129 or e-mail: King.Darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202-395-7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- * Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

- * Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- * Enhance the quality, utility, and clarity of the information to be collected; and

- * Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Revision of a currently approved collection.

Title: Unemployment Compensation for Former Federal Employees Handbook No. 391.

OMB Number: 1205-0179.

Affected Public: Individuals or households; State, Local, or Tribal Government; and Federal Government.

Type of Response: Recordkeeping and Reporting.

Frequency: On occasion—use of forms is dependent on level of unemployment.

Form	Annual responses	Average response time (hours)	Annual burden hours
ETA-931	87,000	0.05	72
ETA-931A	21,750	0.05	18
ETA-933	4,350	0.05	4
ETA-934	8,700	0.05	7

Form	Annual responses	Average response time (hours)	Annual burden hours
ETA-935	87,000	0.08	116
Total:	208,800	217

Total Annualized Capital/Startup Costs: \$0.

Total Annual Costs (operating/maintaining systems or purchasing services): \$0.

Description: Federal law (5 U.S.C. 8501-8509) provides unemployment insurance protection to former or partially unemployed Federal civilian employees. The forms contained throughout the Handbook No. 391 are used in conjunction with the provision of this benefit assistance.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03-8082 Filed 4-2-03; 8:45 am]

BILLING CODE 4510-23-M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 27, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on (202) 693-4129 or e-mail: King.Darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395-7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Type of Review: Extension of a currently approved collection.

Title: Presence Sensing Device Initiation (PSDI).

OMB Number: 1218-0143.

Affected Public: Business or other for-profit; Federal Government; and State, Local, or Tribal Government.

Frequency: On occasion, initially, and annually.

Type of Response: Recordkeeping and Third party disclosure.

Number of Respondents: 0.

Number of Annual Responses: 0.

Estimated Time Per Response: 0 minutes.

Total Burden Hours: 1.

Total Annualized Capital/Startup Costs: \$0.

Total Annual Costs (operating/maintaining systems or purchasing services): \$0.

Description: A number of paragraphs in OSHA's Standard on Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217(h)) (the "Standard") contain paperwork requirements that are necessary to validate employer and manufacturer certifications that their PSDI equipment and practices meet the requirements of the Standard.

These requirements include: Certifying brake-monitor adjustments, alternatives to photoelectric Presence Sensing Devices (PSDs), safety-system design and installation, and employee training; annual recertification of safety systems; establishing and maintaining the original certification and validation records, as well as the most recent recertification and revalidation records; affixing labels to test rods and to certified and recertified presses; and notifying an OSHA-recognized third-party validation organization when a safety system component fails, the employer modifies the safety system, or a point-of-operation injury occurs. In

addition, Appendix A of § 1910.217 provides detailed information and procedures required to meet the certification/validation provisions, as well as the design requirements, contained in the Standard. Accordingly, Appendix A supplements and explains the certification/validation provisions of the PSDI Standard, and does not specify new or additional paperwork requirements for employers. Appendix C § 1910.217 describes the requirements and procedures for obtaining OSHA recognition as a third-party validation organization; therefore, the paperwork requirements specified by this appendix do not impose burden hours or cost directly on employers who use PSDs.

By complying with these paperwork requirements, employers ensure that PSDI-equipped mechanical power presses are in safe working order, thereby preventing severe injury and death to press operators and other employees who work near this equipment. In addition, these records provide the most efficient means for an OSHA compliance officer to determine that an employer performed the requirements and that the equipment is safe.

OSHA is proposing to extend OMB approval of the information-collection requirements specified by the Standard even though the Agency can attribute no burden hours and cost to these requirements—to date, no such presses appear to be in use, either because employers selected other stroke-control devices for mechanical power presses, or because no third-party organization is available to validate employer and manufacturer certifications that their PSDI equipment and practices meet the requirements of the Standard. Therefore, the Standard does not currently affect any known employer; accordingly, the paperwork requirements currently result in no burden hours or cost to employers.

On August 28, 2002, OSHA published a **Federal Register** notice (67 FR 55181, Docket No. S225A) that initiated a Regulatory Flexibility Act review of the Presence Sensing Device Initiation (PSDI) requirements of the Mechanical Power Press Standard, pursuant to Section 610 of the Regulatory Flexibility Act and Section 5 of Executive Order 12866 on Regulatory Planning and Review.

The purpose of this review is to determine, while protecting worker

safety, whether there are ways to modify this standard to make implementation more practical, to reduce regulatory burden on small business and to improve its effectiveness.

OSHA is proposing that OMB extend its approval of the information-collection requirements specified by the Standard so that the Agency can enforce these requirements if employers begin using PSDI.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03-8083 Filed 4-2-03; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

This notice revises the safety standard number referenced in a petition for modification notice that was published in the **Federal Register** on February 4, 2003 (68 FR 5664), for the Dakota Westmoreland Corporation, Beulah Mine. In a letter from the petitioner dated March 7, 2003, the petitioner requests that the safety standard in its petition for modification, docket number M-2003-005-C, be changed from 30 CFR 77.405(b) to 30 CFR 77.803. The petitioner's request is to modify the existing safety standard, 30 CFR 77.803, to allow an alternative method to permit its boom/mast machine to be raised or lowered during initial dragline assembly or disassembly at construction sites. The petitioner asserts that its proposed alternative method would not result in a diminution of safety to the miners but would provide at least the same measure of protection as the existing standard.

Dated in Arlington, Virginia, this 26th day of March, 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03-8019 Filed 4-2-03; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. HB Coal Co., Inc.

[Docket No. M-2003-021-C]

HB Coal Co., Inc., 22 Mary Ann Dr., Gray, Kentucky 40734 has filed a petition to modify the application of 30 CFR 75.342 (Methane monitors) to its No. 1 Mine (MSHA I.D. No. 15-18606) located in Whitley County, Kentucky. The petitioner proposes to use hand-held continuous-duty methane and oxygen detectors in lieu of machine mounted methane monitors on three-wheel tractors with drag bottom buckets. The petitioner asserts that the operator will be qualified in the proper use of said detector and that application of the existing standard would reduce the safety of the miners.

2. HB Coal Co., Inc.

[Docket No. M-2003-022-C]

HB Coal Co., Inc., 22 Mary Ann Dr., Gray, Kentucky 40734 has filed a petition to modify the application of 30 CFR 75.380(f)(4)(i) (Escapeways; bituminous and lignite mines) to its No. 1 Mine (MSHA I.D. No. 15-18606) located in Whitley County, Kentucky. The petitioner proposes to use two ten-pound portable chemical fire extinguishers in the operator's deck of each Mescher tractor operated at its No. 1 Mine. The petitioner states that the equipment operator will inspect each fire extinguisher on a daily basis prior to entering the primary escapeway. The petitioner further states that a record of the daily inspection will be kept at the mine, and a sufficient number of spare fire extinguishers will be maintained at the mine in case a defective fire extinguisher is detected. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Bowie Resources Limited

[Docket No. M-2003-023-C]

Bowie Resources Limited, P.O. Box 483, Paonia, Colorado 81428 has filed a petition to modify the application of 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility) to its Bowie No. 2 Mine (MSHA I.D. No. 05-04591) located in Delta County, Colorado. The petitioner requests a modification of the standard to allow the use of permissible high-voltage continuous miners in by the last open crosscut and within 150 feet of the pillar workings. The petitioner states that the high-voltage continuous miner will be used to develop longwall gateroads and mains. The petitioner asserts that the proposed alternative method would provide at least the same

measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to comments@msha.gov, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before May 5, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 27th day of March, 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03-8020 Filed 4-2-03; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL2-98]

NSF International, Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of NSF International for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on April 3, 2003 and, unless modified in accordance with 29 CFR 1910.7, continues in effect while NSF remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Sherrey Nicolas, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693-2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of NSF International (NSF) as a Nationally Recognized Testing Laboratory (NRTL). NSF's expansion covers the use of

additional test standards. OSHA's current scope of recognition for NSF may be found in the following informational web page: <http://www.osha-slc.gov/dts/otpca/nrtl/nsf.html>.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope.

NSF submitted its application, dated June 25, 2002 (see Exhibit 10), to expand its recognition to use 12 additional test standards. The NRTL Program staff performed the on-site review (assessment) of the facility and provided a positive recommendation on the expansion in their report (see Exhibit 11). OSHA published the notice of its preliminary findings on the expansion request in the **Federal Register** on December 26, 2002 (67 FR 248). The notice requested submission of any public comments by January 10, 2003. OSHA did not receive any comments pertaining to the application.

The previous notice published by OSHA for NSF's recognition covered an expansion of recognition, which became effective on June 28, 2000 (65 FR 39944).

The current address of the NSF facility (site) already recognized by OSHA is: NSF International, 789 Dixboro Road, Ann Arbor, MI 48105

Final Decision and Order

The NRTL Program staff has examined the application, the assessor's report, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that NSF International has met the

requirements of 29 CFR 1910.7 for expansion of its recognition to include the additional test standards, subject to the limitation and conditions, listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of NSF, subject to this limitation and these conditions.

Limitation

Expansion for Additional Standards

OSHA limits the expansion to testing and certification of products for demonstration of conformance to the following 12 test standards, and OSHA has determined the standards are "appropriate," within the meaning of 29 CFR 1910.7(c).

- UL 73 Motor-Operated Appliances
- UL 399 Drinking-Water Coolers
- UL 466 Electric Scales
- UL 514B Fittings for Cable and Conduit
- UL 514C Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers
- UL 514D Cover Plates for Flush-Mounted Wiring Devices
- UL 541 Refrigerated Vending Machines
- UL 751 Vending Machines
- UL 982 Motor-Operated Household Food Preparing Machines
- UL 1453 Electric Booster and Commercial Storage Tank Water Heaters
- UL 1563 Electric Spas, Equipment Assemblies, and Associated Equipment
- UL 1795 Hydromassage Bathtubs

A few of the test standards listed above, are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we often use the designation of the standards developing organization (e.g., UL 751) for the standard, as opposed to the ANSI designation (e.g., ANSI/UL 751). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of whether it is currently recognized for the proprietary or ANSI version. Contact "NSSN" (<http://www.nssn.org>), an organization partially sponsored by ANSI, to find out whether or not a test standard is currently ANSI-approved.

Conditions

NSF must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to NSF's facility and records for purposes

of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If NSF has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

NSF must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, NSF agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

NSF must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

NSF will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

NSF will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC, this 20th day of March, 2003.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03-8098 Filed 4-2-03; 8:45 am]

BILLING CODE 4510-26-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-354]

PSEG Nuclear, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission or NRC) has granted the request of PSEG Nuclear, LLC, (the licensee) to withdraw its April 16, 2002, application for proposed amendment to Facility Operating License No. NPF-57 for the Hope Creek Generating Station, Unit No. 1, located in Salem County, New Jersey.

The proposed amendment would have revised the Technical Specifications to delete the primary containment isolation valves and instrumentation associated with the

permanent removal of the reactor vessel head spray piping.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 29, 2002 (67 FR 66013). However, by letter dated March 19, 2003, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 16, 2002, and the licensee's letter dated March 19, 2003, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams/html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, or 301-415-4737 or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 28th day of March 2003.

For the Nuclear Regulatory Commission.

George F. Wunder,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03-8111 Filed 4-2-03; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-390]

Tennessee Valley Authority; Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of issuance of amendment; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on March 18, 2003 (68 FR 12958), that referenced the incorrect year of Date of Amendment Request. This action is necessary to correct an erroneous date.

FOR FURTHER INFORMATION CONTACT: K. Jabbour, Project Manager, Office of

Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone (301) 415-1496, e-mail: knj@nrc.gov.

SUPPLEMENTARY INFORMATION: On page 12958, in the second column, third line up from bottom of page, it is corrected to read from "2003" to "2002."

Dated in Rockville, Maryland, this 27th day of March 2003.

For the Nuclear Regulatory Commission.

Kahtan N. Jabbour,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03-8112 Filed 4-2-03; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47591; File No. S7-30-02]

RIN 3235-AI60

Regulation Analyst Certification

AGENCY: Securities and Exchange Commission.

ACTION: Notice of OMB approval of collections of information.

SUMMARY: The Securities and Exchange Commission ("Commission") adopted new Regulation Analyst Certification ("Regulation AC") (17 CFR 242.500 through 242.505) under the Securities Exchange Act (17 U.S.C. 78, *et seq.*) on February 20, 2003. Regulation AC requires that brokers, dealers, and certain persons associated with a broker or dealer include in research reports certifications by the research analyst that the views expressed in the report accurately reflect his or her personal views, and disclose whether or not the analyst received compensation or other payments in connection with his or her specific recommendations or views. Broker-dealers would also be required to obtain periodic certifications by research analysts in connection with the analyst's public appearances. Certain provisions of the Regulation contain "collection of information" requirements within the meaning of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and the Commission submitted the proposed collections of information to the Office of Management and Budget (OMB) for review. OMB has approved the collection of information requirements contained in Regulation AC.

EFFECTIVE DATE: April 14, 2003.

FOR FURTHER INFORMATION CONTACT: James Brigagliano, Thomas Eidt, or

Racquel Russell, at (202) 942-0772 in the Office of Risk Management and Control in the Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549-0506.

SUPPLEMENTARY INFORMATION:

I. Regulation Analyst Certification

Regulation Analyst Certification requires that broker-dealers and covered persons include in their research reports:

- A statement by the research analyst certifying that the views expressed in the research report accurately reflect such research analyst's personal views about the subject securities or issuers; and

- A statement by the research analyst certifying that no part of his or her compensation was, is, or will be directly or indirectly related to the specific recommendation or views contained in the research report; or

- A statement by the research analyst certifying that part or all of his or her compensation was, is, or will be directly or indirectly related to the specific recommendation or views contained in the research report. If the analyst did receive such related compensation, the statement must include the source and amount of such compensation, and the purpose of the compensation, and further disclose that such compensation may influence the recommendation in the research report.

Additionally, under Regulation AC, broker-dealers must make a record related to public appearances by research analysts. Specifically, a broker-dealer who publishes, circulates, or provides a research report prepared by a research analyst or a covered person employs, would be required to make a record within thirty days after each calendar quarter in which the research analyst made the public appearance, that includes:

- A written statement by the research analyst certifying that the views expressed in each public appearance accurately reflected such research analyst's personal views about the subject securities or issuers; and

- A written statement by the research analyst certifying that no part of such research analyst's compensation was, is, or will be directly or indirectly related to any specific recommendations or views expressed in any public appearance.

In cases where the broker or dealer does not obtain a statement by the research analyst in connection with public appearances as described above, the broker-dealer must promptly notify its examining authority, designated

pursuant to section 17(d) of the Exchange Act and rule 17d-2 thereunder, that the analyst did not provide certification in connection with public appearances. In addition, for 120 days following such notification, the broker-dealer must disclose in any research report it distributes authored by that analyst that the analyst did not provide certification specified in rule 502(a) of Regulation AC. Further, broker-dealers must keep and maintain these records pursuant to Rule 17a-4(b).

II. Collection of Information Requirements

Certain provisions of Regulation AC contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.¹ In proposing Regulation AC, the Commission estimated the burden hours for these collection of information requirements and solicited comments on the collection of information requirements and the burden estimate. The Commission submitted the proposed collection of information requirements to OMB for review as required pursuant to 44 U.S.C. 3507 and 5 CFR 1320.11. The Commission received one comment letter on the collection of information and has revised estimates in response to that comment.²

The purpose of requiring that research analysts certify that the views expressed in research reports and public appearances reflect their personal views, and requiring disclosure of information regarding whether analyst compensation is related to those specific recommendations or views, is to help bolster investor confidence in the quality of research. This, in turn, should help bolster investor confidence in the securities markets. The Commission estimates that the annual paperwork burden in hours is 11,296 for a cost in dollars of approximately \$1,372,464.³

On March 5, 2003, OMB approved the collections of information contained in Regulation AC. Regulation AC (OMB Control No. 3235-0575) was adopted pursuant to the Securities Exchange Act of 1934 (17 U.S.C. 78, *et seq.*) on February 20, 2003. 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. We are providing this Notice to inform the public that the Commission has received OMB approval and OMB has issued a control number for this collection.

Dated: March 28, 2003.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-8105 Filed 4-2-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Landesbank Baden-Württemberg to Withdraw its 7 7/8% Subordinated Notes (Due April 15, 2004), From Listing and Registration on the New York Stock Exchange, Inc. File No. 1-10836

March 28, 2003.

Landesbank Baden-Württemberg, a German bank ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")¹ and rule 12d2-2(d) thereunder,² to withdraw its 7 7/8% Subordinated Notes (due April 15, 2004) ("Security"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The Board of Managing Directors of the Issuer ("Board") approved a resolution on September 24, 2002 to withdraw the Issuer's Security from listing on the NYSE. In making its decision to withdraw the Security from the Exchange, the Issuer states the following: On September 25, 2002, 85.69% of the outstanding amount of the Security was held by 60 note holders who are institutional investors and the volume of trading in the Security is very small. According to the NYSE, in the period from January 1, 2001 to September 25, 2002, the Security was not traded once on the NYSE. In addition, according to Bloomberg professional, in the period from September 2, 2001 to September 25, 2002, the Security was traded seven times in the secondary market. The Issuer also states that substantial costs incurred each year for the preparation of reporting forms can be avoided.

The Issuer stated in its application that it has complied with the NYSE's

rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under section 12(b) of the Act³ and shall not affect its obligation to be registered under section 12(g) of the Act.⁴

Any interested person may, on or before April 21, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Jonathan G. Katz,
Secretary.

[FR Doc. 03-8031 Filed 4-2-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27661]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 28, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 22, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/

³ 15 U.S.C. 78j(b).

⁴ 15 U.S.C. 78j(g).

⁵ 17 CFR 200.30-3(a)(1).

¹ 44 U.S.C. 3501 *et seq.*

² The Commission intends to submit a change sheet to OMB in order to reflect changes.

³ The Commission estimates that the proposed regulation would result in a total annual time burden of approximately 11,296 hours (10,950 hours to comply with research report requirements + 346 hours to comply with public appearance requirements), and a total annual cost in dollars of approximately \$1,372,464 (\$1,330,425 to comply with the research report requirements + \$42,039 to comply with the public appearance requirements).

¹ 15 U.S.C. 78j(d).

² 17 CFR 240.12d2-2(d).

or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 22, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Transmission Company, LLC, et al. (70-10108)

American Transmission Company, LLC ("ATC"), an electric transmission public utility company subsidiary of Alliant Energy Corporation ("Alliant"), a registered holding company, and ATC Management, Inc. ("ATCMI"), a public utility company, corporate manager of ATC, and holding company subsidiary of Alliant, claiming exemption from registration under section 3(a)(1) by rule 2 of the Act, both located at N19 W23993 Ridgeview Parkway, West Waukesha, Wisconsin 53188 (together, "Applicants") have filed a declaration ("Declaration") under sections 6(a) and 7 of the Act and rule 54 under the Act.

I. Introduction

In 1999, the state of Wisconsin enacted legislation ("Transco Legislation") that facilitated the formation of for-profit transmission companies ("Transcos"). ATC was created under the Transco Legislation and ATCMI was created to be the general manager of ATC. The legislation obligates these Transcos to construct, operate, maintain, and expand transmission facilities to provide adequate, reliable transmission services under an open-access transmission tariff.

II. ATC and ATCMI

By order dated December 29, 2000 (HCAR No. 27331) ("December Order"), the Commission authorized ATC to acquire the transmission assets of the subsidiaries of four investor owned public utility holding companies with service areas in Wisconsin and adjacent areas in Illinois and Michigan. The following utility companies transferred ownership and operation of their transmission assets to ATC in exchange for member interests ("Member Interests") in ATC: Wisconsin Power and Light Company ("WPL") and South Beloit Water, Gas and Electric Company

("South Beloit");¹ Wisconsin Electric Power Company and Edison Sault Electric Company ("Edison Sault");² Madison Gas and Electric Company;³ and Wisconsin Public Service Corp.⁴ Wisconsin Public Power Inc. ("WPPI"), a Wisconsin municipal electric company, contributed cash in exchange for an equity interest in ATC proportional to WPPI's load ratio share in Wisconsin.⁵ These entities together are referred to as the "Initial Members."

Applicants state that as a limited liability company, ATC may be formed to be "member managed" or "manager managed" according to Wisconsin law. Applicants state that it was decided that ATC would be "manager managed" by ATCMI. In the December Order, the Commission authorized ATCMI to acquire a nominal interest in ATC and operate as the sole manager of ATC. Due to the extent of the operational control ATCMI has over the utility assets of ATC, the Commission found that both ATC and ATCMI were jurisdictional public utilities under the Act. ATCMI is also an intermediate holding company by virtue of its ownership interest in ATC and claims exemption from registration by rule 2 under section 3(a)(1) of the Act.

As of December 31, 2002, eighteen more contributors, including twelve municipal utilities, six cooperatives, one public power entity, and one investor owned utility invested transmission assets and/or cash in ATC. These members are referred to as the "Additional Members," and along with the Initial Members, the "Member Utilities." Effective February 1, 2001, ATC transferred operational control of its facilities to the Midwest Independent Transmission System Operator, Inc.

Applicants state that ATCMI's ownership structure consists of Class A non-voting shares and Class B voting shares of stock.⁶ Upon transference of

transmission assets to ATC, each Member Utility purchased Class A shares in proportion to the value of the transmission assets it transferred to ATC. In addition, each Initial Member received one Class B share of stock.⁷ The December Order indicated that, in the future, ATCMI plans to commence an initial public offering ("IPO") of its stock. The Commission reserved jurisdiction over the issuance of any equity securities in connection with a potential IPO by ATCMI.

III. Financing

A. Existing Authorization

The December Order authorized ATC and ATCMI to engage in various financing activities through June 30, 2004 ("Authorization Period") in an aggregate amount not to exceed \$900 million as follows: (1) Short-term debt financing by ATC not to exceed \$125 million in the form of borrowings under a revolving credit agreement, issuance of commercial paper, or other forms of short term financing; (2) long-term debt financing by ATC in the form of debentures or other forms of long-term debt financing, with the total short- and long-term debt not to exceed \$400 million; (3) equity financing of up to \$500 million in the form of preferred stock of ATCMI; and (4) interest rate hedging transactions.

B. Current Request

Applicants now request authority for various financing transactions in addition to their outstanding financing authority as follows: Applicants request authority for ATCMI to issue and sell preferred securities and for ATC to issue long-term and short-term debt in an amount not to exceed \$710 million at any one time outstanding during the Authorization Period Applicants state that short-term debt will not exceed \$200 million at any one time outstanding. In addition to the \$710 million of securities as described above, Applicants request authorization for ATC to issue Member Interests and ATCMI to issue Class A and Class B stock in an aggregate amount of up to \$393 million. Applicants state that the underwriting fees, commissions or other similar remuneration paid in connection

the articles of incorporation and (ii) any merger, consolidation, or sale of all or substantially all of ATCMI's assets.

⁷ Applicants stated in the December Order that this structure was designed to ensure that the Member Utilities had economic interests in proportion to the value of their contribution of assets to the ATC, while maintaining the desired per capita voting arrangement. South Beloit and Edison Sault did not receive a Class B share because their respective corporate parents hold their shares.

¹ See December Order. WPL and South Beloit (which are both subsidiary companies of Alliant) are together treated as a single member.

² See *Wisconsin Energy Corp.*, HCAR No. 27329 (Dec. 28, 2000). Wisconsin Electric Power Company and Edison Sault Electric Company (which are both subsidiaries of Wisconsin Energy Corp., dba We Energies, an exempt holding company) are together treated as a single member.

³ See *Madison Gas and Electric Co.*, HCAR No. 27326 (Dec. 28, 2000). As a result of the acquisition, Madison Gas and Electric Company is both a public-utility company and an exempt holding company.

⁴ See *WPS Resources Corporation*, HCAR No. 27330 (Dec. 28, 2000). Wisconsin Electric Power Company is a subsidiary of WPS Resources Corporation, an exempt holding company.

⁵ WPPI is exempt from all provisions of the Act under section 2(c).

⁶ Class B shareholders are currently entitled to approve by majority vote: (1) Any amendment to

with the non-competitive issue, sale or distribution of securities issued under this Application will not exceed 7% of the principal or total amount of the securities being issued.

C. Short-Term Debt

Applicants request authority for ATC to arrange short term financing, including institutional borrowings, commercial paper and privately placed notes. Applicants state that the maturity of short-term debt would not exceed one year and that any short-term debt security or credit facility would have designations, aggregate principal amount, interest rate(s) or methods of determining the same, terms of payment of interest, collateral, redemption provisions, non-refunding provisions, sinking fund terms, conversion or put terms and other terms and conditions as ATC and ATCMI might determine at the time of issuance, provided that, in no event, however, would the effective cost of money on short-term debt exceed 300 basis points over the London Interbank Offered Rate for maturities of one year or less in effect at the time.

Applicants propose that ATC sell commercial paper or privately placed notes ("Commercial Paper") from time to time, in established domestic or European commercial paper markets. Commercial Paper may be sold at a discount or bear interest at a rate per annum prevailing at the date of issuance for Commercial Paper of a similarly situated company.

Applicants propose that ATC maintain back up lines of credit in connection with one or more Commercial Paper programs in an aggregate amount not to exceed the amount of authorized Commercial Paper, without these credit lines counting against the limit on short-term debt financing set forth above.

Applicants propose that ATC use credit lines for general corporate purposes, to support Commercial Paper, to obtain letters of credit, or to borrow against, from time to time, as it is deemed appropriate or necessary.

D. Long-Term Debt

Applicants request authority for ATC to issue long-term debt securities including notes or debentures under one or more indentures or long-term indebtedness under agreements with banks or other institutional lenders directly or indirectly. Applicants state that ATC's long-term debt may be secured or unsecured. Applicants further state that the maturity of long-term debt would not exceed fifty years. Applicants assert that specific terms of any borrowings will be determined at

the time of issuance but that the interest rate on long-term debt would not exceed 500 basis points over the yield-to-maturity of a U.S. Treasury security having a remaining term approximately equal to the average life of that debt. Applicants ask the Commission to reserve jurisdiction over the issuance of convertible securities except as described in section 3 below.

E. Preferred Securities and Equity Interest

Applicants request authority for ATCMI to issue preferred stock or other types of preferred securities. Applicants request authority for preferred stock or other types of preferred securities to be issued in one or more series with such rights, preferences, and priorities as may be designated in the instrument creating each such series, as determined by ATCMI's board of directors, or a pricing committee or other committee of the board performing similar functions. Preferred securities may be redeemable or may be perpetual in duration. Applicants state that the dividend rate on any series of preferred securities issued by ATCMI would not exceed 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the term of that series of preferred securities at the time of issuance. Applicants further state that dividends or distributions on preferred securities would be made periodically and to the extent funds are legally available for that purpose, but may be made subject to terms which allow Applicants to defer dividend payments for specified periods. Preferred securities may be sold directly through underwriters or dealers in any manner.

Applicants contemplate that from time to time ATC may require an additional equity infusion. In such situations, ATC could reduce the amount of distributions to Member Utilities. Each Member Utilities' equity would be increased by the amount of the undistributed earnings on a *pro rata* basis. Alternatively, there could be a capital call for Member Utilities to make additional cash contributions on a *pro rata* basis. If a Member Utility opts not to make an additional contribution, any other Member Utility could make the requested contribution. Member Utilities do not, however, have the obligation to make additional contributions. Another possibility, therefore, would be for ATC to issue preferred securities that are convertible into Member Interests and/or Class A shares and/or Class B shares. These convertible preferred securities would have a stated par value and dividend rate and would be convertible into

Member Interests and/or Class A and/or Class B shares based on a predetermined ratio or formula. Applicants will seek additional authority as may be required in connection with the exercise of the conversion feature. Applicants also ask the Commission to reserve jurisdiction over the issuance of preferred member interests or convertible member interests other than as described above.

In the event Applicants determine to seek capital through equity or to acquire new facilities in exchange for equity interests, Applicants request authority for ATC to issue Member Interests and ATCMI to issue Class A and B shares in an aggregate amount not to exceed \$393 million plus the face value of any outstanding Member Interests and Class A and B shares at any one time outstanding through the Authorization Period.⁸

Applicants request authority for ATC to issue Member Interests in exchange for cash or the transfer of transmission facilities to ATC by current or future Member Utilities. The entities transferring transmission assets and their transferring asset values have not yet been determined. Applicants further state that in order to maintain its 50/50 debt to equity ratio; ATC would reimburse the contributors for 50% of the net book value of the transmission assets contributed. In addition, ATCMI will issue to each new Member Utility of ATC, Class A shares in an amount that is proportional to that Member Utility's interest in the ATC, with a par value of \$0.01 per share and a sales price of \$10 per share.

Additionally, Applicants state that it is anticipated that ATC will issue Member Interests and ATCMI will issue Class A shares to Wisconsin Public Service Corporation or its affiliate in exchange for that company's contribution of 50% of the ongoing cash requirements of the Arrowhead to Weston Transmission Line Project ("Project"). Applicants state that current cost estimates are \$400 million over the 2002-2004 period.⁹

⁸ In the case of equity securities, Applicants request that the aggregate amount be based on new issuance and exclude issuances for any undistributed earnings. Applicants state that as of December 31, 2002, the value of outstanding Class A and B Shares was \$103,560. Also at that date, there were 28,127,075 outstanding Member Interests. At that time a Member Interest was valued at \$10.77. The total value of Member Interest was \$302,811,729. The value on a Member Interest is based on the amount of the initial contribution and any undistributed earnings and so will vary from time to time.

⁹ Arrowhead-Weston is a 220-mile transmission line connecting Duluth, Minnesota, with Wausau, Wisconsin. Applicants state that the line is needed to accommodate electric load growth in northern Wisconsin and to improve reliability of the electric

F. Guarantees

Applicants request authorization to guarantee or assume certain obligations of its affiliates or Member Utilities. Accordingly, Applicants request authorization to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support with respect to the obligations of their affiliates or Member Utilities in the ordinary course of Applicants' business, in an amount not to exceed \$125 million outstanding at any one time during the Authorization Period.

Applicants state that certain of the guarantees may be in support of obligations that are not capable of exact quantification. In these cases, Applicants state that exposure under the guarantee will be by appropriate means including estimation of exposure based on loss experience or projected potential payment amounts. These estimates will be made in accordance with generally accepted accounting principles and/or sound financial practices.

G. Financial Representations

Applicants represent that at all times during the Authorization Period, ATCMI and ATC will each maintain common equity of at least 30% of its consolidated capitalization. Applicants further represent that, other than Class A and Class B shares and Member Interests, no security may be issued in reliance upon this order, unless: (i) The security to be issued, if rated, is rated investment grade; (ii) all outstanding rated securities of the issuer are rated investment grade; and (iii) all outstanding rated securities of ATCMI are rated investment grade. For purposes of this condition, a security will be considered rated investment grade if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3-1 under the 1934 Act. Applicants request that the Commission reserve jurisdiction over the issuance by ATCMI or ATC of any securities that are rated below investment grade. Applicants further request that the Commission reserve jurisdiction over the issuance of the securities for which authority is sought herein or any guarantee authority at any time that the conditions set forth in clauses (i) through (iii) above are not satisfied.

transmission system in the region. Applicants state that this acquisition of utility assets is subject to approval by the Public Service Commission of Wisconsin and so exempt from section 9(a)(1) under the 1935 Act.

Progress Energy, Inc. and Piedmont Natural Gas Company, Inc. (70-10115)

Progress Energy, Inc. ("Progress Energy"), a registered holding company, 410 South Wilmington Street, Raleigh, NC 27602, and Piedmont Natural Gas Company, Inc. ("Piedmont"), a gas utility company, 1915 Rexford Road, Charlotte, NC 28211, have filed a joint application-declaration under sections 3(a)(2) and 12(d) of the Act and rules 44 and 54 under the Act.

Progress Energy seeks approval to sell all of the issued and outstanding common stock of North Carolina Natural Gas Company ("NCNG") and its 50% share of the common stock of Eastern North Carolina Natural Gas Company ("Eastern NCNG") and preferred stock and other rights and interests in Eastern NCNG that it holds to Piedmont. Piedmont requests an order under section 3(a)(2) of the Act exempting it and its subsidiaries from all provisions of the Act except section 9(a)(2).

Progress Energy is a registered holding company that owns, directly or indirectly, all of the issued and outstanding common stock of two electric utility subsidiary companies, Carolina Power & Light Company ("CP&L") and Florida Power Corporation ("Florida Power"). CP&L generates, transmits, purchases and sells electricity in parts of North Carolina and South Carolina. Florida Power generates, transmits, purchases and sells electricity in parts of Florida. Together, CP&L and Florida Power provide electric utility service to approximately 2.7 million retail, commercial and industrial customers in an area having a population of more than 9 million people.

Progress Energy also owns all of the issued and outstanding common stock of NCNG, a gas utility company which serves approximately 176,000 residential, commercial, industrial and municipal customers primarily in eastern and south central North Carolina. NCNG's facilities include more than 1,000 miles of transmission pipeline and more than 2,900 miles of distribution mains.

NCNG has three direct, wholly-owned, non-utility subsidiaries: Cape Fear Energy Corporation ("Cape Fear"), which was previously engaged in purchasing natural gas for resale to large industrial and commercial users and the municipalities served by NCNG, as well as the business of providing energy management services, but is now inactive; NCNG Cardinal Pipeline Investment Corporation, which holds a 5% membership interest in Cardinal Pipeline Company, LLC, an intrastate

pipeline; and NCNG Pine Needle Investment Corporation, which holds a 5% membership interest in Pine Needle LNG Company, LLC, which owns a liquefied natural gas project in North Carolina.¹⁰

Progress Energy also owns 50% of the issued and outstanding common stock and 100% of the Series A preferred stock of Eastern NCNG, a North Carolina company that was granted a certificate of public convenience and necessity by the North Carolina Utilities Commission to construct a new natural gas distribution system and provide gas service to customers in 14 counties in eastern North Carolina. Albermarle Pamlico Economic Development Corporation ("APEC"), a North Carolina nonprofit corporation created to encourage infrastructure and economic development in eastern North Carolina, owns the remaining 50% of Eastern NCNG's issued and outstanding common stock.

For the twelve months ended December 31, 2002, Progress Energy had total operating revenues of \$7,945,120,000, of which \$6,600,689,000 (83.08%) were derived from electric utility operations and \$1,344,431,000 (16.92%) from other, unregulated, businesses, including sales of electricity by Progress Energy's exempt wholesale generator subsidiaries. At December 31, 2002, Progress Energy had total consolidated assets of \$21,352,704,000, including net utility plant of \$10,656,234,000. (As of December 31, 2002, NCNG's results of operations and assets and liabilities were reported as "discontinued operations" and, therefore, are not included in Progress Energy's year-end consolidated operating revenues and utility plant accounts.)

Piedmont, a North Carolina corporation, is a gas utility company that is engaged in the distribution of natural gas to 740,000 residential, commercial and industrial customers in parts of North Carolina, South Carolina and Tennessee.

For the fiscal year ended October 31, 2002, Piedmont reported on a consolidated basis total operating revenues of \$832,028,000, net operating revenues (operating revenues less cost of gas) of \$335,794,000, operating income of \$90,127,000, and net income of \$62,217,000 (including net income, reported on an equity basis, from non-utility businesses). At October 31, 2002,

¹⁰ Prior to the proposed sale of NCNG to Piedmont, the common stock of Cape Fear will be transferred by NCNG to Progress Energy or another non-utility subsidiary of Progress Energy. The other two companies will remain as subsidiaries of NCNG.

Piedmont had \$1,445,088,000 in total consolidated assets, including net utility plant of \$1,158,523,000.

Progress Energy and Piedmont entered into a Stock Purchase Agreement, dated October 16, 2002, under which Progress Energy agreed to sell and Piedmont agreed to purchase all of the issued and outstanding common stock of NCNG, \$0.10 par value per share ("NCNG Shares"), and all of the shares of common stock and Series A preferred stock of Eastern NCNG that are held by Progress Energy, representing, respectively, 50% and 100% of the total number of shares of common stock and Series A preferred stock that are issued and outstanding (together, "ENCNG Shares"). In addition, Piedmont will assume all of Progress Energy's rights and obligations under a subscription letter, dated January 5, 2001, under which Progress Energy is committed to purchase from Eastern NCNG the remaining authorized but unissued shares of Series A preferred stock, and a shareholders' agreement, dated as of January 5, 2001, by and among Eastern NCNG, Progress Energy and APEC ("ENCNG Rights and Obligations"). Progress Energy requests approval under section 12(d) of the Act for the sale and transfer of the NCNG Shares, the ENCNG Shares and the ENCNG Rights and Obligations to Piedmont ("Transaction").

Under the Stock Purchase Agreement, Piedmont has agreed to pay \$417,500,000 in cash for the NCNG Shares, plus or minus the working capital on the balance sheet of NCNG for the end of the most recent month immediately preceding the closing of the Transaction. In addition, Piedmont has agreed to pay \$7,500,000 for the ENCNG Shares and the ENCNG Rights and Obligations.

Progress Energy states the sale of NCNG and Eastern NCNG will enable Progress Energy to strengthen its balance sheet and focus itself on its core electric utility business. Progress Energy states that the cash proceeds of the Transaction will be used by Progress Energy to pay down debt.

Piedmont states that, immediately following the purchase of the NCNG Shares, it will cause NCNG to be merged with and into Piedmont, with Piedmont as the surviving corporation. Piedmont will acquire and hold Eastern NCNG as a 50%-owned subsidiary company and will therefore become a holding company within the meaning of section 2(a)(7)(A) of the Act with respect to Eastern NCNG. Accordingly, Piedmont requests that the Commission issue an order under section 3(a)(2) of the Act exempting Piedmont and its subsidiary

companies as such from all provisions of the Act, except section 9(a)(2). Piedmont states that, following the Transaction, Piedmont will remain predominantly a public-utility company whose operations will be confined to North Carolina, its state of incorporation, and South Carolina and Tennessee, which are contiguous to North Carolina.

Gulf Power Company (70-10117)

Gulf Power Company ("Gulf"), One Energy Plaza, Pensacola, Florida 32520, a wholly owned electric utility subsidiary of The Southern Company ("Southern"), a registered holding company under the Act, has filed an application-declaration ("Application") under sections 6(a), 7, 9(a), 10 and 12(d) of the Act and rule 54 under the Act.

Gulf proposes to incur, from time to time or at any time on or before March 31, 2006 ("Authorization Period"), obligations in connection with the issuance and sale by public instrumentalities of one or more series of pollution control revenue bonds ("Revenue Bonds") in an aggregate principal amount of up to \$180,000,000. Gulf further proposes to issue and sell, from time to time or at any time on or before the Authorization Period, one or more series of its senior debentures, senior promissory notes or other senior debt instruments (individually, "Senior Note" and collectively, "Senior Notes"), one or more series of its first mortgage bonds and one or more series of its preferred stock in an aggregate amount of up to \$450,000,000 in any combination of issuance.

The Revenue Bonds will be issued for the benefit of Gulf to finance or refinance the costs of certain air and water pollution control facilities and sewage and solid waste disposal facilities at one or more of Gulf's electric generating plants or other facilities located in various counties. It is proposed that each such county or the otherwise appropriate public body or instrumentality ("County") will issue Revenue Bonds to finance or refinance the costs of the acquisition, construction, installation and equipping of said facilities at the plant or other facility located in its jurisdiction ("Project"). It is proposed that the Revenue Bonds will mature not more than 40 years from the first day of the month in which they are initially issued and may, if it is deemed advisable for purposes of the marketability of the Revenue Bonds, be entitled to the benefit of a mandatory redemption sinking fund calculated to retire a portion of the aggregate principal

amount of the Revenue Bonds prior to maturity.

Gulf proposes to enter into a Loan or Installment Sale Agreement with each County ("Agreement"), issuing such Revenue Bonds. Under the Agreement, the issuing County will loan to Gulf the proceeds of the sale of the County's Revenue Bonds, and Gulf may issue a non-negotiable promissory note ("Note"), or the County will undertake to purchase and sell the related Project to Gulf. The proceeds from the sale of the Revenue Bonds will be deposited with a Trustee ("Trustee") under an indenture to be entered into between the County and the Trustee ("Trust Indenture"), under which the Revenue Bonds are to be issued and secured, and will be applied by Gulf to payment of the cost of construction of the Project or to refund outstanding pollution control revenue obligations.

The Trust Indenture and the Agreement may give the holders of the Revenue Bonds the right, during such time as the Revenue Bonds bear interest at a fluctuating rate or otherwise, to require Gulf to purchase the Revenue Bonds from time to time, and arrangements may be made for the remarketing of any such Revenue Bonds through a remarketing agent. Gulf also may be required to purchase the Revenue Bonds, or the Revenue Bonds may be subject to mandatory redemption, at any time if the interest thereon is determined to be subject to federal income tax. Also in the event of taxability, interest on the Revenue Bonds may be effectively converted to a higher variable or fixed rate, and Gulf also may be required to indemnify the bondholders against any other additions to interest, penalties and additions to tax.

In order to obtain the benefit of ratings for the Revenue Bonds equivalent to the rating of Gulf's first mortgage bonds outstanding under the indenture dated as of September 1, 1941 between Gulf and JP Morgan Chase Bank (formerly The Chase Manhattan Bank), as trustee, as supplemented and amended ("Mortgage"), Gulf may determine to secure its obligations under the Note and/or the Agreement by delivering to the Trustee, to be held as collateral, a series of its first mortgage bonds ("Collateral Bonds"). The aggregate principal amount of the Collateral Bonds would be equal to either: (i) The principal amount of the Revenue Bonds or (ii) the sum of such principal amount of the Revenue Bonds plus interest payments thereon for a specified period.

