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

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Presidential Documents

Title 3—

The President

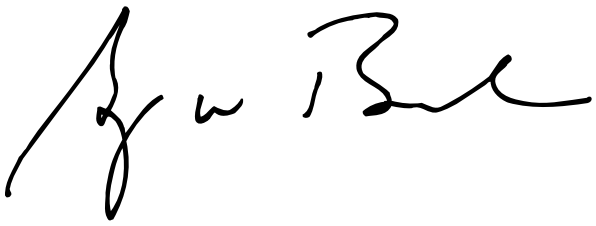
Presidential Determination No. 2003–41 of September 30, 2003

Transfer of Funds from International Organizations and Programs (IO&P) Funds to the Child Survival and Health Programs Fund

Memorandum for the Secretary of State

Consistent with the authority vested in me by the Constitution and laws of the United States, including section 610 of the Foreign Assistance Act of 1961, as amended (FAA), I hereby determine it is necessary for the purposes of the FAA that the $25 million in FY 2003 International Organizations and Programs funds that were reserved to be allocated for the United Nations Population Fund be transferred to, and consolidated with, the Child Survival and Health Programs Fund, and such funds are hereby transferred and consolidated.

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



THE WHITE HOUSE,
Washington, September 30, 2003.

[FR Doc. 03–25782
Filed 10–8–03; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
Vol. 68, No. 196
Thursday, October 9, 2003

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–36–AD; Amendment 39–13327; AD 2003–20–09]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. KG Model STEMME S10–VT Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Stemme GmbH & Co. KG Model STEMME S10–VT sailplanes that incorporate a certain gear box. This AD requires you to incorporate flight restrictions into the Limitations Section of the sailplane flight manual and fabricate and install a placard close to the throttle lever indicating these restrictions. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to prevent the potential for the lower cog wheel in the gear box to rupture, which could result in loss of power and possible loss of control of the sailplane.

DATES: This AD becomes effective on October 20, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of October 20, 2003.

We must receive any comments on this AD by November 3, 2003.

ADDRESSES: Use one of the following to submit comments on this AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–36–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain ''Docket No. 2003–CE–36–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.

You may get the service information identified 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 the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–36–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all Stemme GmbH & Co. KG Model STEMME S10–VT sailplanes that incorporate a part number 11AG gear box (serial numbers 43YYQ001 through 43YYQ093). The LBA reports two incidents where the lower cog wheels of the affected gear box failed. In both cases, the web of the cog wheel separated from the shaft.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not prevented, could cause the lower cog wheel in the gear box to rupture, which could result in loss of power and possible loss of control of the sailplane.

Is There Service Information That Applies to This Subject?

Stemme GmbH & Co. KG has issued Stemme Service Bulletin A31–10–065, Am.-Index: 92a, dated February 21, 2003.

What Are the Provisions of This Service Information?

The service bulletin is divided into two parts as follows:

1. Flight manual limitations and placard installation:

—*Flight manual limitation:* ''The operation of the engine will be limited to maximum 100% power (max. continuous power).''

—*Flight manual limitation:* ''Hence the take-off procedure (take-off with take-off power 115%, see section 4.5.2.2. of the Flight Manual) must not be selected. Alternative procedures (*i.e.*, take-off with max. continuous power 100%) are published in the Flight Manual.''

—*Placard:* Installation of a placard close to the throttle lever with the following: ''Operation above 100% continuous power is not allowed! (see SB A31–10–1065).''

2. Replacement of the lower cog wheel (P/N: 43.15.0028) with a modified cog wheel (P/N: 43:15:0043).

What Action Did the LBA Take?

The LBA classified this service bulletin as mandatory and issued German AD Number 2002–389/2, Effective date: April 17, 2003, in order to ensure the continued airworthiness of these sailplanes in Germany.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These Stemme GmbH & Co. KG Model STEMME S10–VT sailplanes are manufactured in Germany 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.

Per this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

FAA's Determination and Requirements of the Proposed AD

What Has FAA Decided?

We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop

on other Stemme GmbH & Co. KG Model STEMME S10–VT sailplanes of the same type design that are registered in the United States, this AD is being issued to prevent the potential for the lower cog wheel in the gear box to rupture, which could result in loss of power and possible loss of control of the sailplane.

What Does This AD Require?

This AD requires you to incorporate restrictions into the Limitations Section of the flight manual and incorporate a placard close to the throttle lever indicating these restrictions. These restrictions and the placard are referenced in Stemme Service Bulletin A31–10–065, Am.-Index: 02a, dated February 25, 2003.

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.

Why Is the FAA Not Mandating the Cog Wheel Replacement?

We are not mandating the cog wheel replacement (as specified in the service information) in this AD action because of the ''bootstrapping requirement.'' When we issue an AD that involves requirements affecting flight safety where we do not first provide notice and an opportunity for public comment, then we are only able to include a short-term action that immediately corrects the unsafe condition. The Administrative Procedures Act does not permit combining a long-term requirement with a short-term action when we do not provide prior public comment. We analyze the short-term action and the long-term action separately for justification to bypass public notice.

The FAA may initiate future AD action with public comment to mandate the cog wheel replacement as terminating action for the AFM requirements of this AD. This cog wheel replacement is optional in this AD as terminating action.

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

On July 10, 2002, we 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 altered products, special flight permits, and alternative methods of compliance. 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.

Comments Invited

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. 2003–CE–36–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

Regulatory Findings

Will This AD Impact Various Entities?

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

Will This AD involve a significant rule or regulatory action?

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2003–CE–36–AD'' in your request.