As a further alternative to, or in conjunction with, securing its

obligations through the issuance of the Collateral Bonds, Gulf may: (i) Cause an irrevocable Letter of Credit or other credit facility ("Letter of Credit") of a bank or other financial institution to be delivered to the Trustee; and/or (ii) cause an insurance company to issue a policy ("Policy") guaranteeing the payment of the Revenue Bonds. In the event that the Letter of Credit is delivered to the Trustee as an alternative to the issuance of the Collateral Bonds, Gulf may also convey to the County a subordinated security interest in the Project or other property of Gulf as further security for Gulf's obligations under the Agreement and the Note.

The effective cost to Gulf of any series of the Revenue Bonds will not exceed the greater of (i) 200 basis points over comparable term U.S. Treasury securities, or (ii) a gross spread over such Treasury securities which is consistent with comparable securities. Such effective cost will reflect the applicable interest rate or rates and any underwriters' discount or commission.

Gulf also proposes to issue and sell, at any time during the Authorization Period: One or more series of its (a) Senior Notes; (b) first mortgage bonds ("First Mortgage Bonds"); and (c) preferred stock in an aggregate amount of up to \$450 million, in any combination of issuance. The Senior Notes will have a maturity that will not exceed approximately 50 years. The interest rate on each issue of Senior Notes may be either a fixed rate or an adjustable rate to be determined on a periodic basis by auction or remarketing procedures, in accordance with formula or formulae based upon certain reference rates, or by other predetermined methods. The Senior Notes will be direct, unsecured and unsubordinated obligations of Gulf ranking *pari passu* with all other unsecured and unsubordinated obligations of Gulf. The Senior Notes will be effectively subordinated to all secured debt of Gulf, including its First Mortgage Bonds. The Senior Notes will be governed by an indenture or other document. The effective cost of money to Gulf on the Senior Notes will not exceed the greater of (i) 300 basis points over comparable term U.S. Treasury securities, or (ii) a gross spread over such Treasury securities which is consistent with comparable securities.

The First Mortgage Bonds will have a term of not more than 40 years and will be sold for the best price obtainable, but not less than 98% or more than 101³/₄% of the principal amount, plus any accrued interest. Gulf may enhance the marketability of the First Mortgage

Bonds by purchasing an insurance policy to guarantee the payment when due of the First Mortgage Bonds.

Gulf proposes that each issuance of Gulf's preferred stock, par or stated value of up to \$100 per share ("new Preferred Stock"), will be sold for the best price obtainable (after giving effect to the purchasers' compensation) but for a price to Gulf (before giving effect to such purchasers' compensation) of not less than 100% of the par or stated value per share.

Gulf states that it may determine to use the proceeds from the sale of the Revenue Bonds, the Senior Notes, the First Mortgage Bonds and the new Preferred Stock to redeem or otherwise retire its outstanding senior notes, first mortgage bonds, pollution control bonds and/or preferred stock. Gulf also proposes that it may use the proceeds from the sale of the Senior Notes, the First Mortgage Bonds and new Preferred Stock, along with other funds, to pay a portion of its cash requirements to carry on its electric utility business. Gulf further states that it may determine to use the proceeds from the sale of the Revenue Bonds, the Senior Notes, the new Bonds and the new Preferred Stock to redeem or otherwise retire its outstanding senior notes, first mortgage bonds, pollution control bonds and/or preferred stock if such use is considered advisable.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-8103 Filed 4-2-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47578; File No. 4-208]

Intermarket Trading System; Notice of Filing of the Twentieth Amendment to the ITS Plan Relating to the Recognition of the Use by the Chicago Board Options Exchange, Inc. of the Regional Computer Interface and the Description of Commitment Acceptance Applicable to Specialists of the Boston Stock Exchange, Inc.

March 26, 2003.

Pursuant to section 11A of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 11A3a3-2 thereunder,² notice is hereby given that on March 14, 2003, the Intermarket

Trading System Operating Committee ("ITSOC") submitted to the Securities and Exchange Commission ("Commission") a proposed amendment ("Twentieth Amendment") to the restated ITS Plan.³ The purpose of the proposed plan amendment is to recognize the use by the Chicago Board Options Exchange, Inc. ("CBOE") of the Regional Computer Interface ("RCI"); and to revise the description of commitment acceptance applicable to specialists of the Boston Stock Exchange, Inc. ("BSE"). The Commission is publishing this notice to solicit comment on the proposed amendment from interested persons.

I. Description of the Amendment

The ITSOC proposes to amend the ITS Plan to recognize the CBOE's use of the RCI; and revise the description of commitment acceptance applicable to BSE specialists. Specifically, the ITSOC proposes to amend Section 1(34A) of the ITS Plan to include the CBOE as an RCI participant. In addition, the ITSOC proposes to amend Section 6(a)(ii)(B) ("Description Applicable to the BSE") to provide an example of an ITS transaction represented by one or more BSE Registered specialists.

II. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed Plan 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 submission, all subsequent amendments, all written statements with respect to the proposed Plan amendment that are filed with the Commission, and all written communications relating to the proposed Plan 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

³ The ITS is a National Market System ("NMS") plan, which was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. See Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

The ITS Participants include the American Stock Exchange LLC (Amex), the BSE, the CBOE, the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx") ("Participants").

¹ 15 U.S.C. 78k-1.

² 17 CFR 240.11Aa3-2.

available for inspection and copying in the Commission's Public Reference Room. Copies of such proposed Plan Amendment will also be available for inspection and copying at the principal office of the ITS. All submissions should refer to File No. 4-208 and should be submitted by April 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-8038 Filed 4-2-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25984]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

March 28, 2003.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of March, 2003. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549-0102 (tel. 202-942-8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 22, 2003, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549-0609. For Further Information Contact: Diane L. Titus at (202) 942-0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549-0506.

John Hancock Cash Reserve, Inc.

[File No. 811-2995]

Summary: Applicant seeks an order declaring that it has ceased to be an

investment company. On December 7, 2001, applicant transferred its assets to John Hancock U.S. Government Cash Reserve, a series of John Hancock Current Interest, based on net asset value. Expenses of \$16,000 incurred in connection with the reorganization were paid by the acquiring fund.

Filing Date: The application was filed on March 20, 2003.

Applicant's Address: 101 Huntington Ave., Boston, MA 02199-7603.

Global Investment Portfolio

[File No. 811-8454]

Summary: Applicant, a master fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On September 10, 2001, applicant distributed all of its assets in-kind to AIM Global Consumer Products and Services Fund, applicant's feeder fund. Expenses of \$153,338 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on March 17, 2003.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, TX 77046-1173.

Amadeo Trust

811-9409]

Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On December 18, 2002, applicant made a liquidating distribution to its unitholders, based on net asset value. Expenses of \$19,000 incurred in connection with the liquidation were paid by Amadeo, Inc.

Filing Dates: The application was filed on January 31, 2003, and amended on March 24, 2003.

Applicant's Address: 233 South Fourth Street, Suite 305-11, Las Vegas, NV 89101.

PIC Technology Portfolio

[File No. 811-10149]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 31, 2002, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on February 5, 2003, and amended on March 18, 2003.

Applicant's Address: 300 N. Lake Ave., Pasadena, CA 91101.

Emerging Markets Debt Portfolio (Formerly Known as Global High Income Portfolio)

[File No. 811-7302]

Summary: Applicant, a master fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On June 19, 2000, applicant's feeder fund redeemed in-kind its interest in applicant based on net asset value. Expenses of \$126,977 incurred in connection with the liquidation were paid by applicant's adviser, AIM Advisors, Inc.

Filing Dates: The application was filed on March 9, 2001, and amended on March 17, 2003.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, TX 77046-1173.

Growth Portfolio

[File No. 811-7363]

Summary: Applicant, a master fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On September 11, 2000, applicant's feeder fund redeemed in-kind its interest in applicant based on net asset value. Expenses of \$152,114 incurred in connection with the liquidation were paid by applicant's adviser, AIM Advisors, Inc.

Filing Dates: The application was filed on March 9, 2001, and amended on March 17, 2003.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, TX 77046-1173.

Dessauer Global Equity Fund

[File No. 811-7691]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 25, 2002, applicant transferred its assets to Dessauer Global Equity Fund, a series of the Advisors Series Trust, based on net asset value. Expenses of \$118,780 incurred in connection with the reorganization were paid by applicant's investment adviser, McIntyre, Freedman & Flynn, and applicant's administrator, U.S. Bancorp Fund Services, LLC.

Filing Date: The application was filed on March 6, 2003.

Applicant's Address: McIntyre, Freedman & Flynn, 4 Main St., P.O. Box 1689, Orleans, MA 02653.

FSP Investment Trust

[File No. 811-10611]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 25, 2003, and February 26, 2003, applicant distributed its assets to its shareholders, based on net asset value. Expenses of

⁴ 17 CFR 200.30-3(a)(29).

approximately \$31,700 incurred in connection with the liquidation were paid by applicant. Any additional expenses will be paid by Franklin Street Advisors, Inc., applicant's investment adviser.

Filing Date: The application was filed on February 28, 2003.

Applicant's Address: 116 South Franklin St., P.O. Box 69, Rocky Mount, NC 27802-0069.

Credit Suisse Institutional U.S. Core Equity Fund, Inc.

[File No. 811-8919]

Credit Suisse Global New Technologies Fund, Inc.

[File No. 811-9961]

Credit Suisse Global Financial Services Fund, Inc.

[File No. 811-9963]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. By October 23, 2002, November 25, 2002, and February 15, 2003, respectively, all shareholders of each applicant had redeemed their shares at net asset value. Applicants incurred no expenses in connection with the liquidations.

Filing Date: The applications were filed on March 3, 2003.

Applicants' Address: 466 Lexington Ave., New York, NY 10017.

NBP TrueCrossing Funds

[File No. 811-9509]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By November 26, 2002, all shareholders of applicant had redeemed their shares at net asset value. Expenses of \$10,348 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on February 14, 2003.

Applicant's Address: Two Portland Sq., Portland, ME 04101.

Impact Management Investment Trust

[File No. 811-8065]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 17, 2002, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately \$31,000 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on February 14, 2003.

Applicant's Address: 333 West Vine St., Suite 206, Lexington, KY 40507.

First Eagle Funds

[File No. 811-4935]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 31, 2002, applicant transferred its asset to First Eagle Fund of America, a series of First Eagle Funds, Inc. (formerly, First Eagle SoGen Funds, Inc.), based on net asset value. Expenses of \$150,000 incurred in connection with the reorganization were paid pro rata by applicant and the acquiring fund.

Filing Date: The application was filed on February 14, 2003.

Applicant's Address: 1345 Avenue of the Americas, New York, NY 10105.

LaCrosse Funds, Inc.

[File No. 811-9051]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 26, 2002, applicant transferred its assets to Mosaic Equity Trust, based on net asset value. Expenses of \$132,604 incurred in connection with the reorganization were paid by LaCrosse Advisers, LLC, applicant's investment adviser.

Filing Date: The application was filed on February 11, 2003.

Applicant's Address: 311 Main St., LaCrosse, WI 54602.

Rupay-Barrington Funds, Inc.

[File No. 811-8516]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By December 31, 2000, applicant had made a liquidating distribution to all of its shareholders, based on net asset value. All expenses incurred in connection with the liquidation were paid by The Rupay-Barrington Financial Group, Inc.

Filing Dates: The application was filed on June 8, 2000, and amended on June 9, 2000, and March 3, 2003.

Applicant's Address: 1000 Ballpark Way, Suite 302, Arlington, TX 76011.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-8032 Filed 4-2-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25986; 812-12704]

FSA Capital Management Services LLC; Notice of Application

March 28, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from all provisions of the Act.

SUMMARY OF APPLICATION: FSA Capital Management Services LLC

("Applicant") requests an order to permit Applicant to issue and sell certain debt securities and use the proceeds to finance the business activities of Financial Security Assurance Holdings Ltd. ("FSAH") and its direct and indirect subsidiaries.

FILING DATES: The application was filed on December 4, 2001, and amended on March 26, 2003.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 22, 2003, and should be accompanied by proof of service on applicant, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicant: 350 Park Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at 202-942-0567, or Mary Kay Frech, Branch Chief, 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).

Applicant's Representations

1. Applicant is a Delaware limited liability company and direct wholly-

owned subsidiary of FSAH, a New York corporation.¹ FSAH is a holding company primarily engaged, through its direct wholly-owned subsidiary, Financial Security Assurance Inc. ("FSA"), in the financial guarantee insurance business. FSAH is an indirect, approximately 98.9%-owned subsidiary of Dexia S.A., a publicly owned Belgium corporation ("Dexia"), the shares of which are listed and traded on Euronext Brussels, Euronext Paris and the Luxembourg stock exchange. Dexia is primarily engaged through its operating subsidiaries in the banking and investment management business in Europe.

2. FSA is a New York stock insurance corporation that is a leading insurer of asset-backed and municipal obligations. FSA is licensed to do business as an insurance company in all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam and the U.S. Virgin Islands. FSAH depends primarily on dividends and other payments from FSA to pay dividends on its capital stock, to pay principal and interest on its indebtedness and to pay its operating expenses.

3. Applicant was organized to issue and sell municipal investment contracts and similar investment agreements (together, the "MICs"). Applicant presently sells MICs on a private placement basis primarily to state or local government entities or agencies and trustees for bond issues of such entities or agencies (collectively, the "MIC holders") for the investment of proceeds from municipal bond offerings.

4. MICs are debt securities that provide for an agreed-upon rate of return on the principal invested. MICs may be collateralized by U.S. Treasury or other high quality securities. Municipal bond issuers find MICs attractive because their bonds are often issued to finance projects for which the issuer does not need the full proceeds of the issue immediately. A MIC holder may also purchase a MIC as a means of investing amounts on deposit in debt service reserve funds and other similar funds held by the MIC holder. MICs provide the municipal bond issuer with a guaranteed yield that is advantageous relative to the interest rate on the bonds

and can be structured to provide draw-downs to meet the municipality's needs.

5. Because of restrictions on their permitted investments, some municipalities are expected to request that Applicant enter into MICs styled as repurchase agreements (each, a "Repo"), which would provide such municipalities with the economic equivalent of entering into a collateralized MIC. Applicant considers entering into such Repos to be equivalent to issuing a MIC in the form of a collateralized investment contract and will treat the proceeds generated thereby the same as any other proceeds raised in a debt issuance (hereinafter, any reference to "MIC" shall include such Repos).

6. The proceeds of MIC sales will be loaned to FSAH and/or its direct and indirect subsidiaries (collectively, the "Recipients") for use in financing their respective business activities. It is anticipated that substantially all of the proceeds from the MICs will be loaned by Applicant to the Recipients contemporaneously with the issuance of the related MIC, but in no event will less than 85 percent of such proceeds be loaned later than six months after Applicant's receipt of such proceeds. It also is anticipated that substantially all loans to Recipients will be collateralized by the Recipients themselves.

7. Pursuant to an insurance and indemnity agreement with FSA (the "Agreement"), Applicant's obligations under each MIC issued by it will be fully insured by a financial guarantee policy (each, a "Policy") issued by FSA. The Policy provides that in the event of default by Applicant on the payment of principal, premium (if any) and interest on the MIC, FSA will make the scheduled payment. In addition, the MIC holder may institute legal proceedings directly against FSA to enforce such payment without first proceeding against Applicant. The Agreement requires Applicant to reimburse FSA for any payments made by FSA under the Policies.

8. In order to secure its performance under the Agreement, Applicant will rehypothecate all collateral received in respect of loans of proceeds to Recipients either directly to FSA or to one or more trustees, custodians, collateral agents or other similar agents acting for the benefit of FSA under one or more trust, custody, collateral agency or other similar agency agreements. With respect to MICs in the form of collateralized investment contracts or Repos, however, the collateral pledged to secure the related loan of proceeds will be rehypothecated to the MIC holder.

9. Applicant may come within the definition of investment company under section 3(a) of the Act to the extent that its loans to FSAH and the other Recipients may be considered as investing or reinvesting in debt securities of FSAH and the other Recipients. Applicant currently is relying on the exception from the Act provided by section 3(c)(1). It will be unable to continue to do so, however, at such time as the 100 owner limit contained therein is exceeded or if Applicant were to make a public offering of its securities.

Applicant's Legal Analysis

1. Applicant requests an order under section 6(c) of the Act for an exemption from all provisions of the Act. Rule 3a-5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

2. Rule 3a-5(b)(2)(i) in relevant part defines a "parent company" to be a corporation, partnership, or joint venture that is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules or regulations under section 3(a). Applicant states that because FSAH relies on an exception in section 3(c)(6) of the Act as an insurance holding company, FSAH would not qualify as an eligible parent company under rule 3a-5.

3. Rule 3a-5(b)(3)(i) in relevant part defines a "company controlled by the parent company" to be a corporation, partnership, or joint venture that is not considered an investment company under section 3(a) of the Act or that is excepted or exempted by order from the definition of investment company by section 3(b) of the Act or by the rules and regulations under section 3(a). FSAH engages in certain activities (including certain investment activities) through wholly-owned subsidiaries that have no outstanding securities other than those owned directly or indirectly by FSAH. Such subsidiaries would be eligible for exemption under rule 3a-3 under the Act, except that FSAH, as a section 3(c)(6) exempt company, is not an eligible parent of a rule 3a-3 exempt company.² In addition, Applicant might

¹ Applicant also requests relief for any other wholly-owned finance subsidiary of FSAH that FSAH establishes in the future. Applicant is the only wholly-owned finance subsidiary of FSAH that presently intends to rely on the requested order. Any other wholly-owned finance subsidiary of FSAH that subsequently relies on the requested order will comply with the terms and condition stated in the application.

² Rule 3a-3 generally exempts an issuer from the definition of investment company if all of its outstanding securities (other than short-term paper, directors' qualifying shares, and debt securities owned by the Small Business Administration) are owned by an eligible parent company. A parent

choose in the future to lend the proceeds of its MIC offerings to FSA, which, as an insurance company, is excluded from the definition of investment company under section 3(c)(3) of the Act and to any other insurance company subsidiaries now or hereafter controlled by FSAH that derive their non-investment company status under section 3(c)(3) (such insurance companies, including but not limited to FSA, "FSAH's Insurance Company Subsidiaries").

4. Rule 3a-5(a)(1) requires that any debt securities of a finance subsidiary issued to or held by the public be unconditionally guaranteed by the parent company. Rule 3a-5(a)(3) requires that any parent guarantee provide that, in the event of a default in payment of amounts due under such debt securities, the holders of those securities be allowed to proceed directly against the parent company without first having to proceed against the finance company.

5. Applicant states that the Policies to be issued by FSA covering the MICs serve the underlying objectives of the rule 3a-5 guarantee, because the MIC holders will be provided with benefits substantially similar to those provided by the guarantee requirement of rule 3a-5. Each Policy will be an unconditional and irrevocable guarantee of payment of all amounts due under the MICs. Applicant asserts that there are no differences in the procedures that would be followed by the MIC holders to recover for any loss in the event of Applicant's default on a MIC as compared to the procedures for recovery in the event of a default under a rule 3a-5 guarantee. Applicant further states that FSA is subject to a comprehensive scheme of regulation and supervision under the insurance laws of each U.S. jurisdiction where it is licensed to do business, so that there is higher likelihood that FSA would be able to meet its obligations.

6. Applicant further asserts that the receipt of a Policy from FSA in lieu of an FSAH guarantee increases the likelihood that the MIC holders will be paid in full because creditors of FSAH are in effect structurally subordinated to creditors of FSA (and its subsidiaries). This is because FSAH's equity interest in FSA (including its subsidiaries) is approximately 68% of FSAH's assets and FSAH's only significant source of

company generally is eligible if it meets certain asset and income tests and it is (i) not an investment company as defined in section 3(a) of the Act; (ii) excluded from the definition of investment company by section 3(b) of the Act; or (iii) deemed not to be an investment company under rule 3a-1 under the Act.

funds with which to make payments is dividends or other payments from FSA.

7. Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant submits that its exemptive request meets the standards set out in section 6(c).

Applicant's Condition

Applicant agrees that any order issued on the application shall be subject to the following condition:

Applicant will comply with all of the provisions of rule 3a-5 under the Act, except: (1) In lieu of the parent guarantee requirement in rule 3a-5(a)(1), Applicant's obligations under each MIC will be fully insured by a Policy issued by FSA; (2) FSAH will not meet the portion of the definition of "parent company" under rule 3a-5(b)(2)(i) solely because it is excluded from the definition of investment company under section 3(c)(6) of the Act; (3) Applicant will be permitted to make loans to each of FSAH's Insurance Company Subsidiaries, which do not meet the portion of the definition of "company controlled by the parent company" in rule 3a-5(b)(3)(i) solely because they are excluded from the definition of investment company under section 3(c)(3) of the Act; and (4) Applicant will be permitted to make loans to subsidiaries of FSAH that do not meet the portion of the definition of "company controlled by the parent company" solely because they would be excluded from the definition of investment company by virtue of rule 3a-3 under the Act, but FSAH's status as their parent company.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-8104 Filed 4-2-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47588; File No. SR-NASD-2003-37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 thereto by the National Association of Securities Dealers, Inc. to Permanently Expand Order Entry Firm Access to SIZE in Nasdaq's SuperMontage System

March 28, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on March 12, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by Nasdaq. On March 26, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to make permanent its current pilot allowing NNMS Order Entry Firms ("OE Firms") to enter non-marketable limit orders into SuperMontage using the SIZE Market Maker Identifier ("SIZE MMID" or "SIZE").⁴ In addition, this filing also makes permanent a number of non-substantive corrections to the written rules of the NNMS. The text of the proposed rule change is available at the NASD, the Office of the Secretary, and the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Thomas Moran, Office of General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 25, 2003 ("Amendment No. 1"). Nasdaq submitted Amendment No. 1 to reflect that File No. NASD-2003-39, relating to anti-internalization qualifier values, had become immediately effective, and to delete dates in the rule text that are no longer applicable.

⁴ SIZE is an anonymous identifier that represents the aggregate size of all Non-Attributable Quotes and Orders entered by market participants in Nasdaq at a particular price level. Non-Attributable Quotes and Orders are not displayed in the Nasdaq Quotation Montage using the market participant's MMID. Instead, such interest is displayed next to the SIZE MMID.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 31, 2003, the Commission approved File No. SR-NASD-2002-173 on a 90-pilot basis, which allowed OE Firms to enter non-marketable limit orders into Nasdaq's SuperMontage system using SIZE.⁵ This filing seeks to make permanent the ability of OE Firms to enter orders into SuperMontage under essentially the same terms and conditions approved in the pilot program.⁶

Under the pilot, OE Firms are able to voluntarily enter non-marketable limit orders into SuperMontage without an IOC designation and have them be retained for potential execution⁷ through display in SIZE. OE Firms may enter multiple orders (with or without reserve size) at single or multiple price levels, use any available execution algorithm (price/time, price/time-with-fee-consideration, or price/size). Non-marketable limit orders entered by OE Firms are subject to the automatic execution functionality of the system. Orders of OE Firms on opposite sides of the market are not permitted to automatically interact, if at the best price level, like those of Nasdaq Quoting

⁵ See Securities Exchange Act Release No. 47301 (January 31, 2003), 68 FR 6236 (February 6, 2003). The 90-day pilot commenced on February 10, 2003.

⁶ Prior to the pilot period, OE Firms were required to designate all limit orders they entered into SuperMontage as Immediate-or-Cancel ("IOC"). This designation, while allowing such orders to potentially execute if marketable when they reached the front of the SuperMontage processing queue, also instructed the system to return them to the OE Firm if their price precluded an immediate execution. In short, OE Firms could enter market orders and marketable limit orders, but could not enter non-marketable limit orders and have them retained in the system for potential display and/or execution.

⁷ NNMS Order Entry Firms will be able to designate orders as IOC, "Good-till-Cancelled," or "Day" orders.

Market Participants.⁸ If elected by the OE Firm, its quotes/orders on opposite sides of the market will match off against each other only if such interaction would result based on the execution algorithm selected.⁹ Alternatively, OE Firms may elect not to interact with its orders on the opposite side of the market.¹⁰ Quotes/Orders entered by OE Firms that create a locked/crossed market, will be processed like other locking/crossing quotes/orders as set forth in NASD rule 4710(b)(3).

As stated in the filing creating the pilot program, Nasdaq believes that the proposal is an important step in Nasdaq's ongoing process to make its systems more accessible to all NASD member firms while ensuring that market participants who undertake the burdens of continuous liquidity provision are provided benefits commensurate with their activities. Nasdaq believes that most important, however, are the improvements to market quality that can be expected from the proposal's permanent approval. Nasdaq believes that in addition to enhanced liquidity and informational benefits, retention of non-marketable limit orders from OE Firms in SuperMontage, the proposal can be expected to reduce fragmentation of trading interest, thereby improving execution quality and speed and shrinking the costs market participants now incur when searching for trading partners in multiple venues. Finally, to the extent that any previously rejected OE Firm order is retained, Nasdaq believes the proposal will reduce the potential for locked/crossed markets that can occur if such rejected trading interest is subsequently displayed in an unlinked market center without the benefit of SuperMontage processing to eliminate locks or crosses among all quotes and orders residing in the system. Nasdaq notes that the permanent change proposed here was originally suggested as part of the original public comment process on the SuperMontage proposal, and believes its adoption should have the effect of reducing barriers to access to the SuperMontage system.

⁸ Similarly, OE Firms will not be able to use SuperMontage's self-preferencing feature and have buy and sell interest interact on a basis other than a natural interaction based solely on the selected order execution algorithm.

⁹ See Securities Exchange Act No. 47554 (March 21, 2003), 68 FR 15024 (March 27, 2003) (Notice of Filing and Immediate Effectiveness of SR-NASD-2003-39).

¹⁰ *Id.* Change made pursuant to March 27, 2003, telephone conversation between Thomas Moran, Office of General Counsel, Nasdaq, and Terri Evans, Assistant Director, Division, Commission.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,¹¹ in general and with section 15A(b)(6) of the Act,¹² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

¹¹ 15 U.S.C. 78o-3.

¹² 15 U.S.C. 78o-3(b)(6).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2003-37, and should be submitted by April 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-8034 Filed 4-2-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47590; File No. SR-NASD-2003-13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to Proposed Interpretive Material Regarding the Use of Investment Analysis Tools

March 28, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on February 3, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the NASD. On February 27, 2003, the NASD amended the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See February 27, 2003 letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, and attachments ("Amendment No. 1"). The original proposed rule change was inadvertently submitted without page 5, and contained some technical deficiencies. In Amendment No. 1, the NASD removed pages 1-25 of the original filing and replaced them with new pages 1-25. The Commission did not require the NASD to re-file pages 26-230.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to adopt a new Interpretive Material ("IM") to NASD rule 2210(d)(2)(N), to allow NASD member firms to use certain investment analysis tools that show the probability that investing in specific securities or mutual funds may produce a desired result. The text of the proposed rule change is below. Proposed new language is in italics.⁴ *IM-2210-6. Requirements for the Use of Investment Analysis Tools*

(a) General Considerations

This Interpretive Material provides a limited exception to NASD Rule 2210(d)(2)(N).¹

No member may imply that NASD endorses or approves the use of any investment analysis tool or any recommendation based on such a tool. A member that intends to offer an investment analysis tool under this Interpretive Material (whether customers use the member's tool independently or with assistance from the member) must, at least 30 days prior to first use, (1) provide NASD's Advertising Regulation Department (Department) access to the investment analysis tool and (2) file with the Department any template for written reports produced by, or sales material concerning, the tool.² The member also

⁴ The Commission notes for purposes of clarification that all of the proposed rule language is new language. While some of the language appears in brackets, this does not signify language that is being removed, as is normally the case in proposed rule language that is published in the **Federal Register**.

¹ *NASD rule 2210(d)(2)(N) prohibits NASD member firms from making predictions or projections of specific investment results to the public. In the past, the rule also had been interpreted as prohibiting members from providing customers access to investment analysis tools that show the probability that investing in specific securities or mutual funds will produce a desired result. This Interpretive Material allows member firms to offer such tools (whether customers use the member's tool independently or with assistance from the member), written reports indicating the results generated by such tools and related sales material in certain circumstances.*

Rule 2210(d)(2)(N) does not prohibit, and this Interpretive Material does not apply to, automated educational tools that are hypothetical or general in nature. For instance, rule 2210(d)(2)(N) generally does not prohibit, and this Interpretive Material does not cover, portfolio-based planning tools that merely generate a suggested mix of asset classes, broad categories of securities or funds, or probabilities as to how classes of financial assets or styles of investing might perform.

² *Sales material that members disseminate to the public must be in the same form in which it was submitted to NASD for review and approval. Members cannot redact or alter such sales material after receiving NASD approval and must file with the Department any modified version of the sales material, at least 30 days prior to first use of the modified version of the sales material.*

must provide any supplemental information requested by the Department. If the Department requests changes to the investment analysis tool, written-report template or sales material, the member may not offer or use the tool, written-report template or sales material until all changes specified by the Department have been made by the member and approved by the Department. In addition, as in all cases, a member's compliance with this Interpretive Material does not mean that the member is acting in conformity with other applicable laws and rules. A member that offers an investment analysis tool under this Interpretive Material (whether customers use the member's tool independently or with assistance from the member) is responsible for ensuring that use of the investment analysis tool and all recommendations based on the investment analysis tool (whether made via the automated tool or a written report) comply with NASD's suitability rule (rule 2310), the other provisions of rule 2210, and the other applicable federal securities laws and Securities and Exchange Commission and NASD rules.

(b) Definition

For purposes of this Interpretive Material and any interpretation thereof, an "investment analysis tool" is an interactive technological tool that produces simulations and statistical analyses that present a range of probabilities that various investment outcomes might occur, thereby serving as an additional resource to investors in the evaluation of the potential risks of and returns on particular investments.

(c) Use of Investment Analysis Tools and Related Written Reports and Sales Material

A member may provide an investment analysis tool (whether customers use the member's tool independently or with assistance from the member), written reports indicating the results generated by such tool and related sales material³ only if:

(1) the tool presents a range of probabilities that various investment outcomes might occur and does not state that a particular investment outcome will, in fact, occur;

(2) the tool prominently presents a fair and balanced representation of the range of possible investment outcomes

³ *Sales material that contains only an incidental reference to an investment analysis tool (e.g., a brochure that merely mentions a member's tool as one of the services offered by the member) does not need to include the disclosures required by this Interpretive Material and does not need to be filed with the Department, unless otherwise required by another rule 2210 provision.*

that the tool's algorithm determines have a reasonable probability of occurrence;⁴

(3) the tool uses a mathematical process that can be audited and reviewed;

(4) the member describes the criteria and methodology used, including the investment analysis tool's limitations and key assumptions;

(5) the member explains that results may vary with each use and over time;

(6) the member describes the universe of investments considered in the analysis, explains how the tool determines which securities to select, discloses if the tool favors certain securities⁵ and, if so, explains the reasons for the selectivity, and states that other investments not considered may have characteristics similar or superior to those being analyzed; and

(7) the member displays the following additional disclosure: "IMPORTANT: The projections or other information

⁴ The entire range of investment outcomes would encompass a range of numbers that, as a practical matter, cannot be calculated accurately. The IM therefore requires that the tool, written report of the tool's results or related sales material show the range of possible investment outcomes that the tool's algorithm determines have a reasonable probability of occurrence."

The tool, written report of the tool's results or related sales material must depict a "fair and balanced representation" of this range. A "fair and balanced representation" would include, at a minimum, the "upside," "downside" and "median" projections of estimated outcomes, but would not require a depiction of every outcome in between. Any representation that, in light of all the facts and circumstances, is misleading will not be considered a "fair and balanced representation" of the range. For example, the presentation of a range of possible outcomes skewed to depict only or to weigh in favor of positive market performance would not be a "fair and balanced representation" of the range. In this regard, whenever the tool, written report of the tool's results or related sales material shows an outcome that the investor has a certain chance of achieving on the "upside," the tool, written report, or related sales material must also show the corresponding outcome on the "downside." Moreover, the tool, written report or related sales material should make clear that the dollar amount representing the "downside" is not the worst-case scenario, and it must include a prominent statement of the estimated probability (for example, a "5% chance" or "1 in 20 chance") that the investor will end up with less than the "downside" amount that the tool generates.

⁵ This disclosure must indicate, among other things, whether the investment analysis tool searches, analyzes or in any way favors certain securities within the universe of securities considered based on revenue received by the member in connection with the sale of those securities or based on relationships or understandings between the member and the entity that created the investment analysis tool. The disclosure also must indicate whether the investment analysis tool is limited to searching, analyzing or in any way favoring securities in which the member makes a market or has any other direct or indirect interest. Members are not required to provide a "negative" disclosure (i.e., a disclosure indicating that the tool does not favor certain securities).

generated by [name of investment analysis tool] regarding the probabilities that various investment outcomes might occur are hypothetical in nature, do not reflect actual investment results and are not guarantees of future results. [Name of investment analysis tool] only presents a range of possible outcomes."

(d) Disclosures

The disclosures and other required information discussed in paragraph (c) must be written, clear and prominent.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD proposes to allow NASD member firms to use certain investment analysis tools that show the probability that investing in specific securities or mutual funds may produce a desired result. Under the proposed IM, members could offer investment analysis tools and written reports showing the results of such tools (and use related sales material) only if the tools, reports or sales material present a range of probabilities that various investment outcomes might occur and do not state that a particular investment outcome will, in fact, occur; present a fair and balanced representation of the range of possible investment outcomes that the tool's algorithm determines have a reasonable probability of occurrence; use a mathematical process that can be audited and reviewed; describe the criteria and methodology used, including the tool's limitations and key assumptions; explain that results may vary with each use and over time; and describe the universe of investments considered in the analysis, explain how the tool determines which securities to select, disclose if the tool favors certain securities and, if so, explain the reason for the selectivity, and state that other investments not considered may have

characteristics similar or superior to those being analyzed.

In addition, the following disclosure must be displayed: "Important: The projections or other information generated by [name of investment analysis tool] regarding the probabilities that various investment outcomes might occur are hypothetical in nature, do not reflect actual investment results and are not guarantees of future results. [Name of investment analysis tool] only presents a range of possible outcomes."

The proposed IM also would require members to provide NASD's Advertising Regulation Department with access to the tool (as well as any template for written reports showing the results of the tool or sales material concerning such tool) at least 30 days prior to first use. The review and approval are not merit-based, but rather focus on whether the member has complied with the disclosure requirements and the other requirements of NASD rule 2210, such as the prohibitions on exaggerated, unwarranted and misleading statements and claims. Finally, the IM makes clear that, to the extent that these tools produce recommendations, the NASD's suitability rule would apply.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6)⁵ of the Act, which requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. As discussed above, the proposed IM requires members to disclose various material aspects of the investment analysis tools and reports that they generate. The proposed IM also would require members to provide access to the tool (as well as any template for written reports showing the results of the tool or sales material concerning such tool) to the Advertising Regulation Department at least 30 days prior to first use. In addition, the proposal reminds firms of their suitability obligations. The NASD believes that these restrictions will enable firms to provide investment analysis tools to investors while making clear to investors the limitations of such tools. As such, the investment analysis tools should allow investors to make educated judgments about how particular strategies or investments might perform.

⁵ 15 U.S.C. 78o-3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed IM was published for comment in NASD *Notice to Members 02-51* (August 2002). Fifty-six comments were received in response to the *Notice*. A copy of the *Notice to Members* is attached as Exhibit 2. Copies of the comment letters received in response to the *Notice* are attached as Exhibit 3. Of the 56 comment letters received, 50 were generally in favor of allowing members to provide customers access to investment analysis tools and five were opposed. (One of the comments received was non-responsive.) Numerous commenters noted that other financial service providers have used these types of tools for years without any customer confusion.

The NASD both clarified and modified certain aspects of the IM as a result of some of the comments that it received. For instance, a number of commenters requested that the NASD clarify the types of tools that rule 2210(d)(2)(N) currently prohibits and that would be eligible for the IM's limited exception. The IM now explains that NASD staff has interpreted rule 2210(d)(2)(N) as prohibiting members from providing customers with access to investment analysis tools that show the probability that investing in specific securities or mutual funds may produce a desired result. Such tools would be permitted under the proposed IM if they adhere to the IM's requirements. The revised proposed IM also states that rule 2210(d)(2)(N) does not prohibit and the proposed IM thus does not apply to automated educational tools that are hypothetical or general in nature. Rule 2210(d)(2)(N), for example, generally does not prohibit and the proposed IM does not cover portfolio-based planning tools that merely generate a suggested mix of asset classes, broad categories of securities or funds, or probabilities regarding how classes of financial assets or styles of investing might perform.

Some commenters also requested that the NASD broaden the IM to include an exception for written reports indicating the results of the tools' analyses, which the NASD did not expressly discuss in the proposed IM that was distributed for

comment. In general, these commenters opined that members should be able to provide reports to customers so that the customers have the opportunity to review the results and to ask follow-up questions or otherwise consult with a registered representative about the results. The IM now provides such an exception. Members may provide customers with such written reports if they fulfill the requirements set forth in the IM for members' use of the tools, including the first-use filing requirement, which could be accomplished by filing a template with the NASD (rather than by filing each individual report).

In addition, a number of commenters who reviewed the IM that previously was published for comment asked for clarification of the provision that required members to "prominently disclose the range of all possible investment outcomes generated by the investment analysis tool." In general, the commenters stated that providing a range of "all possible outcomes" would be cumbersome, confusing and impractical given the number of variables. Indeed, one commenter opined that it would be virtually impossible to depict all possible outcomes. Several commenters suggested that members should not be required to provide the range of all possible outcomes, but rather the range of outcomes that can be determined with a high degree of certainty.

In response to these comments, the NASD modified the provision. The IM explains that the entire range of investment outcomes would encompass a range of numbers that, as a practical matter, cannot be calculated accurately. The IM therefore requires a "fair and balanced representation" of the range of possible investment outcomes that the tool's algorithm determines have a "reasonable probability of occurrence." For example, a range of outcomes for which there is at least a one in 20 chance of occurrence on both the "upside" of the range and on the "downside" of the range would be deemed a range of outcomes that have a "reasonable probability of occurrence." This requirement will allow tools to eliminate the statistically insignificant outcomes (for example, those for which there is less than a one in 20 chance of occurrence), while still guaranteeing that the tool will show a range of likely investment outcomes that illustrates the relationship between risk and return. The tool should measure the outcomes that have a "reasonable probability of occurrence" with adequate precision to ensure a high degree of confidence in their accuracy.

However, the tool, written report of the tool's results or related sales material must depict a "fair and balanced representation" of this range. A "fair and balanced representation" would include, at a minimum, the "upside," "downside" and "median" projections of estimated outcomes, but would not require a depiction of every outcome in between. Any representation that, in light of all the facts and circumstances, is misleading will not be considered a "fair and balanced representation" of the range. For example, the presentation of a range of possible outcomes skewed to depict only or to weigh in favor of positive market performance would not be a "fair and balanced representation" of the range. In this regard, whenever the tool, written report of the tool's results or related sales material shows an outcome that the investor has a certain chance of achieving on the "upside," the tool, written report or related sales material must also show the corresponding outcome on the "downside." Moreover, the tool, written report or related sales material should also make clear that the dollar amount representing the "downside" is not the worst-case scenario, and it must include a prominent statement of the estimated probability (for example, a "5% chance" or "one in 20 chance") that the investor will end up with less than the "downside" amount that the tool generates.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. The Commission specifically seeks comment on whether the fund advertising rules or any other Commission rules are implicated by the use of the investment analysis tools described in this proposed rule change. Persons making

written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2003-13 and should be submitted by April 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-8035 Filed 4-2-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47587; File No. SR-NASD-2000-42]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Requirements for Recording and Reporting of Certain Quotation Data; Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1, 2, and 3 to the Proposed Rule Change

March 27, 2003.

I. Introduction

On July 3, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to establish requirements for the recording and reporting of certain quotation data. On October 5, 2000, the proposed rule change was published for

comment in the **Federal Register**.³ The Commission received one comment letter in response to the proposed rule change.⁴ The NASD responded to the comment letter and amended the proposed rule change on January 4, 2001.⁵ On June 14, 2001, the NASD submitted a letter clarifying a limitation on its proposed use of quotation data submitted in response to the proposed rule.⁶ On September 21, 2001, the NASD further amended its proposed rule change by filing Amendment No. 2.⁷ On February 27, 2003, the NASD filed Amendment No. 3 to its proposed rule change.⁸ This notice and order solicits comment on Amendment Nos. 1, 2 and 3 and approves the proposed rule change, as amended, on an accelerated basis.

II. Description of Proposed Rule Change

According to the NASD, in September 1999, the Electronic Pink Sheets ("EPS") began displaying real-time, on-line stock quotations for approximately 5,000 securities, including over-the-counter ("OTC") equity securities. Prior to the availability of EPS, quotations were published weekly in hardcopy lists known as the "pink sheets." These lists were updated via daily facsimile

³ See Securities Exchange Act Release No. 43367 (September 27, 2000), 68 FR 59482.

⁴ See letter from R. Cromwell Coulson, Chairman and CEO, Pink Sheets LLC ("Pink Sheets") to Jonathan G. Katz, Secretary, Commission, dated October 26, 2000 ("Pink Sheets Letter").

⁵ See letter from Jeffrey S. Holik, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 4, 2001 ("NASD Response to Comments and Amendment No. 1"). NASD Response to Comments and Amendment No. 1: (1) Addressed comments submitted by Pink Sheets; and (2) amended the proposed rule's text to clarify the conditions under which a member would be required to withdraw its quotations for non-compliance with the proposed rule's requirements.

⁶ See letter from Jeffrey S. Holik, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated June 14, 2001 ("NASD Letter"). The NASD Letter clarified that quotation data provided to the NASD pursuant to the proposed rule would not be provided to The Nasdaq Stock Market, Inc.

⁷ See letter from Jeffrey S. Holik, Vice President and Acting General Counsel, NASD Regulation, to Nancy J. Sanow, Assistant Director, Division, Commission, dated September 21, 2001. ("Amendment No. 2"). In Amendment No. 2, the NASD revised the proposed rule's text to state expressly that the rule would not apply to quotations on inter-dealer quotation systems operated by a registered securities association or national securities exchange.

⁸ See letter from Stephanie M. Dumont, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated February 26, 2003. ("Amendment No. 3"). The amendment clarified that the NASD will not use an inside bid and/or offer that is calculated and submitted by the Reporting Agent for any commercial purposes.

transmission to subscribers. To obtain more current quotations for securities published in the pink sheets, market participants would communicate directly with broker-dealers publishing quotations in that medium, including unpriced indications of interest for the particular security.

NASD Regulation represents that because quotations for OTC equity securities now are displayed on a real-time basis in inter-dealer quotation systems, such as the pink sheets, NASD Regulation staff requires access to data pertaining to those quotations in order to surveil adequately for member compliance with applicable rules and regulations and, when necessary, to reconstruct market activity.

Therefore, the NASD proposed NASD Rule 6630 to require its members to: (1) Record specified information pertaining to quotations for OTC equity securities displayed in an inter-dealer quotation system⁹ that permits real-time quotation updates, unless such system is operated by a registered securities association, a national securities exchange or an NASD member; (2) preserve the quotation information for the period of time and accessibility set forth in Rule 17a-4(a) under the Act;¹⁰ and (3) report the quotation information to the NASD upon request.

Under the proposed rule, NASD members that publish quotations in inter-dealer quotation systems covered by the rule ("covered quotation systems") would be required to record, among other things, the time of the quotation's display, the bid price and quotation size, the offer price and quotation size, and the prevailing inside bid and offer in the quotation system at the time of the quotation.¹¹ The proposed rule would apply to priced quotes and unpriced indications of interest. The NASD proposal would permit members to enter into an agreement with a third party that would act as the agent for fulfilling the member's obligations under the rule.

NASD Regulation represents that it would use quotation data obtained pursuant to the proposed rule to surveil,

⁹ Rule 15c2-11(e) of the Act defines inter-dealer quotation system as "any system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers." 17 CFR 240.15c2-11(e).

¹⁰ 17 CFR 240.17a-4(a). Pursuant to Rule 17a-4(a) under the Act, members would be required to preserve records of such data for at least six years. During the first two of the six years, members would be required to maintain the records "in an easily accessible place."

¹¹ See Amendment No. 3, *supra* note 8, which clarifies that a member should not consolidate quotation information from other systems or markets that are quoting the security.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

for example, for compliance with NASD Rule 3320, *Offers at Stated Prices*, which requires that a member's quotation be "firm,"¹² and NASD Rule 6750, *Minimum Quotation Size Requirements for OTC Equity Securities*, which requires that every member firm that functions as a market maker in OTC equity securities on an inter-dealer quotation system that permits quotations to be updated on a real-time basis must honor those quotations for the minimum size applicable to the member firm's firm bid or ask price. NASD Regulation represents that although it has access to trade execution data through existing trade reporting requirements and systems, it does not otherwise have access to historical quotation activity at the time of trades.

As originally proposed, the rule change would not apply to quotations displayed on an inter-dealer quotation system that is qualified pursuant to section 17B of the Act.¹³ In Amendment No. 2, the NASD proposed revising the rule text to state expressly that the exclusion applies to quotations on an inter-dealer quotation system that is operated by a registered securities association or national securities exchange. NASD Regulation observed that the registered securities association or national securities exchange operating such an inter-dealer quotation system would have access to quotation information displayed on that system. Therefore, the NASD would not require members to record and report information pertaining to quotations entered into inter-dealer quotation systems operated by a registered securities association or national securities exchange. NASD Regulation noted that, under this exclusion, members would not need to record and report quotation information for quotations on the OTC Bulletin Board, which is sponsored and regulated by the NASD.

The proposed rule change also would not apply to an inter-dealer quotation

system operated by a member of the NASD. The NASD indicated that if an NASD member were to operate an inter-dealer quotation system, the NASD would be able to receive the pertinent quotation data (or, in some cases, the display of limit orders) directly from the NASD member operating the system.

The proposed rule change would permit a member to use an agent to provide the quotation data to the NASD ("Reporting Agent").¹⁴ The NASD believes that most or all members that would be required to provide quotation data under the proposed rule would use the services of a Reporting Agent, which likely would be the operator of the inter-dealer quotation system.

NASD Regulation anticipates that if a system operator agrees to be a member's Reporting Agent, the system operator would provide all relevant quotation data directly to NASD Regulation on a daily or ongoing basis. Notwithstanding a member's use of a Reporting Agent to furnish quotation information, the member would remain responsible for compliance with all requirements of the proposed rule. If a member knew or had reason to believe that it or its Reporting Agent was not in compliance with the proposed rule, the member would be required to withdraw its quotations or unpriced indications of interest from the inter-dealer quotation system until the member was satisfied that quotation data is being properly recorded and reported.¹⁵ In this regard, NASD Regulation stated that it would expect members that use a Reporting Agent to periodically review or monitor its activities in order to ensure continued compliance with the proposed rule.

Under the NASD's original proposed rule change, if a member knew or had reason to believe that its Reporting Agent was not in compliance with the proposed rule, the member would be required to *immediately* withdraw its priced quotations and unpriced indications of interest. In response to concerns that problems with data systems could interfere with the ability of a member or its Reporting Agent to comply with the proposed rule, the NASD proposed removing the word "immediately" from the proposed rule's text.¹⁶

¹⁴ NASD Rule 6630(e) would define "Reporting Agent" as "a third party that enters into any agreement with a member pursuant to which such third party agrees to fulfill such member's obligations under this Rule."

¹⁵ See NASD Response to Comments and Amendment No. 1, *supra* note 5.

¹⁶ NASD Response to Comments and Amendment No. 1. A literal reading of the original proposed rule text would have required a member to withdraw its quotations only if the member knew or had a reasonable belief that its Reporting Agent was not

To ensure that its members have adequate time to implement the proposed rule, the NASD represented that, if approved, it will announce the operative date of the proposed rule change in a Notice to Members to be published no later than 60 days following the date of Commission approval. The operative date will be 30 days following publication of the Notice to Members.

III. Summary of Comments and NASD Response

The Commission received one comment letter in response to the proposed rule change. The letter, from Pink Sheets: (1) Expressed concern regarding the NASD's proposal to obtain quotation information based on regulation of NASD members rather than through the negotiation of a private contract between NASD Regulation and Pink Sheets; (2) stated that NASD Regulation must acknowledge Pink Sheets' private property rights in the data and provide assurances that this data will be protected, and not redistributed in competition with Pink Sheets; (3) stated that NASD members should not bear the entire responsibility for ensuring that the NASD receives the proper information; (4) stated that NASD members should not be required to withdraw quotations without time to address data systems problems when such problems are the cause of non-compliance; (5) asserted that the proposed rule should set forth the form in which required data must be provided; and (6) questioned the basis of the proposed rule's exclusion for systems operated by a registered securities association or national securities exchange.¹⁷ Pink Sheets also noted its view that the proposed rule change is overly restrictive and should apply to bond quotation services and order routing and negotiation services in addition to electronic quotation services. These comments are discussed below, along with NASD Regulation's responses contained in NASD Response to Comments and Amendment No. 1.

A. Approach to Obtaining Quotation Data

Pink Sheets asserted that it has an intellectual property interest in the data that NASD members would be required to ensure was recorded, preserved, and provided to the NASD upon request. Pink Sheets posited that the negotiation

complying with the proposed rule. The NASD proposed a revision to the rule text clarifying that the member also must withdraw its quotes if the member itself is not complying with the proposed rule. *Id.*

¹⁷ Pink Sheets Letter, *supra* note 4.

¹² NASD Rule 3320 states: "No member shall make an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell." A member is expected to buy or sell at least a normal unit of trading in the quoted stock at its then prevailing quotations, unless the quotation is designated clearly as not firm or as firm for less than a normal unit of trading. NASD Firmness of Quotations Rule, IM-3320.

¹³ 15 U.S.C. 78q-2. Section 17B states that "[t]he Commission shall facilitate the widespread dissemination of reliable and accurate last sale and quotation information with respect to penny stocks* * *with a view toward establishing, at the earliest feasible time, one or more automated quotation systems that will collect and disseminate information regarding all penny stocks."

of a private contract between the NASD and the owner of an automated inter-dealer quotation system would more adequately address the needs of both the NASD and the system. In addition, Pink Sheets sought assurances that quotation data provided to the NASD pursuant to the proposed rule would not be redistributed in competition with Pink Sheets.

NASD Regulation has noted that it cannot rely on a contractual arrangement with the Pink Sheets. Because the NASD's jurisdiction extends only to its members and not to Pink Sheets and other inter-dealer quotation services, NASD Regulation believed that it could not impose a requirement on Pink Sheets to provide quotation data, and, therefore, Pink Sheets at any time could refuse to provide the quotation data. NASD Regulation stated that, although it could pursue legal action against the system operator for breach of such contract, it would be at risk of not having quotation data in the interim and thus would be unable to surveil effectively and monitor for compliance with applicable rules and regulations. Finally, NASD Regulation noted that it requires access to the quotation data for regulatory purposes and intends to use that data only for this purpose.¹⁸ Further, in its letter dated June 14, 2001, NASD Regulation specifically represented that quotation data submitted to the NASD or NASD Regulation under the proposed rule will not be provided to The Nasdaq Stock Market by the NASD or NASD Regulation.¹⁹ Also, in Amendment No. 3, the NASD represented that to the extent the member's Reporting Agent calculates an inside bid and/or offer and submits that inside bid and/or offer to the NASD, the NASD will not use this inside bid and/or offer for any commercial purposes.²⁰

B. Responsibility for Compliance

In the proposed rule change, the NASD stated that an NASD member would be fully responsible for compliance with the proposed rule whether or not the member used a Reporting Agent to provide quotation information. Pink Sheets argued that requiring NASD members to bear the responsibility for ascertaining whether the NASD is receiving quotation data would impose an undue burden on NASD members. Pink Sheets therefore suggested that the proposed rule be amended to require the NASD to notify

its members or their Reporting Agents if the NASD knows or has reason to believe that the NASD is not receiving quotation data.

NASD Regulation responded that it believes member firms must be responsible for compliance with the proposed rule and must put procedures in place to ensure proper reporting of quotation information. NASD Regulation stated, however, that it would be willing, upon request, to confirm whether it is receiving quotation information submitted pursuant to the proposed rule.

C. Withdrawal of Quotations

As originally proposed, non-compliance with the proposed rule would require a member to immediately withdraw its priced quotations and unpriced indications of interest. Pink Sheets expressed concern that this might require NASD members to immediately withdraw their quotations where non-compliance is the result of data systems problems.

NASD Regulation responded that it recognizes members or their Reporting Agents may experience systems problems that temporarily restrict their ability to record and report quotation information. Therefore, NASD Regulation stated that if a member or its Reporting Agent were unable to record or report quotation information due to a systems problem, the member would not be required to withdraw its quotations or unpriced indications of interest, as long as the problem did not extend beyond one trading day. NASD Regulation further noted that if the systems problem extended beyond one trading day, the proposed rule would require that the member withdraw its quotations or unpriced indications of interest, if the member is unable to use an alternative means to comply with the proposed rule. Reflecting this approach, the NASD amended the proposed rule so that it no longer requires quotations to be withdrawn immediately.²¹

Pink Sheets also expressed concern that market makers required to withdraw their quotations and unpriced indications of interest might lose their "piggyback" status under Rule 15c2-11 of the Act.²² Pink Sheets asserted that in

order to avoid this possible result, the proposed rule should be amended so that, in the case of non-compliance, members would only be required to withdraw their quotations, not their unpriced indications of interest. NASD Regulation responded that if quotation information, including unpriced indications of interest, is not properly recorded and reported, the NASD could not ensure that its members are in compliance with applicable rules.

D. Data Standards

The proposed rule would require members to record and report quotation data "in such form as is prescribed by the Association from time to time." The proposed rule, however, specifies the items of information the quotation activity must contain. Pink Sheets argued that no quotation system should be held to "such a subjective standard." NASD Regulation responded that, under the proposed rule, the NASD would, in a Notice to Members, prescribe the form in which it would require data to be transmitted to the Association. NASD Regulation stated that its staff has met with a representative of Pink Sheets to discuss data transmission alternatives. Further, NASD Regulation stated that if it were to now stipulate the use of a specific transmission method, the NASD would not have the ability, should it be necessary, "to address varying systems transmissions capabilities."

E. Inter-Dealer Quotation Systems Covered by the Rule

As amended, proposed NASD Rule 6630 would not require the recording and reporting of quotations that are displayed on an inter-dealer quotation system that is either: (1) Operated by a registered securities association or national securities exchange; or (2) operated by an NASD member. In addition, since the rule applies only to OTC equity securities, it would not apply to electronic bond quotation services. Pink Sheets objected to the proposed rule's original exclusion of systems qualified pursuant to section 17B of the Act, which, by definition, are operated by either a national securities association or a national securities exchange.²³ Pink Sheets expressed concern that there is no rule that requires members to remove their

Once the security is quoted regularly for 30 days, other broker-dealers can "piggyback" off of those quotations, *i.e.*, submit quotations without reviewing information about the issuer. 17 CFR 24.15c2-11(f)(3).

²³ Amendment No. 2, *supra* note 7, revised the text of this exclusion to expressly exclude quotations displayed on an inter-dealer quotation system operated by a registered securities association or national securities exchange.

¹⁸ NASD Response to Comments and Amendment No. 1, *supra* note 5.

¹⁹ NASD Letter, *supra* note 6.

²⁰ Amendment No. 3, *supra* note 8.

²¹ If a systems problem extends beyond one trading day, causing quotation data to not be recorded or reported for a particular member, that member would then be required to withdraw from the quotation system. See NASD Response to Comments and Amendment No. 1, *supra* note 5.

²² Rule 15c2-11 requires a broker-dealer to review current information about an issuer before it publishes a quotation for the issuer's security in the non-Nasdaq OTC markets. Because of the rule's "piggyback" provision, generally only the first broker-dealer is required to review this information.

quotations from any of the exempt systems if the member believes or has reason to believe that the data is not being properly maintained by the exempt system. Pink Sheets expressed concern that the NASD could force market makers on the OTCBB that also quote in the EQS to abandon their use of the EQS. In addition, Pink Sheets inquired why the proposed rule would not apply to electronic bond quotation services.

With regard to the original proposal to exclude systems qualified under section 17B of the Act, NASD Regulation stated that, because those systems are sponsored and regulated by either a national securities association or national securities exchange, the association or exchange would be able to obtain quotation data directly from those systems. Regarding electronic bond quotation services, NASD Regulation stated that it does not currently require historical quotation information for regulation of the OTC component of the bond market. NASD Regulation represented, however, that it will continue to monitor bond market activity to determine whether it is necessary to impose, in that area, requirements similar to those described in the proposed rule change.

IV. Discussion

The Commission has carefully considered the proposed rule change and amendments thereto, along with the comment letter from Pink Sheets, as well as the response letter from NASD Regulation and the NASD Letter. The Commission finds that the NASD proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Act,²⁴ which requires the rules of a national securities association to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In addition, the Commission finds that the proposed rule change is consistent with section 15A(b)(2) of the Act,²⁵ which requires that a national securities association be organized and have the capacity to be able to carry out the purposes of the Act and to comply, and enforce compliance by its members and persons associated with its members, with the Act and rules and regulations

thereunder and the rules of the association.

The Commission finds that the proposed rule change is designed to ensure that the NASD receives quotation information that is necessary to adequately surveil member activity in OTC equity securities quoted on inter-dealer quotation systems that permit quotation updates on a real-time basis and that are not operated by a registered national securities association, a registered national securities exchange, or an NASD member. The required quotation information must be recorded and reported by the member itself or, on the member's behalf, though a Reporting Agent. The Commission believes that this quotation information is necessary for the NASD, through NASD Regulation, to adequately surveil member compliance with applicable rules and regulations in a trading environment where quotations for OTC equity securities are displayed on a real-time basis in those inter-dealer quotation systems for which the NASD does not otherwise have access to quotation data. Because these OTC equity securities often are microcap securities that can be the subject of fraud and manipulation, the Commission believes that it is vital for the NASD to have access to quotation information for these securities so that the NASD can properly carry out its regulatory responsibilities with respect to this market sector.

In considering this proposed rule change, the Commission observes that the NASD has amended the proposed rule change to address, and has clarified a number of points in response to, issues raised in the Pink Sheets Letter. Specifically, in response to comments made in the Pink Sheets Letter, the NASD revised the proposal with respect to the circumstances under which a member would be required to withdraw its quotes from the inter-dealer quotation system in the event of non-compliance with the rule's provisions. The Commission believes that the NASD's revisions address the Pink Sheets' concerns that an NASD member would be required to immediately withdraw its quotes where non-compliance is the result of a temporary data systems problem. The NASD also responded to the Pink Sheets' concern about the specificity of the standards in which the NASD would require data to be submitted by indicating that it would publish information regarding the prescribed form for recording and reporting the quotation information in a Notice to Members. Finally, the NASD responded to the Pink Sheets' objection that the proposed rule did not cover

electronic bond quote services by indicating that it would monitor activities to determine whether NASD Rule 6630 should in the future cover a broader range of securities. The Commission does not believe that the NASD's obligations as a self-regulatory organization ("SRO") to enforce compliance by its members with the Act requires it to apply the same rules to all the varied activities of its members. Instead, the Commission believes that, in many cases, it is appropriate for an SRO to tailor its rules to aid it in fulfilling its responsibilities with respect to a particular market segment. The Commission believes that this proposal is appropriately tailored to surveil a market segment that historically has experienced repeated instances of fraud and manipulation.

There are two issues raised by Pink Sheets that the Commission wishes to address further. First, Pink Sheets claimed that NASD Rule 6630 is anti-competitive because it excludes systems that are sponsored and regulated by a registered securities association or national securities exchange, and is unfairly targeted at EQS and its users. The Commission finds that the proposed rule's exclusion of quotations displayed in inter-dealer quotation systems operated by a registered national securities association or national securities exchange is consistent with the Act. To qualify for the exclusion, the system must be operated by an SRO registered with, and regulated by, the Commission. These SROs have responsibilities under the Act to surveil systems they operate. Accordingly, it is unnecessary, and would be needless and redundant, for the NASD to require its members to record and report information regarding quotations on such systems. On the other hand, the Commission believes that it is necessary for the NASD, as the principal regulator of the OTC equity market, to have the requisite information regarding quotations displayed by members in covered quotation systems to enable it to carry out its functions as an SRO. The Commission also believes that the NASD appropriately places the burden to provide the quotation information on its members, because it is these members over which the NASD is obligated to enforce compliance with the Act's provisions.²⁶ To reduce the costs and burdens on its members, however, the NASD will permit members to enter into an agreement

²⁴ 15 U.S.C. 78o-3(b)(6).

²⁵ 15 U.S.C. 78o-3(b)(2).

²⁶ 15 U.S.C. 78o-3(b)(2).

with a Reporting Agent to provide the information on the member's behalf.

Second, Pink Sheets expressed concern that quotation information provided to the NASD pursuant to the proposed rule could be used to compete against Pink Sheets. Pink Sheets also suggested that the NASD might use the quotation information in some way to advantage its OTC Bulletin Board, to the detriment of EQS. The Commission notes that NASD Regulation specifically represented that it requires access to this quotation data for regulatory purposes and intends to use the data only for this purpose²⁷ and that quotation data submitted to the NASD or NASD Regulation under the proposed rule change will not be provided to The Nasdaq Stock Market by the NASD or NASD Regulation.²⁸ Also, in Amendment No. 3, the NASD represented that to the extent the member's Reporting Agent calculates an inside bid and/or offer and submits that inside bid and/or offer to the NASD, the NASD will not use this inside bid and/or offer for any commercial purposes.²⁹

V. Accelerated Approval of Amendment Nos. 1, 2, and 3

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Under Amendment No. 1, the NASD clarified when a member must withdraw its quotes from an inter-dealer quotation system under the rule.

The Commission also finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. By expressly excluding from application of the proposed rule quotations entered into inter-dealer quotation systems that are operated by a registered national securities association or national securities exchange, Amendment No. 2 clarifies the proposed rule's scope. In addition, the Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of filing thereof in the **Federal Register**. By clarifying that the terms "prevailing inside bid" and "prevailing inside offer" refer to the prevailing inside bid and offer of the system under which the participant has

a responsibility to provide quotation activity under the proposed rule, Amendment No. 3 makes it clear that it is not necessary for a member to consolidate quotation information from other systems or markets that are quoting the same security. Amendment No. 3 also clarifies that the NASD will not use the inside bid/offer quotations collected and submitted by the Reporting Agent for any commercial purposes.

For these reasons, the Commission finds good cause, consistent with sections 15A(b)(2), 15A(b)(6) and 19(b)(2) of the Act, to accelerate approval of Amendment Nos. 1, 2, and 3 to the proposed rule change.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, and 3, including whether Amendment Nos. 1, 2, and 3 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2000-42 and should be submitted by April 24, 2003.

VII. Conclusion

It is therefore Ordered, pursuant to section 19(b)(2) of the Act,³⁰ that the proposed rule change (SR-NASD-00-42) be and hereby is, approved, and Amendment Nos. 1, 2, and 3 are approved on an accelerated basis.³¹

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-8037 Filed 4-2-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47592; File No. SR-NASD-2003-03]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Waive Fees Assessed Under NASD Rule 7010(s) for New Subscribers to Nasdaq PostData

March 28, 2003.

I. Introduction

On January 9, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to waive for two months the fees assessed under NASD Rule 7010(s) for each new subscriber to Nasdaq PostData. The proposed rule change was published for notice and comment in the **Federal Register** on January 27, 2003.³ The Commission received one comment on the proposal.⁴ On March 20, 2003, Nasdaq responded to the comment letter.⁵ This order approves the proposed rule change.

³² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 47209 (January 17, 2003), 68 FR 3911.

⁴ See February 7, 2003 letter from Joseph L. Magill, Managing Director AutEx, Thomson Financial Banking and Brokerage ("Thomson"), to Jonathan G. Katz, Secretary, Commission, and attachments ("Thomson Letter"). The Thomson Letter includes as an attachment a January 10, 2003 letter, also from Joseph L. Magill to Jonathan G. Katz, commenting on SR-NASD-2002-184, a proposed rule change the NASD filed and later withdrew. Because the issues Thomson raised in its January 10, 2003 letter are also raised in the instant proposed rule change, Thomson submitted its January 10, 2003 letter as an attachment to its February 7, 2003 letter as a comment to SR-NASD-2003-03. When citing to page numbers of the Thomson Letter in this order, the Commission is referencing the page numbers of Thomson's January 10, 2003 letter.

⁵ See March 19, 2003 letter from Jeffrey S. Davis, Nasdaq, to Alden S. Adkins, Associate Director, Division of Market Regulation, Commission ("Nasdaq Letter").

²⁷ See NASD Response to Comments and Amendment No. 1, *supra* note 3.

²⁸ See NASD Letter, *supra* note 6.

²⁹ See Amendment No. 3, *supra* note 8.

³⁰ 15 U.S.C. 78s(b)(2).

³¹ In approving the proposed rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation.

II. Summary of Comments

While the instant proposed rule change is limited to the question of a two-month waiver of fees associated with PostData for new subscribers, the commenter's concerns are broader in scope. The following is an overview of the concerns the commenter raised.

- *Nasdaq Has Failed To Evaluate Its Fee Structure*

The commenter believes that Nasdaq is able to effectively present an analysis of the PostData fees, despite Nasdaq's assertion to the contrary, by calculating the cost of operating, enhancing, and marketing the product.⁶ Additionally, the commenter notes that the fees for PostData are imposed on a per-user basis, which may provide relevant price data, as well as some basis for estimating the anticipated average number of paying users per firm.⁷

- *Cost of Enhancements to PostData*

The commenter disagrees with Nasdaq's position that enhancements to PostData do not entail any additional fees.⁸ The commenter believes that Nasdaq, by adding material enhancements to PostData "whose costs are not defrayed by the fees charged for the service" may be a burden on competition.⁹ The commenter raises the question of whether such a revenue shortfall is being offset by fees generated by the self-regulatory organization's regulatory activities.¹⁰

- *PostData Wholesale Fees Are Improper*

The commenter believes that Nasdaq's wholesale fees must "reflect only those costs that the SRO would incur if it just collected information and passed it on to private vendors."¹¹ Citing *NASD v. SEC*,¹² the commenter believes that Nasdaq's fee structure cannot mandate that vendors pay costs related to Nasdaq's own commercial service, such as costs relating to formatting PostData reports and any operating and overhead costs attributed to the retail version of PostData.¹³

III. Nasdaq's Response to Comments

Nasdaq says that the commenter has not alleged that Nasdaq's PostData product is an undue burden on competition, and that the inference that

one should draw from the commenter's failure to allege such harm is that PostData has been neither a burden on competition, nor a burden on the commenter's business.¹⁴

In response to the commenter's claim that Nasdaq should evaluate its fee structure, Nasdaq states that its fee structure is proper, and that the proposal "clearly identifies the costs attributable to market data vendors and the separate, incremental costs that are attributable to direct subscribers."¹⁵ Regarding the fees themselves, Nasdaq believes that the fees at their current levels "equitably allocate Nasdaq's costs for offering PostData to members and non-members."¹⁶

Nasdaq acknowledges that it has expanded the amount of market data available through PostData since approval of its original pilot program. However, Nasdaq does not believe that raising the PostData fees is proper because the new data "does not materially affect the costs that Nasdaq is permitted to include in the PostData fees, such as the maintenance, operation or marketing of PostData, or the operation of the web security infrastructure."¹⁷

Finally, Nasdaq asks the Commission to reject the commenter's argument that the wholesale fees associated with PostData are improper, because the Commission found in its approval order for the original PostData pilot program that the fees "are equitably allocated among members and non-members, and that the price differential between retail and wholesale fees offer market data vendors the opportunity to compete effectively" with Nasdaq.¹⁸

IV. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the comment letter, and Nasdaq's response to the comment letter, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association¹⁹ and, in particular, the

requirements of sections 15A(b)(5) and (6) of the Act.²⁰ Section 15A(b)(5)²¹ requires the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that a national securities association operates or controls. Section 15A(b)(6)²² requires that the rules of a national securities association be designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission finds that the proposal is consistent with both of these sections of the Act.

Specifically, the Commission, in its original approval of the PostData pilot,²³ found that the fees that Nasdaq would charge for both the retail and the wholesale distribution of PostData are equitably allocated among members and non-members. In the instant proposed rule change, Nasdaq has not changed the differential between the retail and wholesale fees permanently—instead, Nasdaq seeks only to offer a waiver of those fees for two months for new subscribers to encourage such persons to use the service. The waiver will apply to subscribers that deal directly with Nasdaq (retail subscribers), as well as subscribers who are vendors (wholesale subscribers). If subscribers do take on this opportunity and like the service, they will pay for the service at the approved rates. The Commission believes, therefore, that such a waiver is reasonable.

Furthermore, the Commission believes the information contained in PostData may help to foster cooperation and coordination with persons engaged in facilitating transactions in securities, by providing consistent, reliable, and verified market data to market participants who choose to subscribe to the service or purchase the information from market data vendors. The Commission believes that investors will benefit by the timely dissemination of this reliable market data.²⁴ The Commission believes that the two month fee waiver places no undue burden on competition, and in fact, may

²⁰ 15 U.S.C. 78o-3(b)(5) and (6).

²¹ 15 U.S.C. 78o-3(b)(5).

²² 15 U.S.C. 78o-3(b)(6).

²³ See Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002) (SR-NASD-99-12).

²⁴ In this regard, the Commission reminds Nasdaq of its representation that Nasdaq generally will provide the PostData information to vendors approximately five minutes before it posts the information on the web site for direct end-users.

⁶ Thomson Letter at 8.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 9.

¹⁰ *Id.*

¹¹ *Id.*

¹² 801 F.2d at 1419.

¹³ Thomson Letter at 9-10.

¹⁴ Nasdaq Letter at 1-2. The Commission notes, however, that the commenter, in arguing that Nasdaq could not have materially enhanced PostData without incurring any additional fees, states that adding enhancements without charging additional fees to defray the costs "can place a significant burden on competition. * * *"

Thomson Letter at 8-9.

¹⁵ *Id.* at 2.

¹⁶ *Id.*

¹⁷ *Id.* at 3.

¹⁸ *Id.*

¹⁹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

foster competition, as market data vendors obtain verified data from PostData, provide enhancements to the data, and in turn, sell the enhanced data to retail customers.²⁵

The Commission expects that Nasdaq will continue to examine the fees and fee structure of PostData, and will take whatever steps are necessary to ensure that the fees remain consistent with the mandate established in section 15A(b)(5) of the Act,²⁶ so that the fees associated with PostData remain equitable. The Commission also expects that Nasdaq will provide the Commission with the information the Commission requested in its original approval order of the PostData pilot²⁷ as soon as practicable.

V. Conclusion

It is therefore Ordered, pursuant to section 19(b)(2) of the Act²⁸, that the proposed rule change (SR-NASD-2003-03) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-8106 Filed 4-2-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47584; File No. SR-NYSE-2002-35]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 3 to a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Business Continuity and Contingency Planning

March 27, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 27, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") Amendment No. 3³ to

the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The NYSE submitted the proposed rule change to the Commission on August 16, 2002, and it was published in the **Federal Register** on September 9, 2002 ("Original Notice").⁴ The NYSE subsequently submitted amendments to the proposed rule change on January 13, 2003,⁵ and March 7, 2003.⁶ Amendment No. 3 incorporates and replaces Amendments Nos. 1 and 2 in their entirety. The Commission is publishing Amendment No. 3 to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to clarify that proposed new NYSE Rule 446 ("Business Continuity and Contingency Plans")—which would require members and member organizations to develop, maintain, review, and update business continuity and contingency plans that establish procedures to be followed in the event of an emergency or significant business disruption—also would require such plans to be reasonably designed to enable members and member organizations to continue their businesses in the event of a significant business disruption.

Below is the text of the proposed rule change, as amended. The base text is that provided in the Original Notice. Language added by Amendment No. 3 is in italics; language deleted by Amendment No. 3 is in brackets:

* * * * *

Business Continuity and Contingency Plans

New Rule 446

(a) Members and member organizations must develop and maintain a written business continuity and contingency plan establishing procedures [to be followed in the event of] *relating to* an emergency or significant business disruption. *Such procedures must be reasonably designed to enable members and member organizations to continue their businesses in the event of a future significant business disruption.*

Members and member organizations must make such plan available to the Exchange upon request.

(b) Members and member organizations must conduct, *at a minimum*, a yearly review of their business continuity and contingency plan to determine whether any modifications are necessary in light of changes to the member's or member organization's operations, structure, business or location. *In the event of a material change to a member's or member organization's operations, structure, business or location, the member or member organization must promptly update its business continuity and contingency plan.*

(c) The [requirements of] *elements that comprise* a business continuity and contingency plan shall be tailored to the size and needs of a member or member organization *so as to enable the member or member organization to continue its business in the event of a future significant business disruption.* Each plan, however, must, at a minimum, address, if applicable:

(1) books and records back-up and recovery (hard copy and electronic);

(2) identification of all mission critical systems and back-up for such systems;

(3) financial and operational risk assessments;

(4) alternate communications between customers and the firm;

(5) alternate communications between the firm and its employees;

(6) alternate physical location of employees;

(7) business constituent, bank and counter-party impact;

(8) regulatory reporting; and

(9) communications with regulators.

To the extent that any of the above items is not applicable, the member's or member organization's business continuity and contingency plan must specify the item(s) and state the rationale for not including each such item(s) in its plan. If a member or member organization relies on another entity for any of the above-listed categories or any mission critical system, the member's or member organization's business continuity and contingency plan must address this relationship.

(d) The term "mission critical system," for purposes of this Rule, means any system that is necessary, depending on the nature of a member's or member organization's business, to ensure prompt and accurate processing of securities transactions, including order taking, entry, execution, comparison, allocation, clearance and settlement of securities transactions, the

²⁵ The Commission notes that PostData relates to enhanced data that is not integral to the ability of a broker-dealer or customer to trade. *Cf. NASD v. SEC*, footnote 12, *supra*.

²⁶ 15 U.S.C. 78o-3(b)(5).

²⁷ See footnote 23, *supra*.

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Katherine A. England, Division of Market Regulation, Commission, dated March 26, 2003 ("Amendment No. 3").

⁴ Securities Exchange Act Release No. 46443 (August 30, 2002), 67 FR 57264.

⁵ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Division of Market Regulation, Commission, dated January 10, 2003 ("Amendment No. 1").

⁶ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Katherine A. England, Division of Market Regulation, Commission, dated March 6, 2003 ("Amendment No. 2").

maintenance of customer accounts, access to customer accounts and the delivery of funds and securities.

(e) The term “financial and operational risk assessments,” for purposes of this Rule, means a set of written procedures that allow members and member organizations to identify changes in their operational, financial, and credit risk exposure.

(f) Members and member organizations must designate a senior officer, as defined in Rule 351(e), to approve the Plan, who shall also be responsible for the required annual review, as well as an Emergency Contact Person(s). Such individuals must be identified to the Exchange (by name, title, mailing address, e-mail address, telephone number, and facsimile number). Prompt notification must be given to the Exchange of any change in such designations.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this amendment is to clarify that the language of proposed NYSE Rule 446 is intended to require not only that members and member organizations conduct a planning process to create a written business continuity and contingency plan, but also that the plan resulting from such process be reasonably designed to enable members and member organizations to continue their businesses in the event of a future significant business disruption.

As described in detail in the Original Notice, the tragic events of September 11, 2001, and their disruptive impact on the manner in which the securities industry operates have re-emphasized the need for greater contingency planning for business continuity. Accordingly, the Exchange has proposed new NYSE Rule 446 which

would require members and member organizations to develop, maintain, review, and update business continuity and contingency plans that establish procedures to be followed in the event of an emergency or significant business disruption. Members and member organizations would be required to make such plans available to the Exchange upon request. The proposed rule also would require that members and member organizations designate and notify the Exchange of a senior officer designated to approve and annually review the plans and to designate an emergency contact person(s).

The purpose of Amendment No. 3 is to address concerns that a literal reading of proposed NYSE Rule 446, as set forth in the Original Notice, could suggest that the rule would require members and member organizations only to create, maintain and periodically review a business continuity and contingency plan, but would not obligate members and member organizations to develop a plan that is effective in enabling the member or member organization to continue its business in the event of a future significant business disruption. The Exchange did not intend to propose a rule which limits the scope of its members' and member organizations' responsibilities in establishing such plans. In this regard, in its description of the purpose of the proposed rule change, the Exchange stated that the “disruptive impact” of September 11, 2001 “re-emphasized the need for greater contingency planning for business continuity.” Implicit in planning for “business continuity” is the requirement that members' and member organizations' business plans make it possible for them to continue operating in the event of a significant business disruption. Accordingly, the NYSE believes that members and member organizations should be obligated to develop a business continuity and contingency plan that is reasonably designed, in light of particular characteristics of the firm, to allow the firm to recover as early as practicable in the event of a future significant business interruption.

Accordingly, the Exchange is amending the language of proposed NYSE Rule 446 to clarify that the proposed rule change is intended to require the creation of not only a written business continuity and contingency plan, but also a reasonably effective plan. In light of the concerns regarding the clarity of the original proposed rule text, the Exchange believes that this amendment to the proposed rule change should be published for comment to

ensure that interested persons are given notice of the clarification and an opportunity to comment thereon.

2. Statutory Basis

The NYSE believes that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b)(5) of the Act.⁷ Under that section, the rules of the Exchange must be designed to, among other things, 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 of a free and open market and a national market system; and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change, as amended, would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulation Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The NYSE received three written comment letters in response to the Original Notice. In response to the comment letters, the Exchange identified the following issues that warranted amendment and/or further clarification:⁸

Annual Review of Business Continuity and Contingency Plans (“BCPs”)

Proposed NYSE Rule 446(b) would require members and member organizations to conduct a yearly review of their business continuity and contingency plans to determine whether any modifications are necessary in light of changes to the member's or member organization's operations, structure, business or location. Some commenters believed that the yearly review requirement was inadequate. Although commenters cited different events that should trigger an update of a BCP, most commenters who dissented believed that the plans should be updated more frequently.

The Exchange believes that BCPs must be updated whenever there is a

⁷ 15 U.S.C. 78f(b)(5).

⁸ This discussion was originally provided in Amendment No. 1.

material change in a firm's operations, structure, business, or location that affects the information set forth in the BCP. In response to industry comments, the Exchange is amending the proposed rule to expand upon this requirement to include the following language:

Members and member organizations must conduct, at a minimum, a yearly review of their business continuity and contingency plan. In the event of a material change to a member's or member organization's operations, structure, business or location, the member or member organization must promptly update its business continuity and contingency plan.

This added language emphasizes that this requirement would be in addition to the yearly review.

Minimum Requirements of a BCP

Proposed Rule 446(c) would set forth the minimum requirements that a BCP must address. Plans would, at a minimum, be required to address: Books and records back-up and recovery (hard copy and electronic); identification of all mission critical systems and back-up for such systems; financial and operational risk assessments; alternate communications between customers and the firm; alternate communications between the firm and its employees; alternate physical location of employees; business constituent, bank, and counter-party impact; regulatory reporting; and communications with regulators.

One commenter stated that all of the items listed above may not be applicable to all members and member organizations. In response to industry comments, the Exchange is amending proposed NYSE Rule 446(c) to include the language "if applicable." In addition, the rule would require that, if an item is not applicable, a member's or member organization's BCP would have to specify the item(s) and state the rationale for not including such item(s) in its plan. Further, the rule would state that, if a member or member organization relies on another entity for any of the above-listed categories or any mission critical system, the member's or member organization's business continuity and contingency plan must address this relationship.

Business Constituent, Bank and Counterparty Impact

Proposed NYSE Rule 446(c)(7) would require that a member's or member organization's BCP address "business constituent, bank and counterparty impact." A commenter asked for clarification of this category. Under this proposed category, members and

member organizations would be required to establish procedures that assess the impact that a significant business disruption has on business constituents (businesses with which a member or member organization has an on-going commercial relationship pertaining to the support of the member's or member organization's operating activities), banks (lenders), and counter-parties (such as other broker-dealers or institutional customers). In addition, members and member organizations would be required to provide for alternative actions or arrangements with respect to their contractual relationships with business constituents, banks, and counter-parties upon the occurrence of a material business disruption to either party. An Exchange Information Memo announcing adoption of the rule will provide the guidance described above with regard to this requirement of the rule.

Emergency Contact Information

Proposed NYSE Rule 446(f) would require members and member organizations to designate and identify to the Exchange a senior officer to approve and review BCPs, as well as an emergency contact person(s). Prompt notification would have to be given to the Exchange in the event of a change in such designations. While commenters supported this requirement, one commenter suggested that the SROs take a "proactive role in the gathering of this contact information." The Exchange believes that it has taken a proactive approach in that regard. The Exchange previously required (effective August 30, 2002) that members and member organizations furnish BCP contact information to the Exchange in addition to contact information on other key personnel and that such information be reviewed and updated on a quarterly basis. Such changes in designation are made by members and member organizations through the Exchange's Electronic Filing Platform ("EFP"). The Exchange also established a new emergency notification telephone line (1-866-NYSEDIAL) and website (www.nyse.com/memberinfo) for members and member organizations to access and obtain up-to-date information concerning a disruption to normal NYSE business operations.

Participation in a Corporate-Wide BCP

One commenter raised an issue that, when a member or member organization participates in a corporate-wide BCP of its parent corporation (non-member or member organization) that satisfies the proposed rule requirements, this

requirement inappropriately imposes Exchange rules upon non-member organization parents. The Exchange believes that if a member or member organization chooses to participate in a parent company's corporate-wide business continuity plan, the record-keeping, supervision, creation, execution, or updating of that plan must comply with NYSE rules. Participating in a corporate-wide continuity plan is an alternative and is intended to give firms greater flexibility in complying with the proposed rule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or with such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-NYSE-2002-35 and should be submitted by April 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-8036 Filed 4-2-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47586; File No. SR-OCC-2001-11]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Intraday Margin Deposits

March 27, 2003.

I. Introduction

On September 7, 2001, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2001-11 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on April 26, 2002.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The purpose of the proposed rule change is to add language to Rule 609 to make explicit OCC's policies with respect to required deposits of intraday margin. OCC can require a deposit of intraday margin for a variety of reasons. Most often, deposits of intraday margin are required in response to changes in market conditions that affect the value of clearing members' positions and/or collateral. Currently, rule 609 states that OCC's Chairman, Management Vice Chairman, and President are each authorized to require any clearing member to make such deposits within such time period as the officer may prescribe.