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. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2003–20–09 Stemme GmbH & Co. KG: Amendment 39–13327; Docket No. 2003–CE–36–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on October 20, 2003.

Are Any Other ADs Affected by This Action?

(b) None.

What Sailplanes Are Affected by This AD?

(c) This AD affects all Model STEMME S10-VT sailplanes that:

(1) Incorporate a part number (P/N) 11AG gear box (serial numbers 43YYQ001 through 43YYQ093); and

(2) Are certificated in any category:

What is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to prevent the potential for the lower cog wheel in the gear box to rupture, which could result in loss of power and possible loss of control of the sailplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Incorporate the following flight restrictions into the Limitations Section of the flight manual: (i) ''The operation of the engine will be limited to maximum 100% power (max. continuous power).'' and (ii) ''Hence the take-off procedure (take-off with take-off power 115%, see section 4.5.2.2, of the Flight Manual) must not be selectd. Alternative procedures (*i.e.,* take-off with max. continuous power 100%) are published in the flight Manual.''	Within the next 10 days after October 20, 2003 (the effective date of this AD), unless already accomplished.	Either insert a copy of this portion of the AD or Stemme Service Bulletin A31–10–065, Am.-Index: 02a, dated February 25, 2003, into the Limitations Section of this of the AFM. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 Federal Aviation Regulations (14 CFR 43.7) may do this flight manual insertion. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation regulations (14 CFR 43.9).
(2) Fabricate a placard that incorporates the following words (using at least 1/8-inch letters) and install this placard close to the throttle lever: ''Operation above 100% continuous power is not allowed! (see SB A31–10–1065).''	Within the next 10 days after October 20, 2003 (the effective date of this AD), unless already accomplished.	No specific procedures are necessary for this action. Stemme Service Bulletin A31–10–065, Am.-Index: 02a, dated February 25, 2003, references this action. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR the throttle 43.7) may do the placard requirements. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation (14 CFR 43.9).
(3) As an alternative method of compliance to this AD, replace the lower cog wheel (P/N: 43.15.0028) with a modified cog wheel (P/N: 43:15:0043).	At any time as terminating action for the limitations and placard requirements of this AD.	Use the instructions in Stemme Service Bulletin A31–10–065, Am.-Index: 02a, dated February 25, 2003.

Why Is the FAA Not Mandating the Cog Wheel Replacement?

(f) We are not mandating the cog wheel replacement (as specified in the service information) in this AD action because of the ''bootstrapping requirement.'' When we issue an AD that involves requirements affecting flight safety where we do not first provide notice and an opportunity for public comment, then we are only able to include a short-term action that immediately corrects the unsafe condition.

(1) The Administrative Procedures Act does not permit combining a long-term requirement with a short-term action when we do not provide prior public comment. The short-term action and the long-term action are analyzed separately for justification to bypass public notice.

(2) We may initiate future AD action with public comment to mandate the cog wheel replacement as terminating action for the AFM requirements of this AD. This cog wheel replacement is optional in this AD as terminating action.

What About Alternative Methods of Compliance?

(g) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

Is There Material Incorporated by Reference?

(h) If you choose to do the replacement required by this AD, then you must use Stemme Service Bulletin A31–10–065, Am.-Index: 02a, dated February 25, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy 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 review copies at FAA, Central Region, Office of the Regional Counsel, 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.

Is There Other Information That Relates to This Subject?

(i) German AD Number 2002–389/2, Effective date: April 17, 2003, also addresses the subject of this AD.

Issued in Kansas City, Missouri, on September 30, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–25330 Filed 10–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–42–AD; Amendment 39–13333; AD 2003–20–15]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires you to inspect for certain installed fuel booster pumps and replace that fuel booster pump, inspect other certain fuel booster pumps for defects, and either install lead protection spiral wrap or replace the defective fuel booster pumps, depending on whether defects are found. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. We are issuing this AD to detect and correct any defective fuel booster pump, which could result in electrical arcing from the leads in an air/fuel mixture.

Such failure could lead to a fire or explosion of a fuel tank.

DATES: This AD becomes effective on October 10, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of October 10, 2003.

We must receive any comments on this AD by December 10, 2003.

ADDRESSES: Use one of the following to submit comments on this AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–42–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain ''Docket No. 2003–CE–42–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.

You may get the service information identified in this AD from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–42–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

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 Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports 11 reports of damaged fuel booster pump wires from 9 different aircraft. Within the FAA service difficulty/accident report system, we found eight occurrences of damaged fuel booster pump wires. This damage to the electrical wires could possibly cause electrical arcing when the wires get in an air/fuel mixture.

What Are the Consequences if the Condition Is Not Corrected?

Such electrical arcing could lead to a fire or explosion of a fuel tank.

Is There Service Information That Applies to This Subject?

Pilatus has issued:

Pilatus PC12 Service Bulletin No. 28–011, Revision No. 1, dated July 11, 2003;

Pilatus PC12 Maintenance Manual Temporary Revision No. 12–03 (12–10–01), dated June 6, 2003; and

Pilatus PC12 Maintenance Manual Temporary Revision No. 28–02 (28–20–04), dated June 6, 2003.

What Are the Provisions of This Service Information?

The service information includes procedures for:

—Inspecting the fuel booster pumps for defects;

—Replacing fuel booster pumps;

—Installing lead protection spiral wrap; and

—Incorporating Temporary Revision No. 7, dated June 6, 2003, or Temporary Revision No. 37, dated June 6, 2003, to the *Section 2—Limitations* section of the applicable pilot's operating handbook (POH). This is a temporary option and replacing the subject fuel booster pump or installing the lead protection spiral wrap is mandatory within a certain time frame.