Pursuant to a long-standing policy, required deposits of intraday margin must be satisfied in immediately available funds within one hour of OCC's issuance of a debit instruction against the applicable bank account of a clearing member. This policy will now be explicitly set forth in Rule 609 although the authority to prescribe a different settlement time, including a

shorter settlement time, will be preserved. In order to expedite processing, the individuals authorized to require intraday margin deposits will now include any officer of OCC so authorized by the Chairman, Management Vice Chairman, or President.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of OCC.³ By making explicit certain OCC procedures related to required deposits of intraday margin, the proposed rule change adds certainty and clarity to OCC's rules and operations related to the collection of intraday margin and as such should help OCC provide for which the safeguarding of securities and funds in its custody or control. Therefore, the Commission finds that the rule change is consistent with section 17A and the rules and regulations thereunder.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-2001-11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-8033 Filed 4-2-03; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[Public Notice 4328]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Educational Partnerships Program for Tunisia

Summary: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program to support the development of programs of instruction

and faculty training at universities in Tunisia in business management, public administration, information technology, computer science, or other fields with significant potential to support the modernization of the Tunisian economy. Accredited, post-secondary educational institutions meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may apply to pursue institutional or departmental objectives in partnership with one or more Tunisian institutions with support from the Educational Partnerships Program for Tunisia.

The means for achieving the objectives of the applicant and its partner(s) may include mentoring, teaching, consultation, research, distance education, internship training, and professional outreach to public sector managers or private sector entrepreneurs.

Program Information

Overview and Project Objectives: The program is designed to assist Tunisian universities to develop modern curricula and programs of instruction in business management, public administration, and related fields; to facilitate the development of business activity; and to improve the quality, efficiency, and integrity of management in the private and public sectors. Proposals emphasizing practical strategies to assist Tunisian faculty and administrators to develop new curricula, teaching methodologies and programs are encouraged. Pending availability, funds will be awarded for a period of three years to assist with the costs of exchanges, of providing educational materials, of increasing library holdings, and of improving Internet connections.

The project should pursue these objectives through a strategy that coordinates the participation of junior and senior level faculty, administrators, or graduate students in appropriate combinations of teaching, mentoring, internships, in-service training, outreach, and exchange visits ranging from one week to an academic year. Visits of one semester or more for participants from Tunisia are strongly encouraged and program activities must be tied to the goals and objectives of the project. Proposals may also include English language training for selected participants whose existing English skills need to be strengthened or refreshed.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 45787, (April 19, 2002), 67 FR 20859.

³ 15 U.S.C. 78q-1(b)(3)(F).

⁴ 17 CFR 200.30-3(a)(12).

U.S. Institution and Participant Eligibility

The lead institution and grant recipient must be an accredited U.S. college or university. Applications from community colleges, institutions serving significant minority populations, undergraduate liberal arts colleges, comprehensive universities, research universities, and combinations of these types of institutions are eligible. The lead U.S. organization in a consortium or other combination of cooperating institutions is responsible for submitting the application. Each application must document the lead organization's authority to represent all U.S. cooperating partners. Secondary U.S. partners may include governmental or non-governmental organizations at the federal, state, or local levels as well as non-profit service, community and professional organizations.

With the exception of translators and outside evaluators, participation is limited to teachers, advanced graduate students, and administrators from the participating U.S. institution(s).

Tunisian Institution and Participant Eligibility

In Tunisia, the partner must be a recognized institution(s) of post-secondary education, including state-supported and independent universities, research institutes, relevant governmental organizations, and private non-profit organizations with project-related educational objectives. Except for translators and evaluators, participation is limited to teachers, administrators, researchers, or advanced students from the participating foreign institution(s). Any advanced student participant must either have teaching or research responsibilities or be preparing for such responsibilities. Foreign participants must be both qualified to receive U.S. J-1 visas and willing to travel to the U.S. under the provisions of a J-1 visa during the exchange visits funded by this Program. Foreign participants may not be U.S. citizens.

Budget Guidelines

The Bureau anticipates awarding up to two grants in amounts not to exceed approximately \$195,000 each under this grant competition. Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to \$60,000 in Bureau funding. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. There must be a summary budget as well as

breakdowns reflecting both the program and administrative budgets. A narrative that provides justification for the amount requested should accompany the summary and detailed program and administrative budgets. Administrative costs should be kept to a reasonable level. Cost sharing will be considered an important indicator of institutional commitment. Please refer to the POGI for complete budget guidelines and formatting instructions.

Grant Duration

Grant activities should begin on or around September 1, 2003 and should last approximately three years

Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the above title "Educational Partnerships Program for Tunisia" and number ECA/A/S/U-03-27.

For Further Information Contact: The Office of Global Educational Programs, ECA/A/S/U, Room 349, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone (202) 619-5289; fax (202) 401-1433; or fcbery@pd.state.gov to request a solicitation package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at <http://exchanges.state.gov/education/rfgps>. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on May 23, 2003. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 7 copies of the application should be sent to: U.S. Department of State, SA-44, Bureau of

Educational and Cultural Affairs, Ref.: ECA/A/S/U-03-27, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the U.S. Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104-319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106-113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the

administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements. The Grantee will be responsible for issuing DS-2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at <http://exchanges.state.gov> or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA-44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401-9810, FAX: (202) 401-9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The program office and the Public Affairs Section of the U.S. Embassy in Tunis will review eligible proposals. Eligible proposals will be subject to compliance with federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance grant awards resides with the Bureau's Grants Officer.

Review Criteria

All reviewers will use the criteria below to reach funding recommendations and decisions. Technically eligible applications will be reviewed competitively according to these criteria, which are not rank-ordered or weighted.

(1) *Broad and Enduring Significance of Institutional Objectives:* Project objectives should have significant and ongoing results for the Tunisian partner institutions and for their surrounding societies or communities by providing a deepened understanding of critical issues in one or more of the eligible fields. Project objectives should relate clearly to institutional and societal needs.

(2) *Creativity and Feasibility of Strategy to Achieve Project Objectives:*

Strategies to achieve project objectives should be feasible and realistic within the projected budget and timeframe. These strategies should utilize and reinforce exchange activities creatively to ensure an efficient use of program resources. Relevant factors include: The availability of a sufficient number of faculty and/or administrators willing and able to participate in project activities, and faculty and/or administrators with Arabic or French language skills.

(3) *Institutional Commitment to Cooperation:* Proposals should demonstrate significant understanding by each institution of its own needs and capacities and of the needs and capacities of its proposed partner(s), together with a strong commitment by the partner institutions, during and after the period of grant activity, to cooperate with one another in the mutual pursuit of institutional objectives. Proposals should describe projected benefits to the institutions involved as well as to wider communities of educators and practitioners in Tunisia.

(4) *Project Evaluation:* Proposals should outline a methodology for determining the degree to which a project meets its objectives, both while the project is underway and at its conclusion. The final project evaluation should include an external component and should provide observations about the project's influence within the participating institutions as well as their surrounding communities or societies, and observations about anticipated long-term impact on the Tunisian economy.

(5) *Cost-effectiveness:* Administrative and program costs should be reasonable and appropriate with cost sharing provided by all participating institutions within the context of their respective capacities. We view cost sharing as a reflection of institutional commitment to the project.

(6) *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity are included in project objectives for all institutional partners. Issues resulting from differences of race, ethnicity, gender, religion, geography, socio-economic status, or physical challenge should be addressed during project implementation. In addition, project participants and administrators should reflect the diversity within the societies that they represent (see the section of this document on "Diversity, Freedom, and Democracy Guidelines"). Proposals should also discuss how the various institutional partners approach diversity issues in their respective communities or societies.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87-256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * *and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the U.S. North African Economic Partnership (USNAEP).

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: March 25, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03-8145 Filed 4-2-03; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 120-16D, Air Carrier Maintenance Programs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the issuance and availability of Advisory

Circular (AC) 120–16D, “Air Carrier Maintenance Programs”. AC 120–16D is written in plain language format and represents a major revision and update of the earlier version. The AC identifies and describes in detail the functions of the nine elements of the air carrier maintenance programs described in 14 CFR part 119, part 121, and part 135. It explains the background as well as the Federal Aviation Administration’s (FAA) regulatory requirements for these programs. As with all advisory Circulars, the material is not a regulation, nor does it establish minimum standards. However, where terms such as “must,” “shall,” and “will” are used in AC 120–16D, such use reflects actual regulatory requirements.

DATES: Advisory Circular 120–16D, Air Carrier Maintenance Programs was issued by the Office of the Director, Flight Standards Service, AFS–1 on March 18, 2003.

FOR FURTHER INFORMATION CONTACT: Russell S. Unangst, Jr., Technical Advisor for Aircraft Maintenance, AFS–304, Federal Aviation Administration, Aircraft Maintenance Division, Flight Standards Service, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3786; facsimile (202) 267–5115, e-mail russell.unangst@faa.gov.

SUPPLEMENTARY INFORMATION: How To Obtain a Copy of the AC *How To Obtain Copies:* This AC can be read or downloaded from the Internet at <http://www2.faa.gov/avr/afs/index.cfm> under the “All Advisory Circulars” hyperlink. Paper copies of the AC will be available in approximately 6–8 weeks from the U.S. Department of Transportation, Subsequent Distribution Office, SVC–121.23, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785.

Issued in Washington, DC on March 27, 2003.

David E. Cann,

Manager, Aircraft Maintenance Division, Flight Standards Service.

[FR Doc. 03–8128 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Revision to Advisory Circular 25.562–1A, Dynamic Evaluation of Seat Restraint Systems and Occupant Protection on Transport Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed revision to advisory circular; extension of comment period.

SUMMARY: On January 2, 2003, the FAA published a request for public comment on a proposed revision to Advisory Circular (AC) 25.562–1A, Dynamic Evaluation of Seat Restraint Systems and Occupant Protection on Transport Airplanes. The revised AC provides guidance on an improved procedure for selection of test articles, as well as criteria for determining whether analysis or testing is appropriate for substantiation. The comment period closes April 2, 2003; however, the FAA is extending the comment period to allow additional time to review the draft AC and develop comments in response to the notice.

DATES: Comments must be received on or before May 2, 2003.

ADDRESSES: You should send your comments on the proposed revision to the Federal Aviation Administration, Attention: Jeff Gardlin, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056. You may also submit comments electronically to: jeff.gardlin@faa.gov.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin at the above address, telephone (425) 227–2136, facsimile 425–227–1149, or e-mail jeff.gardlin@faa.gov.

SUPPLEMENTARY INFORMATION:

How Do I Obtain a Copy of the Proposed Advisory Circular Revision?

You may obtain an electronic copy of the draft advisory circular identified in this notice at the following Internet address: <http://www.airweb.faa.gov/DraftAC>. If you do not have access to the Internet, you may request a copy by contacting Jeff Gardlin at the address or phone number listed earlier in this announcement.

How Do I Submit Comments on the Draft Advisory Circular?

You are invited to comment on the proposed advisory material by submitting written comments, data, or views. You must identify the title of the

AC and submit your comments in duplicate to the address specified above. We will consider all comments received on or before the closing date for comments before issuing the final advisory material.

Discussion

We have determined that due to the size and scope of the AC revision, a longer comment period is warranted. The comment period is therefore extended for 30 days to May 2, 2003, to allow commenters additional time to review the AC and submit comments.

Issued in Renton, Washington, on March 24, 2003.

K.C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8125 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2003–14824; Airspace Docket No. 00–AWA–3]

RIN 2120–AA66

Designation of Oceanic Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of provision of air traffic services in oceanic airspace.

SUMMARY: By this action the FAA informs airspace users of the type of air traffic control (ATC) service provided in the oceanic airspace controlled by the United States of America (U.S.). This notice is consistent with U.S. obligations under the Convention on International Civil Aviation (Chicago Convention), including, that all Contracting States disseminate information regarding the types of ATC services provided in oceanic airspace under their control.

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

SUPPLEMENTARY INFORMATION:

Background

International Civil Aviation Organization (ICAO)

The Chicago Convention was adopted to promote the safe and orderly development of international civil aviation. The Chicago Convention also

created the International Civil Aviation Organization (ICAO), which promulgates uniform international Standards and Recommended Practices (SARPs) aimed at standardizing international civil aviation operational practices and services. Currently, these SARPs are detailed in 18 annexes to the Chicago Convention. Annex 11, Air Traffic Services, and Annex 15, Aeronautical Information Services, are of particular relevance to this notice as they address civil aircraft operations, the establishment of airspace, ATC services in international airspace, and the dissemination of aeronautical information.

Most recently ICAO recommended, and the FAA concurred, that all Contracting States take action to define their oceanic airspace, and inform those interested as to the type of ATC services that would be provided.

By this action the FAA gives notice to those interested parties operating in the oceanic airspace controlled by the U.S. of the type of ATC services provided within the airspace.

ATC Services/Procedures Provided

Pursuant to the Chicago Convention, the U.S. accepted responsibility for providing ATC services over the domestic U.S. and within certain areas of the western half of the North Atlantic, the Gulf of Mexico, the Caribbean, and the North Pacific. In the airspace over the contiguous U.S. and out to 12 nautical miles (NM) from the U.S. shores, domestic ATC separation is applied (with certain limitations) along with additional services (e.g., traffic advisories, bird activity information, weather and chaff information, etc.).

The U.S. also manages airspace areas outside of the domestic U.S. These areas are called Control Areas (CTA) and Flight Information Regions (FIR). Within these CTA/FIR the U.S. applies oceanic separation procedures consistent with ICAO regional procedures.

The FAA may also apply, per Annex 11, domestic ATC procedures within designated Offshore/Control airspace areas provided certain conditions are met. Specifically, these airspace areas must be within signal coverage of domestic radio navigational aid or ATC radar coverage from the 12-NM limit outward to the inner oceanic CTA/FIR boundaries. The Chicago Convention permits the application of domestic ATC procedures even though this is international airspace. However, within the oceanic CTA/FIR area itself, ICAO oceanic ATC procedures are used instead of domestic procedures.

Article of Exemption

Article 3 of the Chicago Convention provides that the Chicago Convention, and its annexes, are not applicable to state-aircraft (which includes military aircraft). However, article 3 requires states, when issuing regulations for their state aircraft, to have due regard for the safety of navigation of civil aircraft. The U.S., as a Contracting State, complies with this provision.

Further, article 12 obligates each Contracting State to adopt measures to ensure that persons operating an aircraft within its territory will comply with that state's air traffic rules, and with Annex 2, Rules of the Air, when operating over the high seas. The U.S. has satisfied this responsibility through Title 14, Code of Federal Regulations (14 CFR) part 91, General Operating and Flight Rules, which requires that operators of aircraft comply with U.S. operating rules when in the U.S. and that U.S.-registered aircraft comply with Annex 2 when over the high seas (see 14 CFR 91.703).

Section 91.703 applies only to civil aircraft. State aircraft operating outside the U.S. are only subject to the "due regard" provisions of article 3 of the Chicago Convention. The SARPs in Annex 11, apply to airspace under the jurisdiction of a Contracting State that has accepted the responsibility of providing air traffic services over the high seas (oceanic airspace), or in airspace of undetermined sovereignty.

U.S. Controlled Oceanic Airspace

The ICAO classes of airspace and associated services provided, as described in Annex 11, to be used by the U.S. within their delegated Oceanic/Arctic CTA/FIR areas are: (1) Class A airspace area (instrument flight rules (IFR) flights only are permitted, all flights are provided with ATC service and are separated from each other); (2) Class E airspace area (IFR and visual flight rules (VFR) flights are permitted, IFR flights are provided with ATC service and are separated from other IFR flights); and (3) Class G airspace area (IFR and VFR flights are permitted, IFR flights are provided with ATC service and are separated from other IFR flights). All flights in these airspace areas would receive traffic information as far as is practical.

Anchorage Oceanic CTA/FIR

Aircraft operating in the Anchorage Oceanic CTA/FIR can expect to receive ATC services associated with the following types of airspace areas and associated altitudes:
Class G—below FL 55;

Class A—FL 55 to FL 600, inclusive except less than 100 NM seaward is Class E below FL 180;
Class E—above FL 600.

Anchorage Arctic CTA/FIR

Aircraft operating in the Anchorage Arctic CTA/FIR can expect to receive ATC services associated with the following types of airspace areas and associated altitudes:

Class G—below FL 230;
Class A—FL 230 to FL 600, inclusive;
Class E—above FL 600.

Houston Oceanic CTA/FIR

Aircraft operating in the Houston Oceanic CTA/FIR can expect to receive ATC services associated with the following types of airspace areas and associated altitudes:

Class G—below FL 15;
Class E—FL 15 to, but not including FL 180;
Class A—FL 180 to FL 600, inclusive;
Class E—above FL 600.

Miami Oceanic CTA/FIR

Aircraft operating in the Miami Oceanic CTA/FIR can expect to receive ATC services associated with the following types of airspace areas and associated altitudes:

Class G—below FL 25;
Class—FL 25 to, but not including FL 180;
Class A—FL 180 to FL 600, inclusive;
Class E—above FL 600.

New York Oceanic CTA/FIR, Excluding That Portion of the Airspace Delegated to NAVCANADA

Aircraft operating in the New York Oceanic CTA/FIR, excluding that portion of the airspace delegated to NAVCANADA can expect to receive ATC services associated with the following types of airspace areas and associated altitudes:

Class G—below FL 55;
Class A—FL 55 to FL 600, inclusive;
Class E—above FL 600.

Oakland Oceanic CTA/FIR

Aircraft operating in the Oakland Oceanic CTA/FIR can expect to receive ATC services associated with the following types of airspace areas and associated altitudes:

Class G—below FL 55;
Class A—FL 55 to FL 600, inclusive except less than 100 NM seaward from the shoreline within controlled airspace, sunrise to sunset, is Class E below FL 200;
Class E—above FL 600.

Oakland/Nauru UTA Airspace Area Delegated to Oakland Center Above FL245

Aircraft operating in the Oakland/Nauru UTA airspace area delegated to Oakland Center above FL 245 can expect to receive ATA services associated with the following types of airspace and associated altitudes:
Class A—above FL 245 to FL 600, inclusive except less than 100 NM seaward from the shoreline within controlled airspace, sunrise to sunset, is Class E below FL 200;
Class E—above FL 600.

Oakland/Tokyo UTA Airspace Area Delegated to Oakland Center at and Above FL 55

Aircraft operating in the Oakland/Tokyo UTA delegated airspace to Oakland Center at and above FL 55 can expect to receive ATC services associated with the following types of airspace and associated altitudes:
Class A—FL 55 to FL 600, inclusive except less than 100 NM seaward from the shoreline within controlled airspace, sunrise to sunset, is Class E below FL 200;
Class E—above FL 600.

San Juan Oceanic CTA/FIR

Aircraft operating in the San Juan Oceanic CTA/FIR can expect to receive ATC services associated with the following types of airspace and associated altitudes:
Class G—below FL 25;
Class E—FL 25 to, but not including FL 180;
Class A—FL 180 to FL 600, inclusive;
Class E—above FL 600.

Accordingly, the U.S. designation of ICAO classes of Oceanic Airspace and associated altitudes, as described in this notice will be reflected on the appropriate aeronautical charts.

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

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03-8139 Filed 4-2-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Deadline for Notification of Intent to Use the Airport Improvement Program (AIP) Sponsor Entitlement, Cargo Funds, and Nonprimary Entitlement Funds for Fiscal Year 2003

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces May 1, 2003, as the deadline for each airport sponsor to notify the FAA that it will use its fiscal year 2003 entitlement funds to accomplish projects identified in the Airports Capital Improvement Plan that was formulated in the spring of 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Molar, Manager, Airports Financial Assistance Division, Office of Airport Planning and Programming, APP-500, on (202) 267-3831.

SUPPLEMENTARY INFORMATION: Section 47105(f) of Title 49, United States Code, provides that the sponsor of each airport to which funds are apportioned shall notify the Secretary by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for the funds apportioned to it (entitlements). This notice applies only to those airports that have received such entitlements, except those nonprimary airports located in designated Block Grant States. Notification of the sponsor's intent to apply during fiscal year 2003 for any of its available entitlement funds including those unused from prior years, shall be in the form of inclusion of projects for fiscal year 2003 in the Airports Capital Improvement Plan.

This notice is promulgated to expedite and prioritize grants in the final quarter of the fiscal year. Absent an acceptable application by May 1, 2003, FAA will defer an airport's entitlement funds until the next fiscal year. Pursuant to the authority and limitations in section 47117(f), FAA will issue discretionary grants in an aggregate amount not to exceed the aggregate amount of deferred entitlement funds. Airport sponsors may request unused entitlements after September 30, 2003.

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

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 03-8140 Filed 4-2-03; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03-06-C-00-CLM To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at William R. Fairchild International Airport, Submitted by the Port of Port Angeles, William R. Fairchild International Airport, Port Angeles, WA.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at William R. Fairchild International Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 5, 2003.

ADDRESSES: Comments on this application may be mailed or delivered to triplicate to the FAA at the following address: Mr. J. Wade Bryant, manager; Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055-4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jeffery Robb, Airport Manager, at the following address: PO Box 1350, Port Angeles, WA 98362.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to William R. Fairchild International Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227-2654, Seattle Airports District Office, SEA-ADO; Federal Aviation Regulation; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055-4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 03-06-C-00-CLM to impose and use PFC revenue at William R. Fairchild International Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 27, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Port Angeles, William R. Fairchild International Airport, Port Angeles, Washington, was

substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 28, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: \$3.00.

Proposed charge effective date:

October 1, 2003.

Proposed charge expiration date: June 1, 2008.

Total requested for use approval: \$313,484.

Brief description of proposed project: Drainage System Construction; GA Site Development; Obstruction Removal; Taxiway Restriping and Reflector Installation; Runway 26 Safety Area.

Class or classes of air carriers that the public agency has requested not be required to collect PFC's: none.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Regulation, Northwest Mountain Region, Airports Division, ANM-600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055-4056.

In addition, any person may, upon request, inspect the application, a notice and other documents germane to the application in person at the William R. Fairchild International Airport.

Issued in Renton, Washington on March 27, 2003.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 03-8144 Filed 4-2-03; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for the Fulton Street Transit Center in New York, NY

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The FTA, in cooperation with the Metropolitan Transportation Authority (MTA) and New York City Transit (NYCT), intends to prepare an Environmental Impact Statement (EIS) on a proposal to create the Fulton Street Transit Center in Lower Manhattan, New York, NY. The proposed project would consist of six distinct elements: (1) A new mass transit "Center" at street

and subsurface levels on Broadway between Fulton and John Streets that would provide consolidated access to, and transfers between nine different subway lines; (2) rehabilitation of the 4/5 line Fulton Street Station and the 2/3 line Fulton Street Station; (3) improvements to the mezzanines and platform access at the A/C line Fulton Street Station that would facilitate way-finding, circulation and access to the street and to the platform; (4) an underground concourse below Dey Street between Broadway and Church Street that would connect the N/R line and the area west of Church Street with the 4/5 line and the area east of Broadway; (5) a pedestrian and passenger connection located beneath Church Street that would link the Cortlandt Street Station on the N/R line with the E line terminal station at the former World Trade Center site and include a new transfer between N/R platforms; and (6) various improvements to street entrances to the subway to provide better access for all users, including Americans with Disabilities Act (ADA) compliant access. The location for these proposed improvements is in Lower Manhattan in the area bounded by Church Street to the west, William Street to the east, Fulton Street to the north and Dey Street and John Street to the south.

The EIS is being prepared in accordance with the National Environmental Policy Act of 1969 (NEPA) and the applicable regulations implementing NEPA, as set forth in 23 CFR part 771 and 40 CFR parts 1500-1508. As co-sponsors of the proposed project, the MTA and NYCT will ensure that the EIS and the environmental review process also satisfy the requirements of the New York State Environmental Quality Review Act (SEQRA) as may be applicable.

The EIS will evaluate a No Action Alternative, various Build Alternatives, and any additional alternatives generated by the scoping process. Scoping will be accomplished through meetings and correspondence with interested persons, organizations, and Federal, state, regional, and local agencies.

DATES: The public is invited to participate in project scoping on April 29, 2003 from 6 p.m. to 9 p.m. at the location identified under **ADDRESSES** below to ensure that all significant issues are identified and considered. Poster boards depicting the project concept will be available for review at the meeting location from 4 p.m. to 6 p.m. A formal presentation by MTA and NYCT regarding the project will be

made at 6 p.m., followed by the opportunity for the public to ask questions and make comments on the scope of the EIS. MTA and NYCT representatives will be available for informal questions and comments during the 4 to 6 p.m. poster session. Those wishing to speak are requested to register at the meeting location before 7 p.m. Additional speakers will be invited until there are no more requesting to be heard. Subsequent opportunities for public involvement will be announced on the Internet, by mail, and through other appropriate mechanisms, and will be conducted throughout the study area. Additional project information may be obtained from the MTA Web site: <http://www.mta.info> (click "Inside the MTA" then "Planning Studies," and "Fulton Street Transit Center"). Written comments on the scope of the EIS should be sent to the MTA Project Manager by May 13, 2003 at the address given under **ADDRESSES** below.

ADDRESSES: The public scoping meeting will be held at The Alexander Hamilton U.S. Custom House, One Bowling Green, Lower Level Auditorium, New York, NY. The scoping meeting site is accessible to mobility-impaired people and interpreter services will be provided for hearing-impaired people upon request. Written comments will be taken at the meeting or may be sent to the following address at any time during the scoping period: Mr. William Wheeler, Director, Special Project Development and Planning, Fulton Street Transit Center, C/O Government and Community Relations, MTA New York City Transit, 130 Livingston Street, Brooklyn, New York, NY 11201. The scoping packet may also be requested by writing to this address or by calling (718) 694-5160. Requests to be placed on the project mailing list may also be made by calling this number or by writing to the project address above.

FOR FURTHER INFORMATION CONTACT: Susan E. Schruth, Director, Lower Manhattan Recovery Office, Federal Transit Administration, One Bowling Green, Room 429, New York, NY 10004; Telephone: (212) 668-1770.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and MTA/NYCT invite interested individuals, organizations, and Federal, state, and local agencies to provide comments on the scope of the Fulton Street Transit Center EIS. During the scoping process, comments should focus on specific social, economic, or environmental issues to be evaluated, and on suggesting alternatives that may be less costly or have fewer

environmental impacts while achieving similar transportation objectives. To assist interested parties in formulating their comments, a scoping information packet has been prepared and is available on the MTA Web site address noted above, or upon request from the MTA representative identified above. The scoping information packet includes the project's purpose and need, goals and objectives, a preliminary list of alternatives, and environmental areas that will be addressed during the course of the study. An outline of the on-going public participation program is also contained in the information packet and on the Internet site given above.

II. Description of the Project Area

The MTA/NYCT subway system is the largest in North America, serving 4.6 million trips daily and is the main public transit service to Lower Manhattan. The largest and most heavily used subway lines providing access to Lower Manhattan converge at or near the Fulton Street—Broadway Nassau Subway Station Complex in Lower Manhattan. This station complex consists of four separate stations serving a total of nine subway lines, including: (1) The 4/5 line Fulton Street Station below Broadway; (2) the A/C line Broadway Nassau Station below Fulton Street; (3) the J/M/Z line Fulton Street Station below Nassau Street; and (4) the 2/3 line Fulton Street Station below William Street. In combination, this station complex is the ninth largest of over 400 stations citywide, serving over 225,000 movements (passengers entering, exiting or transferring) each day, and is among the oldest in the City. The complex is one block (450 feet) east of the site of the former World Trade Center (WTC).

One block (approximately 450 feet) to the west of this station complex is the N/R line Cortlandt Street Station below Church Street, immediately adjacent to the WTC site. Two blocks (approximately 400 feet) further to the north, the E line below Church Street terminates in a station at the WTC site. Immediately west of the study area is the 1/9 line Cortlandt Street Station at the WTC site. None of these stations have underground connections to each other or to the Fulton Street—Broadway Nassau Subway Station Complex. Also located to the west is the proposed restoration of Port Authority Trans-Hudson (PATH) service and the existing trans-Hudson ferry service at the World Financial Center, neither of which is directly connected to any of the subway lines.

III. Problem Identification

The four separate stations comprising the Fulton Street—Broadway Nassau Subway Station Complex were built at different times since the early 1900s. Because these stations were separately conceived and were connected after their construction, a series of inefficient and circuitous connections were constructed between the individual stations. This group of stations is further characterized by: Crowded corridors, mezzanines and train platforms; lack of prominent surface visibility to aid customer entry and exit; and inadequate connections to other nearby subway and transit services. Despite the extraordinary density of transit services at the existing Fulton Street—Broadway Nassau Subway Station Complex, there is no quick and easy access to, from and among the other heavily-used subway lines in the vicinity or efficient connections between the subway network and the street. Given these deficiencies, the existing Fulton Street—Broadway Nassau Subway Station Complex is cumbersome to workers and others who access Lower Manhattan daily. Its improvement would address a long-standing obstacle to better transit access to Lower Manhattan.

The importance of addressing Lower Manhattan transit access was further reinforced by the devastating impact of the terrorist attacks on Lower Manhattan on September 11, 2001. These events caused serious disruption to the economy, infrastructure and quality of life, and have made travel to and from Lower Manhattan difficult and time consuming. Residents, businesses and jobs have been displaced, and there is a compelling need to restore and improve the transportation infrastructure and functionality in Lower Manhattan to allow for a full economic recovery.

Millions of visitors are expected to visit Lower Manhattan as the planned World Trade Center memorial is anticipated to become one of the most important destinations in the United States. With 85% of all downtown access trips made by transit, Lower Manhattan urgently needs a clear, easily navigable, "connected" subway complex and visible gateway to support its economic recovery and provide access to the prospective WTC Memorial and other cultural resources for tourists.

Because of the pivotal role that the Fulton Street—Broadway Nassau Subway Station Complex currently plays in providing transit access to Lower Manhattan, its existing deficiencies need to be addressed in

order to improve upon the overall access to Lower Manhattan and in supporting its economic recovery and future growth.

IV. Purpose and Need for the Proposed Action

The purpose of the Fulton Street Transit Center is to create a functionally and visually unified transit facility with a central distinguishing portal by improving the existing Fulton Street—Broadway Nassau Subway Station Complex. This would reduce congestion at the existing subway platforms, improve the overall experience of transit users and provide improved pedestrian connectivity within the subway complex and with other subway and transit services to the west. In doing so, the proposed action would address the need for improved access to Lower Manhattan in support of economic recovery and resumed growth.

Addressing the deficiencies at the Fulton Street—Broadway Nassau Subway Station Complex would create a facility that is less congested and circuitous, ADA accessible, easily identifiable at street level, and provide direct pedestrian access and streamlined transfers with other subway services. The proposed Fulton Street Transit Center would be designed to adequately accommodate present customer demands and anticipated 2020 levels of demand for movement to, from, and within the existing Fulton Street—Broadway Nassau Subway Station Complex.

V. Goals and Objectives

In conjunction with the purpose and need for the proposed action, the following goals and objectives have been identified in support of improving transit access to Lower Manhattan and economic revitalization.

The specific goals for the proposed action are to provide a prominent and effective downtown transit center that:

- Facilitates access, improves wayfinding, and streamlines transfers;
- Allows for intermodal connectivity (PATH, ferry service);
- Promotes system flexibility in the event of service disruption;
- Improves east-west pedestrian connectivity across Lower Manhattan;
- Promotes safety and reduces congestion at heavily trafficked street crossings;
- Supports current land use, and recovery and rebuilding of Lower Manhattan; and,
- Improves travelers' experience and transit's overall attractiveness.

In support of the above goals, the objectives are to:

- Create a Transit Center to better serve the complex of four stations located between Broadway and William Street: *i.e.*, the 4/5, J/M/Z and 2/3 Fulton Street Stations and the A/C Broadway Nassau Station;

- Add a concourse beneath Dey Street to link the new Transit Center with the N/R Cortlandt Street Station, and allow for a connection with a proposed Port Authority of New York and New Jersey (PANYNJ) sponsored concourse that would continue into the WTC site, connect to the PATH and the 1/9 line Cortlandt Street Station, and potentially extend to the World Financial Center and trans-Hudson ferries;

- Provide a visual presence by creating a street-level building and prominent point of access to the subway system;

- Improve street access to the 4/5 line Fulton Street Station and the N/R line Cortlandt Street Station;

- Improve the transfer between the 4/5 and A/C lines in particular, and all adjacent services in general;

- Establish both a paid and unpaid connection between the N/R line Cortlandt Street Station and the E line Terminal at the WTC site;

- Reduce dwell time and exposure to dwell delays for 4/5 and A/C trains at the Fulton Street Station;

- Reduce commuter access time from the WTC site/World Financial Center and PATH to locations and subway stations east of Church Street;

- Create Americans with Disabilities Act (ADA) compliant access;

- Improve wayfinding; and

- Improve safety.

The proposed Fulton Street Transit Center project will be closely coordinated with the proposed PATH station reconstruction at the WTC site, the proposed WTC Transportation Hub project and the redevelopment of the WTC site.

VI. Alternatives

The EIS will evaluate alternatives and options for the proposed action which will: (1) Be feasible and cost-effective, and provide beneficial transit improvements that enhance connections to the existing transportation system and Lower Manhattan land uses; (2) meet the anticipated increase in transit use in Lower Manhattan; and (3) enhance Lower Manhattan and the region's economic vitality and quality of life.

Based on previous planning studies, and with the cooperation of public and agency work groups, a preliminary list of alternatives has been developed to address the purpose and need of this facility. The alternatives identified to

date, which may be supplemented or further developed during the scoping process, have been organized as follows:

(A) No Action Alternative; (B) Transit Center and Concourse Full Build Alternative; (C) Partial Build Alternatives. The Full Build Alternative under consideration includes a transit center building with a subsurface passenger concourse connecting several existing subway stations. The Partial Build Alternatives include: a subsurface passenger concourse connecting several existing subway stations without a transit center building; and a combination of improvements, rehabilitations, and enhancements to existing stations. The full set of project alternatives are further described as follows:

A. *No Action Alternative*. This alternative provides for minor improvements, repairs, and other maintenance actions to the existing Fulton Street—Broadway Nassau Subway Station Complex and the N/R line Cortlandt Street Station.

B. *Transit Center and Concourse Full Build Alternative*. This alternative provides for construction of the following six main elements:

1. A new transit "Center" at street and subsurface levels on Broadway between Fulton and John Streets. The "Center" would serve the large ridership of Lower Manhattan, facilitate pedestrian access and transfer between subway lines, reduce 4/5 and A/C train platform congestion and dwell times, improve wayfinding between stations, improve street access and street-level visibility, and provide consolidated downtown access.

2. Rehabilitation of the 4/5 line Fulton Street Station and the 2/3 line Fulton Street Station. This element would incorporate the necessary measures to bring these stations to a state of good repair and provide operational and infrastructure improvements consistent with NYCT station planning, accessibility and design guidelines.

3. Improvements to the mezzanines and platform access at the A/C line Fulton Street Station. These improvements would facilitate wayfinding, circulation and access to the street and to the platform for all users, including those subject to the Americans with Disabilities Act (ADA). They would address current and future overcrowded circulation conditions.

4. An underground concourse beneath Dey Street between Broadway and Church Street. This concourse would connect the N/R line with the 4/5 line and the area west of Church Street with the area east of Broadway. The concourse would improve pedestrian

connectivity between subway lines, particularly east-west across Lower Manhattan, and pedestrian safety, comfort, and convenience, and would provide intermodal connectivity between NYCT services and prospective PATH services west of Church Street.

5. A pedestrian and passenger connector between N/R and E service. This connector would improve west side access to Lower Manhattan and would improve operational flexibility by permitting customers to transfer between the services without payment of additional fares. This connector would run along Church Street, linking the northern end of the N/R line Cortlandt Street Station with the southern end of the E line terminal at the World Trade Center, and would include a new transfer between N/R platforms.

6. Improved street access to the subway. This element would provide better access for all users through the provision of wider and more direct stairways, access for disabled customers and new street entrances from the 4/5 and N/R platforms.

In combination, the above-stated six elements encompass the Transit Center and Concourse Full Build Alternative.

C. *Partial Build Alternatives*. Various combinations of subsets of the six project elements described under the Full Build Alternative above will be considered. For example, one possibility is construction of only the underground concourse beneath Dey Street between Broadway and Church Street. This partial-build alternative would connect the N/R and 4/5 subway lines with a fully accessible subsurface concourse under Dey Street. FTA and MTA/NYCT specifically seek comment during scoping on appropriate combinations of project elements that should be evaluated as detailed alternatives in the EIS.

Although compatible with and contributing to the functionality of the overall Transit Center, some elements of the Full Build Alternative, such as the station rehabilitation elements, are functionally independent of the other elements of the proposed action. Although the current plan is to evaluate all of these geographically contiguous elements in the EIS, as the project elements are developed and as schedules and construction phasing plans develop, it is possible that some of the independent elements may be advanced via separate environmental evaluations under NEPA.

VII. Potential Adverse Effects

Upon its completion, the proposed Fulton Street Transit Center is

anticipated to eliminate the existing deficiencies in Lower Manhattan subway service noted above and generate positive impacts for Lower Manhattan businesses, residents, workers, and visitors. In light of this, and in consideration of other new construction activity that is expected to occur in Lower Manhattan over the next decade, it is anticipated that construction-related impacts from the proposed project may be the most important aspect of the environmental evaluation under NEPA. Potential effects associated with the construction phase include noise, business disruption, and impacts on pedestrian and vehicular traffic, air quality, and historic resources. The cumulative effects of construction of this project and other Lower Manhattan recovery projects will be a major focus of the evaluation.

The long-term operational issues and impacts of the alternatives to be considered in the EIS include economic development; land acquisition; historic, archaeological, and cultural resources; visual and aesthetic qualities; air quality; noise and vibration; safety and security; utilities; and transportation impacts. In addition, the EIS will describe the methodology used to assess impacts; identify the affected environment; and identify opportunities and measures for mitigating adverse impacts. Principles of environmental construction management, resource protection and mitigation measures, and NYCT's "Design for the Environment" guidelines (2002) will be considered for incorporation into the Build Alternatives.

VIII. FTA Procedures

During the NEPA process, FTA will also comply with the requirements of the National Historic Preservation Act, Section 4(f) of the Department of Transportation Act (49 U.S.C. 303), the Clean Air Act, and other applicable environmental statutes, rules, and regulations, in accordance with FTA procedures.

Through the NEPA scoping process and as project development advances, it will be determined whether certain elements of the Full Build Alternative should be advanced independently or in combination with other elements, or be deferred for evaluation at a future time, in order to meet the transportation needs of redeveloping Lower Manhattan with minimal impact and in a timely manner.

If there are no major changes to the proposed action, a Draft EIS will be prepared and made available for public and agency review and comment. One

or more public hearings will be held on the Draft EIS. On the basis of the Draft EIS and the public and agency comments thereon, a locally preferred alternative will be selected and will be fully described and further developed in the Final EIS.

Issued on: March 31, 2003.

Susan E. Schrueth,

Director, Lower Manhattan Recovery Office.

[FR Doc. 03-8136 Filed 4-2-03; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2002-13219; Notice 2]

Decision That Nonconforming 2002 Ferrari 360 Passenger Cars Manufactured Before September 1, 2002, Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 2002 Ferrari 360 Passenger Cars manufactured before September 1, 2002, are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 2002 Ferrari 360 passenger cars manufactured before September 1, 2002, that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 2002 Ferrari 360 passenger car manufactured before September 1, 2002), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202-366-3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is

substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer 90-007) petitioned NHTSA to decide whether 2002 Ferrari 360 passenger cars manufactured before September 1, 2002, are eligible for importation into the United States. NHTSA published notice of the petition on September 10, 2002 (67 FR 57479), to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of petition, from a law firm representing Ferrari North America, Inc. ("FNA"), the U.S. representative of the vehicle's manufacturer. In this comment, FNA took issue with the extensiveness of the modification described in the petition as necessary to conform non-U.S. certified 2002 Ferrari 360 passenger cars manufactured before September 1, 2002, to certain of the Federal motor vehicle safety standards. FNA contended that if import eligibility were to be granted to those vehicles, that decision, insofar as it involved conformity with the Federal motor vehicle safety standards, would have to be made on the same basis as the decision to grant import eligibility to the non-U.S. certified 2001 Ferrari 360 that was published on April 10, 2002, at 67 FR 17483 (Docket No. NHTSA-2001-9628).

FNA also noted that G&K had stated in the petition that it would modify non-U.S. certified Ferrari 360 passenger cars manufactured before September 1, 2002, to the Bumper Standard at 49 CFR part 581, but stated in a subsequent letter to the agency that "[a]t this time we will be replacing the bumpers with

U.S. bumpers instead of modifying them." Expressing a lack of understanding of the phrase "at this time," as used in G&K's letter, FNA asserted that the agency should require the replacement of the bumpers on all nonconforming 2002 Ferrari 360s with U.S.-model bumpers, and should not permit G&K or other importers to change their means for conforming the vehicles to the standard at some undisclosed future time.

After it was given an opportunity to respond to FNA's comments, G&K requested that the 2002 model be accorded import eligibility on the same terms as the 2001 model.

For the reader's convenience, those terms are set forth below with respect to each standard that was discussed in the eligibility decision for the 2001 Ferrari 360:

Standard No. 108 Lamps, Reflective Devices, and Associated Equipment: Modification of the tail lamp assembly wiring on the non-U.S. certified vehicle so that the tail lamps will operate in the same manner as those on the U.S. certified version.

Standard No 118 Power-Operated Window Systems: Installation of a relay to the power window system so that the power windows will not operate when the ignition switch is in the "off" position.

Standard No. 201 Occupant Protection in Interior Impacts: Replacement of the occupant compartment padding components with U.S.-model components as necessary to meet the upper interior component requirements of the standard.

Standard No. 208 Occupant Crash Protection: Replacement of seat belts and modification or replacement of the bumpers with U.S.-model components.

Standard No. 225 Child Restraint Anchorage Systems: Installation of U.S.-model top tether anchorages for child restraints on the rear frame of the non-U.S. certified vehicles.