What Action Did the FOCA Take?

The FOCA classified this service bulletin as mandatory and issued Swiss AD Number HB 2003–301, dated July 17, 2003, in order to ensure the continued airworthiness of these airplanes in Switzerland.

Was This in Accordance With the Bilateral Airworthiness Agreement?

The Pilatus Models PC–12 and PC–12/45 are manufactured in Switzerland and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Per this bilateral airworthiness agreement, the FOCA has kept us informed of the situation described above.

FAA's Determination and Requirements of This AD

What Has FAA decided?

We have examined the FOCA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other Pilatus Models PC–12 and PC–12/45 airplanes of the same type design that are registered in the United States, this AD is being issued to detect and correct any defective fuel booster pump, which could result in electrical arcing from the leads in an air/fuel mixture. Such failure could lead to a fire or explosion of a fuel tank.

What Does This AD Require?

This AD requires you to incorporate the actions in the previously-referenced service information.

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, we 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 altered products, special flight permits, and alternative methods of compliance. 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.

Compliance Time of This AD

What Would Be the Compliance Time of This AD?

The compliance time of this AD is within the next 7 calendar days after October 10, 2003 (the effective date of this AD).

Why Is This Compliance Time Presented in Calendar Time Instead of Hours TIS?

The leads may rub and arc as a result of aircraft operation. Therefore, FAA has determined that a compliance based on calendar time should be utilized in this AD in order to ensure that the unsafe condition is addressed on all aircraft in a reasonable time period.

Comments Invited

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an

opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–42–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

Regulatory Findings

Will This AD Impact Various Entities?

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

Will This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–42–AD'' in your request.

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. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2003–20–15 Pilatus Aircraft Ltd.: Amendment 39–13333; Docket No. 2003–CE–42–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on October 10, 2003.

Are Any Other ADs Affected By This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Models PC–12 and PC–12/45 airplanes, serial numbers 101 through 520, with fuel booster pump (fuel pump) part number (P/N) 969.84.11.401, 968.84.11.403, or 968.84.11.404 installed, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. We are issuing this AD to detect and correct any defective fuel booster pump, which could result in electrical arcing from the leads in an air/fuel mixture. Such electrical arcing could lead to a fire or explosion of a fuel tank.

What Must I Do To Address This Problem?

(e) To address this problem, you must accomplish the following unless already accomplished:

Actions	Compliance	Procedures
(1) Replace any installed fuel booster pump part number (P/N) 969.84.11.401 with a fuel pump that has the Pilatus PC12 Service Bulletin No. 28–011, Revision No. 1, dated July 11, 2003, modification incorporated.	Within the next 7 calendar days after October 10, 2003 (the effective date of this AD).	Per Pilatus PC12 Service Bulletin No. 28-011, Revision No. 1, dated July 11, 2003, Pilatus PC12 Maintenance Manual Temporary Revision No. 12–03 (12–10–01), dated June 6, 2003, and Pilatus PC12 Maintenance Manual Temporary Revision No. 28–02 (28–20–04), dated June 6, 2003.
(2) Inspect the installed fuel booster pump P/N 968.84.11.403 or 968.84.11.404 for defects: (i) If defects are found, replace the fuel booster pump with a fuel booster pump that has the modification referenced in Pilatus PC12 Service Bulletin No. 28–011, Revision No. 1, dated July 11, 2003. (ii) If no defects are found: (B) Re-identify the fuel booster pump P/N and 968.84.11.403 or 968.84.11.404 by adding the suffix letter ''B'' adjacent to the serial Maintenance number on the fuel pump identification plate.	Within the next 7 calendar days after October 10, 2003 (the effective date of this AD).	Per Pilatus PC12 Service Bulletin No. 28–011, Revision No. 1, dated July 11, 2003, Pilatus PC12 Maintenance Manual Temporary Revision No. 12–03 (12–10–01), dated June 6, 2003, and Pilatus PC12 Maintenance Manual Temporary Revision No. 28–02 (28–20–04), dated June 6, 2003, and Pilatus PC12 Maintenance Manual Temporary Revision No. 28–02 (28–20–04), dated June 6, 2003.
(3) Do not install any part referenced in paragraph (e)(1) or (e)(2) of this AD unless it has been modified per Pilatus PC12 Service Bulletin No. 28–011, Revision No. 1, dated July 11, 2003.	As of October 10, 2003 (the effective date of this AD).	Not applicable.

Actions	Compliance	Procedures
(4) If you have scheduled the replacement or installation required by paragraphs (e)(1) and (e)(2) of this AD, but the schedule puts you beyond the time to comply, you may insert Temporary Revision No. 7, dated June 6, 2003, or Temporary Revision No. 37, dated June 6, 2003, in the *Section 2—Limitations* section of the applicable pilot's operating handbook (POH) and operate the aircraft according.	Prior to further flight after scheduling the replacement of installation. The replacement or installation of paragraphs (e)(1) and (e)(2) of this AD must be accomplished within 50 hours time-in-service after October 10, 2003 (the effective date of this AD). After compliance with paragraphs (e)(1) and (e)(2) of this AD, you may remove Temporary Revision No. 7, dated June 6, 2003, or Temporary Revision No. 37, dated June 6, 2003, from the POH.	Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the POH revision required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, per section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). Send the following to the Small Airplane Directorate using the procedures described in paragraph (f) of this AD: the airplane model and serial number designation; the number of hours TIS on the airplane; the scheduled date for the replacement/installation; and the name and location of the authorized repair shop.

What About Alternative Methods of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. 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.

Is There Material Incorporated by Reference?

(g) You must do the actions required by this AD per Pilatus PC12 Service Bulletin No. 28–011, Revision No. 1, dated July 11, 2003, Pilatus PC12 Maintenance Manual Temporary Revision No. 12–03 (12–10–01), dated June 6, 2003, and Pilatus PC12 Maintenance Manual Temporary Revision No. 28–02 (28–20–04), dated June 6, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040.

You may review copies at FAA, Central Region, Office of the Regional Counsel, 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.

Is There Other Information That Relates to This Subject?

(h) Swiss AD Number HB 2003–301, dated July 17, 2003, also addresses the subject of this AD.

Issued in Kansas City, Missouri, on October 2, 2003.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–25477 Filed 10–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–326–AD; Amendment 39–13331; AD 2003–20–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–400, –500, –600, –700, and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–400, –500, –600, –700, and –800 series airplanes, that requires either modification of the wiring to the windshield wiper motors in the flight compartment or replacement of those windshield wiper motor/converters with new motor/converters. This action is necessary to prevent a reduction in flight crew visibility due to stalled wiper motors during heavy precipitation and a period of substantial crew workload, which could result in damage to the airplane structure and injury to flight crew, passengers, or ground personnel during final approach for landing. This action is intended to address the identified unsafe condition.

DATES: Effective November 13, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 13, 2003.

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

FOR FURTHER INFORMATION CONTACT: Don Eiford, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6465; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–400, –500, –600, –700, and –800 series airplanes was published in the **Federal Register** on December 2, 2002 (67 FR 71500). That action proposed to require modification of the wiring to the windshield wiper motors in the flight compartment and nose wheel well areas. For certain airplanes, that action also provided for optional replacement of the windshield wiper motor/converters in the flight compartment.

Comments

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

Request To Remove Prior/Concurrent Requirement for Optional Replacement

The airplane manufacturer requests that the FAA remove the requirement specified in paragraph (b) of the proposed AD to accomplish the modification prior to or concurrently with the replacement. The airplane manufacturer states that the current production airplanes with the new wiper motor/converters, and the

equivalent service bulletins (discussed below), include the proposed wiring modification. It asserts that, if new wiper motor/converters are installed, accomplishing the airplane wiring modification prior to or concurrent with the wiper motor/converter replacement is redundant and does not add to the safety of the airplane. The airplane manufacturer also states that it will revise Boeing Service Bulletins 737–30–1054 and 737–30–1055 to remove the recommendation to accomplish the airplane wiring modification prior to or concurrent with the wiper motor/converter replacement.

The FAA agrees. We find that replacement of the new wiper motor/converters, without referencing the concurrent requirements of paragraph (a) of the proposed AD, will correct the root cause of the wiper motor stalls. Therefore, we have removed the requirement to accomplish the airplane wiring modification specified in paragraph (b) of this final rule (paragraph (a) of the proposed AD) prior to or concurrent with the replacement specified in paragraphs (c) and (d) of this final rule (paragraph (b) of the proposed AD).

Request To Mandate Optional Replacement

One commenter requests that we mandate the proposed optional replacement of the windshield wiper motor/converters provided in paragraph (b) of the proposed AD, because the proposed wiring modification and wiper blade load reduction specified in paragraph (a) of the proposed AD would only make the flight crew's visibility worse due to wiper blade load reduction. This commenter also requested an extension of compliance time to allow adequate time to produce enough replacements. The other commenter, the airplane manufacturer, requests that we allow operators to accomplish either the modification or replacement.

We partially agree with the commenters' requests. We do not agree that the optional replacement should be mandated. While we do agree that replacing the windshield wiper motor/converters is preferable to modifying the wiring to the windshield wiper motor, we have determined that the required modification will provide an acceptable level of safety for the affected airplanes. Therefore, we have changed this final rule to add a new paragraph (a), and re-lettered subsequent paragraphs accordingly, to clarify that operators have the option of accomplishing either the modification or replacement.

Although we do not agree to mandate the replacement, we do agree that the compliance time of this final rule for accomplishing either the modification or replacement may be extended. The wiper motor/converter manufacturer has confirmed that 36 months will allow it sufficient time to manufacture/refurbish motor/converters in the new configuration, provided operators order the motor/converters in a timely manner after the effective date of this final rule. We have determined that a compliance time of 36 months will not adversely affect safety and will ensure enough time for production of new motor/converters and enable operators to comply using the preferred method. We have revised this final rule accordingly.

Request To Reference Additional Service Information

Both commenters request that Boeing Service Bulletin 737–30–1055, Revision 1, dated March 6, 2003, which describes procedures for replacement of the wiper motor/converters for Model 737–400 and ''500 series airplanes equipped with brushless windshield wiper motor/converters, be added to the proposed AD for accomplishing the optional replacement for those airplanes. Both commenters further point out that this service bulletin was not included in the proposed AD.

We agree. Since the issuance of the proposed AD, we have reviewed and approved Revision 1 of Boeing Service Bulletins 737–30–1054 and 737–30–1055, both dated March 6, 2003, which describe procedures for the replacement of the wiper motor/converters. The proposed AD referenced the original issue of Boeing Service Bulletin 737–30–1054 as the appropriate source of service information for accomplishment of the replacement for Model 737–600, –700, and –800 series airplanes. The procedures specified in Revision 1 are essentially similar to those in the original issue of the service bulletins. We have changed this final rule to reference Revision 1 of those service bulletins as the appropriate sources of service information for the replacement. We have also added paragraph (d) to this final rule to add the replacement for Model 737–400 and –500 series airplanes, and added new paragraphs (e) and (f) to this final rule to give credit to operators for replacements accomplished before the effective date of this AD per the original issue of Boeing Service Bulletins 737–30–1054 and 737–30–1055. Replacement, accomplished after the effective date of this AD, shall be done in accordance with Boeing Service Bulletin 737–30–1055, Revision 1, dated March 6, 2003.