Standard No. 301 Fuel System Integrity: (a) Replacement of the fuel/vapor separator, rollover valve, filler neck, vapor lines, evaporative (charcoal) canister, air pump, and associated hardware on non-U.S. certified versions of the vehicle to make them identical to those in the U.S. certified version; (b) modification of the U.S.-model filler neck so that it can be attached to the non-U.S.-model tank; (c) relocation of the charcoal canister, air pump, fuel filler neck, and rollover valve so that they are in essentially the same position as those components found on the U.S. certified vehicle.

In the eligibility decision for the 2001 Ferrari 360, the agency noted that these

modifications would entail the replacement, with U.S.-model parts, of all non-U.S.-model parts except for the fuel tanks and bumpers that are necessary to bring non-U.S. certified Ferrari 360 vehicles into compliance with the applicable Federal Motor Vehicle Safety Standards and with the Bumper Standard in part 581.

NHTSA has considered FNA's comments and G&K's response. In view of FNA's assertion that non-U.S. certified 2002 Ferrari 360 passenger cars manufactured before September 1, 2002, should be judged on the same terms, and conformed in the same manner, as set forth in the agency's eligibility decision for the 2001 version of the vehicle, and G&K's request that the 2002 version be granted import eligibility on the same terms as the 2001 version, NHTSA has decided to grant the petition. The agency notes, however, that on account of the petitioner's stated intention to replace the bumpers on non-U.S. certified 2002 Ferrari 360 passenger cars manufactured before September 1, 2002, with U.S.-model components, those bumpers will have to be replaced, and not merely modified to conform to the Bumper Standard in 49 CFR part 581, as was allowed for the 2001 version of the vehicle.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP-402 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 2002 Ferrari 360 Passenger Cars manufactured before September 1, 2002, that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 2002 Ferrari 360 Passenger Cars manufactured before September 1, 2002, that were originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 31, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03-8135 Filed 4-2-03; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

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 Community Development Financial Institutions Fund (the "Fund"), within the Department of the Treasury, is soliciting comments concerning the Native American CDFI Development (NACD) Program Application.

DATES: Written comments should be received on or before June 2, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda G. Davenport, Acting Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, Facsimile Number (202) 622-7754.

FOR FURTHER INFORMATION CONTACT: The NACD Program Application may be obtained from the Fund's Web site at <http://www.cdfifund.gov>. Requests for additional information should be directed to: Linda G. Davenport, Acting Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; or by phone to (202) 622-8662.

SUPPLEMENTARY INFORMATION:

Title: Native American CDFI Development (NACD) Program Application.

OMB Number: 1559-0013.

Abstract: The Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001

(Pub. L. 106-377) authorizes the Fund to provide technical assistance (TA) to promote economic development in Native American, Alaska Native and/or Native Hawaiian communities by creating new CDFIs or building the capacity of existing CDFIs that serve Native American, Alaska Native or Native Hawaiian communities. The Consolidated Appropriations Resolution, 2003 (Pub. L. 108-7) authorizes the Fund to provide financial assistance, technical assistance and training programs to benefit Native American, Alaska Native, and Native Hawaiian communities in the coordination of community development strategies designed to increase access to equity investments and loans for development activities.

The NACD Program specifically provides TA to two categories of entities that propose to establish a new CDFI(s) that will serve a Native American, Alaska Native or Native Hawaiian population(s): Category (1) including Tribes, Tribal Entities, or Non-Profit Organizations that primarily serve Native American and Alaska Native and/or Native Hawaiian populations; and Category (2) including TA providers or other suitable providers.

Current Action: Currently receiving applications.

Type of Review: Extension.

Affected Public: Not-for-profit institutions; State, local or tribal government and tribal entities; and businesses or other for-profit institutions.

Estimated Number of Respondents: 40.

Estimated Annual Time Per Respondent: 65 hours.

Estimated Total Annual Burden Hours: 2,600 hours.

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 Fund, including whether the information shall have practical utility; (b) the accuracy of the Fund'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.

Authority: Pub. L. 106-377; Pub. L. 108-7.

Dated: March 28, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03-8148 Filed 4-2-03; 8:45 am]

BILLING CODE 4810-70-P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

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, Pub. L. No. 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the "Fund") within the Department of the Treasury is soliciting comments concerning the Community Development Financial Institutions ("CDFI") Program; Technical Assistance (incorporating Native American Technical Assistance) Component Application.

DATES: Written comments should be received on or before June 2, 2003, to be assured of consideration.

ADDRESSES: Direct all comments to Linda G. Davenport, Acting Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, Facsimile Number (202) 622-7754.

FOR FURTHER INFORMATION CONTACT: The Technical Assistance Component application may be obtained from the Fund's Web site at <http://www.cdfifund.gov>. Requests for additional information should be directed to Linda G. Davenport, Acting Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or call (202) 622-8662.

SUPPLEMENTARY INFORMATION:

Title: The Community Development Financial Institutions Program—Technical Assistance Component Application.

OMB Number: 1559-0006.

Abstract: The purpose of the CDFI Program is to promote economic revitalization and community development through investment in and assistance to certified community development financial institutions (CDFIs). Through the Technical Assistance Component of the CDFI Program, the Fund provides technical assistance in the form of grants to competitively selected CDFIs and entities proposing to become CDFIs. The Fund provides such assistance to such entities to enhance their capacity to address the community development and capital access needs of their particular target markets, including Native American, Alaska Native, and Native Hawaiian communities.

The Technical Assistance Component is also designed to meet the unmet capacity needs of early stage CDFIs, or entities proposing to become CDFIs, who have significant potential for increasing their community development impact.

Current Action: Currently receiving applications.

Type of review: Extension.

Affected Public: Not-for-profit institutions, businesses or other for-profit institutions and tribal entities.

Estimated Number of Respondents: 100.

Estimated Annual Time Per Respondent: 55 hours.

Estimated Total Annual Burden Hours: 5,500 hours.

Requests 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 Fund, including whether the information shall have practical utility; (b) the accuracy of the Fund'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 technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: March 28, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03-8149 Filed 4-2-03; 8:45 am]

BILLING CODE 4810-70-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0642]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to reimburse veterans insured by United Services Automobile Association (USAA) and Hartford Life Insurance for co-payments paid to VA for their medical care.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 2, 2003.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail ann.bickoff@mail.va.gov. Please refer to "OMB Control No. 2900-0642" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273-8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed

collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA Copayment Refund—USAA/Hartford Claim Form, VA Form 10-0406.

OMB Control Number: 2900-0642.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10-0406 will be used to reimburse veterans insured by USAA/Hartford Life Insurance for co-payments they paid to VA for medical care from January 1, 1995, through December 31, 2001. Such insured veterans will have a one year time period from the initial notification date on a first-come-first-served basis, to file claim with VA for refund of their co-payments. The information collected will be used to determine the validity of such claims.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 12,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 24,000.

Dated: March 25, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03-8157 Filed 4-2-03; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Cemeteries and Memorials will be held April 30-May 1, 2003, at the Wyndham Milwaukee Center Hotel, 129 East Kilbourn Avenue, Milwaukee, WI. The meeting will begin at 8 a.m. and conclude at 4:30 p.m. on

both days. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of national cemeteries, soldiers' lots and plots, and the selection of new national cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits. The Committee will make recommendations the Secretary regarding these activities.

On April 30, the Committee will discuss issues relating to Wood National Cemetery, the Southern Wisconsin State Veterans Cemetery and the State Cemetery Grants Program. In the afternoon, the Committee will tour Wood National Cemetery and the Southern Wisconsin State Veterans Cemetery. On May 1, the Committee will receive updates on National Cemetery Administration's Operational Standards and Measures, construction of new national cemeteries, legislative initiatives, meeting veterans' burial needs, and other issues related to the administration and maintenance of national cemeteries. The Committee will conclude with discussions of any unfinished business, make recommendations for future programs, meeting sites, and agenda topics.

No time will be allocated for receiving for oral presentations from the public. Any member of the public wishing to attend the meeting is requested to contact Ms. Paige Lowther, Designated Federal Officer, at (202) 273-5164. The Committee will accept written comments. Comments can be transmitted electronically to the Committee at paige.lowther@mail.va.gov or mailed to National Cemetery Administration (40), 810 Vermont Avenue, NW., Washington, DC 20420. In their Communications with the Committee, the writer must identify themselves and state the organizations, associations, or person(s) they represent.

Dated: March 26, 2003.

By Direction of the Secretary.

E. Philip Riggan,

Committee Management Officer.

[FR Doc. 03-8158 Filed 4-2-03; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that a meeting of the Special Medical Advisory Group (SMAG) will

be held on Tuesday, April 22, 2003. The meeting will convene at 9 a.m. and end at 2 p.m. The meeting will be held at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 830, Washington, DC 20420. The meeting is open to the public.

The purpose of SMAG is to advise the Secretary of Veterans Affairs and the Under Secretary for Health on matters relating to the care and treatment of veterans and other matters pertinent to the operations of the Veterans Health Administration (*i.e.*, research, education and training of health manpower, and VA/DOD contingency planning).

The meeting will focus on discussions of various strategic clinical issues affecting VA's delivery of health care services. Those issues include ongoing emergency preparedness activities and plans to carry out VA's mission as a health care back up to the Defense Department during certain national emergencies.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties can provide written comments for review by the Committee in advance to the meeting to Ms. Terrie Brown, Designated Federal Officer, Department

of Veterans Affairs, Veterans Health Administration (10B), 810 Vermont Avenue, NW., Washington, DC 20420. Those wishing to attend should contact Ms. Sylvia Best, Office of the Under Secretary for Health, Department of Veterans Affairs, at (202) 273-5806.

Dated: March 26, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03-8159 Filed 4-2-03; 8:45 am]

BILLING CODE 8320-01-M

Corrections

Federal Register

Vol. 68, No. 64

Thursday, April 3, 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.

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 2003-B1]

eTravel Initiative

Correction

In notice document 03-6662 beginning on page 13710 in the issue of Thursday, March 20, 2003, make the following corrections:

1. On page 13710, in the second column, the fifth line "Of" should read, "If".
2. On the same page, in the same column, under the heading **Attachment**, in paragraph 2. *Background*, in the second line "governmentwide" should read, "governmentwide".
3. On the same page, in the third column, in paragraph 4. *Government Interest*, in the second line "outline" should read, "online".
4. On the same page, in the same column, under paragraph 4., in paragraph e., in the fourth line, "achieve" should read, "achieved".

5. On the same page, in the same column, under the same paragraph, in paragraph f., in the first line, "I" should read, "If".

6. On the same page, in the same column, under paragraph 5. *Agency Planning*, in paragraph c., in the fifth line, "transaction" should read, "transactions".

7. On page 13711, in the first column, in paragraph 7. *Expiration Date*, in the second line, "services" should read, "service".

[FR Doc. C3-6662 Filed 4-2-03; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2003-14597; Airspace Docket No. 03-ACE-20]

Modification of Class E Airspace; Hampton, IA

Correction

In rule document 03-7660 beginning on page 15349 in the issue of Monday, March 31, 2003, make the following correction:

On page 15349, in the third column, in the **EFFECTIVE DATE** section, in the

second line, "July 20, 2003" should read, "July 10, 2003."

[FR Doc. C3-7660 Filed 4-2-03; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9050]

RIN 1545-AY08

Civil Cause of Action for Damages Caused by Unlawful Tax Collection Actions, Including Actions Taken in Violation of Section 362 or 524 of the Bankruptcy Code

Correction

In rule document 03-6597 beginning on page 14316 in the issue of Tuesday, March 25, 2003, make the following correction:

§301.7430-1 [Corrected]

On page 14319, in §301.7430-1, in the third column, in Par. 3, in the fourth line "revising the phrase 'paragraph (e)(1), (e)(2), (e)(3), or (e)(4) of this section'" should read "in newly-designated paragraph (f) revising the phrase 'paragraph (e)(1), (e)(2), (e)(3), or (e)(4) of this section'".

[FR Doc. C3-6597 Filed 4-2-03; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

**Thursday,
April 3, 2003**

Part II

Department of the Interior

43 CFR Part 10

**Native American Graves Protection and
Repatriation Act Regulations—Civil
Penalties; Final Rule**

DEPARTMENT OF THE INTERIOR**Office of the Secretary****43 CFR Part 10**

RIN 1024-AC84

Native American Graves Protection and Repatriation Act Regulations—Civil Penalties**AGENCY:** Department of the Interior.**ACTION:** Final rule.

SUMMARY: This final rule relates to regulations implementing the Native American Graves Protection and Repatriation Act of 1990 (“the Act” or “NAGPRA”). This section outlines procedures for assessing civil penalties on museums that fail to comply with applicable provisions of the Act.

EFFECTIVE DATE: This final rule becomes effective on May 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. John Robbins, Assistant Director, Cultural Resources Stewardship and Partnerships, National Park Service, 1849 C Street NW (2253), Washington, DC 20240. Telephone: (202) 354-2269.

SUPPLEMENTARY INFORMATION: On November 16, 1990, President George Bush signed the Act into law. The Act addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony with which they are affiliated. Section 13 of the Act requires the Secretary of the Interior (“the Secretary”) to promulgate regulations to carry out provisions of the Act [25 U.S.C. 3011]. Final regulations implementing the Act were published in the Federal Register on December 4, 1995, and went into effect on January 3, 1996. The final regulations had five sections reserved for later publication.

Section 9 of the Act authorizes the Secretary to assess a civil penalty against any museum that fails to comply with the requirements of the Act [25 U.S.C. 3007]. Such penalties must be assessed according to procedures established by the Secretary through regulation. An interim rule establishing civil penalty procedures was published in the Federal Register on January 13, 1997 (62 FR 1820), and went into effect on February 12, 1997. Written comments on the interim rule were solicited from Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and members of the public. The extended period between the receipt of comments and publication of this final rule is attributed to

administrative processing delays and National NAGPRA program organizational changes. Despite the delay, the comments continue to be relevant as there has been no significant developments regarding NAGPRA civil penalties since publication of the interim rule.

Twenty-four written comments were received representing 28 organizations and individuals. These included one Indian tribe, four Native American organizations, eight museums, one university, three national scientific organizations, three state agencies, two Federal agencies, four other organizations, and two individuals. Several letters represented more than one organization. Comments addressed most of the interim rule. All comments were fully considered when revising the interim rule for publication as a final rule.

Primary Changes

There are two primary changes to the interim rule.

The first change concerns the relationship between the notice of failure to comply and the notice of assessment. As explained in the preamble of the interim rule, the administrative procedures for providing notice, holding a hearing, appealing an administrative decision, and issuing a final administrative decision were patterned after the regulatory procedures currently used in assessing civil penalties under the Archaeological Resources Protection Act (ARPA). Further consideration revealed a statutory distinction between the ARPA and NAGPRA civil penalty procedures, particularly regarding the relationship between the notice of failure to comply and the notice of assessment. ARPA specifies that no penalty may be assessed until the person who violates the ARPA is given notice and opportunity for a hearing [16 U.S.C. 470 ff (a)(1)]. Regulations implementing the ARPA civil penalty provisions require that the notice of violation include a proposed penalty amount, which may be addressed at the hearing [43 CFR 7.15 (b)(3)]. NAGPRA is different. Section 9 (a) of NAGPRA stipulates that both the determination and assessment of the penalty can occur only after the museum has an opportunity for an agency hearing [25 U.S.C. 3007]. The regulatory text has been revised to indicate that the notice of failure to comply must be issued first, followed by a period during which the museum may request a hearing. A notice of assessment may be issued after the first period for requesting a hearing has expired. The possibility of a second

hearing on the notice of assessment has been added to the regulations. Figure 1 outlines the civil penalty hearing and appeal process. If the museum consents, the Secretary may also combine the two notices, in which case the two opportunities for hearing will also be combined.

The second change concerns the amount of the per-day penalty that may be assessed if the museum continues to violate NAGPRA after the date of the final administrative decision on the notice of assessment. Several commenters considered the \$100-per-day amount too low. Others recommended that the Secretary should have some discretion depending on the nature of failure to comply and the human remains, funerary object, sacred object, or object of cultural patrimony in question. The amount has been changed from a set \$100 per day to a range not to exceed \$1,000 per day.

Section-by-Section*General*

Five commenters offered no specific changes to the text. Two commenters encouraged the Department of the Interior to remain flexible in its application of civil penalties and to refrain from penalizing museums that have attempted, in good faith, to comply with the Act. Whether a museum has failed to comply is determined under a strict liability standard. Mitigating factors, such as whether the museum has made a good faith attempt to comply, may be used by the Secretary to determine the penalty amount.

Paragraph 10.12 (a)

This paragraph outlines the Secretary’s authority to assess civil penalties. Several comments concerned applicability of the rule to specific types of institutions. One commenter recommended amending the rule to apply to Federal agencies that fail to comply with provisions of the Act. One commenter recommended amending the rule to apply to non-Federally-funded institutions that refuse to return human remains, funerary objects, sacred objects, or objects of cultural patrimony controlled by a Federal agency or museum. One commenter recommended amending the rule to apply to museums in other countries that control human remains, funerary objects, sacred objects, and objects of cultural patrimony.

Section 9 of the Act authorizes the Secretary to assess civil penalties on any museum that fails to comply with the requirements of the Act [25 U.S.C. 3007]. Section 2 (8) of the Act defines

a "museum" as any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony [25 U.S.C. 3001 (8)]. The definition of museum specifically excludes the Smithsonian Institution or any other Federal agency. The definition of museum is further clarified by regulation [paragraph 10.2 (a)(3) of this part]. The Act does not authorize the Secretary to assess civil penalties on a Federal agency that fails to comply with the Act. Section 15 of the Act does specifically grant the United States district courts jurisdiction over any action brought by any person alleging a violation of the Act, including violations by a Federal agency [25 U.S.C. 3013]. Institutions that do not receive Federal funds are not required to comply with the Act. However, human remains, funerary objects, sacred objects, and objects of cultural patrimony recovered from Federal lands generally fall under provisions of the Act regardless of where they currently are curated.

One commenter recommended amending the definition of the term "you" to exclude "the museum official designated responsible for matters related to implementation of the Act." The term is used in the rule only to advise the museum official designated responsible for matters related to implementation of the Act of actions that they may take in the notification and appeal process. Section 9 of the Act authorizes the Secretary to assess civil penalties on any museum that fails to comply with the requirements of the Act, not on an individual employee of that institution.

Paragraph 10.12 (b)

This paragraph defines the term "failure to comply."

Paragraph 10.12 (b)(1)(i) of this section stipulates that a museum has failed to comply if, after November 16, 1990, the museum sells or otherwise transfers human remains, funerary objects, sacred objects, or objects of cultural patrimony in violation of the Act, including, but not limited to, an unlawful sale or transfer to any individual or institution that is not required to comply with the Act. Six commenters recommended inserting the word "knowingly" before the phrase "sells or otherwise transfers" to be consistent with the criminal provisions in section 4 of the Act [18 U.S.C. 1170]. The criminal provisions in section 4 of the Act require mens rea or criminal

intent. The civil penalty provisions in section 9 of the Act do not include such a requirement. Nothing precluded Congress from specifically requiring an element of knowledge or intent to the civil penalty provisions, but this was not done. The text has not been changed.

One commenter recommended deleting the phrase "or otherwise transfers," as this concept does not appear in the Act. Another commenter recommended clarifying that this phrase applies to transfers where the intent was avoiding compliance with the Act. This phrase is intended to identify instances where human remains, funerary objects, sacred objects, or objects of cultural patrimony are conveyed from one party to another, without reciprocal financial consideration, to avoid compliance with provisions of the Act. The phrase has been retained.

One commenter considered use of the term "in violation of" to be tautological, that is, defining a term with reference to itself. The term has been replaced with "contrary to provisions of."

One commenter recommended deleting the word "unlawful" referring to the sale or transfer of human remains, funerary objects, sacred objects, or objects of cultural patrimony. Since museums may sell or otherwise transfer such items if they can prove a right of possession, the term has been retained to distinguish sales or transfers that violate provisions of the Act from sales or transfers of items for which the museum has right of possession.

One commenter recommended adding provisions to specifically prohibit the sale or transfer of human remains, funerary objects, sacred objects, or objects of cultural patrimony across State lines. The criminal provisions of the Act already apply to the sale, purchase, use for profit, or transport for sale or profit of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony within the United States. Transfer across a State boundary is not a necessary element of this crime.

One commenter questioned whether assessing civil penalties on museums that acquire items that are otherwise widely available for sale to the general public might actually encourage the growth of private collections and restrict Federally funded institutions from adding to their collections. Section 4 of the Act makes it a crime under certain conditions to knowingly sell, purchase, use for profit, or transport for sale or profit Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony. The rule in part provides an alternative

administrative mechanism to prosecute museums that violate these criminal provisions.

No comments were received regarding paragraphs 10.12 (b)(1)(ii), (b)(1)(iii), or (b)(1)(iv) of this section.

Paragraph 10.12 (b)(1)(v) of this section stipulates that a museum has failed to comply if it refuses to repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony to a lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization pursuant to the requirements of the Act. Two commenters requested clarification of the relevant requirements of the Act, particularly as it applies to disputes. The section has been rewritten to apply to any museum that, absent any of the exemptions specified at paragraph 10.10 (c) of this part, refuses to repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony to a lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization.

Paragraph 10.12 (b)(1)(vi) of this section stipulates that a museum has failed to comply if it repatriates human remains, funerary objects, sacred objects, or objects of cultural patrimony before publication of a notice in the Federal Register as required by the Act. One commenter pointed out that the regulations require publication of two separate types of notice, depending on the type of cultural item. Publication of a notice of intent to repatriate is required prior to repatriation of an unassociated funerary object, sacred object, or object of cultural patrimony [paragraph 10.10 (a)(3) of this part]. Publication of a notice of inventory completion is required prior to repatriation of human remains or an associated funerary object [paragraph 10.10 (b)(2) of this part]. The text has been rewritten to refer to publication of the required notice in the Federal Register. Another commenter suggested deleting this section since the Secretary ultimately is responsible for publication of notices in the Federal Register, not the submitting museum. The Secretary is responsible for publishing the museum's notice in the Federal Register. However, as the regulations make clear, repatriation may not occur until at least 30 days after the notice is published [paragraphs 10.10 (a)(3) and (b)(2) of this part]. The section has been retained.

One commenter recommended that failure to adequately consult with the relevant lineal descendants, Indian tribe officials, and traditional religious leaders also should constitute a "failure to comply." Other sections of the

regulations already require museum and Federal agency officials to consult with Indian tribe officials and traditional religious leaders by the completion of the summary process [paragraph 10.8 (d)(2) of this part]. The regulations also require museum and Federal agency officials to consult with lineal descendants, Indian tribe officials, and traditional religious leaders at the point in the inventory process when investigation into the cultural affiliation is being conducted [paragraph 10.9 (b)(2) of this part], and prior to repatriation in order to determine the place and manner of repatriation [paragraph 10.10 (d) of this part]. Text has been added as paragraph 10.12 (b)(1)(vii) of this section specifically identifying as a failure to comply a museum official's failure to consult with lineal descendants, Indian tribe officials, and traditional religious leaders as required.

Text also has been added as paragraph 10.12 (b)(1)(viii) of this section specifically identifying as a failure to comply a museum official's failure to inform the recipients of repatriations of any presently known treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony with pesticides, preservatives, or other substances that represent a potential hazard to the objects or to persons handling the objects as required in paragraph 10.10 (e) of this part.

One commenter asked whether failure to comply with regulations regarding the curation of Federally owned and administered archeological collections would constitute a failure to comply under 36 CFR Part 79. Federal agencies are responsible for the administration of all collections within their control, including Federal collections in the possession of non-Federal repositories. This includes the curation of archeological collections -- artifacts, objects, specimens, and other physical evidence -- that are excavated or removed under the authority of the Antiquities Act [16 U.S.C. 431-433], the Reservoir Salvage Act [16 U.S.C. 469-469c], the National Historic Preservation Act [16 U.S.C. 470-2], or the Archaeological Resources Protection Act [16 U.S.C. 40aa-mm]. Federal agencies also are responsible for completion of summaries and inventories, publication of notices, and other activities under the Native American Graves Protection and Repatriation Act [25 U.S.C. 3001 *et seq.*]. A Federal agency's failure to comply with curation regulations is a matter separate and unrelated to compliance with NAGPRA.

Paragraph 10.12 (b)(2) of this section stipulates that each violation constitutes

a separate offense. One commenter requested clarification of what would constitute separate violations. Determination of the number of separate violations of unlawful sale or transfer [paragraph 10.12 (b)(1)(i) of this section], refusal to repatriate [paragraph 10.12 (b)(1)(v) of this section], or repatriate prior to publication of the required notice [paragraph 10.12 (b)(1)(vi) of this section] will be based on the number of human remains, funerary objects, sacred objects, or objects of cultural patrimony involved. Determination of the number of separate violations of failure to provide summaries [paragraph 10.12 (b)(1)(ii) of this section], inventories [paragraph 10.12 (b)(1)(iii) of this section], notifications [paragraph 10.12 (b)(1)(iv) of this section], consultations [paragraph 10.12 (b)(1)(vii) of this section], or information regarding potentially hazardous human remains, funerary objects, sacred objects, or objects of cultural patrimony [paragraph 10.12 (b)(1)(viii) of this section] will be based on the number of lineal descendants, Indian tribes, or Native Hawaiian organizations involved.

Paragraph 10.12 (c)

This paragraph explains how to notify the Secretary of a failure to comply.

Paragraph 10.12 (c) of this section stipulates that any person may bring an allegation of failure to comply to the Secretary's attention. One commenter suggested requiring the person who makes the allegation to provide credible evidence of a failure to comply. Text has been added stipulating that allegations must be in writing, and should include documentation of the alleged failure to comply. This documentation might include evidence that: the museum has possession or control of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony; receives Federal funds; and has failed to comply with specific provisions of the Act. "Possession" is defined in paragraph 10.2 (a)(3)(i) of this section. "Control" is defined in paragraph 10.2 (a)(3)(ii) of this section. "Native American," "human remains," "funerary objects," "sacred objects," and "objects of cultural patrimony" are defined in paragraph 10.2 (d) of this section. "Receives Federal funds" is defined in paragraph 10.2 (b) of this section.

Paragraph 10.12 (d)

Paragraph 10.12 (d) of this section, designated paragraph 10.12 (c)(2) in the interim rule, explains what steps the Secretary must take upon receiving an allegation.

One commenter requested that the person making the allegation be notified that the allegation has been received. Text specifying this required action has been added to paragraph 10.12 (d)(1) of this section. Six commenters requested that the Secretary also be required to notify the museum that the allegation has been received. It is anticipated that the Secretary usually will notify the museum upon receipt of an allegation. However, this decision must be made on a case-by-case basis in order to avoid jeopardizing investigation of the alleged failure to comply or any other ongoing law enforcement investigation.

Paragraph 10.12 (d)(2) of this section, designated paragraph 10.12 (c)(2) in the interim rule, outlines the steps that the Secretary may take upon receiving an allegation of failure to comply. These include: (i) reviewing the alleged failure to comply; (ii) identifying the specific provisions of the Act with which the museum allegedly failed to comply; (iii) determining if the institution of a civil penalty action is in the public interest; and (iv) if appropriate, estimating the proposed penalty.

Seven commenters requested clarification of the procedures by which the Secretary will investigate an allegation of failure to comply. One commenter stressed that such an investigation must be conducted fully and fairly before the Secretary commences with the determination of the penalty. Investigation of an allegation of failure to comply must necessarily be done on a case-by-case basis. Paragraph 10.12 (d)(2) of this section outlines the basic steps necessary to complete such an investigation.

One commenter considered the language in paragraph 10.12 (d)(2)(i) of this section, designated paragraph 10.12 (c)(2)(i) in the interim rule, too vague and offered revised wording. One commenter objected that no provision was made to involve the alleging party in the process. Text has been added to this section to indicate that additional information may be requested from the person making the allegation, the museum that has allegedly failed to comply, and other parties. Subpoenas may be issued if the Secretary's request for information is resisted.

Section 9 (a) of the Act stipulates that the penalty may only be determined after the museum is provided with an opportunity for an agency hearing [25 U.S.C. 3007 (a)]. Paragraph 10.12 (c)(2)(iv) of the interim rule has been deleted.

One commenter objected to the investigatory procedure's being at the Secretary's discretion. Section 9 (a) of

the Act makes it clear that assessment of a civil penalty is completely at the Secretary's discretion [25 U.S.C. 3007 (a)]. However, consistent with the Department of the Interior's continuing responsibility to keep constituents and the general public informed of its activities [43 DM 1.1], the regulations require certain investigatory steps.

Six commenters requested that the Secretary be required to provide notification if, after consideration of the allegation, no further action will be taken. Text has been added as paragraph 10.12 (d)(3) of this section requiring notification of the person making the allegation and the museum if the available evidence does not show a failure to comply.

One commenter requested clarification of how long the Secretary might take in determining whether a museum has failed to comply. Generally, a civil penalty must be assessed within five years of when facts material to the failure to comply become known, unless the assessment: 1) is founded upon a tort on behalf of a Federally recognized Indian tribe [28 U.S.C. 2415 (b)], or 2) is intended to establish title to, or right of possession of, a human remains, funerary object, sacred object, or object of cultural patrimony [28 U.S.C. 2415 (c)], in which case a longer period may apply.

Paragraph 10.12 (e)

This section explains how the Secretary notifies the museum and potentially aggrieved parties if the alleged failure to comply is verified.

One commenter recommended that written notice of failure to comply be explicitly required. The word "written" has been inserted before phrase "notice of failure to comply" in paragraph 10.12 (e)(1) of this section.

Section 9 (a) of the Act stipulates that the determination of the penalty may only occur after the museum is provided with an opportunity for an agency hearing [25 U.S.C. 3007 (a)]. Paragraph 10.12 (e)(1)(iii) of this section has been deleted and subsequent sections renumbered.

Paragraph 10.12 (e)(1)(iii) of this section, designated paragraph 10.12 (e)(1)(iv) in the interim rule, has been revised to reflect the options available in paragraph 10.12 (f) of this section.

Paragraph 10.12 (e)(2) of this section allows the Secretary, with the consent of the museum, to combine the notice of failure to comply and notice of assessment.

Paragraph 10.12 (f)

This Paragraph outlines the actions that the museum may take upon receipt

of a notice of failure to comply. Four options were outlined in the interim rule: (1) seek informal discussions with the Secretary; (2) file a petition for relief; (3) take no action and await the Secretary's notice of assessment; or (4) accept the proposed penalty.

Paragraphs 10.12 (f)(1) and (f)(3) of this section have been retained. Paragraph 10.12 (f)(2) of this section described the process for filing a petition for relief of the penalty amount. Because the Notice of Failure to Comply will not necessarily include a determination of penalty amount, paragraph 10.12 (f)(2) of this section has been deleted and replaced with the option of requesting a hearing. The process for requesting a hearing is described in paragraph 10.12 (j) of this section. Paragraph 10.12 (f)(4) of the interim rule, which also dealt with the proposed penalty, has been deleted.

Paragraph 10.12 (g)

This paragraph, designated paragraph 10.12 (d) in the interim rule, explains how the Secretary determines the penalty amount.

Section 9 (b) of the Act stipulates that the amount of a penalty assessed must be determined taking into account, in addition to other factors: (1) the archeological, historical, or commercial value of the item involved; (2) the damages suffered, both economic and non-economic, by an aggrieved party; and (3) the number of violations [25 U.S.C. 3007 (b)].

The interim rule outlined a two-stage approach to implementing these statutory criteria. The first stage, outlined in paragraph 10.12 (g)(1) of this section, designated paragraph 10.12 (d)(1) in the interim rule, stipulated that the initial assessment is based on an amount equal to .25 percent of the museum's annual budget, or \$5,000, whichever is less, plus an additional sum determined after taking into account: (1) the archeological, historical, and commercial value of the human remains, funerary object, sacred object, or object of cultural patrimony, including, but not limited to, consideration of their importance to performing traditional practices; (2) damages suffered, both economic and non-economic, by the aggrieved party or parties including, but not limited to, the costs of attorney and expert witness fees, investigations, and administrative expenses related to efforts to compel compliance with the Act; and (3) the number of violations that have occurred. The second stage, outlined in paragraph 10.12 (g)(2) of this section, designated paragraph 10.12 (d)(2) in the interim rule, provided for an additional penalty

amount of \$100 per day if the museum continues to violate the Act after the date that the final administrative decision takes effect.

Five commenters considered the base penalty amount stipulated in paragraph 10.12 (g)(1) of this section, designated paragraph 10.12 (d)(1) in the interim rule, insufficient to encourage compliance. One commenter considered the base penalty amount too severe. While the base penalty amount of \$5000 or less might be considered overly modest by some, the Secretary is authorized to assess a penalty based on the sum of the listed factors. This amount might be substantial depending on the situation.

Three commenters requested clarification of the process by which the archeological, historical, or commercial value of the human remains, funerary object, sacred object or object of cultural patrimony in paragraph 10.12 (g)(1)(i) of this section, designated paragraph 10.12 (d)(1)(i) in the interim rule, will be determined by the Secretary. In calculating civil penalties, the Secretary will consider the value to be the benefit derived by the museum through control of the particular human remains, funerary object, sacred object, or object of cultural patrimony. This value can be calculated in a variety of ways. Archeological and historical values focus on the benefits derived by the museum through the study or exhibition of the human remains, funerary object, sacred object, or object of cultural patrimony. These values might include research fees and grants obtained to study the cultural items, admission fees or donations obtained for the public display of the human remains, funerary object, sacred object, or object of cultural patrimony, and royalties obtained from publication of information related to or images of the cultural items. Commercial value means the price a willing buyer would pay, and a willing seller accept, for the human remains, funerary object, sacred object, or object of cultural patrimony in the open market.

One commenter objected to using the value of the cultural item in calculating part of the penalty amount and the subsequent assumption that, after paying such a penalty, the museum also will be forced to relinquish control of the cultural item. The Act addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated. By failing to comply with the Act, the museum is depriving lineal descendants, Indian

tribes, and Native Hawaiian organizations of these rights. The value portion of the penalty calculation is intended to deprive the museum of any benefit derived through control of the particular cultural item. This assessment in no way reduces the lineal descendant's, Indian tribe's, or Native Hawaiian organization's right to the cultural item.

One commenter questioned whether the importance of a cultural item to performing traditional practices is a reasonable criterion for calculating its archeological, historical, or commercial value. We agree that consideration of the importance of a cultural item should not be used in calculating its archeological, historical, or commercial value. The phrase has been deleted.

One commenter requested clarification of how the damages suffered by aggrieved parties in paragraph 10.12 (g)(ii) of this section, designated paragraph 10.12 (d)(ii) in the interim rule, will be calculated. Section 9 (b)(2) of the Act stipulates that both economic and non-economic damages suffered by an aggrieved party be taken into account in determining the penalty amount.

Two classes of aggrieved parties must be considered. The first class consists of lineal descendants, Indian tribes, or Native Hawaiian organizations that are denied access, by the museum's failure to comply, to human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated. The museum's failure to comply with the Act denies these parties a property right that may result in both economic and non-economic damages. Economic damages might include expenditures by the aggrieved party to compel the museum to comply with the Act, such as the cost of activities taken after November 16, 1993, to compel the museum to complete the required summary. Non-economic damages might include loss of use of or damage to the cultural item. One commenter recommended that non-Federally recognized Indian groups also must be consulted in determining the penalty amount. The Act addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations. While a non-Federally recognized Indian group also may have a property interest in cultural item, the Act and these regulations do not directly address that interest.

The second class of aggrieved parties consists of the people of the United States who, due to the museum's failure to comply, are burdened with an obligation to investigate and, if appropriate, assess a civil penalty

against a museum that has failed to comply. This burden could include expenditures by the Department of the Interior related to assessing the archeological, historical, or commercial value of a cultural item and the economic and non-economic damages to the aggrieved lineal descendants, Indian tribes, or Native Hawaiian organizations.

Two commenters objected to including attorney's fees in calculating economic damages. One commenter cited the case of *Alyeska Pipeline Service Company v. Wilderness Society* [421 U.S. 247, 250 (1975)] in which the court found that parties must bear all of their own costs of litigation absent a specific fee-shifting statute. Another commenter recommended that a museum must be required to pay all attorney fees, expert witness fees, investigation costs, and any other expenses that are required to compel compliance if the museum was found to be in noncompliance. The example in paragraph 10.12 (g)(1)(ii) of this section, designated paragraph 10.12 (d)(1)(ii) in the interim rule, has been revised to omit explicit reference to attorney's fees and rewritten as "expenditures by the aggrieved party to compel the museum to comply with the Act." We recognize that such activities may in fact include expenditures for an attorney or other staff to prepare, review, and file documents, but do not intend that this category include litigation costs.

Two commenters considered requiring the museum to pay damages unreasonably punitive. Section 9 (b)(2) requires that both economic and non-economic damages to the aggrieved party must be taken into account in assessing the penalty amount. We consider this requirement a strong indication that Congress intended museums to comply with the Act. The damages component of the penalty amount is, in fact, purely compensatory, being explicitly based on the expenditures of the aggrieved parties. Punitive damages would be damages assessed over and above the compensatory amount, such as additional penalties based on the number of violations that have occurred as authorized in section 9 (b)(3) of the Act. Two commenters requested that museums lose Federal funding if they are identified as failing to comply with the Act. The legislative history of the Act indicates that although Congress considered such a penalty, loss of Federal funding was not included in the final bill. We generally are precluded from including a provision in regulation that previously was considered and rejected by Congress.

Three commenters requested clarification of the process by which an additional penalty amount will be assessed after the day that the final administrative decision takes effect if the museum continues to violate the Act. One commenter identified this provision as imposing prohibitive costs upon a museum that seeks judicial review of the final administrative decision. Another commenter considered the \$100-per-day penalty insufficient to compel compliance with the Act, recommending instead a flexible amount ranging from \$100 to \$10,000 per day. Another commenter considered this provision to be punitive rather than serving to compel further compliance with the Act. The drafters agree that the per-day assessment is in fact a punitive damage intended to compel compliance with the Act, but not based on any actual damage to an aggrieved party. The per-day assessment will not be imposed until the final administrative decision, providing ample opportunity to participate in an agency hearing, request a hearing before an administrative law judge, appeal the administrative law judge's decision, or comply with the Act. The penalty amount has been increased to \$1,000 maximum per day in order to provide the Secretary with some flexibility in tailoring a penalty to the situation.

Paragraph 10.12 (g)(4) of this section, designated paragraph 10.12 (d)(3) in the interim rule, outlined provisions by which the Secretary may reduce the penalty amount. Reasons for reducing the amount include: 1) the failure to comply is determined to be not willful; 2) the museum agrees to adequately mitigate the violation; 3) the museum demonstrates a hardship or inability to pay; or 4) the penalty would constitute excessive punishment under the circumstances.

The provision in paragraph 10.12 (g)(3)(i) of this section, designated paragraph 10.12 (d)(3)(i) in the interim rule, allows the Secretary to reduce the penalty if it is determined that the museum did not willfully fail to comply with the Act. Three commenters felt that the provisions did not go far enough. One commenter requested an explicit statement that a penalty must be imposed only on museums that willfully and knowingly fail to comply with the Act. Evidence of a good faith effort to comply with the Act must be considered when deciding whether the penalty amount should be reduced.

The provision in paragraph 10.12 (g)(3)(ii) of this section, designated paragraph 10.12 (d)(3)(ii) in the interim rule, allows the Secretary to reduce the penalty if the museum agrees to mitigate

the violation by, among other things, paying restitution to the aggrieved party or parties. One commenter felt that the Secretary should pay all actual damages to the aggrieved parties. Another commenter recommended that the Secretary seek an amendment to the Act that would permit the Secretary to distribute collected penalties via the NAGPRA grants program. Direct payment of restitution by the United States to an aggrieved party generally requires explicit statutory authority. Absent such authority, and when appropriate, the Secretary may mitigate the penalty amount when the museum agrees to pay restitution directly to that aggrieved party. In their 1995-1997 and 1998 reports to Congress, the Native American Graves Protection and Repatriation Review Committee recommended amending the Act to provide monies collected as civil penalties to the Secretary to further enforcement activities.

One commenter requested clarification of how hardship will be defined in paragraph 10.12 (g)(3)(iii) of this section, designated paragraph 10.12 (d)(3)(iii) in the interim rule. The sentence has been rewritten to clarify that the Secretary may reduce the penalty amount if the museum is unable to pay, provided that this factor will not apply if the museum has previously failed to comply with these regulations.

One commenter requested clarification of how excessive punishment will be defined in paragraph 10.12 (g)(3)(iv) of this section, designated paragraph 10.12 (d)(3)(iv) of this section in the interim rule. The eighth amendment to the Constitution of the United States prohibits excessive fines. A civil penalty might be considered excessive if it seriously impairs the museum's capacity of gaining a business livelihood.

One commenter questioned how the funds collected from the fines and penalties would be used. Another commenter questioned whether funds collected from civil penalty fines could be directed towards helping to bring museums into compliance or channeled into an account to fund Federal actions pertaining to the Act. Under the current statutory authority, civil penalties must be paid directly to the United States Treasury.

Paragraph 10.12 (h)

This paragraph, designated paragraph 10.12 (g) in the interim rule, explains how the Secretary assesses the penalty.

One commenter recommended text acknowledging that ongoing legal proceedings would be sufficient to delay a museum's response to a notice of

failure to comply. A museum may have recourse to the Federal courts regarding the Secretary's issuance of a notice of failure to comply. However, the Secretary is not bound by the status of ongoing litigation when assessing a civil penalty on a museum for failing to comply with the Act.

One commenter recommended that written notice be required if the Secretary concludes that the museum has not failed to comply. The phrase "in writing" has been added after the phrase "the Secretary notified you" in paragraph 10.12 (h)(3) of this section.

Paragraph 10.12 (j)

This paragraph, combining two paragraphs in the interim rule designated as 10.12 (h) and (i), describes how the museum may request a hearing regarding a notice of failure to comply or a notice of assessment.