Request To Remove References to Windshield Wiper Blade Flutter

The airplane manufacturer also states that Boeing Service Bulletin 737–30–1055 will be revised to state that it corrects the wiper stalling problem, not the wiper blade flutter as described in the original issue of Boeing Service Bulletin 737–30–1054. The airplane manufacturer asserts that the wiper blade flutter was a Boeing production issue, neither affecting safe operation of the system nor prevalent in the fleet.

From this statement, we infer that the airplane manufacturer is requesting that we remove references to loss of wiper blade load leading to flutter of the wiper arm from the proposed AD. We agree and have revised this final rule accordingly.

Request To Clarify Description of Cause of Unsafe Condition

The airplane manufacturer requests that we clarify the cause of the reported incidents stated in the Discussion section of the proposed AD. The airplane manufacturer explains that further investigation of the windshield wiper stalling problem revealed the root cause of the stalling to be inadequate backlash or clearance between the gears inside the wiper motor's converter, causing large internal losses due to friction between the gears, not the result of inadequate torque caused by insufficient electrical current as described in the proposed AD.

In light of the results of the additional investigation described previously, we agree that the cause of the wiper motor/converter stalling could be more accurately described. However, the Discussion section is not repeated in a final rule, so no change to this final rule is necessary in this regard.

Request To Revise the Description of Location of the Modification

The other commenter requests that we revise the proposed AD to exclude references to the ''nose wheel well areas.'' The commenter points out that Boeing Alert Service Bulletin 737–30A1052 does not specify a wiring modification in the those areas. We agree and have revised this final rule to remove references to the nose wheel well areas.

Request To Allow Designated Engineering Representative (DER) Approval

The airplane manufacturer requests that certification of the new wiper motor/converter installed on airplanes without the wiring modification or production equivalent be accomplished by DER approval of revised Boeing

Service Bulletins 737–30–1054 and 737–30–1055.

We do not agree. Because we have revised this final rule to allow operators to accomplish the replacement per Boeing Service Bulletins 737–30–1054 and 737–30–1055, as applicable, as explained previously, there is no need for DER approval. No change to this final rule is necessary in this regard.

Conclusion

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

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 483 airplanes of the affected design in the worldwide fleet. The FAA estimates that 162 Model 737–600, –700, and –800 series airplanes of U.S. registry will be affected by this AD.

The wiring modification, if accomplished in lieu of the wiper motor/converter replacement, will take approximately 15 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts will be provided by the airplane manufacturer at no cost to operators. Based on these figures, the cost impact of the wiring modification required by this AD on U.S. operators is estimated to be $157,950, or $975 per airplane.

The wiper motor/converter replacement, if accomplished in lieu of the wiring modification, will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Parts cost will be minimal. Based on these figures, the cost impact of the replacement required by this AD is estimated to be $31,590, or $195 per airplane.

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

Currently, there are no affected Model 737–400 or –500 series airplanes on the U.S. Register. However, should an airplane be imported and placed on the U.S. Register in the future, the wiring modification, if accomplished in lieu of the wiper motor/converter replacement, will take approximately 20 work hours to accomplish, at an average labor rate of $65 per work hour. Required parts will be provided by the airplane manufacturer at no cost to operators. Based on these figures, the cost impact of the wiring modification will be $1,300 per airplane.

Should an affected Model 737–400 or –500 series airplane be imported and placed on the U.S. Register in the future, wiper motor/converter replacement, if accomplished in lieu of the wiring modification, will take approximately 4 work hours to accomplish the replacement of the wiper motor/converters, at an average labor rate of $65 per work hour. Parts cost will be minimal. Based on these figures, the cost impact of the replacement will be $260 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–20–13 Boeing: Amendment 39–13331. Docket 2001–NM–326–AD.

Applicability: Model 737–400 and –500 series airplanes, as listed in Boeing Alert Service Bulletin 737–30A1052, dated October 12, 2000; and Model 737–600, –700, and –800 series airplanes, as listed in Boeing Alert Service Bulletin 737–30A1049, dated June 1, 2000; 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 (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a reduction in flight crew visibility due to stalled wiper motors during

heavy precipitation and a period of substantial crew workload, which could result in damage to the airplane structure and injury to flight crew, passengers, or ground personnel during final approach for landing; accomplish the following:

Compliance Time

(a) For all airplanes: Within 36 months after the effective date of this AD, do the actions specified in paragraph (b) of this AD, or paragraph (c) or (d) of this AD, as applicable.

Modification

(b) Modify the wiring to the left and right windshield wiper motors in the flight compartment (including changing certain wire bundles, reducing the windshield wiper blade force to between 3.5 and 4.5 pounds, and doing an operational test of the windshield wiper system), per Boeing Alert Service Bulletin 737–30A1052, dated October 12, 2000 (for Model 737–400 and –500 series airplanes); or Boeing Alert Service Bulletin 737–30A1049, dated June 1, 2000 (for Model 737–600, –700, and –800 series airplanes); as applicable.

Replacement

(c) For Model 737–600, –700, and –800 series airplanes: Replace the left and right windshield wiper motor/converters in the flight compartment (including increasing the blade force of the windshield wipers to between 6.5 and 7.5 pounds; and doing an operational test of the windshield wiper system), per Boeing Service Bulletin 737–30–1054, Revision 1, dated March 6, 2003.