One commenter recommended adding a provision that would allow for the involvement of lineal descendants, culturally affiliated tribes, and/or the complaining party or parties in the hearing process where appropriate. The involvement of lineal descendants, tribal representatives, or the complaining person may be necessary as determined by the parties in the hearing. Participation of these and other persons can be compelled by means of a subpoena [25 U.S.C. 3007 (d)]. Agency hearings generally are open to the public.

Paragraph 10.12 (h)(4)(iv) of the interim rule, which dealt with the amount of the civil penalty assessment, has been deleted.

Paragraph 10.12 (k)

This paragraph, designated paragraph 10.12 (j) in this interim rule, explains how a hearing decision may be appealed.

Paragraph 10.12 (l)

This paragraph, designated paragraph 10.12 (k) in this interim rule, explains what constitutes a final administrative action regarding a notice of assessment.

Paragraph 10.12 (m)

This paragraph, designated paragraph 10.12 (l) in this interim rule, explains how a museum pays the civil penalty. The sentence authorizing the Secretary to start civil penalty action in U.S. District Court without the authorization of the Attorney General of the United States has been deleted. In *Mehle v. American Management Systems, Inc.*, [01-1544 (JR), D. D.C. Nov 30, 2001] the district court ruled that the Attorney General must represent the United States, an agency, or officer thereof in

litigation, unless Congress has expressly directed otherwise. NAGPRA does not confer independent litigating authority on the Secretary.

Drafting Information

This final rule was prepared by Dr. C. Timothy McKeown in consultation with the Native American Graves Protection and Repatriation Review Committee as directed by section 8 (c)(7) of the Act.

Compliance with Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Order 12866)

This rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. We expect to assess civil penalties on a small number of museums that have failed to comply with the Act. The Secretary may exercise discretion to reduce the penalty amount if it seriously impairs the museum's capacity of gaining a business livelihood.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Section 9 of the Act delegates exclusive responsibility for implementing the civil penalty provisions to the Secretary. This rule has been reviewed by the U.S. Department of the Interior, Office of the Solicitor and the Office of Hearings and Appeals, and the U.S. Department of Justice.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs, or the rights or obligations of their recipients. Assessment of civil penalties under this rule is limited to museums that fail to comply with the requirements of the Act. Consistent with the legislative history of the Act, museums that have failed to comply continue to be eligible for Federal funds.

(4) This rule does not raise novel legal or policy issues. All substantive comments received on the interim rule have been addressed in the preamble and changes made in the regulatory text if necessary.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We expect to assess civil penalties on a small number of museums that have failed to comply with the Act. The Secretary may exercise discretion to reduce the penalty amount if it seriously impairs the museum's capacity of gaining a business livelihood.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804 (2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(1) Does not have an annual effect on the economy of \$100 million or more.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local or tribal government agencies, or geographic regions;

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. We expect to assess civil penalties on a small number of museums that have failed to comply with the Act. The Secretary may exercise discretion to reduce the penalty amount if it seriously impairs the museum's capacity of gaining a business livelihood.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. Museums are only required to repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony for which they can not prove right of possession [25 U.S.C. 3005 (c)]. This rule applies to museums that fail to comply with the administrative provisions of the Act.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3 (a) and 3 (b) of the order.

Paperwork Reduction Act

This final rule does not require an information collection of 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I is not required.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship with Tribes

In accordance with Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249), the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), and 512 DM 2 we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects. NAGPRA makes provisions for the return to lineal descendants, Indian tribes and Native Hawaiian organizations of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. Native American organizations participated in the drafting of this rule.

List of Subjects in 43 CFR Part 10

Administrative practice and procedure, Hawaiian Natives, Historic preservation, Indians -- Claims, Museums, Reporting and record-keeping requirements.

■ In consideration of the forgoing, 43 CFR Subpart A is amended as follows:

PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT REGULATIONS

■ 1. The authority citation for Part 10 continues to read as follows:

Authority: 25 U.S.C. 3001 *et seq.*

■ Part 10 is amended by adding § 10.12 to read as follows:

§ 10.12 Civil penalties.

(a) *The Secretary's Authority to Assess Civil Penalties.* The Secretary is authorized by section 9 of the Act to assess civil penalties on any museum

that fails to comply with the requirements of the Act. As used in this Paragraph, "failure to comply with requirements of the Act" also means failure to comply with applicable portions of the regulations set forth in this Part. As used in this Paragraph "you" refers to the museum or the museum official designated responsible for matters related to implementation of the Act.

(b) *Definition of "failure to comply."*

(1) Your museum has failed to comply with the requirements of the Act if it:

(i) After November 16, 1990, sells or otherwise transfers human remains, funerary objects, sacred objects, or objects of cultural patrimony contrary to provisions of the Act, including, but not limited to, an unlawful sale or transfer to any individual or institution that is not required to comply with the Act; or

(ii) After November 16, 1993, has not completed summaries as required by the Act; or

(iii) After November 16, 1995, or the date specified in an extension issued by the Secretary, whichever is later, has not completed inventories as required by the Act; or

(iv) After May 16, 1996, or 6 months after completion of an inventory under an extension issued by the Secretary, whichever is later, has not notified culturally affiliated Indian tribes and Native Hawaiian organizations; or

(v) Refuses, absent any of the exemptions specified in § 10.10(c) of this part, to repatriate human remains, funerary object, sacred object, or object of cultural patrimony to a lineal descendant or culturally affiliated Indian tribe or Native Hawaiian; or

(vi) Repatriates a human remains, funerary object, sacred object, or object of cultural patrimony before publishing the required notice in the Federal Register;

(vii) Does not consult with lineal descendants, Indian tribe officials, and traditional religious leaders as required; or

(viii) Does not inform the recipients of repatriations of any presently known treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony with pesticides, preservatives, or other substances that represent a potential hazard to the objects or to persons handling the objects.

(2) Each instance of failure to comply will constitute a separate violation.

(c) *How to Notify the Secretary of a Failure to Comply.* Any person may bring an allegation of failure to comply to the attention of the Secretary. Allegations must be in writing, and should include documentation

identifying the provision of the Act with which there has been a failure to comply and supporting facts of the alleged failure to comply.

Documentation should include evidence that the museum has possession or control of Native American cultural items, receives Federal funds, and has failed to comply with specific provisions of the Act. Written allegations should be sent to the attention of the Director, National Park Service, 1849 C Street, NW, Washington, D.C. 20240.

(d) *Steps the Secretary may take upon receiving such an allegation.* (1) The Secretary must acknowledge receipt of the allegation in writing.

(2) The Secretary also may:

(i) Compile and review information relevant to the alleged failure to comply. The Secretary may request additional information, such as declarations and relevant papers, books, and documents, from the person making the allegation, the museum, and other parties;

(ii) Identify the specific provisions of the Act with which you have allegedly failed to comply; and

(iii) Determine if the institution of a civil penalty action is an appropriate remedy.

(3) The Secretary must provide written notification to the person making the allegation and the museum if the review of the evidence does not show a failure to comply.

(e) *How the Secretary notifies you of a failure to comply.* (1) If the allegations are verified, the Secretary must serve you with a written notice of failure to comply either by personal delivery or by registered or certified mail (return receipt requested). The notice of failure to comply must include:

(i) A concise statement of the facts believed to show a failure to comply;

(ii) A specific reference to the provisions of the Act and/or these regulations with which you allegedly have not complied; and

(iii) Notification of the right to request an informal discussion with the Secretary or a designee, to request a hearing, as provided below, or to await the Secretary's notice of assessment. The notice of failure to comply also must inform you of your right to seek judicial review of any final administrative decision assessing a civil penalty.

(2) With your consent, the Secretary may combine the notice of failure to comply with the notice of assessment

described in paragraph (h) of this section.

(3) The Secretary also must send a copy of the notice of failure to comply to:

(i) Any lineal descendant of a known Native American individual whose human remains, funerary objects, or sacred objects are in question; and

(ii) Any Indian tribes or Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony in question.

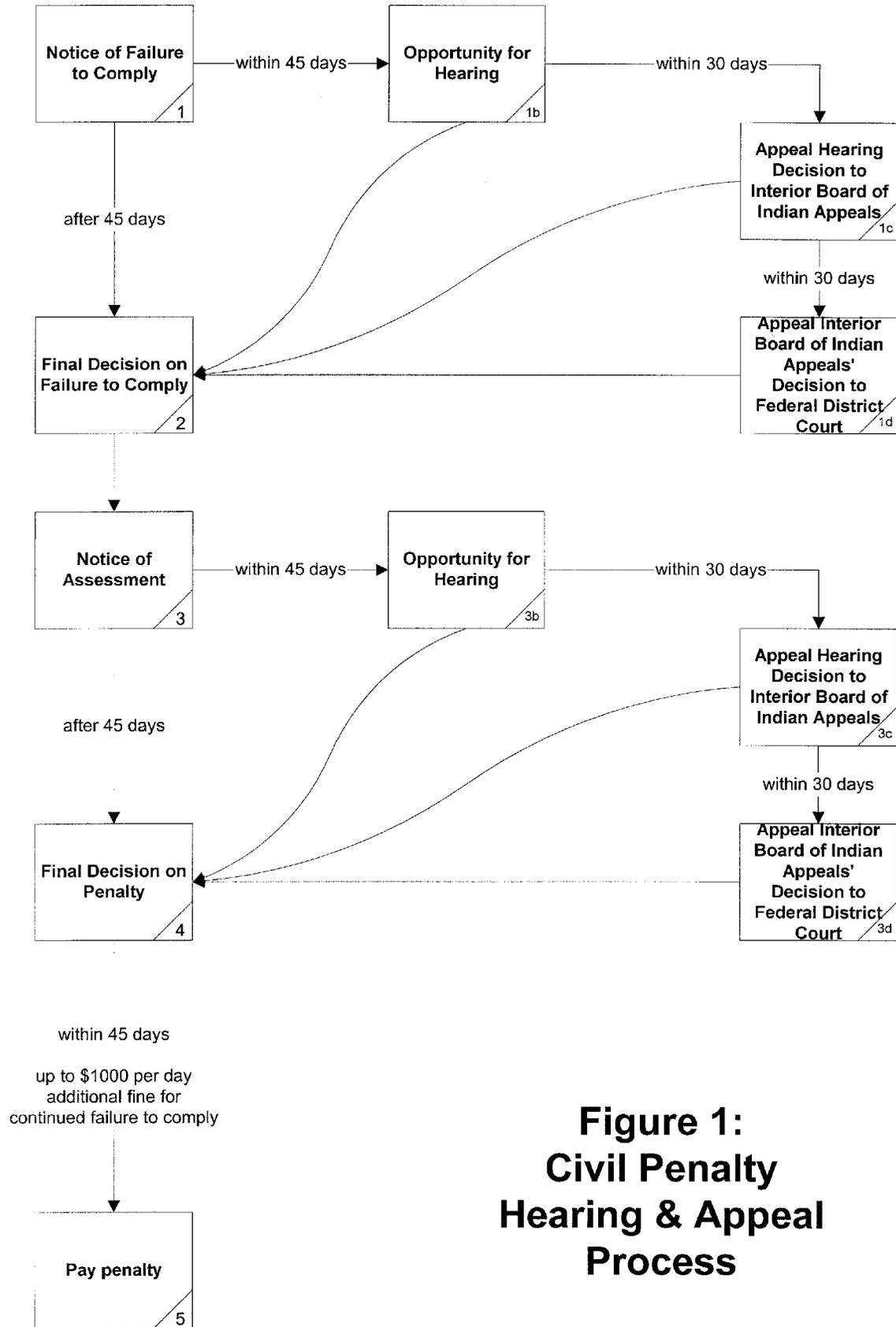
(f) *Actions you may take upon receipt of a notice of failure to comply.* If you are served with a notice of failure to comply, you may:

(1) Seek informal discussions with the Secretary;

(2) Request a hearing. Figure 1 outlines the civil penalty hearing and appeal process. Where the Secretary has issued a combined notice of failure to comply and notice of assessment, the hearing and appeal processes will also be combined.

(3) Take no action and await the Secretary's notice of assessment.

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**Figure 1:
Civil Penalty
Hearing & Appeal
Process**

(g) *How the Secretary determines the penalty amount.*

(1) The penalty amount must be determined on the record;

(2) The penalty amount must be .25 percent of your museum's annual budget, or \$5,000, whichever is less, and such additional sum as the Secretary may determine is appropriate after taking into account:

(i) The archeological, historical, or commercial value of the human remains, funerary object, sacred object, or object of cultural patrimony involved; and

(ii) The damages suffered, both economic and non-economic, by the aggrieved party or parties including, but not limited to, expenditures by the aggrieved party to compel the museum to comply with the Act; and

(iii) The number of violations that have occurred at your museum.

(3) An additional penalty of up to \$1,000 per day after the date that the final administrative decision takes effect may be assessed if your museum continues to violate the Act.

(4) The Secretary may reduce the penalty amount if there is:

(i) A determination that you did not willfully fail to comply; or

(ii) An agreement by you to mitigate the violation, including, but not limited to, payment of restitution to the aggrieved party or parties; or

(iii) A determination that you are unable to pay, provided that this factor may not apply if you have been previously found to have failed to comply with these regulations; or,

(iv) A determination that the penalty constitutes excessive punishment under the circumstances.

(h) *How the Secretary assesses the penalty.* (1) The Secretary considers all available information, including information provided during the process of assessing civil penalties or furnished upon further request by the Secretary.

(2) The Secretary may assess the civil penalty upon completing informal discussions or when the period for requesting a hearing expires, whichever is later.

(3) The Secretary notifies you in writing of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The notice of assessment includes:

(i) The basis for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and

(ii) Notification of the right to request a hearing, including the procedures to follow, and to seek judicial review of

any final administrative decision that assesses a civil penalty.

(i) *Actions that you may take upon receipt of a notice of assessment.* If you are served with a notice of assessment, you may do one of the following:

(1) Accept in writing or by payment of the proposed penalty, or any mitigation or remission offered in the notice of assessment. If you accept the proposed penalty, mitigation, or remission, you waive the right to request a hearing.

(2) Seek informal discussions with the Secretary.

(3) File a petition for relief. You may file a petition for relief with the Secretary within 45 calendar days of receiving the notice of assessment. Your petition for relief may request the Secretary to assess no penalty or to reduce the amount. Your petition must be in writing and signed by an official authorized to sign such documents. Your petition must set forth in full the legal or factual basis for the requested relief.

(4) Request a hearing. Figure 1 outlines the civil penalty hearing and appeal process.

(i) In addition to the documentation required in paragraph (g) of this section, your request must include a copy of the notice of assessment and must identify the basis for challenging the assessment.

(ii) In this hearing, the amount of the civil penalty assessed must be determined in accordance with paragraph (h) of this section, and will not be limited to the amount assessed by the Secretary or any offer of mitigation or remission made by the Secretary.

(j) *How you request a hearing.* (1) You may file a written, dated request for a hearing on a notice of failure to comply or notice of assessment with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203-1923. You must enclose a copy of the notice of failure to comply or the notice of assessment. Your request must state the relief sought, the basis for challenging the facts used as the basis for determining the failure to comply or fixing the assessment, and your preference of the place and date for a hearing. You must serve a copy of the request on the Solicitor of the Department of the Interior personally or by registered or certified mail (return receipt requested) at the address specified in the notice of failure to comply or notice of assessment. Hearings must take place following procedures set forth in 43 CFR part 4, subparts A and B.

(2) Your failure to file a written request for a hearing within 45 days of

the date of service of a notice of failure to comply or notice of assessment waives your right to a hearing.

(3) Upon receiving a request for a hearing, the Hearings Division assigns an administrative law judge to the case, gives notice of assignment promptly to the parties, and files all pleadings, papers, and other documents in the proceeding directly with the administrative law judge, with copies served on the opposing party.

(4) Subject to the provisions of 43 CFR 1.3, you may appear by representative or by counsel, and may participate fully in the proceedings. If you fail to appear and the administrative law judge determines that this failure is without good cause, the administrative law judge may, in his/her discretion, determine that this failure waives your right to a hearing and consent to the making of a decision on the record.

(5) Departmental counsel, designated by the Solicitor of the Department of the Interior, represents the Secretary in the proceedings. Upon notice to the Secretary of the assignment of an administrative law judge to the case, this counsel must enter his/her appearance on behalf of the Secretary and must file all petitions and correspondence exchanges by the Secretary and the respondent that become part of the hearing record. Thereafter, you must serve all documents for the Secretary on his/her counsel.

(6) Hearing administration. (i) The administrative law judge has all powers accorded by law and necessary to preside over the parties and the proceedings and to make decisions under 5 U.S.C. 554-557.

(ii) The transcript of testimony; the exhibits; and all papers, documents, and requests filed in the proceedings constitute the record for decision. The administrative law judge renders a written decision upon the record, which sets forth his/her findings of fact and conclusions of law, and the reasons and basis for them.

(iii) Unless you file a notice of appeal described in these regulations, the administrative law judge's decision constitutes the final administrative determination of the Secretary in the matter and takes effect 30 calendar days from this decision.

(k) *How you appeal a decision.* (1) Either you or the Secretary may appeal the decision of an administrative law judge by filing a "Notice of Appeal" with the Interior Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203-1954, within 30 calendar days of the date of the

administrative law judge's decision. This notice must be accompanied by proof of service on the administrative law judge and the opposing party.

(2) To the extent they are not inconsistent with these regulations, the provisions of the Department of the Interior Hearings and Appeals Procedures in 43 CFR part 4, subpart D, apply to such appeal proceedings. The appeal board's decision on the appeal must be in writing and takes effect as the final administrative determination of the Secretary on the date that the decision is rendered, unless otherwise specified in the decision.

(3) You may obtain copies of decisions in civil penalty proceedings instituted under the Act by sending a request to the Interior Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203-1954. Fees for this

service are established by the director of that office.

(l) *The final administrative decision.*

(1) When you have been served with a notice of assessment and have accepted the penalty as provided in these regulations, the notice constitutes the final administrative decision.

(2) When you have been served with a notice of assessment and have not filed a timely request for a hearing as provided in these regulations, the notice of assessment constitutes the final administrative decision.

(3) When you have been served with a notice of assessment and have filed a timely request for a hearing as provided in these regulations, the decision resulting from the hearing or any applicable administrative appeal from it constitutes the final administrative decision.

(m) *How you pay the penalty.* (1) If you are assessed a civil penalty, you have 45 calendar days from the date of issuance of the final administrative

decision to make full payment of the penalty assessed to the Secretary, unless you have filed a timely request for appeal with a court of competent jurisdiction.

(2) If you fail to pay the penalty, the Secretary may request the Attorney General of the United States to collect the penalty by instituting a civil action in the U.S. District Court for the district in which your museum is located. In these actions, the validity and amount of the penalty is not subject to review by the court.

(3) Assessing a penalty under this section is not a waiver by the Secretary of the right to pursue other available legal or administrative remedies.

Dated: December 16, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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Part III

**Department of
Defense**

**General Services
Administration**

**National Aeronautics
and Space
Administration**

48 CFR Part 2, et al.

**Federal Acquisition Regulation; Central
Contractor Registration; Proposed Rule**

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 2, et al.****[FAR Case 2002-018]****RIN 9000-AJ61****Federal Acquisition Regulation;
Central Contractor Registration**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to require contractor registration in the Central Contractor Registration (CCR) database prior to award of any contract, basic agreement, basic ordering agreement, or blanket purchase agreement. In addition, the rule requires contracting officers to modify existing contracts whose period of performance extends beyond September 30, 2003, to require contractors to register in the CCR database by September 30, 2003. The rule also revises the source list of supplies at FAR 13.102 to reflect statutory changes in 15 U.S.C. 644(g).

DATES: Interested parties should submit comments in writing on or before June 2, 2003, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—farcase.2002-018@gsa.gov. Please submit comments only and cite FAR case 2002-018 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAR case 2002-018.

SUPPLEMENTARY INFORMATION:**A. Background**

This rule proposes to amend the Federal Acquisition Regulation (FAR) to

require contractor registration in a Central Contractor Registration (CCR) database prior to the award of a contract, basic agreement, basic ordering agreement, blanket purchase agreement, and the modification of all existing contracts, basic agreements, basic ordering agreements, blanket purchase agreements, or orders by September 30, 2003.

Certain agencies, *e.g.*, DoD, currently require in their regulations that contractors register in the CCR database. For other agencies, under current FAR regulations, contractors are required to submit the same information to various contracting and payment offices. Under the proposed rule, contractors are required to provide certain business information, including their Taxpayer Identification Number (TINs) and Electronic Funds Transfer (EFT) information only once into a common Governmentwide data source. The Government will use this common Governmentwide data source to more efficiently meet the requirements of the Debt Collection Improvement Act of 1996 (section 31001 of Pub. L. 104-134). This proposed rule will not create a total electronic commerce environment, but will help provide a basic framework or foundation that will allow migration to a total electronic commerce environment. There are other projects that are completed (FedBizOpps) or in the planning stages, which are complementary and will also become part of the total electronic commerce initiative.

The "Business Partner Network" definition in the FAR coverage has been limited to contractors because the regulation is directed towards contractors. It should be noted that Government use of the Business Partner Network is broader in scope and includes contractors, grantees, and others.

Also, the source list of supplies at FAR 13.102 has been revised to reflect statutory changes in 15 U.S.C. 644(g).

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for

the Small Business Administration. The analysis is summarized as follows:

Certain agencies, *e.g.*, DoD, currently require in their regulations that contractors register in the CCR database. For other agencies, under current FAR regulations, contractors are required to submit the same information to various contracting and payment offices. Under the proposed rule, contractors are required to provide certain business information, including their Taxpayer Identification Number (TINs) and Electronic Funds Transfer (EFT) information only once into a common Governmentwide data source. The Government will use this common Governmentwide data source to more efficiently meet the requirements of the Debt Collection Improvement Act of 1996 (section 31001 of Pub. L. 104-134). This proposed rule will not create a total electronic commerce environment, but will help provide a basic framework or foundation that will allow migration to a total electronic commerce environment. There are other projects that are completed (FedBizOpps) or in the planning, which are complementary and will also become part of the total electronic commerce initiative.

To date, no supporting data has been collected; therefore, there is no available estimate of the number of small businesses that will be subject to the rule. However, some agencies (*e.g.*, DoD) already have this requirement and there does not appear to be any adverse impact on small business. Based on Federal Procurement Data System information, approximately, 54,199 businesses (42,675 small businesses, 11,524 large businesses) were awarded contracts of \$25,000 or more in fiscal year 2001. It is estimated that a majority of them will be subject to the rule. Many of these businesses are already among the over 200,000 registrants in CCR. Information is not available to identify the additional number of small businesses that were awarded contracts of less than \$25,000, or were awarded basic agreements, basic ordering agreements, or blanket purchase agreements. All small entities will be subject to the rule unless their contract, basic agreements, basic ordering agreements, and blanket purchase agreements fall within one of the five exceptions. Administrative or financial personnel, who have general knowledge of the contractor's business, including the contractor's bank account and financial agent, are able to register by providing the pertinent information into the CCR database. Existing regulations require contractors to submit, with each offer, or as a term of each basic agreement, basic ordering agreement, and blanket purchase agreement, the same information.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts 2, 4, 13, 32, and 52 in accordance with 5 U.S.C. 610. Comments must be submitted separately

and should cite 5 U.S.C 601, *et seq.* (FAR case 2002-018), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies because the proposed rule contains information collection requirements. Accordingly, the FAR Secretariat has submitted a request for approval of a new information collection requirement concerning Central Contractor Registration to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Annual Reporting Burden

The paperwork burden analysis takes into account the burden required for current registrants to keep the information current, complete and accurate and the burden required for new registrants to review instructions, search existing data sources, gather and maintain the data needed, and completing and reviewing the collection of information. Public reporting burden for this collection of information is estimated to average 1 hour per response for new and current registrants.

The annual reporting burden is estimated as follows:

Respondents: 54,199.

Responses per respondent: 1.

Total annual responses: 54,199.

Preparation hours per response: 1.

Total response burden hours: 54,199.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than June 2, 2003, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requesters may obtain a copy of the justification from the General Services

Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control Number 9000-00XX, Central Contractor Registration, in all correspondence.

List of Subjects in 48 CFR Parts 2, 4, 13, 32, and 52

Government procurement.

Dated: March 27, 2003.

Ralph J. De Stefano,

Acting Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 4, 13, 32, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 13, 32, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101(b) by adding, in alphabetical order, the definitions “Central Contractor Registration (CCR) database”, “Data Universal Numbering System (DUNS) number”, “Data Universal Numbering System +4 (DUNS+4) number”, and “Registered in the CCR database” to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Central Contractor Registration (CCR) database means the primary Government repository for contractor information required for the conduct of business with the Government.

* * * * *

Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by Dun and Bradstreet plus a 4-character suffix that may be assigned by a business concern. This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see Subpart 32.11) for the same concern.

* * * * *

Registered in the CCR database means that—

(1) The contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated mandatory data fields and has marked the record “Active”.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

3. Amend section 4.603 by revising paragraph (a)(1) to read as follows:

4.603 Solicitation provisions.

(a)(1) The contracting officer shall insert the provision at 52.204-6, Data Universal Numbering System (DUNS) Number, in solicitations that—

(i) Are expected to result in a requirement for the generation of an SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report (see 4.602(c)), or a similar agency form; and

(ii) Do not contain the clause at 52.204-XX, Central Contractor Registration.

* * * * *

4. Add subpart 4.11 to read as follows:

Subpart 4.11—Central Contractor Registration

Sec.

4.1100 Scope.

4.1101 Definitions.

4.1102 Policy.

4.1103 Procedures.

4.1104 Solicitation provision and contract clauses.

4.1100 Scope.

This subpart prescribes policies and procedures for requiring contractor registration in the Central Contractor Registration (CCR) database, a part of the Business Partner Network (BPN) to—

(a) Increase visibility of vendor sources (including their geographical locations) for specific supplies and services; and

(b) Establish a common source of vendor data for the Government.

4.1101 Definitions.

As used in this subpart—

Agreement means basic agreement, basic ordering agreement, or blanket purchase agreement.

Business Partner Network means an integrated electronic infrastructure the Government uses to manage (*i.e.*, collect, validate, access and maintain) the information it needs to transact business with its contractors.

4.1102 Policy.

(a) Prospective contractors shall be registered in the CCR database prior to award of a contract or agreement, except for—

(1) Purchases that use a Governmentwide commercial purchase card as the purchasing mechanism;

(2) Classified contracts or purchases (see 4.401) when registration in the CCR database, or use of CCR data, could compromise the safeguarding of classified information or national security;

(3) Contracts awarded by—

(i) Deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) or humanitarian or peacekeeping operations as defined in 10 U.S.C. 2302(7); or

(ii) Contracting officers in the conduct of emergency operations, such as responses to natural or environmental disasters or national or civil emergencies, e.g., Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121);

(4) Contracts to support unusual or compelling needs (see 6.302–2); and

(5) Awards made to foreign vendors for work performed outside the United States, if it is impractical to obtain CCR registration before award.

(b) If practical, the contracting officer shall modify the contract or agreement awarded under paragraph (a)(3) or (a)(4) of this section to required CCR registration.

(c)(1)(i) If a contractor has legally changed its business name, “doing business as” name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart 42.12, the contractor shall provide the responsible contracting officer a minimum of one business day’s written notification of its intention to change the name in the CCR database; comply with the requirements of 42.12; and agree in writing to the timeline and procedures specified by the responsible contracting officer. The contractor must provide with the notification sufficient documentation to support the “legally” changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of the FAR clause at 52.204–XX, CCR, or fails to perform the agreement at FAR 52.204–XX(g)(1)(i)(3), and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the contractor to be other than the contractor indicated in the contract will be considered to be incorrect information within the meaning of the “suspension of payment” paragraph of the EFT clause of this contract.

(2) The contractor shall not change the name or address for electronic funds transfer payments (EFT) or manual

payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims).

Assignees shall be separately registered in the CCR database. Information provided to the contractor’s CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that contractor will be considered to be incorrect information within the meaning of the “suspension of payment” paragraph of the EFT clause of this contract.

4.1103 Procedures.

(a) Unless the acquisition is exempt under 4.1102, the contracting officer—

(1) Shall verify that the prospective contractor is registered in the CCR database (see paragraph (b) of this section) before awarding a contract or agreement;

(2) Should use the DUNS number or, if applicable, the DUNS+4 number, to verify registration—

(i) Via the Internet at <http://www.ccr.gov>;

(ii) By calling toll-free: 1–888–227–2423, commercial: (616) 961–5757, or DSN: 932–5757; or

(iii) As otherwise provided by agency procedures; and

(3) Shall modify a contract or agreement that does not already include the requirement to be registered in the CCR database and maintain registration until final payment, and whose period of performance extends beyond September 30, 2003—

(i) To incorporate, as appropriate, the clause at 52.204–XX, Central Contractor Registration, and its Alternate 1, or, for a contract for commercial items, an addendum to 52.212–4, Contract Terms and Conditions—Commercial Items, that requires the contractor to be registered in the CCR database by September 30, 2003, and maintain registration until final payment; and

(ii) In sufficient time to permit CCR registration by September 30, 2003.

(b) Need not verify registration before placing an order or call if the contract or agreement includes the clause at 52.204.XX, or 52.212–4(t), or a similar agency clause.

(c) If the contracting officer, when awarding a contract or agreement, determines that a prospective contractor is not registered in the CCR database and an exception to the registration requirements for the award does not apply (see 4.1102), the contracting officer shall—

(1) If the needs of the requiring activity allow for a delay, make award after the apparently successful offeror

has registered in the CCR database. The contracting officer shall advise the offeror of the number of days it will be allowed to become registered. If the offeror does not become registered by the required date, the contracting officer shall award to the next otherwise successful registered offeror following the same procedures (i.e., if the next apparently successful offeror is not registered, the contracting officer shall advise the offeror of the number of days it will be allowed to become registered, etc.); or

(2) If the needs of the requiring activity do not allow for a delay, proceed to award to the next otherwise successful registered offeror, provided that written approval is obtained at one level above the contracting officer.

(d) Agencies shall protect against improper disclosure of contractor CCR information.

(e) The contracting officer shall, on contractual documents transmitted to the payment office, provide the DUNS number, or, if applicable, the DUNS+4, in accordance with agency procedures.

4.1104 Solicitation provision and contract clauses.

Except as provided in 4.1102(a), use the clause at 52.204–XX Central Contractor Registration, in solicitations and contracts that require contractors to be registered in the CCR database. If modifying a contract, or an agreement to require registration, use the clause with its Alternate I.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

5. Amend section 13.102 by revising the introductory text of paragraph (a); and adding paragraphs (a)(4) and (a)(5) to read as follows:

13.102 Source list.

(a) Each contracting office should maintain a source list (or lists, if more convenient). A list of new supply sources may be obtained from the Central Contractor Registration database (see 4.11) at <http://www.ccr.gov> or the Procurement Marketing and Access Network (PRO–Net) of the Small Business Administration. Either list should identify the status of each source (when the status is made known to the contracting office) in the following categories:

* * * * *

(4) HUBZone small business.

(5) Service-disabled veteran-owned small business.

* * * * *

PART 32—CONTRACT FINANCING

6. Amend section 32.805 by adding paragraph (d)(4) to read as follows:

32.805 Procedure.

* * * * *

(d) * * *
(4) The assignee is registered separately in the Central Contractor Registration unless one of the exceptions in 4.1102 applies.

* * * * *

32.1103 [Amended]

7. Amend section 32.1103 by removing the word “where” from paragraph (d).

8. Amend section 32.1110 by revising the introductory text of paragraph (a), (a)(1), and (a)(2)(i) to read as follows:

32.1110 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at—

(1) 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, in solicitations and contracts that include the clause at 52.204–XX, Central Contractor Registration, or an agency clause that requires a contractor to be registered in the CCR database and maintain registration until final payment, unless—

(i) Payment will be made through a third party arrangement (see 13.301 and paragraph (d) of this section); or

(ii) An exception listed in 32.1103(a) through (i) applies.

(2)(i) 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration, in solicitations and contracts that require EFT as the method for payment but do not include the clause at 52.204–XX, Central Contractor Registration, or a similar agency clause that requires the contractor to be registered in the CCR database.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. Amend section 52.204–6 by revising the date of the provision and paragraph (b); and removing paragraph (c). The revised text reads as follows:

52.204–6 Data Universal Numbering System (DUNS) Number.

* * * * *

Data Universal Numbering System (DUNS) Number (Date)

* * * * *

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) If located within the United States, by calling Dun and Bradstreet at 1–800–333–0505 or via the Internet at <http://www.dnb.com>; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet Information Services Office.

(2) The offeror should be prepared to provide the following information:

(i) Company name.

(ii) Company address.

(iii) Company telephone number.

(iv) Line of business.

(v) Chief executive officer/key manager.

(vi) Date the company was started.

(vii) Number of people employed by the company.

(viii) Company affiliation.

(End of provision)

10. Add section 52.204–XX to read as follows:

52.204–XX Central Contractor Registration.

As prescribed in 4.1104(a), use the following clause:

Central Contractor Registration (Date)

(a) Definitions. As used in this clause—

Central Contractor Registration (CCR) database means the primary Government repository for Contractor information required for the conduct of business with the Government.

Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by Dun and Bradstreet plus a 4-character suffix that may be assigned by a business concern. This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR 32.11) for the same parent concern.

Registered in the CCR database means that—

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated all mandatory data fields and has marked the record “Active”.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS+4” followed by the DUNS or DUNS+4 number that identifies the offeror’s name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) If located within the United States, by calling Dun and Bradstreet at 1–800–333–0505 or via the Internet at <http://www.dnb.com>; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet Information Services Office.

(2) The offeror should be prepared to provide the following information:

(i) Company name.

(ii) Company address.

(iii) Company telephone number.

(iv) Line of business.

(v) Chief executive officer/key manager.

(vi) Date the company was started.

(vii) Number of people employed by the company.

(viii) Company affiliation.

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered offeror.

(e) Processing time should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government’s reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g)(1)(i) If a Contractor has legally changed its business name, “doing business as” name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not

completed the necessary requirements regarding novation and change-of-name agreements in subpart 42.12, the Contractor shall provide the responsible contracting officer a minimum of one business day's written notification of its intention to (1) Change the name in the CCR database; (2) comply with the requirements of subpart 42.12; and (3) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the "legally" changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(3) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for electronic funds transfer (EFT) payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the Internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 616-961-5757.

(End of clause)

Alternate I (DATE). As prescribed in 4.1104(a), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b)(1) The Contractor shall be registered in the CCR database by _____ [*Contracting Officer shall insert a date no later than September 30, 2003*]. The Contractor shall maintain registration during performance and through final payment of this contract.

(2) The Contractor shall enter, in the block with its name and address on the

cover page of the Standard Form 30, Amendment of Solicitation/Modification of Contract, the annotation "DUNS" or "DUNS+4" followed by the DUNS or DUNS+4 number that identifies the Contractor's name and address exactly as stated in this contract. The DUNS number will be used by the Contracting Officer to verify that the Contractor is registered in the CCR database.

11. Amend section 52.212-1 by revising date of the provision and paragraph (j); and adding a new paragraph (k) to read as follows:

52.212-1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions to Offerors—Commercial Items (Date)

* * * * *

(j) *Data Universal Numbering System (DUNS) Number.* (Applies to all offers exceeding \$25,000, and offers of \$25,000 or less if the solicitation requires the Contractor to be registered in the Central Contractor Registration (CCR) database. The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS+4" followed by the DUNS or DUNS+4 number that identifies the offeror's name and address. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR 32.11) for the same parent concern. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet to obtain one. An offeror within the United States may contact Dun and Bradstreet by calling 1-800-333-0505 or via the Internet at <http://www.dnb.com>. An offeror located outside the United States must contact the local Dun and Bradstreet Information Services Office for a DUNS number.

(k) *Central Contractor Registration.* Unless exempted by an addendum to this solicitation, by submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance and through final payment of any contract resulting from this solicitation. If the offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered offeror. Offerors may obtain information on registration and annual confirmation requirements via the Internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 616-961-5757.

(End of provision)

12. Amend section 52.212-4 by revising date of the clause; and adding a new paragraph (t) to read as follows:

52.212-4 Contract Terms and Conditions—Commercial Items

* * * * *

Contract Terms and Conditions—Commercial Items (Date)

* * * * *

(t) *Central Contractor Registration (CCR).*
(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2) The Contractor shall not change the name or address for electronic funds transfer (EFT) payments or manual payments as appropriate in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(3) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the Internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 616-961-5757.
(End of clause)

52.213-4 [Amended]

13. Amend section 52.213-4 by removing from the clause heading "(SEPT 2002)" and in paragraph (b)(1)(ix) "(MAY 1999)" and adding in their places "(DATE)".

14. Amend section 52.232-33 by—

- a. Revising the date of clause;
- b. Removing paragraph (e);
- c. Redesignating paragraphs (f) through (j) as (e) through (i), respectively; and
- d. Revising the newly designated paragraph (g) to read as follows:

52.232-33 Payment by Electronic Funds Transfer—Central Contractor Registration.

* * * * *

Payment by Electronic Funds Transfer—Central Contractor Registration (Date)

* * * * *

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such

assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized

under an assignment of claims pursuant to subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of

claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

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Federal Register

**Thursday,
April 3, 2003**

Part IV

**Nuclear Regulatory
Commission**

**10 CFR Parts 170 and 171
Revision of Fee Schedules; Fee Recovery
for FY 2003; Proposed Rule**

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AH14

Revision of Fee Schedules; Fee Recovery for FY 2003

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which requires that the NRC recover approximately 94 percent of its budget authority in fiscal year (FY) 2003, less the amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 2003 is approximately \$526.3 million.

DATES: The comment period expires May 5, 2003. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because OBRA-90 requires that the NRC collect the FY 2003 fees by September 30, 2003, requests for extensions of the comment period will not be granted.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301-415-1966). Comments may be faxed to (301) 415-1101.

Comments may also be submitted via the NRC's rulemaking Web site (<http://ruleforum.llnl.gov>). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the NRC's rulemaking site, contact Ms. Carol Gallagher, 301-415-5905; e-mail CAG@nrc.gov.

With the exception of restricted information, documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System

(ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, or 301-415-4737, or by e-mail to pdr@nrc.gov.

In addition to being available in ADAMS, the agency workpapers that support these proposed changes to 10 CFR parts 170 and 171 may also be examined during the 30-day comment period at the NRC Public Document Room, Room O-1F22, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

FOR FURTHER INFORMATION CONTACT: Robert Carlson, telephone 301-415-8165; or Ann Norris, telephone 301-415-7807; Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Proposed Action
- III. Plain Language
- IV. Voluntary Consensus Standards
- V. Environmental Impact: Categorical Exclusion
- VI. Paperwork Reduction Act Statement
- VII. Regulatory Analysis
- VIII. Regulatory Flexibility Analysis
- IX. Backfit Analysis

I. Background

For FYs 1991 through 2000, OBRA-90, as amended, required that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the U.S. Department of Energy (DOE) administered NWF, by assessing fees. To address fairness and equity concerns raised by the NRC related to charging NRC license holders for agency budgeted costs that do not provide a direct benefit to the licensee, the FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. As a result, the NRC is required to recover approximately 94 percent of its FY 2003 budget authority, less the amounts appropriated from the NWF, through fees. In the Energy and Water Development Appropriation Act, 2003, contained in the Consolidated Appropriations Resolution, 2003 (Public Law 108-7), Congress appropriated \$584.6 million to the NRC for FY 2003. The total amount NRC is required to recover for FY 2003 is approximately \$526.3 million.

The NRC assesses two types of fees to meet the requirements of OBRA-90, as amended. First, license and inspection

fees, established in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for new licenses, and for certain types of existing licenses, the review of renewal applications, the review of amendment requests, and inspections. Second, annual fees established in 10 CFR part 171 under the authority of OBRA-90, recover generic and other regulatory costs not otherwise recovered through 10 CFR part 170 fees.

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 94 percent of its FY 2003 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF. The NRC's total budget authority for FY 2003 is \$584.6 million, of which approximately \$24.7 million has been appropriated from the NWF. Based on the 94 percent fee recovery requirement, the NRC must recover approximately \$526.3 million in FY 2003 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts. The total amount to be recovered through fees and other offsetting receipts for FY 2003 is \$46.8 million more than the amount estimated for recovery in FY 2002.

The NRC estimates that approximately \$124.7 million will be recovered in FY 2003 from part 170 fees and other offsetting receipts. For FY 2003, the NRC also estimates a net adjustment of approximately \$1.9 million for FY 2003 invoices that the NRC estimates will not be paid during the fiscal year, and for payments received in FY 2003 for FY 2002 invoices. The remaining \$399.7 million would be recovered through the part 171 annual fees, compared to \$345.6 million for FY 2002.

A primary reason for the increase in total fees, as well as the annual fee amount, for FY 2003 compared to FY 2002 is that the amount to be recovered for FY 2003 includes \$29.3 million for homeland security activities, whereas the FY 2002 funding for homeland security was excluded from fees. While the President's FY 2003 budget requested that NRC's funding for homeland security activities continue to be excluded from the fee base, the Energy and Water Development

Appropriations Act, 2003, contained in the Consolidated Appropriations Resolution, 2003 (Public Law 108-7), included NRC's budget for homeland security activities in the fee base. Therefore, the proposed FY 2003 fees include the \$29.3 million budgeted for

NRC's homeland security activities. Other reasons for the fee increases include the 2003 Federal pay raise, and the increased workload for new reactor licensing activities and reactor license renewal.