(d) For Model 737–400 and –500 series airplanes equipped with brushless windshield wiper motor/converters: Replace the left and right windshield wiper motor/converters in the flight compartment (including increasing the blade force of the windshield wipers to between 6.5 and 7.5 pounds; and doing an operational test of the windshield wiper system), per Boeing Service Bulletin 737–30–1055, Revision 1, dated March 6, 2003.

Credit for Previously Accomplished Replacements

(e) Replacement of the left and right windshield wiper motor/converters accomplished prior to the effective date of this AD per Boeing Service Bulletin 737–30–1054, dated May 9, 2002, is considered acceptable for compliance with the requirements of paragraph (c) of this AD.

(f) Replacement of the left and right windshield wiper motor/converters accomplished prior to the effective date of this AD per Boeing Service Bulletin 737–30–1055, dated November 14, 2002, is considered acceptable for compliance with the requirements of paragraph (d) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permit

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

Incorporation by Reference

(i) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 737–30A1049, dated June 1, 2000; Boeing Alert Service Bulletin 737–30A1052, dated October 12, 2000; Boeing Service Bulletin 737–30–1054, Revision 1, dated March 6, 2003; or Boeing Service Bulletin 737–30–1055, Revision 1, dated March 6, 2003; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on November 13, 2003.

Issued in Renton, Washington, on October 2, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–25491 Filed 10–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–48–AD; Amendment 39–13332; AD 2003–20–14]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727–200 series airplanes, that requires installation of four lanyards on the forward access panel/door. This action is necessary to prevent the forward ceiling access panel/door from falling down and blocking the aisle, which would impede evacuation in an emergency. This action is intended to address the identified unsafe condition.

DATES: Effective November 13, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 13, 2003.

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

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6435; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727–200 series airplanes was published in the **Federal Register** on April 16, 2003 (68 FR 18569). That action proposed to require installation of four lanyards on the forward access panel/door.

Comments

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

Request To Revise Applicability

The commenter, the manufacturer, requests that the applicability of the proposed AD be revised to include only those airplanes that remain in a passenger configuration and to exclude those certified to permanently fly in a cargo configuration. The commenter also requests that special consideration be given to airplanes that are presently parked (out of service). The commenter states that, of the total number of airplanes affected by the proposed AD and still in flying condition, approximately 50 percent have been converted to a cargo configuration. The commenter adds that there are 20 affected airplanes in active service that

have retained the passenger configuration, which represents 22 percent of the total affected fleet, and that the remaining flyable passenger fleet is presently parked.

The FAA does not agree that the applicability of the AD should be revised. Airplanes that have been modified to fly in a cargo configuration may still be subject to the unsafe condition addressed by this AD. Numerous supplemental type certificates (STC) exist, which, depending on the configuration, may or may not have the forward ceiling access panel/door installed. Airplanes in the cargo configuration, which do have the forward ceiling access panel/door installed are still subject to this AD. However, operators of airplanes in the cargo configuration that do not have the forward ceiling panel/door installed may request that the cargo modification be approved as an alternate method of compliance, as explained in Note 1 of this AD pertaining to altered products. No change to the final rule is necessary in this regard.

We do not agree that special consideration is necessary for airplanes that have been parked. Those airplanes need only comply with the requirements of this AD before they return to service. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change To Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 100 airplanes of the affected design in the worldwide fleet. The FAA estimates that 78 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 actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $5,070, or $65 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.

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:

2003–20–14 Boeing: Amendment 39–13332. Docket 2003–NM–48–AD.

Applicability: Model 727–200 series airplanes, certificated in any category, as listed in Boeing Special Attention Service Bulletin 727–25–0298, dated February 13, 2003.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the forward ceiling access panel/door from falling down and blocking the aisle, which would impede evacuation in an emergency, accomplish the following:

Lanyard Installation

(a) Within 18 months after the effective date of this AD, install 4 lanyards on the forward ceiling access panel/door, in accordance with Boeing Special Attention Service Bulletin 727–25–0298, dated February 13, 2003.

Alternative Methods of Compliance

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

Note 2: 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

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR

21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Special Attention Service Bulletin 727–25–0298, dated February 13, 2003. 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

(e) This amendment becomes effective on November 13, 2003.

Issued in Renton, Washington, on October 2, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–25490 Filed 10–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–47–AD; Amendment 39–13318; AD 2003–19–15]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2003–19–15, applicable to Pratt & Whitney PW4000 series turbofan engines. AD 2003–19–15 was published in the **Federal Register** on September 30, 2003 (68 FR 56143). In the amendatory language, under § 39.13 [Amended], the amendment number of the new action was inadvertently omitted. This document corrects that omission. In all other respects, the original document remains the same.

EFFECTIVE DATE: October 9, 2003.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7133; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive, FR Doc. 03–24486, applicable to Pratt & Whitney PW4000 series turbofan engines, was published in the **Federal Register** on September 30, 2003 (68 FR 56143). The following correction is needed:

■ On page 56145, in the second column, under § 39.13 [Amended], in the sixth line, add ''Amendment 39–13318.'' after ''Pratt & Whitney:''.

Issued in Burlington, MA, on October 3, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–25577 Filed 10–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 347

[Docket No. 78N–021A]

RIN 0910–AA01

Skin Protectant Drug Products for Over-the-Counter Human Use; Astringent Drug Products; Final Monograph; Direct Final Rule; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of October 27, 2003, for the final rule that appeared in the **Federal Register** of June 13, 2003 (68 FR 35290). The direct final rule amends the regulation that established conditions under which over-the-counter (OTC) skin protectant astringent drug products are generally recognized as safe and effective and not misbranded. This action revises some labeling for astringent drug products to be consistent with the final rule for OTC skin protectant drug products (68 FR 33362, June 4, 2003) and adds labeling for certain small packages (styptic pencils). This document confirms the effective date of the direct final rule. This action is part of FDA's ongoing review of OTC drug products.

DATES: Effective date confirmed: October 27, 2003.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2307.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 13, 2003 (68 FR 35290), FDA solicited comments concerning the direct final rule for a 75-day period ending August 27, 2003. FDA stated that the effective date of the direct final rule would be on October 27, 2003, 60 days after the end of the comment period, unless any significant adverse comment was submitted to FDA during the comment period. FDA did not receive any significant adverse comments.

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

Accordingly, the amendments issued thereby are effective.

Dated: October 3, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–25648 Filed 10–8–03; 8:45 am]

BILLING CODE 4160–01–S

POSTAL SERVICE

39 CFR Part 111

Eligibility Requirements for Certain Nonprofit Standard Mail Matter

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: In this final rule, the Postal Service adopts an amendment to Domestic Mail Manual standards that expands eligibility for Nonprofit Standard Mail rates by exempting certain matter soliciting monetary donations from application of the cooperative mail rule.

EFFECTIVE DATE: November 13, 2003.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease, Mailing Standards, United States Postal Service, 703–292–4184.

SUPPLEMENTARY INFORMATION: In a proposed rule published in the **Federal Register** on May 6, 2003 (68 FR 23937–23939), the Postal Service proposed to expand the eligibility for Nonprofit Standard Mail rates by exempting certain fundraising mailings from the application of the cooperative mail rule. For the reasons explained herein, the Postal Service adopts the proposal, with minor modifications.

The proposal provided background concerning Nonprofit Standard Mail eligibility; the traditional role of Congress in expansion of eligibility for these rates; the history of the cooperative mail rule and its application to fundraising mailings; recent concerns

raised by nonprofit representatives concerning application of the cooperative mail rule on fundraising mail and potential effects on nonprofit organizations; and proposed legislation to exempt certain fundraising mail from application of the rule. The proposal also explained the Postal Service's reluctance to propose a rulemaking on these issues since expansion of eligibility for nonprofit rates has traditionally been accomplished through legislation. Nevertheless, as the proposal discussed, the Postal Service determined to embark upon this rulemaking with the understanding that it represented the consensus of parties with an interest in nonprofit issues, including bipartisan Congressional support, representatives of both nonprofit organizations and professional fundraisers, and the Postal Service; that it was needed to assist nonprofit organizations in obtaining support necessary to fund their programs; and that this result could be accomplished more quickly administratively than legislatively.

The Postal Service received 67 comments concerning its proposal, including one that was received late but was considered. The commenters were diverse, including nonprofit organizations and organizations representing such organizations; professional fundraisers and organizations representing these commercial entities; Congressional representatives; private individuals; and an organization representing state officials that regulate charities. The comments also presented a broad range of views. A significant majority of the comments urged the Postal Service to adopt the rule as proposed. A small number of comments, concerned with potential abuses, recommended limitation of the proposed rule. Of these commenters, a small number recommended that the Postal Service withdraw the proposal, while the remainder recommended that it be adopted with additional restrictions. In contrast, a lesser number of comments recommended that the exemption from application of the cooperative mail rule be expanded even further. Additionally, several comments recommended that the rule should be retroactive.

One of the comments that urged withdrawal of the rule argued that the rule would primarily benefit commercial fundraisers, rather than nonprofit organizations, while the other spoke more generally of potential abuse. If the former assertion were proven to be true, it would give the Postal Service reason to consider withdrawing the proposal. That is, the Postal Service understands that the primary concern of Congress and the nonprofit industry in seeking changes in this area was to benefit nonprofit organizations. Admittedly, the Postal Service does not have independent knowledge to verify the accuracy of the commenter's claims, since the Postal Service does not monitor or regulate the business relationships between nonprofit organizations and professional fundraisers. The comment did not provide evidence to substantiate its claim. Moreover, both nonprofit organizations and associations representing them, who obviously have an interest in this question, urge adoption of the proposal or a modified version of it. This suggests, and some of these comments specifically state, that the change will benefit at least some nonprofit organizations. Accordingly, the Postal Service does not find it appropriate to reject the proposal, as urged by this comment.

The comments that urge the imposition of restrictions narrowing the proposed exemption from the cooperative mail rule do so for reasons related to those raised by comments seeking withdrawal of the proposal. That is, although they do not urge rejection of the new policy, these comments express concern that some professional fundraisers may use the new rules to take advantage of inexperienced or unsophisticated nonprofit organizations.

At the outset, it should be noted that the proposed rule does not dictate the terms of the relationship between nonprofit organizations and fundraisers. If anything, it increases the options available to the parties. For instance, it does not prevent nonprofits from entering the type of principal-agent relationship with fundraisers contemplated by the cooperative mail rule. And, as urged by the numerous parties that sought the Postal Service rulemaking in this area, it allows the nonprofits to consider other relationships to retain the services of professional fundraisers.