Table I summarizes the budget and fee recovery amounts for FY 2003. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2003

[Dollars in millions]

Total Budget Authority	\$584.6
Less NWF	-24.7
Balance	\$559.9
Fee Recovery Rate for FY 2003	× 94.0%
Total Amount to be Recovered For FY 2003	\$526.3
Less Carryover from FY 2002	-0
Amount to be Recovered Through Fees and Other Receipts	\$526.3
Less Estimated Part 170 Fees and Other Receipts	-124.7
Part 171 Fee Collections Required	\$401.6
Part 171 Billing Adjustments:	
Unpaid FY 2003 Invoices (estimated)	2.4
Less Payments Received in FY 2003 for Prior Year Invoices (estimated)	-4.3
Subtotal	-1.9
Adjusted Part 171 Collections Required	\$399.7

The FY 2003 final fee rule will be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fees for FY 2003 would become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee to reactors and major fuel cycle facilities upon publication of the FY 2003 final rule. For these licensees, payment would be due on the effective date of the FY 2003 rule. Those materials licensees whose license anniversary date during FY 2003 falls before the effective date of the final FY 2003 rule would be billed for the annual fee during the anniversary month of the license at the FY 2002 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2003 rule would be billed for the annual fee at the FY 2003 annual fee rate during the anniversary month of the license, and payment would be due on the date of the invoice.

As a matter of courtesy, the NRC plans to continue mailing the proposed fee rule to all licensees, although, in accordance with its FY 1998 announcement, the NRC has discontinued mailing the final fee rule to all licensees as a cost-saving measure. Accordingly, the NRC does not plan to routinely mail the FY 2003 final fee rule or future final fee rules to licensees.

However, the NRC will send the final rule to any licensee or other person upon specific request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301-415-7554, or e-mail us at fees@nrc.gov. The NRC plans to publish the final fee rule in June 2003. In addition to publication in the **Federal Register**, the final rule will be available on the Internet at <http://ruleforum.llnl.gov> for at least 90 days after the effective date of the final rule.

The NRC is proposing to make changes to 10 CFR parts 170 and 171 as discussed in Sections A and B below.

A. Amendments to 10 CFR part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended

The NRC is proposing to establish the hourly rates used to calculate fees and to adjust the part 170 fees based on the proposed hourly rates and the results of the agency's biennial review of fees required by the Chief Financial Officer (CFO) Act of 1990 (Pub. L. 101-578, November 15, 1990, 104 Stat. 2838). Additionally, the NRC is proposing to revise fee category 15.A. of § 170.31 to cover all categories of radioactive waste import license applications and to revise category 15.B. to remove the

radioactive waste import license applications.

The proposed amendments are as follows:

1. Hourly Rates

The NRC is proposing to establish in § 170.20 the two professional hourly rates for NRC staff time. These proposed rates would be based on the number of FY 2003 direct program full time equivalents (FTEs) and the FY 2003 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF. These rates are used to determine the part 170 fees. The proposed rate for the reactor program is \$156 per hour (\$276,661 per direct FTE). This rate would be applicable to all activities for which fees are assessed under § 170.21 of the fee regulations. The proposed rate for the materials program (nuclear materials and nuclear waste programs) is \$158 per hour (\$280,876 per direct FTE). This rate would be applicable to all activities for which fees are assessed under § 170.31 of the fee regulations. In the FY 2002 final fee rule, the reactor and materials program rates were \$156 and \$152, respectively.

A major reason for the 4 percent increase to the materials program rate is the salary and benefits increase that results primarily from the Government-wide pay raise. While salary and benefits also increase for the reactor

program, the increase is offset by a reduction in the average overhead cost per direct FTE.

The method used to determine the two professional hourly rates is as follows:

a. Direct program FTE levels are identified for the reactor program and the materials program (nuclear materials and nuclear waste programs).

b. Direct contract support, which is the use of contract or other services in

support of the line organization's direct program, is excluded from the calculation of the hourly rates because the costs for direct contract support are charged directly through the various categories of fees.

c. All other program costs (*i.e.*, Salaries and Benefits, Travel) represent "in-house" costs and are to be collected by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus

contracts for non-program direct management and support, and for the Office of the Inspector General, are allocated to each program based on that program's direct costs. This method results in the following costs which are included in the hourly rates. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE II.—FY 2003 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

	Reactor program	Materials program
Direct Program Salaries & Benefits (millions)	\$134.1	\$34.4
Overhead Salaries and Benefits, Program Travel and Other Support (millions)	62.3	17.1
Allocated Agency Management and Support (millions)	118.5	31.1
Subtotal (millions)	\$314.9	\$82.6
Less offsetting receipts (million)	- 0.1	- 0.00
Total Budget Included in Hourly Rate (millions)	\$314.8	\$82.6
Program Direct FTEs	1,138.0	294.1
Rate per Direct FTE	\$276,661	\$280,876
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	\$156	\$158

As shown in Table II, dividing the \$314.8 million budgeted amount (rounded) included in the hourly rate for the reactor program by the reactor program direct FTEs (1138.0) results in a rate for the reactor program of \$276,661 per FTE for FY 2003. The Direct FTE Hourly Rate for the reactor program would be \$156 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$276,661) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A-76, "Performance of Commercial Activities." Similarly, dividing the \$82.6 million budgeted amount (rounded) included in the hourly rate for the materials program by the program direct FTEs (294.1) results in a rate of \$280,876 per FTE for FY 2003. The Direct FTE Hourly Rate for the materials program would be \$158 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$280,876) by the number of productive hours in one year (1,776 hours).

2. Fee Adjustments

The NRC is proposing to adjust the current part 170 fees in §§ 170.21 and 170.31 to reflect both the proposed hourly rates and the results of the biennial review of part 170 fees required by the CFO Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional

staff hours used to process a new license application for those materials licensees whose fees are based on the average cost method, or "flat" fees. This review also included new license and amendment applications for import and export licenses.

Evaluation of the historical data shows that fees based on the average number of professional staff hours required to complete licensing actions in the materials program should be increased in some categories and decreased in others to more accurately reflect current costs incurred in completing these licensing actions. The data for the average number of professional staff hours needed to complete new licensing actions was last updated in FY 2001 (66 FR 32452; June 14, 2001). Thus, the revised average professional staff hours in this proposed fee rule reflect the changes in the NRC licensing review program that have occurred since FY 2001.

As a result of the biennial review, the proposed licensing fees that are based on the average professional staff hours reflect an increase in average time for new license applications for six of the 33 materials program fee categories, a decrease in average time for eight fee categories, and the same average time for the remaining 19 fee categories. Similarly, the average time for applications for new export and import licenses and for amendments to export and import licenses remained the same

for eight fee categories in §§ 170.21 and 170.31, and decreased for two other fee categories.

The proposed licensing fees for fee categories K.1 through K.5 of § 170.21, and fee categories 1C, 1D, 2B, 2C, 3A through 3P, 4B through 9D, 10B, 15A through 15E, and 16 of § 170.31 are based on the revised average professional staff hours needed to process the licensing actions multiplied by the proposed materials program professional hourly rate for FY 2003.

The biennial review also included the "flat" fee for the general license registrations covered by fee Category 3.Q. As a result of this review, the proposed fee per registration is \$620, compared to the current fee of \$450. The proposed fee is based on the current estimated number of registrants, current annual resource estimates for the program, and the FY 2003 materials program FTE rate. This increase to the current fee of \$450 is based on experience with the registrations to date, which indicates that the average cost per registrant is higher than originally estimated. The next biennial review of the registration fee will be included in the FY 2005 fee rule; however, the registration fee may change in the FY 2004 fee rule if there is a change to the materials program FTE rate for FY 2004.

The amounts of the materials licensing "flat" fees are rounded as follows: fees under \$1,000 are rounded

to the nearest \$10, fees that are greater than \$1,000 but less than \$100,000 are rounded to the nearest \$100, and fees that are greater than \$100,000 are rounded to the nearest \$1,000. Applications filed on or after the effective date of the final rule would be subject to the revised fees in this proposed rule.

The NRC is also proposing to expand fee Category 15.A. of § 170.31 to include all categories of radioactive waste import license applications, and to modify Category 15.B. of § 170.31 to exclude these types of import license applications. This change is being proposed because all applications for the import of radioactive waste must be reviewed by the Executive Branch and require the involvement of all states and compacts, as well as extensive coordination within the NRC. Therefore, the NRC efforts for the waste import license applications are more closely aligned with the efforts for the other types of export and import licenses currently covered by Category 15.A.

In summary, the NRC is proposing to amend 10 CFR part 170 to—

1. Establish the materials and reactor programs FTE hourly rates;
2. Revise the licensing fees to be assessed to reflect the reactor and materials program hourly rates and to comply with the CFO Act requirement that fees be reviewed biennially and revised as necessary to reflect the cost to the agency;
3. Revise Category 15.A. of § 170.31 to include radioactive waste import licenses, and exclude these types of applications from Category 15.B.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

The NRC proposes to revise the annual fees for FY 2003 as follows.

1. Annual Fees

The NRC is proposing to establish rebaselined annual fees for FY 2003. The Commission's policy commitment, made in the statement of considerations accompanying the FY 1995 fee rule (60 FR 32225; June 20, 1995), and further explained in the statement of considerations accompanying the FY 1999 fee rule (64 FR 31448; June 10, 1999), determined that base annual fees will be re-established (rebaselined) at least every third year, and more frequently if there is a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licenses. The fees were last rebaselined in FY 2002. Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline the annual fees again this year. Rebaselining fees would result in increased annual fees compared to FY 2002 for four classes of licenses (power reactors, spent fuel storage/reactor decommissioning, fuel facilities, and rare earth facilities), and decreased annual fees for two classes (non-power reactors and uranium recovery). For the small materials users and transportation classes, some categories of licenses would have increased annual fees and others would have decreased annual fees.

The annual fees in §§ 171.15 and 171.16 would be revised for FY 2003 to recover approximately 94 percent of the NRC's FY 2003 budget authority, less the estimated amount to be recovered through part 170 fees and the amounts appropriated from the NWF. The total amount to be recovered through annual fees for FY 2003 is \$399.7 million, compared to \$345.6 million for FY 2002.

Within the fee classes, the proposed FY 2003 annual fees would increase for many categories of licenses, decrease for other categories, and for one category remain the same from the previous year. The two largest categories of materials licensees (which together include nearly

3,500 of NRC's approximately 4,900 materials user licenses) show annual fee decreases compared to FY 2002 of 7.4 percent and 9.8 percent. The increases in annual fees range from approximately 1.0 percent (for licenses authorizing receipt of radioactive waste for packaging and transfer to others for disposal) to approximately 175 percent (for rare earth facilities). The decreases in annual fees range from approximately 1.0 percent for DOE's transportation activities to approximately 53 percent for materials licenses authorizing possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies (other than field flooding). The fees remain the same for materials licenses authorizing possession and use of byproduct material in sealed sources for irradiation of materials where the source is not removed from its shield.

Factors affecting the changes to the annual fee amounts include adjustments in budgeted costs for the different classes of licenses (including the addition of budgeted costs for NRC's homeland security activities), the reduction in the fee recovery rate from 96 percent for FY 2002 to 94 percent for FY 2003, the estimated part 170 collections for the various classes of licenses, the increased hourly rate for the materials and waste program, and decreases in the numbers of licensees for certain categories of licenses. In addition, there is no carryover from FY 2002 to reduce the FY 2003 fees. The FY 2002 fees were reduced by a \$1.7 million carryover from FY 2001.

Table IV below shows the proposed rebaselined annual fees for FY 2003 for representative categories of licenses.

TABLE IV.—REBASELINED ANNUAL FEES FOR FY 2003

Class/category of licenses	Proposed FY 2003 Annual fee
Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	\$3,278,000
Spent Fuel Storage/Reactor Decommissioning	309,000
Nonpower Reactors	68,300
High Enriched Uranium Fuel Facility	5,836,000
Low Enriched Uranium Fuel Facility	1,957,000
UF ₆ Conversion Facility	839,000
Uranium Mills	64,800
Transportation:	
Users/Fabricators	75,000
Users Only	7,000

TABLE IV.—REBASELINED ANNUAL FEES FOR FY 2003—Continued

Class/category of licenses	Proposed FY 2003 Annual fee
Typical Materials Users:	
Radiographers	12,300
Well Loggers	4,700
Gauge Users	2,500
Broad Scope Medical	24,900

The annual fees assessed to each class of licenses include a surcharge to recover those NRC budgeted costs that are not directly or solely attributable to the classes of licenses, but must be recovered from licensees to comply with the requirements of OBRA-90, as amended. Based on the FY 2001 Energy

and Water Appropriations Act which amended OBRA-90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005, the total surcharge costs for FY 2003 will be reduced by about \$33.6 million. The total FY 2003 budgeted

costs for these activities and the reduction to the total surcharge amount for fee recovery purposes are shown in Table V. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE V.—SURCHARGE COSTS
[Dollars in millions]

Category of costs	FY 2003 budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	\$10.3
b. Agreement State oversight	8.8
c. Low-level waste disposal generic activities	2.7
d. Site decommissioning management plan activities not recovered under part 170	3.6
2. Activities not assessed part 170 licensing and inspection fees or part 171 annual fees based on existing law or Commission policy:	
a. Fee exemption for nonprofit educational institutions	6.7
b. Licensing and inspection activities associated with other Federal agencies	2.9
c. Costs not recovered from small entities under 10 CFR 171.16(c)	4.5
3. Activities supporting NRC operating licensees and others:	
a. Regulatory support to Agreement States	13.4
b. Generic decommissioning/reclamation (except those related to power reactors)	4.9
Total surcharge costs	57.8
Less 6 percent of NRC's FY 2003 total budget (less NWF)	- 33.6
Total Surcharge Costs to be Recovered	\$24.2

As shown in Table V, \$24.2 million would be the total surcharge cost allocated to the various classes of licenses for FY 2003. The NRC would continue to allocate the surcharge costs, except Low-Level Waste (LLW) surcharge costs, to each class of licenses

based on the percent of the budget for that class. The NRC would continue to allocate the LLW surcharge costs based on the volume of LLW disposed of by certain classes of licenses. The proposed surcharge costs allocated to each class would be included in the annual fee

assessed to each licensee. The FY 2003 proposed surcharge costs that would be allocated to each class of licenses are shown in Table VI. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE VI.—ALLOCATION OF SURCHARGE

	LLW surcharge		Non-LLW surcharge		Total surcharge
	Percent	\$,M	Percent	\$,M	\$,M
Operating Power Reactors	74	2.0	79.3	17.1	19.1
Spent Fuel Storage/Reactor Decomm.			8.2	1.8	1.8
Nonpower Reactors			0.1	0.0	0.0
Fuel Facilities	8	0.2	6.7	1.4	1.6
Materials Users	18	0.5	3.8	0.8	1.3
Transportation			1.2	0.3	0.3
Rare Earth Facilities			0.2	0.0	0.0
Uranium Recovery			0.7	0.1	0.1

TABLE VI.—ALLOCATION OF SURCHARGE—Continued

	LLW surcharge		Non-LLW surcharge		Total surcharge
	Percent	\$,M	Percent	\$,M	\$,M
Total Surcharge	100	2.7	100.0	21.5	24.2

The budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in A. through H. below. The workpapers which support this proposed rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The workpapers are available electronically at the NRC's Electronic Reading Room on the Internet at Web site address <http://www.gov/reading-rm/adams.html>. During the 30-day public comment period, the workpapers may also be examined at the NRC Public Document Room located at One White Flint North, Room O-1F22, 11555 Rockville Pike, Rockville, MD 20852-2738.

a. *Fuel Facilities.* The proposed annual fees for the fuel facility class reflect increased budgeted costs for activities that are not subject to cost recovery under part 170, primarily homeland security activities related to fuel facilities. Such activities include the issuance and follow-up of orders directing the fuel facility licensees to take interim compensatory measures to increase security, and a series of risk-informed vulnerability assessments the NRC is conducting on fuel facilities.

The FY 2003 budgeted costs of approximately \$27.0 million to be recovered in annual fees assessed to the fuel facility class is allocated to the individual fuel facility licensees based

on the effort/fee determination matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). In the matrix (which is included in the NRC workpapers that are publicly available), licensees are grouped into five categories according to their licensed activities (*i.e.*, nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

The methodology is adaptable to changes in the number of licensees or certificate holders, licensed-certified material/activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, it may result in a change of category for a particular fuel facility licensee as a result of the methodology used in the fuel facility effort/fee matrix. Consequently, this change may also have an effect on the fees assessed to other fuel facility licensees and certificate holders. For example, if a fuel facility licensee amends its license/certificate in such a way (*e.g.*, decommissioning or license termination) that results in them not

being subject to part 171 costs applicable to the fee class, then the budgeted costs for the safety and/or safeguards components would be spread among the remaining fuel facility licensees/certificate holders, resulting in higher fees for those affected licensees.

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by license or certificate. Although a licensee/certificate holder may elect not to fully utilize a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities, and the relative generic regulatory programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity, and the commensurate generic regulatory program (*i.e.*, scope, depth and rigor) level of effort.

The effort factors for the various subclasses of fuel facility licenses are summarized in Table VII.

TABLE VII.—EFFORT FACTORS FOR FUEL FACILITIES

Facility type	Number of facilities	Effort factors	
		Safety	Safeguards
High Enriched Uranium Fuel	2	91 (36.0%)	76 (57.1%)
Enrichment	2	70 (27.7%)	34 (25.6%)
Low Enriched Uranium Fuel	3	66 (26.1%)	18 (13.5%)
UF ₆ Conversion	1	12 (4.7%)	0 (0%)
Limited Operations Facility	1	8 (3.2%)	3 (2.3%)
Others	1	6 (2.4%)	2 (1.5%)

Applying these factors to the safety, safeguards, and surcharge components of the \$27.0 million total annual fee amount for the fuel facility class results in the proposed annual fees for each licensee within the subcategories of this class summarized in Table VIII.

TABLE VIII.—PROPOSED ANNUAL FEES FOR FUEL FACILITIES

Facility type	Proposed FY 2003 annual fee
High Enriched Uranium Fuel	\$5,836,000

TABLE VIII.—PROPOSED ANNUAL FEES FOR FUEL FACILITIES—Continued

Facility type	Proposed FY 2003 annual fee
Uranium Enrichment	3,634,000

TABLE VIII.—PROPOSED ANNUAL FEES FOR FUEL FACILITIES—Continued

Facility type	Proposed FY 2003 annual fee
Low Enriched Uranium	1,957,000
UF6 Conversion	839,000
Limited Operations Facility ...	769,000
Others	559,000

b. Uranium Recovery Facilities. The FY 2003 budgeted costs, including surcharge costs, to be recovered through annual fees assessed to the uranium recovery class is approximately \$1.5 million. Approximately \$1.0 million of this amount would be assessed to DOE. The remaining \$0.5 million would be recovered through annual fees assessed to conventional mills, in-situ leach solution mining facilities, and 11e.(2) mill tailings disposal facilities.

Consistent with the change in methodology adopted in the FY 2002 final fee rule (67 FR 42612; June 24, 2002), the total annual fee amount, less the amounts specifically budgeted for Title I activities, is allocated equally between Title I and Title II licensees. This would result in an annual fee being assessed to DOE to recover the costs specifically budgeted for NRC's Title I activities plus 50 percent of the remaining annual fee amount, including the surcharge, for the uranium recovery class. The remaining surcharge, generic, and other costs would be assessed to the NRC Title II program licensees that are subject to annual fees. The costs to be recovered through annual fees assessed to the uranium recovery class are shown

below. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

DOE Annual Fee Amount (UMTRCA Title I and Title II general licenses):	
UMTRCA Title I budgeted costs	\$393,227
50% of generic/other uranium recovery budgeted costs	495,513
50% of uranium recovery surcharge	70,829
Total Annual Fee Amount for DOE	959,569
Annual Fee Amount for UMTRCA Title II Specific Licenses:	
50% of generic/other uranium recovery budgeted costs	495,513
50% of uranium recovery surcharge	70,829
Total Annual Fee Amount for Title II Specific Licenses	566,342

The costs allocated to the various categories of Title II specific licensees are based on the uranium recovery matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). The methodology for establishing part 171 annual fees for Title II uranium recovery licensees has not changed and is as follows:

(1) The methodology identifies three categories of licenses: conventional uranium mills (Class I facilities), uranium solution mining facilities (Class II facilities), and mill tailings disposal facilities (11e.(2) disposal

facilities). Each of these categories benefits from the generic uranium recovery program efforts (e.g., rulemakings, staff guidance documents);

(2) The matrix relates the category and the level of benefit by program element and subelement;

(3) The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure;

(4) Each of the major program elements was further divided into three subelements;

(5) The three major subelements of generic activities associated with uranium facility operations are regulatory efforts related to the operation of mills, handling and disposal of waste, and prevention of groundwater contamination. The three major subelements of generic activities associated with uranium facility closure are regulatory efforts related to decommissioning of facilities and land clean-up, reclamation and closure of tailings impoundments, and groundwater clean-up. Weighted values were assigned to each program element and subelement considering health and safety implications and the associated effort to regulate these activities. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The relative weighted factors per facility type for the various subclasses of specifically licensed Title II uranium recovery licensees are as follows:

TABLE IX.—WEIGHTED FACTORS FOR URANIUM RECOVERY LICENSES

Facility type	Number of facilities	Category weight	Level of Benefit, Total weight	
			Value	Percent
Class I (conventional mills)	3	770	2,310	34
Class II (solution mining)	6	645	3,870	58
11e.(2) disposal	1	475	475	7
11e.(2) disposal incidental to existing tailings sites	1	75	75	1

Applying these factors to the \$0.5 million in budgeted costs to be recovered from Title II specific licensees

results in the following proposed annual fees:

TABLE X.—ANNUAL FEES FOR TITLE II SPECIFIC LICENSES

Facility type	Proposed FY 2003 annual fee
Class I (conventional mills)	\$64,800
Class II (solution mining)	54,300
11e.(2) disposal	40,000
11e.(2) disposal incidental to existing tailings sites	6,300

In the FY 2001 final rule (66 FR 32478; June 14, 2001), the NRC revised § 171.19 to establish a quarterly billing schedule for the Class I and Class II licensees, regardless of the annual fee amount. Therefore, as provided in § 171.19(b), if the amounts collected in the first three quarters of FY 2003 exceed the amount of the revised annual fee, the overpayment will be refunded; if the amounts collected in the first three quarters are less than the final revised annual fee, the remainder will be billed after the FY 2003 final fee rule is published. The remaining categories of Title II facilities are subject to billing based on the anniversary date of the license as provided in § 171.19(c).

c. Power Reactors. The approximately \$308.8 million in budgeted costs to be recovered through FY 2003 annual fees assessed to the power reactor class, which includes NRC's budgeted costs for homeland security activities related to power reactors, would be divided equally among the 104 power reactors licensed to operate. This results in a proposed FY 2003 annual fee of \$2,969,000 per reactor. Additionally, each power reactor licensed to operate would be assessed the proposed FY 2003 spent fuel storage/reactor decommissioning annual fee of \$309,000. This would result in a total FY 2003 annual fee of \$3,278,000 for each power reactor licensed to operate.

d. Spent Fuel Storage/Reactor Decommissioning. For FY 2003, budgeted costs of approximately \$37.3 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to part 50 power reactors, and to part 72 licensees who do not hold a part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite are not subject to these annual fees. The costs would be divided equally among the 121 licensees, resulting in a proposed FY 2003 annual fee of \$309,000 per licensee.

e. Non-power Reactors. Approximately \$273,000 in budgeted costs is to be recovered through annual fees assessed to the non-power reactor class of licenses for FY 2003. This amount would be divided equally among the four non-power reactors subject to annual fees. This results in a proposed FY 2003 annual fee of \$68,300 for each licensee.

f. Rare Earth Facilities. The FY 2003 budgeted costs of approximately \$377,000 for rare earth facilities to be recovered through annual fees would be divided equally among the two licensees who have a specific license for receipt and processing of source material. Prior to the beginning of FY

2003, one rare earth facility permanently ceased operations and requested that its license be amended to authorize decommissioning activities only. Consequently, this license is no longer subject to annual fees. The result is a proposed FY 2003 annual fee of \$189,000 for each of the two remaining rare earth facilities.

g. Materials Users. To equitably and fairly allocate the \$23.9 million in FY 2003 budgeted costs to be recovered in annual fees assessed to the approximately 5,000 diverse materials users and registrants, the NRC has continued to use the FY 1999 methodology to establish baseline annual fees for this class. The annual fees are based on the part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licenses based on how much it costs the NRC to regulate each category. The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses. The annual fee for these categories of licenses is developed as follows:

$$\text{Annual fee} = \text{Constant} \times [\text{Application Fee} + (\text{Average Inspection Cost divided by Inspection Priority})] + \text{Inspection Multiplier} \times (\text{Average Inspection Cost divided by Inspection Priority}) + \text{Unique Category Costs.}$$

The constant is the multiple necessary to recover approximately \$18.0 million in general costs and is 1.18 for FY 2003. The inspection multiplier is the multiple necessary to recover approximately \$4.5 million in inspection costs for FY 2003, and is 0.92 for FY 2003. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2003, approximately \$65,300 in budgeted costs for the implementation of revised part 35, Medical Use of Byproduct Material (unique costs), has been allocated to holders of NRC human use licenses.

The annual fee assessed to each licensee also includes a share of the \$800,000 in surcharge costs allocated to the materials user class of licenses and, for certain categories of these licenses, a share of the approximately \$500,000 in LLW surcharge costs allocated to the class. The proposed annual fee for each fee category is shown in § 171.16(d).

h. Transportation. Off the approximately \$5.0 million in FY 2003

budgeted costs to be recovered through annual fees assessed to the transportation class of licenses (including homeland security costs), approximately \$1.4 million would be recovered from annual fees assessed to DOE based on the number of part 71 Certificates of Compliance that it holds. Of the remaining \$3.6 million, approximately 25 percent would be allocated to the 89 quality assurance plans authorizing use only and the 40 quality assurance plans authorizing use and design/fabrication. The remaining 75 percent would be allocated only to the 40 quality assurance plans authorizing use and design/fabrication. This results in a proposed annual fee of \$7,000 for each of the holders of quality assurance plans that authorize use only, and a proposed annual fee of \$75,000 for each of the holders of quality assurance plans that authorize use and design/fabrication.

2. Small Entity Annual Fees

The NRC stated in the FY 2001 fee rule (66 FR 32452; June 14, 2001), that it would re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act. Accordingly, the NRC has re-examined the small entity fees, and does not believe that a change to the small entity fees is warranted for FY 2003. The revision to the small entity fees in FY 2000 (65 FR 36946; June 12, 2000) was based on the 25 percent increase in average total fees assessed to other materials licensees in selected categories since the small entity fees were first established and changes that had occurred in the fee structure for materials licensees over time.

Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees. Instead, the reduced fees for small entities are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from them some of the agency's costs for activities that benefit them. The costs not recovered from small entities for activities that benefit them must be recovered from other licensees. Given the reduction in annual fees and the relative low inflation rates, the NRC has determined that the current small entity fees of \$500 and \$2,300 continue to meet the objective of providing relief to many small entities while recovering from them some of the costs that benefit them.

Therefore, the NRC is proposing to retain the \$2,300 small entity annual fee and the \$500 lower tier small entity

annual fee for FY 2003. The NRC plans to re-examine the small entity fees again in FY 2005.

In summary, the NRC is proposing to—

1. Establish rebaselined annual fees for FY 2003;
2. Retain the current reduced fees for small entities.

III. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Federal government's writing be in plain language (63 FR 31883; June 10, 1998). The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments on the language used should be sent to the NRC as indicated under the **ADDRESSES** heading.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 94 percent of its budget authority in FY 2003 as is required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the proposed regulation. By its very nature, this regulatory action does not affect the environment and, therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This proposed rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

With respect to 10 CFR part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in *National Cable Television Association, Inc. v. United States*, 415 U.S. 36 (1974) and *Federal Power Commission v. New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association v. Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters v. Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association v. Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc. v. Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co. v. U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). This court held that—

- (1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;
- (2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;
- (3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;
- (4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;
- (5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and
- (6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR part 171, on November 5, 1990, the Congress passed

Pub. L. 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA-90 was subsequently amended to extend the 100 percent fee recovery requirement through FY 2000. The FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. The NRC's fee recovery amount for FY 2003 is 94 percent. To comply with this statutory requirement and in accordance with § 171.13, the NRC is publishing the proposed amount of the FY 2003 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA-90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA-90, provides that—

- (1) The annual fees be based on approximately 94 percent of the Commission's FY 2003 budget of \$584.6 million less the amounts collected from part 170 fees and funds directly appropriated from the NWF to cover the NRC's high level waste program;
- (2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and
- (3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

10 CFR part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company v. United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989). Further, the NRC's FY 1991 annual fee rule methodology was upheld by the D.C. Circuit Court of Appeals in *Allied Signal v. NRC*, 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990, as amended, to recover approximately 94 percent of its FY 2003 budget authority through the assessment of user fees. This act further requires that the NRC establish a schedule of charges that

fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule would establish the schedules of fees that are necessary to implement the Congressional mandate for FY 2003. The proposed rule would result in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. Licensees affected by the annual fee increases and decreases include those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2003.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these proposed amendments do not require the

modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct, or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER

REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

1. The authority citation for part 170 continues to read as follows:

Authority: Sec. 9701, Pub. L. 97-258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92-314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101-576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902).

2. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

- (a) Reactor Program (§ 170.21 Activities)—\$156 per hour
(b) Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities)—\$158 per hour

3. In § 170.21, Category K in the table is revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

* * * * *

Facility categories and type of fees

Fees 1, 2

K. Import and export licenses:

Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR part 110.

- 1. Application for import or export of reactors and other facilities and exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b). This category includes application for import of radioactive waste.

Application-new license \$10,300
Amendment \$10,300

- 2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)-(8). This category includes application for the export of radioactive waste.

Application-new license \$6,000
Amendment \$6,000

- 3. Application for export of components requiring foreign government assurances only.

Application-new license \$1,900
Amendment \$1,900

- 4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances.

Application-new license \$1,300
Amendment \$1,300

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and type of fees	Fees ^{1, 2}
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review. Amendment	\$240

¹ Fees will not be charged for orders issued by the Commission under §2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

² Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

* * * * *

6. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services, and holders of

materials licenses or import and export licenses shall pay fees for the following categories of services. The following schedule includes fees for health and safety and safeguards inspections where applicable:

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2, 3}
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only: Licensing and Inspection	Full Cost.
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI): Licensing and inspection	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: ⁴ Application	\$730.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: ⁴ Application	\$1,500.
E. Licenses or certificates for construction and operation of a uranium enrichment facility: Licensing and inspection	Full Cost.
2. Source material:	
A. (1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, and ion exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode: Licensing and inspection	Full Cost.
(2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2A(1): Licensing and inspection	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(1): Licensing and inspection	Full Cost.
B. Licenses which authorize the possession, use, and/or installation of source material for shielding: Application	\$170.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2,3}
C. All other source material licenses:	
Application	\$6,200.
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	\$7,400.
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	\$2,900.
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). These licenses are covered by fee Category 3D.	
Application	\$6,100.
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4).	
Application	\$2,700.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application	\$1,800.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	\$3,700.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	\$8,800.
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application	\$4,300.
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application	\$4,300.
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application	\$1,100.
K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application	\$650.
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application	\$6,200.
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application	\$3,000.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application	\$3,300.
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations:	
Application	\$3,300.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Registration	\$1,200.
Q. Registration of a device(s) generally licensed under part 31 of this chapter:	
Application	\$620.
4. Waste disposal and processing:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2,3}
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material: Licensing and inspection	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material: Application	\$1,900.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material: Application	\$2,800.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies: Application	\$2,000.
B. Licenses for possession and use of byproduct material for field flooding tracer studies: Licensing	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material: Application	\$12,600.
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices: Application	\$6,900.
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices: Application	\$4,900.
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material in sealed sources contained in teletherapy devices: Application	\$1,900.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities: Application	\$360.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution: Application—each device	\$5,700.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices: Application—each device	\$5,700.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution: Application—each source	\$1,800.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel: Application—each source	\$600.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers: Licensing and inspections	Full Cost.
B. Evaluation of 10 CFR part 71 quality assurance programs: Application	\$2,100.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities: Licensing and inspection	Full Cost.
12. Special projects:	
Approvals and preapplication/Licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance: Licensing	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter: Licensing and inspection	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2,3}
15. Import and Export licenses:	
Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite.	
A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for import of radioactive waste.	
Application—new license	\$10,300.
Amendment	\$10,300.
B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export of radioactive waste.	
Application—new license	\$6,000.
Amendment	\$6,000.
C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act.	
Application—new license	\$1,900.
Amendment	\$1,900.
D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.	
Application—new license	\$1,300.
Amendment	\$1,300.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments.	
Amendment	\$240.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application	\$1,500.

¹ *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, generally licensed device registrations, and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees*. Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) *Licensing fees*. Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for pre-application consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees*. Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees*. Inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5*. Submittals of registration information must be accompanied by the prescribed fee.

² Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

³ Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

⁴ Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIAL LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

7. The authority citation for part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

8. In § 171.15 paragraphs (b), (c), (d), and (e) are revised to read as follows:

§ 171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses.

* * * * *

(b)(1) The FY 2003 annual fee for each operating power reactor which must be collected by September 30, 2003, is \$3,278,000.

(2) The FY 2003 annual fee is comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 2003 spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of this section. The activities comprising the FY 2003 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2003 base annual fee for operating power reactors are as follows:

(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors, except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors, *e.g.*, updating part 50 of this chapter, or operating the Incident Response Center.

The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 2003 annual fee for each power reactor holding a part 50 license that is in a decommissioning or possession only status and has spent fuel on-site and each independent spent fuel storage part 72 licensee who does not hold a part 50 license is \$309,000.

(2) The FY 2003 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the FY 2003 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2003 spent fuel storage/reactor decommissioning rebaselined annual fee are:

(i) Generic and other research activities directly related to reactor decommissioning and spent fuel storage; and

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The activities comprising the FY 2003 surcharge are as follows:

(i) Low level waste disposal generic activities;

(ii) Activities not attributable to an existing NRC licensee or class of licenses (*e.g.*, international cooperative safety program and international safeguards activities, support for the Agreement State program, and site decommissioning management plan (SDMP) activities); and

(iii) Activities not currently subject to 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy, *e.g.*, reviews and inspections conducted of nonprofit educational institutions, licensing actions for Federal agencies, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

(2) The total FY 2003 surcharge allocated to the operating power reactor class of licenses is \$19.1 million, not including the amount allocated to the

spent fuel storage/reactor decommissioning class. The FY 2003 operating power reactor surcharge to be assessed to each operating power reactor is approximately \$183,300. This amount is calculated by dividing the total operating power reactor surcharge (\$19.1 million) by the number of operating power reactors (104).

(3) The FY 2003 surcharge allocated to the spent fuel storage/reactor decommissioning class of licenses is \$1.8 million. The FY 2003 spent fuel storage/reactor decommissioning surcharge to be assessed to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage part 72 licensee who does not hold a part 50 license is approximately \$14,900. This amount is calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel on site, and part 72 licensees who do not hold a part 50 license.

(e) The FY 2003 annual fees for licensees authorized to operate a non-power (test and research) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor—\$68,300
Test reactor—\$68,300

12. In § 171.16, paragraphs (c), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in the following table. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due. The small entity fees are as follows:

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts):	
\$350,000 to \$5 million	\$2,300

	Maximum annual fee per licensed category
Less than \$350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300.
Less than 35 employees	500.
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	2,300
Less than 35 employees	500

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

(2) A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under which it is billed. NRC Form 526 can be accessed through the NRC's Web site at <http://www.nrc.gov>. For licensees who

cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR-0238, which is enclosed with each annual fee billing. The form can also be obtained by calling the fee staff at 301-415-7554, or by e-mailing the fee staff at [<fees@nrc.gov>](mailto:fees@nrc.gov)

(3) For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

(4) The maximum annual fee a small entity is required to pay is \$2,300 for

each category applicable to the license(s).

(d) The FY 2003 annual fees are comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 2003 surcharge are shown for convenience in paragraph (e) of this section. The FY 2003 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown in the following table:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees ^{1 2 3}
1. Special of nuclear material:	
A.(1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material:	
BWX Technologies SNM-42	\$5,836,000
Nuclear Fuel Services SNM-124	5,836,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:	
Global Nuclear Fuel SNM-1097	1,957,000
Framatome ANP Richland SNM-1227	1,957,000
Westinghouse Electric Company SNM-1107	1,957,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations:	
Framatome ANP SNM-1168	769,000
(b) All Others:	
General Electric SNM-960	559,000
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI).	¹¹ N/A
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	1,900
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	4,600
E. Licenses or certificates for the operation of a uranium enrichment facility	3,634,000
2. Source material:	
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	839,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
Class I facilities ⁴	64,800
Class II facilities ⁴	54,300
Other facilities ⁴	189,000
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2A(2) or Category 2A(4)	40,000

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued
[See footnotes at end of table]

Category of materials licenses	Annual fees ^{1 2 3}
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(2)	6,300
B. Licenses that authorize only the possession, use and/or installation of source material for shielding	730
C. All other source material licenses	11,500
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	22,000
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	6,600
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). These licenses are covered by fee Category 3D	11,000
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license	4,800
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,600
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	6,700
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	24,200
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	6,100
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	6,200
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	2,200
K. Licenses issued under Subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	1,400
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	11,900
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution	5,600
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	6,200
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license	12,300
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,500
Q. Registration of devices generally licensed pursuant to part 31 of this chapter	¹³ N/A
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	⁵ N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	10,400

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees ^{1 2 3}
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	7,500
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	4,700
B. Licenses for possession and use of byproduct material for field flooding tracer studies	⁵ N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	23,300
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	11,200
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. ⁹ ...	24,900
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. ⁹	4,600
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,400
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	7,000
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	7,000
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	2,200
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	740
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers:	
Spent Fuel, High-Level Waste, and plutonium air packages	⁶ N/A
Other Casks	⁶ N/A
B. Quality assurance program approvals issued under part 71 of this chapter:	
Users and Fabricators	75,000
Users	7,000
11. Standardized spent fuel facilities	⁶ N/A
12. Special Projects	⁶ N/A
13. A. Spent fuel storage cask Certificate of Compliance	⁶ N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	¹² N/A
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter	⁷ N/A
15. Import and Export licenses	⁸ N/A
16. Reciprocity	⁸ N/A
17. Master materials licenses of broad scope issued to Government agencies	230,000
18. Department of Energy:	
A. Certificates of Compliance	¹⁰ 1,359,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	960,000

¹ Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 2002, and permanently ceased licensed activities entirely by September 30, 2002. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

² Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

³ Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

⁴ A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

⁵ There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

⁶ Standardized spent fuel facilities, 10 CFR Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

⁷ Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

⁸ No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

⁹ Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

¹⁰ This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

¹¹ See § 171.15(c).

¹² See § 171.15(c).

¹³ No annual fee is charged for this category because the cost of the general license registration program applicable to licenses in this category will be recovered through 10 CFR part 170 fees.

(e) The activities comprising the surcharge are as follows:

- (1) LLW disposal generic activities;
- (2) Activities not directly attributable to an existing NRC licensee or class(es) of licenses; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; Site Decommissioning Management Plan (SDMP) activities; and
- (3) Activities not currently assessed licensing and inspection fees under 10 CFR part 170 based on existing law or Commission policy (e.g., reviews and inspections of nonprofit educational institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*)

Dated at Rockville, Maryland, this 27th day of March, 2003.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix A to This Proposed Rule— Draft Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act (RFA), as amended, (5 U.S.C. 601 *et seq.*) requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.810). These size standards were established on the basis of the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC

uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in § 171.16(c) of this proposed rule are based on the NRC's size standards.

From FY 1991 through FY 2000, the Omnibus Budget Reconciliation Act (OBRA-90), as amended, required that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, by assessing license and annual fees. The FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. The amount to be recovered for FY 2003 is approximately \$526.3 million.

OBRA-90 requires that the schedule of charges established by rule should fairly and equitably allocate the total amount to be recovered from the NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. Since FY 1991, the NRC has complied with OBRA-90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

In FY 1995, the NRC announced that, in order to stabilize fees, annual fees would be adjusted only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR part 170 fees, the number of licensees paying annual fees, and as otherwise needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there were a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licenses, the annual fee base would be recalculated.

In FY 1999, the NRC concluded that there had been significant changes in the allocation of agency resources among the various classes of licenses and established rebaselined annual fees for FY 1999. The NRC stated in the final FY 1999 rule that to stabilize fees it would continue to adjust the annual fees by the percent change method established in FY 1995, unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a

specific class of licenses, in which case the annual fee base would be reestablished.

Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline its part 171 annual fees again in FY 2003. Rebaselining fees would result in increased annual fees for a majority of the categories of licenses, decreased annual fees for other categories (including many materials licensees), and no change for one category.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a "major" rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which a final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis (RFA) and the small entity compliance guide (Attachment 1) have been prepared for the FY 2003 fee rule as required by law.

II. Impact on Small Entities

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 24 percent of these licensees (approximately 1,200 licensees for FY 2002) have requested small entity certification in the past. A 1993 NRC survey of its materials licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified:

1. Large firms would gain an unfair competitive advantage over small entities.

Commenters noted that small and very small companies ("Mom and Pop" operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soils testing, annual fees would put small licensees at an extreme competitive disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than \$500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Approximately 3,000 license, approval, and registration terminations have been requested since the NRC first established annual fees for materials licenses. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives in accordance with the RFA, in developing each of its fee rules since FY 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (*e.g.*, number of sources).

2. Base fees on the frequency of use of the licensed radioactive material (*e.g.*, volume of patients).

3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

III. Maximum Fee

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity; therefore, the NRC has no

benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six Agreement States, Washington, Texas, Illinois, Nebraska, New York, and Utah, were used as benchmarks in the establishment of the maximum small entity annual fee in FY 1991. Because small entities in those Agreement States were paying the fees, the NRC concluded that these fees did not have a significant impact on a substantial number of small entities. Therefore, those fees were considered a useful benchmark in establishing the NRC maximum small entity annual fee.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid annually would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark states, the maximum Agreement State fee of \$3,800 in Washington was used as the ceiling for the total fees.

Thus the NRC's small entity fee was developed to ensure that the total fees paid by NRC small entities would not exceed \$3,800. Given the NRC's FY 1991 fee structure for inspections, amendments, and renewals, a small entity annual fee established at \$1,800 allowed the total fee (small entity annual fee plus yearly average for inspections, amendments and renewal fees) for all categories to fall under the \$3,800 ceiling.

In FY 1992, the NRC introduced a second, lower tier to the small entity fee in response to concerns that the \$1,800 fee, when added to the license and inspection fees, still imposed a significant impact on small entities with relatively low gross annual receipts. For purposes of the annual fee, each small entity size standard was divided into an upper and lower tier. Small entity licensees in the upper tier continued to pay an annual fee of \$1,800 while those in the lower tier paid an annual fee of \$400.

Based on the changes that had occurred since FY 1991, the NRC re-analyzed its maximum small entity annual fees in FY 2000, and determined that the small entity fees should be increased by 25 percent to reflect the increase in the average fees paid by other materials licensees since FY 1991 as well as changes in the fee structure for materials licensees. The structure of the fees that NRC charged to its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through part 170 fees for services, are now included in the part 171 annual fees assessed to materials licensees. As a result, the maximum small entity annual fee increased from \$1,800 to \$2,300 in FY 2000. By increasing the maximum annual fee for small entities from \$1,800 to \$2,300, the

annual fee for many small entities was reduced while at the same time materials licensees, including small entities, would pay for most of the costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the NRC determined that the maximum annual fee of \$2,300 for small entities may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars range. Therefore, the NRC continued to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts, and for manufacturing concerns and educational institutions not State or publicly supported, with less than 35 employees. The NRC also increased the lower tier small entity fee by the same percentage increase to the maximum small entity annual fee. This 25 percent increase resulted in the lower tier small entity fee increasing from \$400 to \$500 in FY 2000.

The NRC examined the small entity fees again in FY 2001 (66 FR 32452; June 14, 2001), and determined that a change was not warranted to the small entity fees established in FY 2000. The NRC stated in the Regulatory Flexibility Analysis for the FY 2001 final fee rule that it would re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act.

Accordingly, the NRC has re-examined the small entity fees for FY 2003, and does not believe that a change to the small entity fees is warranted this year. Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees. Instead, the reduced fees for small entities are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from them some of the agency's costs for activities that benefit them. The costs not recovered from small entities for activities that benefit them must be recovered from other licensees. Given the reduction in annual fees and the relative low inflation rates, the NRC has determined that the current small entity fees of \$500 and \$2,300 continue to meet the objective of providing relief to many small entities while recovering from them some of the costs that benefit them.

Therefore, the NRC is proposing to retain the \$2,300 small entity annual fee and the \$500 lower tier small entity annual fee for FY 2003. The NRC plans to re-examine the small entity fees again in FY 2005.

IV. Summary

The NRC has determined that the 10 CFR part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to recover 94 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of \$2,300 for small entities and a lower-tier small entity annual fee of \$500 for small

businesses and not-for-profit organizations with gross annual receipts of less than \$350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees, and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA-90. Thus, the fees for small entities maintain a balance between the objectives of OBRA-90 and the RFA. Therefore, the analysis and conclusions previously established remain valid for FY 2003.

Attachment 1 to Appendix A—U.S. Nuclear Regulatory Commission Small Entity Compliance Guide Fiscal Year 2003

Contents

- Introduction
- NRC Definition of Small Entity
- NRC Small Entity Fees
- Instructions for Completing NRC Form 526

Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each “major” final rule as defined by the Act. The NRC’s fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, is considered a “major” rule under SBREFA. Therefore, in compliance with the law, this guide has been prepared to assist NRC material licensees in complying with the FY 2003 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2003 annual fees assessed under 10 CFR part 171. The NRC has established two tiers of separate annual fees for those materials licensees who qualify as small entities under NRC’s size standards.

Licensees who meet NRC’s size standards for a small entity must submit a completed NRC Form 526 “Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR part 171” to qualify for the reduced annual fee. This form can be accessed on the NRC’s Web site at <http://www.nrc.gov>. The form can then be accessed by selecting “License Fees” and under “Forms” selecting NRC Form 526. For licensees who cannot access the NRC’s Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC’s “Materials Annual Fee Billing Handbook,” NUREG/BR-0238, which is enclosed with each annual fee billing. Alternatively, the form may be obtained by calling the fee staff at 301-415-7554, or by e-mailing the fee staff at fees@nrc.gov. The completed form, the appropriate small entity fee, and the payment copy of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, to the address indicated on the invoice. Failure to file the NRC small entity certification Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

The NRC has defined a small entity for purposes of compliance with its regulations (10 CFR 2.810) as follows:

1. *Small business*—a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$5 million or less over its last 3 completed fiscal years;
2. *Manufacturing industry*—a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;
3. *Small organizations*—a not-for-profit organization which is independently owned and operated and has annual gross receipts of \$5 million or less;

4. *Small governmental jurisdiction*—a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;

5. *Small educational institution*—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer employees.¹

To further assist licensees in determining if they qualify as a small entity, we are providing the following guidelines, which are based on the Small Business Administration’s regulations (13 CFR part 121).

1. A small business concern is an independently owned and operated entity which is not considered dominant in its field of operations.
2. The number of employees means the total number of employees in the parent company, any subsidiaries and/or affiliates, including both foreign and domestic locations (*i.e.*, not solely the number of employees working for the licensee or conducting NRC licensed activities for the company).
3. Gross annual receipts includes all revenue received or accrued from any source, including receipts of the parent company, any subsidiaries and/or affiliates, and account for both foreign and domestic locations. Receipts include all revenues from sales of products and services, interest, rent, fees, and commissions, from whatever sources derived (*i.e.*, not solely receipts from NRC licensed activities).
4. A licensee who is a subsidiary of a large entity does not qualify as a small entity.

4. *Small governmental jurisdiction*—a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;

5. *Small educational institution*—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer employees.¹

NRC Small Entity Fees

In 10 CFR 171.16 (c), the NRC has established two tiers of small entity fees for licensees that qualify under the NRC’s size standards. The fees are as follows:

	Maximum annual fee per licensed category
Small Business Not Engaged in Manufacturing and Small Not-For Profit Organizations (Gross Annual Receipts):	
\$350,000 to \$5 million	\$2,300
Less than \$350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	2,300
Less than 35 employees	500

To pay a reduced annual fee, a licensee must use NRC Form 526. Licensees can access this form on the NRC’s Web site at <http://www.nrc.gov>. The form can then be accessed by selecting “License Fees” and

under “Forms” selecting NRC Form 526. Those licensees that qualify as a “small entity” under the NRC size standards at 10 CFR part 2.810 can complete the form in accordance with the instructions provided,

and submit the completed form and the appropriate payment to the address provided on the invoice. For licensees who cannot access the NRC’s Web site, NRC Form 526 may be obtained through the local point of

¹ An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a

nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who

provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR-0238, which is enclosed with each annual fee invoice. Alternatively, licensees may obtain the form by calling the fee staff at 301-415-7544, or by e-mailing us at fees@nrc.gov.

Instructions for Completing NRC Small Entity Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.

2. Complete all items on NRC Form 526 as follows:

a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.

b. The Standard Industrial Classification (SIC) Code must be entered if known.

c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526, or on the invoice does not constitute a request to amend the license. Any request to amend a license is to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.

d. Check the appropriate size standard for which the licensee qualifies as a small entity. Check only one box. Note the following:

(1) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(2) The size standards apply to the licensee, including all parent companies and affiliates—not the individual authorized users listed in the license or the particular segment of the organization that uses licensed material.

(3) Gross annual receipts means all revenue in whatever form received or accrued from whatever sources—not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income; proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS); and amounts collected for another entity by a travel agent, real estate agent, advertising agent, or conference management service provider.

(4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

The NRC sends invoices to its licensees for the full annual fee, even though some entities qualify for reduced fees as a small entity. Licensees who qualify as a small entity and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which for a full year is either \$2,300 or \$500 depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first six months of the fiscal year, and licensees who file for termination or for a possession only license and permanently cease licensed activities during the first six months of the fiscal year, pay only 50 percent of the annual fee for that year. Such an invoice states the "Amount Billed Represents 50% Proration." This means the amount due from a small entity is not the prorated amount shown on the invoice, but rather one-half of the

maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either \$1150 or \$250 for each fee category billed, instead of the full small entity annual fee of \$2,300 or \$500.

A new small entity form (NRC Form 526) must be filed with the NRC each fiscal year to qualify for reduced fees in that year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and a new Form 526 must be completed and returned in order for the fee to be reduced to the small entity fee amount. Licensees will not be issued a new invoice for the reduced amount. The completed NRC Form 526, the payment of the appropriate small entity fee, and the "Payment Copy" of the invoice should be mailed to the U. S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch at the address indicated on the invoice.

If you have questions regarding the NRC's annual fees, please call the license fee staff at 301-415-7554, e-mail the fee staff at fees@nrc.gov, or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.* NRC's implementing regulations are found at 10 CFR part 13.

[FR Doc. 03-7814 Filed 4-2-03; 8:45 am]

BILLING CODE 7590-01-P



Federal Register

**Thursday,
April 3, 2003**

Part V

Department of Labor

**Employee Benefits Security
Administration**

5 CFR Part 5201

29 CFR Part 70, et al.

**Technical Amendments Due to Change of
Agency Name; Final Rules**

DEPARTMENT OF LABOR**Office of the Secretary of Labor****5 CFR Part 5201****29 CFR Parts 70 and 71****Technical Amendments Due to Change of Agency Name**

AGENCY: Office of the Secretary of Labor, Department of Labor.

ACTION: Final rule.

SUMMARY: This document revises all references to the Pension and Welfare Benefits Administration in 5 CFR part 5201 and in 29 CFR parts 70 and 71 to reflect the change of that agency's name to the Employee Benefits Security Administration. 5 CFR part 5201 contains standards of ethical conduct for Department of Labor employees. 29 CFR part 70 relates to the production or disclosure of information by the Department, and 29 CFR part 71 relates to the maintenance of systems of records in accordance with the Privacy Act. 5 U.S.C. 552a. All the changes made in this rule are strictly technical.

DATES: *Effective date:* This rule is effective on April 3, 2003.

FOR FURTHER INFORMATION CONTACT:

William W. Taylor, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, (202) 693-5583. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:**I. Summary of Rule**

On February 3, 2003, the Secretary of Labor published in the **Federal Register** Secretary of Labor's Order No. 1-2003 (68 FR 5374). This order renamed the Pension and Welfare Benefits Administration (PWBA) as the Employee Benefits Security Administration (EBSA). The title, "Assistant Secretary for Pension and Welfare Benefits" became "Assistant Secretary for Employee Benefits Security." All the functions formerly carried out by PWBA and this Assistant Secretary remain unchanged. As a result of this name change, we are revising all references to "Pension and Welfare Benefits Administration" that appear in these parts. The Department has previously published similar amendments to chapter XXV of title 29 of the CFR.

II. Administrative Procedure Act

Because this regulation merely implements a change in the name of government agency and in the titles of certain government officers, it relates

only to agency organization, procedure or practice; requirements for prior notice and public comment do not apply. 5 U.S.C. 553(b)(3)(A). The limited purpose and effect of this rule also justifies the finding for good cause, pursuant to 5 U.S.C. 553(d)(3) that the rule should take effect immediately.

III. Paperwork Reduction Act

This final rule does not include or modify a collection of information as defined in 44 U.S.C. 3502(3) of the Paperwork Reduction Act of 1995.

IV. Regulatory Flexibility Act

Because the Department is issuing this rule without a proposal and an opportunity for comments, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply. In any event, the technical amendments made by this regulation will not have a significant impact on a substantial number of small entities.

V. Congressional Review Act

This regulation is a rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties. It is therefore not subject to the Congressional Review Act pursuant to 5 U.S.C. 801 and 804(1).

VI. Executive Order 12866

We have consulted the Office of Management and Budget and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866.

VII. Federalism

This rule does not have Federalism implications under Executive Order 13132.

■ For the reasons set forth in the preamble, there are amended the following parts of the Code of Federal Regulations:

- (a) Part 5201 of Title 5, Code of Federal Regulations (5 CFR part 5201);
- (b) Part 70 of Title 29, Code of Federal Regulations (29 CFR part 70); and
- (c) Part 71 of Title 29, Code of Federal Regulations (29 CFR part 71).

Title 5—Administrative Personnel**PART 5201—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF LABOR**

■ 1. The authority citation for part 5201 continues to read as follows:

Authority: 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act); E.O. 12674, 54 FR 15159, 3 CFR 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547,

3 CFR, 1990 Comp., 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.803.

§ 5201.102 [Amended]

■ 2. In § 5201.102, paragraph (a)(6) is revised to read "Employee Benefits Security Administration (EBSA)."

§ 5201.103 [Amended]

- 3. In § 5201.103, paragraph (e) is revised to read "Employee Benefits Security Administration."
- 4. In § 5201.103, example 2, the term "Pension and Welfare Benefits Administration" is revised to read "Employee Benefits Security Administration" and the term "PWBA" is revised to read "EBSA."

Title 29—Labor**PART 70—PRODUCTION OR DISCLOSURE OF INFORMATION OR MATERIALS**

■ 5. In the table of contents for Part 70, at the reference to § 70.54, the term "Pension and Welfare Benefits Administration" is revised to read "Employee Benefits Security Administration."

§ 70.54 [Amended]

■ 6. All references to "Pension and Welfare Benefits Administration § 70.54 are revised to read "Employee Benefits Security Administration."

Appendix A [Amended]

■ 7. Appendix A to part 70 is amended as follows:

- a. In paragraph (a)(13), the term "Pension and Welfare Benefits Administration" is revised to read "Employee Benefits Security Administration."
- b. In paragraph (b)(1), all references to "Pension and Welfare Benefits Administration" are revised to read "Employee Benefits Security."

Appendix B [Amended]

■ 8. Appendix B to part 70 is amended as follows:

- (a) The term "Pension and Welfare Benefits Security Administration;"
- (b) The term "PWBA" is revised to read "EBSA;" and
- (c) The name "June Patron" is revised to read "Sharon Watson;"
- (d) The telephone number "219-6999" is revised to read "693-8630."

PART 71—PROTECTION OF INDIVIDUAL PRIVACY AND ACCESS TO RECORDS UNDER PRIVACY ACT OF 1974

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

Authority: 5 U.S.C. 301; 5 U.S.C. 552a as amended; Reorganization Plan No. 6 of 1950, 5 U.S.C. Appendix.

§ 71.50 [Amended]

■ 10. In § 71.50, paragraph (a)(7), the term “DOL/PWBA-2” is revised to read “DOL/EBSA-2,” and the term “Pension and Welfare Benefits Administration” is revised to read “Employee Benefits Security Administration.”

§ 71.51 [Amended]

■ 11. Sec. 71.51, is amended as follows:

■ (a) In paragraph (a)(30), the term “DOL/PWBA-2” is revised to read “DOL/EBSA-2,” and the term “Pension and Welfare Benefits Administration (PWBA)” is amended to read “Employee Benefits Security Administration (EBSA);”

■ (b) In paragraph (a)(31), the term “DOL/PWBA-7” is revised to read “DOL/EBSA-7” and the term “PWBA” is revised to read “EBSA;”

Appendix A [Amended]

■ 12. In appendix A to part 71, all references to “Pension and Welfare Benefits Administration” are revised to read “Employee Benefits Security Administration.”

Signed at Washington, DC this 28th day of March, 2003.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 03-8100 Filed 4-2-03; 8:45 am]

BILLING CODE 4510-23-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2509, 2510, 2520, 2550, 2560, 2570, 2575, 2582, 2584, 2589 and 2590

Change of Agency Name; Technical Amendments

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule; nomenclature change and technical amendments.

SUMMARY: In accordance Secretary of Labor Order 1-2003, which changed the name of the Pension and Welfare Benefits Administration to the Employee Benefits Security Administration, this document revises all references to the “Pension and Welfare Benefits Administration” in chapter XXV of title 29 of the Code of Federal Regulations. This document also makes conforming changes to all references to “PWBA,” “Assistant

Secretary for Pension and Welfare Benefits,” and similar references in chapter XXV. In addition, this document updates authority citations in chapter XXV to reflect the Secretary of Labor’s Order 1-2003. Finally, this document makes certain other corrections to agency telephone numbers and addresses in chapter XXV. All the changes made in this rule are strictly technical.

DATES: *Effective date:* This rule is effective on April 3, 2003. *Applicability date:* The changes made by this rule to §§ 2520.102-3 and 2520.104b-10 are applicable to any disclosures required to be furnished on or after January 1, 2004.

FOR FURTHER INFORMATION CONTACT:

Shelly Mui, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210, (202) 693-8523 (not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Summary of Rule

On February 3, 2003, the Secretary of Labor published in the **Federal Register** Secretary of Labor’s Order No. 1-2003 (68 FR 5374). This order renamed the Pension and Welfare Benefits Administration (PWBA) as the Employee Benefits Security Administration (EBSA). The title, “Assistant Secretary for Pension and Welfare Benefits” became “Assistant Secretary for Employee Benefits Security.” All the functions formerly carried out by PWBA and this Assistant Secretary remain unchanged. As a result of this name change, we are revising all references to “Pension and Welfare Benefits Administration,” “PWBA,” “Assistant Secretary for Pension and Welfare Benefits” and similar references in chapter XXV of the Code of Federal Regulations. In addition, because the Secretary of Labor’s Order 1-2003 supersedes Secretary of Labor’s Order 1-87, this document updates the authority citations for certain parts of this chapter. Finally, this document makes certain other corrections to agency telephone numbers and addresses.

II. Administrative Procedure Act

Because this regulation merely implements a change in the name of a government agency and in the titles of certain government officers, it relates only to agency organization, procedure or practice, and, accordingly, requirements for prior notice and public comment do not apply. 5 U.S.C. 553(b)(3)(A). In any event, the Department for good cause finds,

pursuant to 5 U.S.C. 553(b)(3)(B), that notice and public comment thereon are unnecessary. In addition, and for the same reasons, the Department for good cause finds, pursuant to 5 U.S.C. 553(d)(3), that this rule should take effect immediately.

III. Paperwork Reduction Act

This final rule does not include a collection of information as defined in 44 U.S.C. 3502(3) of the Paperwork Reduction Act of 1995. This rule will require modification of the content of disclosures specified in 29 CFR 2520.102-3, pertaining to Summary Plan Descriptions, and § 2520.104b-10, pertaining to Summary Annual Reports. The information collection provisions of those sections are currently approved under OMB control numbers 1210-0039 and 1210-0040, respectively. Required changes in the references to the agency name are not substantive or material modifications to the existing collections of information. The delayed applicability date for these changes should further limit any associated burden. Accordingly, the modifications to these collections of information have not been submitted to OMB for review.

IV. Regulatory Flexibility Act

Because this regulation is being promulgated without a proposal and an opportunity for public comments, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply. In any event, the technical amendments made by this regulation will not have a significant impact on a substantial number of small entities.

V. Congressional Review Act

This regulation is a rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties. It is therefore not subject to the Congressional Review Act pursuant to 5 U.S.C. 801 and 804(1).

VI. Executive Order 12866—Regulatory Planning and Review

We have consulted the Office of Management and Budget and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866.

VII. Executive Order 13132—Federalism

This rule does not have Federalism implications under Executive Order 13132.

■ For the reasons set forth in the preamble, the Department of Labor amends chapter XXV of title 29 of the Code of Federal Regulations as follows:

CHAPTER XXV—EMPLOYEE BENEFITS SECURITY ADMINISTRATION, DEPARTMENT OF LABOR

- 1. Revise the heading for chapter XXV to read as set forth above.
- 2. In addition to the other amendments herein, in chapter XXV:
 - a. Revise all references to “Pension and Welfare Benefits Administration” to read “Employee Benefits Security Administration”;
 - b. Revise all references to “PWBA” to read “EBSA”;
 - c. Revise all references to “Assistant Secretary for Pension and Welfare Benefits” to read “Assistant Secretary for Employee Benefits Security”; and
 - d. Revise all references to “<http://www.dol.gov/dol/pwba>” to read “<http://www.dol.gov/ebsa>”.

SUBCHAPTER A—GENERAL

PART 2509—INTERPRETIVE BULLETINS RELATING TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

- 3. The authority citation for part 2509 is revised to read as follows:

Authority: 29 U.S.C. 1135 and Secretary of Labor’s Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Secs. 2509.75–10 and 2509–75–2 issued under 29 U.S.C. 1052, 1053, 1054.

SUBCHAPTER B—DEFINITIONS AND COVERAGE UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2510—DEFINITIONS OF TERMS USED IN SUBCHAPTERS C, D, E, F AND G OF THIS CHAPTER

- 4. The authority citation for part 2510 is revised to read as follows:

Authority: 29 U.S.C. 1002(2), 1002(21), 1002(37), 1031, and 1135; Secretary of Labor’s Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2510.3–101 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713 (Oct. 17, 1978), effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978); 3 CFR 1978 Comp. 332, and 29 U.S.C. 1135 note. Sec. 2510.3–102 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713 (Oct. 17, 1978), effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR 1978 Comp. 332.

SUBCHAPTER C—REPORTING AND DISCLOSURE UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

- 5. The authority citation for part 2520 is revised to read as follows:

Authority: 29 U.S.C. 1021–1025, 1027, 1029–31, 1059, 1134 and 1135; Secretary of

Labor’s Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2520.101–2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.102–3, 2520.104b–1 and 2520.104b–3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788.

§ 2520.104–22 [Amended]

- 6. Amend section 2520.104–22 as follows:
 - a. Remove from paragraph (c) the phrase “Room N–5664” wherever it appears and add, in its place, the phrase “Room N–1513”, and
 - b. Remove from paragraph (c) the phrase “Division of Reports, Office of Program Services, Pension and Welfare Benefits Administration” and add, in its place, the phrase “Employee Benefits Security Administration.”

§ 2520.104–23 [Amended]

- 7. Amend section 2520.104–23 as follows:
 - a. Remove from paragraph (c) the phrase “Room N–5664” wherever it appears and add, in its place, the phrase “Room N–1513”, and
 - b. Remove from paragraph (c) the phrase “Division of Reports, Office of Program Services, Pension and Welfare Benefits Administration” and add, in its place, the phrase “Employee Benefits Security Administration.”

§ 2520.104b–10 [Amended]

- 8. Amend section 2520.104b–10 by revising the last sentence of both paragraphs (d)(3) and (d)(4) under the heading “Your Rights to Additional Information” to read “Requests to the Department should be addressed to: Public Disclosure Room, Room N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.”.

SUBCHAPTER F—FIDUCIARY RESPONSIBILITY UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

- 9. The authority citation for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135, and Secretary of Labor’s Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2550.401b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 43 FR 47713 (Oct. 17, 1978), 3 CFR, 1978 Comp. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), 3 CFR 1978 Comp. 332. Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sec. 2550.404c–1 also issued under 29

U.S.C. 1104. Sec. 2550.407c–3 also issued under 29 U.S.C. 1107. Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1) and sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR 1978 Comp. 332. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

SUBCHAPTER G—ADMINISTRATION AND ENFORCEMENT UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

- 10. The authority citation for part 2560 is revised to read as follows:

Authority: 29 U.S.C. 1132, 1135, and Secretary of Labor’s Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2560.503–1 also issued under 29 U.S.C. 1133.

PART 2570—PROCEDURAL REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

- 11. The authority citation in part 2570 is revised to read as follows:

Authority: 5 U.S.C. 8477, 29 U.S.C. 1021, 1108, 1132, 1135, sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), 3 CFR 1978 Comp. 332; Secretary of Labor’s Order 1–2003, 68 FR 5374 (Feb. 3, 2003).

§ 2570.82 [Amended]

- 12. Revise the reference to “Area Directors for Pension and Welfare Benefits” in paragraph (e) of section 2570.82 to read “Regional Directors for Employee Benefits Security.”

PART 2575—ADJUSTMENT OF CIVIL PENALTIES UNDER ERISA TITLE I

- 13. The authority citation in part 2575 is revised to read as follows:

Authority: 29 U.S.C. 1135; 28 U.S.C. 2461 note; Secretary of Labor’s Order 1–2003, 68 FR 5374 (Feb. 3, 2003).

SUBCHAPTER J—FIDUCIARY RESPONSIBILITY UNDER THE FEDERAL EMPLOYEES’ RETIREMENT SYSTEM ACT OF 1986

PART 2582—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

- 14. The authority citation in part 2582 is revised to read as follows:

Authority: 5 U.S.C. 8478 and 8478 note; Secretary of Labor’s Order 1–2003, 68 FR 5374 (Feb. 3, 2003).

PART 2584—RULES AND REGULATIONS FOR THE ALLOCATION OF FIDUCIARY RESPONSIBILITY

■ 15. The authority citation in part 2584 is revised to read as follows:

Authority: 5 U.S.C. 8477(e)(1)(E) and Secretary of Labor's Order 1-2003, 68 FR 5374 (Feb. 3, 2003).

PART 2589—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

■ 16. The authority citation for part 2589 is revised to read as follows:

Authority: 5 U.S.C. 8477(e)(1)(B) and (f); Secretary of Labor's Order 1-2003, 68 FR 5374 (Feb. 3, 2003).

SUBCHAPTER L—HEALTH INSURANCE PORTABILITY AND RENEWABILITY FOR GROUP HEALTH PLANS**PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLAN REQUIREMENTS**

■ 17. The authority citation in part 2590 is revised to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1169, 1181-1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c, 42

U.S.C. 651 note; Secretary of Labor's Order 1-2003, 68 FR 5374 (Feb. 3, 2003).

Signed at Washington, DC this 28th day of March 2003.

Ann L. Combs,

Assistant Secretary for Employee Benefits Security, U.S. Department of Labor.

[FR Doc. 03-8099 Filed 4-2-03; 8:45 am]

BILLING CODE 4510-29-P

90.....15691	32 CFR	38 CFR	44 CFR	4.....16366
		1.....15659	Ch.1.....15666	13.....16366
32 CFR			61.....15666	32.....16366
Proposed Rules:	40 CFR		64.....15967	52.....16366
199.....16247	52.....15661, 15664			
312.....16249	180.....15945, 15958, 15963		46 CFR	
	Proposed Rules:		Proposed Rules:	49 CFR
33 CFR	52.....15696		401.....15697	1.....16215
117.....15943			530.....15978	665.....15672
Proposed Rules:	42 CFR			
110.....15691	Proposed Rules:		47 CFR	50 CFR
165.....15694	440.....15973		54.....15669	635.....16216
			Proposed Rules:	17.....15804
37 CFR	43 CFR		64.....16250	224.....15674
Proposed Rules:	10.....16354			230.....15680
201.....15972	423.....16214		48 CFR	679.....15969
			Proposed Rules:	Proposed Rules:
			2.....16366	17.....15876, 15879

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 3, 2003**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Cherries (sweet) grown in—
Washington; published 4-2-03

Raisins produced from grapes grown in—
California; published 4-2-03

AGRICULTURE DEPARTMENT**Commodity Credit Corporation**

Loan and purchase programs:
Conservation Security Program; published 3-21-03

AGRICULTURE DEPARTMENT

Rural empowerment zones and enterprise communities; published 4-3-03

COMMERCE DEPARTMENT Industry and Security Bureau

Export administration regulations:
Explosives detection equipment and related software and technology, exports and reexports; foreign policy controls imposition and expansion; published 4-3-03

COMMERCE DEPARTMENT National Oceanic and Atmospheric Administration

Fishery conservation and management:
Atlantic highly migratory species—
Swordfish quota adjustment; published 4-3-03

INTERIOR DEPARTMENT Reclamation Bureau

Public conduct on Reclamation lands and projects; published 4-3-03

LABOR DEPARTMENT**Employee Benefits Security Administration**

Organization, functions, and authority delegations:
Pension and Welfare Benefits Administration;

agency name change to Employee Benefits Security Administration; published 4-3-03

LABOR DEPARTMENT

Organization, functions, and authority delegations:
Pension and Welfare Benefits Administration; agency name change to Employee Benefits Security Administration; published 4-3-03

POSTAL SERVICE

Domestic Mail Manual:
Bound printed matter; flat-size mail co-packaging and co-sacking; published 3-28-03

TRANSPORTATION DEPARTMENT

Organization, functions, and authority delegations:
Administrator, Maritime Administration; published 4-3-03

TRANSPORTATION DEPARTMENT

Federal Aviation Administration
Aircraft registration:
Registration requirements; court of competent jurisdiction; term clarification; published 3-4-03

COMMENTS DUE NEXT WEEK**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Olives grown in—
California; comments due by 4-9-03; published 3-10-03 [FR 03-05561]

AGRICULTURE DEPARTMENT**Animal and Plant Health Inspection Service**

Exportation and importation of animals and animal products:
Foot-and-mouth disease; disease status change—
Uruguay; comments due by 4-11-03; published 2-10-03 [FR 03-03228]

Noxious weeds:
Kikuyu grass cultivars; comments due by 4-11-03; published 2-10-03 [FR 03-03181]

AGRICULTURE DEPARTMENT**Animal and Plant Health Inspection Service**

Noxious weeds:

Witchweed; regulated areas; comments due by 4-11-03; published 2-10-03 [FR 03-03182]

AGRICULTURE DEPARTMENT**Animal and Plant Health Inspection Service**

Plant-related quarantine, foreign:
Wheat and related products; flag smut import prohibitions; comments due by 4-8-03; published 2-7-03 [FR 03-03057]

Plant related quarantine; domestic:

Fire ant, imported; comments due by 4-7-03; published 2-5-03 [FR 03-02685]

AGRICULTURE DEPARTMENT**Forest Service**

National Forest System land and resource management planning; comments due by 4-7-03; published 3-5-03 [FR 03-05116]

COMMERCE DEPARTMENT**National Oceanic and Atmospheric Administration**

Fishery conservation and management:
Northeastern United States fisheries—

Atlantic mackerel, squid, and butterfish; comments due by 4-10-03; published 3-26-03 [FR 03-07252]

DEFENSE DEPARTMENT**Federal Acquisition Regulation (FAR):**

Competitive acquisition; debriefing; comments due by 4-7-03; published 2-4-03 [FR 03-02580]

Cost principles; general provisions; comments due by 4-7-03; published 2-4-03 [FR 03-02581]

ENERGY DEPARTMENT**Energy Efficiency and Renewable Energy Office**

Consumer products; energy conservation program:

Energy conservation standards and test procedures—

Refrigerators and refrigerator-freezers; comments due by 4-7-03; published 3-7-03 [FR 03-05405]

ENERGY DEPARTMENT**Energy Efficiency and Renewable Energy Office**

Consumer products; energy conservation program:

Energy conservation standards and test procedures—

Refrigerators and refrigerator-freezers; comments due by 4-7-03; published 3-7-03 [FR 03-05404]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
California; comments due by 4-10-03; published 3-11-03 [FR 03-05748]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Indiana; comments due by 4-10-03; published 3-11-03 [FR 03-05741]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Indiana; comments due by 4-10-03; published 3-11-03 [FR 03-05742]
New Hampshire; comments due by 4-7-03; published 3-6-03 [FR 03-05305]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New Hampshire; comments due by 4-7-03; published 3-6-03 [FR 03-05306]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New Jersey; comments due by 4-7-03; published 3-6-03 [FR 03-05320]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New Jersey; comments due by 4-7-03; published 3-6-03 [FR 03-05321]
Rhode Island; comments due by 4-7-03; published 3-6-03 [FR 03-05307]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans

for designated facilities and pollutants:
Rhode Island; comments due by 4-7-03; published 3-6-03 [FR 03-05308]
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 4-7-03; published 3-7-03 [FR 03-05325]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
California; comments due by 4-7-03; published 3-7-03 [FR 03-05326]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
Iowa; comments due by 4-7-03; published 3-7-03 [FR 03-05309]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
Iowa; comments due by 4-7-03; published 3-7-03 [FR 03-05310]

ENVIRONMENTAL PROTECTION AGENCY

Small Business Liability Relief and Brownfields Revitalization Act; implementation:
Federal standards for conducting all appropriate inquiry; negotiated rulemaking committee; intent to establish; comments due by 4-7-03; published 3-6-03 [FR 03-05324]

FARM CREDIT ADMINISTRATION

Farm credit system:
Borrower rights; comments due by 4-7-03; published 2-4-03 [FR 03-02506]

FEDERAL COMMUNICATIONS COMMISSION

Radio frequency devices:
Unlicensed devices operating in additional frequency bands; feasibility; comments due by 4-7-03; published 1-21-03 [FR 03-01206]
Radio stations; table of assignments:

North Carolina and Virginia; comments due by 4-11-03; published 3-10-03 [FR 03-05333]
Oregon; comments due by 4-11-03; published 3-6-03 [FR 03-05334]
Various States; comments due by 4-11-03; published 3-6-03 [FR 03-05335]

FEDERAL MARITIME COMMISSION

Passenger vessel financial responsibility:
Performance and casualty rules, Alternative Dispute Resolution program, etc.; miscellaneous amendments; comments due by 4-8-03; published 12-27-02 [FR 02-32645]

FEDERAL RESERVE SYSTEM

Home mortgage disclosure (Regulation C):
Transition rules for applications; staff commentary; comments due by 4-8-03; published 3-7-03 [FR 03-05365]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
Competitive acquisition; debriefing; comments due by 4-7-03; published 2-4-03 [FR 03-02580]
Cost principles; general provisions; comments due by 4-7-03; published 2-4-03 [FR 03-02581]

HEALTH AND HUMAN SERVICES DEPARTMENT Centers for Medicare & Medicaid Services

Medicare:
End-stage renal disease services; provider bad debt payment; comments due by 4-11-03; published 2-10-03 [FR 03-02974]

HEALTH AND HUMAN SERVICES DEPARTMENT Food and Drug Administration

Radiological health:
Diagnostic x-ray systems and their major components; performance standard; comments due by 4-9-03; published 12-10-02 [FR 02-30550]

HEALTH AND HUMAN SERVICES DEPARTMENT

Energy Employees Occupational Illness Compensation Program Act; implementation:
Special Exposure Cohort; classes of employees

designated as members; procedures; comments due by 4-7-03; published 3-7-03 [FR 03-05604]

HOMELAND SECURITY DEPARTMENT

Coast Guard
Drawbridge operations:
New Jersey; comments due by 4-7-03; published 2-5-03 [FR 03-02696]
Pollution:
Ballast water management reports; non-submission penalties; comments due by 4-7-03; published 1-6-03 [FR 03-00100]
Vessel and facility response plans for oil; 2003 removal equipment requirements and alternative technology revisions
Meeting; comments due by 4-8-03; published 11-19-02 [FR 02-29168]

Ports and waterways safety:
Oahu, Maui, Hawaii, and Kauai, HI; security zones; comments due by 4-7-03; published 2-4-03 [FR 03-02523]

HOMELAND SECURITY DEPARTMENT

Lobbying restrictions; comments due by 4-7-03; published 3-6-03 [FR 03-05145]

HOMELAND SECURITY DEPARTMENT

Nondiscrimination on basis of disability in federally conducted programs or activities; comments due by 4-7-03; published 3-6-03 [FR 03-05142]

HOMELAND SECURITY DEPARTMENT

Nondiscrimination on basis of race, color, or national origin in programs or activities receiving Federal financial assistance; comments due by 4-7-03; published 3-6-03 [FR 03-05144]
Nondiscrimination on basis of sex in education programs or activities receiving Federal financial assistance; comments due by 4-7-03; published 3-6-03 [FR 03-05143]

Organization, functions, and authority delegations:
Immigration law enforcement; comments due by 4-7-03; published 3-6-03 [FR 03-05146]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public and Indian housing;

Public housing assessment system; changes; comments due by 4-7-03; published 2-6-03 [FR 03-02608]

JUSTICE DEPARTMENT

DNA identification system:
USA PATRIOT Act; implementation—
Federal offenders; DNA sample collection; comments due by 4-10-03; published 3-11-03 [FR 03-05861]

LABOR DEPARTMENT Occupational Safety and Health Administration

Safety and health standards:
Commercial diving operations; comments due by 4-10-03; published 1-10-03 [FR 03-00372]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
Competitive acquisition; debriefing; comments due by 4-7-03; published 2-4-03 [FR 03-02580]
Cost principles; general provisions; comments due by 4-7-03; published 2-4-03 [FR 03-02581]

PERSONNEL MANAGEMENT OFFICE

Federal Long Term Care Insurance Program; comments due by 4-7-03; published 2-4-03 [FR 03-02463]

PERSONNEL MANAGEMENT OFFICE

Health benefits, Federal employees:
Health care providers; financial sanctions; comments due by 4-11-03; published 2-10-03 [FR 03-03125]

PERSONNEL MANAGEMENT OFFICE

Homeland Security Act; implementation:
Voluntary separation incentive payments; comments due by 4-7-03; published 2-4-03 [FR 03-02766]

SECURITIES AND EXCHANGE COMMISSION

Securities:
Sarbanes-Oxley Act of 2002; implementation—
Attorneys; professional conduct standards; implementation; comments due by 4-7-03; published 2-6-03 [FR 03-02520]

**OFFICE OF UNITED STATES
TRADE REPRESENTATIVE
Trade Representative, Office
of United States**

Andean Trade Preference Act, as amended by Andean Trade Promotion and Drug Eradication Act; countries eligibility for benefits; petition process; comments due by 4-7-03; published 2-4-03 [FR 03-02705]

**TRANSPORTATION
DEPARTMENT
Federal Aviation
Administration**

Aircraft products and parts; certification procedures:
Production Approval Holder's quality system; products and/or parts that have left system, performing work on; policy statement; comments due by 4-10-03; published 3-11-03 [FR 03-05128]

Airworthiness directives:
BAE Systems (Operations) Ltd.; comments due by 4-11-03; published 3-12-03 [FR 03-05859]

Bell; comments due by 4-8-03; published 2-7-03 [FR 03-03030]

Boeing; comments due by 4-10-03; published 2-24-03 [FR 03-04236]

Dornier; comments due by 4-11-03; published 3-12-03 [FR 03-05858]

General Electric Co.; comments due by 4-8-03; published 2-7-03 [FR 03-02995]

McDonnell Douglas; comments due by 4-7-03; published 2-20-03 [FR 03-04028]

Raytheon; comments due by 4-10-03; published 2-24-03 [FR 03-04234]

Sikorsky; comments due by 4-8-03; published 2-7-03 [FR 03-03031]

Turbomeca; comments due by 4-7-03; published 2-5-03 [FR 03-02633]

Turbomeca S.A.; comments due by 4-8-03; published 2-7-03 [FR 03-02996]

Jet routes; comments due by 4-7-03; published 2-19-03 [FR 03-03965]

**TRANSPORTATION
DEPARTMENT
Federal Highway
Administration**

Grants:

Operation of motor vehicles by intoxicated persons; withholding of Federal-aid highway funds; comments due by 4-7-03; published 2-6-03 [FR 03-02790]

**TRANSPORTATION
DEPARTMENT**

**Federal Motor Carrier Safety
Administration**

Motor carrier safety standards:
Intermodal container chassis and trailers; general inspection, repair, and maintenance requirements; negotiated rulemaking process; intent to consider; comments due by 4-10-03; published 2-24-03 [FR 03-04228]

**TRANSPORTATION
DEPARTMENT**

**National Highway Traffic
Safety Administration**

Grants:

Operation of motor vehicles by intoxicated persons; withholding of Federal-aid highway funds; comments due by 4-7-03; published 2-6-03 [FR 03-02790]

**TREASURY DEPARTMENT
Comptroller of the Currency**

National banks:

Authority provided by American Homeownership and Economic Opportunity Act, and other miscellaneous amendments; comments due by 4-8-03; published 2-7-03 [FR 03-02641]

TREASURY DEPARTMENT

**Community Development
Financial Institutions Fund**

Bank Enterprise Award Program; implementation; comments due by 4-7-03; published 2-4-03 [FR 03-02336]

Community Development Financial Institutions Program; implementation; comments due by 4-7-03; published 2-4-03 [FR 03-02335]

TREASURY DEPARTMENT

Currency and foreign transactions; financial reporting and recordkeeping requirements:

USA PATRIOT Act; implementation—

Anti-money laundering programs for businesses engaged in vehicle sales; comments due by 4-10-03; published 2-24-03 [FR 03-04173]

Anti-money laundering programs for travel agencies; comments due by 4-10-03; published 2-24-03 [FR 03-04172]

**VETERANS AFFAIRS
DEPARTMENT**

Adjudication; pensions, compensation, dependency, etc.:

Cirrhosis of liver in former prisoners of war; presumptive service connection; comments due by 4-11-03; published 2-10-03 [FR 03-03175]

**VETERANS AFFAIRS
DEPARTMENT**

Loan guaranty:

Veterans Education and Benefits Expansion Act; implementation; comments due by 4-11-03; published 2-10-03 [FR 03-03176]

LIST OF PUBLIC LAWS

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H.R. 395/P.L. 108-10

Do-Not-Call Implementation Act (Mar. 11, 2003; 117 Stat. 557)

Last List March 10, 2003

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