The Postal Service does not doubt that the proposed change in its standards will provide individual nonprofit organizations the freedom to enter agreements that, in hindsight, at least a few will conclude to have been unwise. However, the Postal Service does not believe that this provides the justification, at least at this time, to adopt the additional restrictions urged by some comments. Those proposals recommend that the Postal Service require nonprofits and fundraisers to adhere, and certify their compliance, to a variety of conditions concerning their relationship. The conditions suggested include: (1) A restriction against any officer, director, principal, or fiduciary of the party that is ineligible to mail at nonprofit rates (hereafter ''ineligible participant'') or a corporate affiliate or close relative of the ineligible participant serving as an officer, director, or key employee of the nonprofit; (2) a requirement that the arrangement between the nonprofit and ineligible participant be governed by a written contract, and that this contract be signed by a board member or officer of the nonprofit; (3) a requirement that the donations be deposited in a bank account under the nonprofit's exclusive control; (4) a requirement that the ineligible participant have no ownership or control over the list of donors responding to the solicitation, beyond a limited contingent security interest; (5) a requirement that the ineligible participant not retain ownership rights to intellectual property in the fundraising package developed at the nonprofit's expense; (6) a requirement that, in instances where the ineligible participant extends credit to the nonprofit, the credit terms are not conditioned upon the continued employment of the ineligible participant; and (7) a requirement that the mailing not constitute an excess benefit transaction as defined by the Internal Revenue Service. As explained, the Postal Service has determined to adopt the fourth suggestion, in part. Other than that item, for the reasons discussed below, the Postal Service has determined not to adopt the restrictions suggested by these commenters.

First, based on comments received by the Postal Service, it is clear there is significant disagreement as to whether any, much less these, additional restrictions should be adopted. As discussed above, and in the earlier **Federal Register** notice, the Postal Service proposed its rule change reluctantly, based on an understanding there was a broad consensus among interested parties supporting it. Although there appears to remain a general consensus in support of the proposal, there is no consensus supporting any of the suggested additional restrictions.

Second, even if the Postal Service found it appropriate to consider additional postal standards in this area, it is not convinced that the standards suggested are necessarily appropriate. The Postal Service understands the nonprofit universe to be diverse. For example, nonprofits may be large or small, well-established or relatively new, relatively well-funded or not well-funded, run by a permanent paid staff

or all-volunteer. It seems to us difficult to impose a set of restrictions that should be universally applied to all of these organizations. However, that is what the comments suggest.

Third, even if the terms suggested by the commenters are reasonable, the need to impose them by regulation is not clear to the Postal Service. That is, although the need to ensure that nonprofit organizations are not subject to abuses by commercial entities is a laudable objective, it might be accomplished, or at least attempted, through alternatives to regulation. For example, education or training of nonprofits may prove to be sufficient, particularly if it is true that adherence to the suggestions is financially beneficial for the nonprofit. There are a number of interested entities that might provide this education and training: associations representing nonprofit organizations; associations representing fundraisers; and government entities that regulate professional fundraisers and nonprofits. The Postal Service encourages these associations and government agencies to undertake efforts to educate nonprofit organizations and to take other appropriate measures to protect nonprofits from potential abuses. We also encourage nonprofit organizations to utilize these resources and to review their existing and proposed fundraising arrangements and consider whether the terms of those arrangements are in their best interests. The Postal Service will be happy to assist, as appropriate, in these efforts.

Fourth, the Postal Service also has doubts that the procedures suggested by some of the comments are administratively feasible. The comments did not appear to suggest that the Postal Service undertake the difficult task of independently verifying mailers' compliance with the proposed conditions. Rather, they suggested that the parties each sign the postage statements certifying compliance with the new standards and that the Postal Service rely upon these statements. However, the Postal Service does not require all parties to sign the postage statement at this time and, when analogous proposals have been raised in the past, mailers have pointed out the logistical problems they would face if required to sign postage statements for mail prepared and entered by their agents. Moreover, even if it is not contemplated by the commenters that the Postal Service will seek to enforce the suggested conditions beyond ensuring that the parties sign the postage statement, it is unlikely that the Postal Service can avoid all other enforcement activity. For instance, if it is alleged that parties are not in compliance, despite mailing at the nonprofit rates while certifying they did comply, it is likely that the Postal Service would be expected to investigate the assertions. Unlike violations of the current cooperative mail rule, which often can be determined by examination of the parties' contractual arrangements, some of the proposed conditions would likely require a more extensive investigation. For example, the restriction against officers and others with close ties to the ineligible participant (including the close relatives of these individuals) serving as officers, directors, or key employees of the nonprofit would require an exhaustive examination of the organization charts and employment rolls of each organization. Determining whether there is a violation of the IRS excess benefit transaction standard would require Postal Service employees to develop expertise in these standards and to obtain the information needed to apply them. Given the possibility of IRS investigations of the parties under the same standard, this requirement would create the risk of duplicative government efforts.

There is also the likelihood that the proposed conditions will create practical, administrative hardships for some nonprofits. For example, the requirement that the donated funds be deposited in a bank account controlled exclusively by the nonprofit could prove difficult for nonprofits that, because of size or other concerns, are ill-equipped to handle such accounts. Similarly, the requirement that the board members or officers sign fundraising agreements could create difficulties for organizations that delegate these responsibilities to other parties. As the Postal Service is aware from its own purchasing procedures, it is not unusual for employees that are not officers to be given authority to sign contracts.

Adoption of the proposed conditions also could work to the financial detriment of some nonprofits. The proposed rule provides additional options for nonprofits, thereby giving them additional choices in their efforts to find the arrangement that will maximize the benefit to the nonprofit. For instance, it may be beneficial for some nonprofits to consider arrangements concerning donor lists, intellectual property rights, and credit terms beyond those that would be permitted under the proposed conditions. Limiting the choices available to nonprofits might, in some instances, take away the option that would be best for some organizations. Of course, it could be argued that increasing the options available to nonprofits will increase the likelihood that some, particularly the least sophisticated, will make the wrong choice. However, as observed above, the appropriate safeguard against this possibility would seem to be the education of nonprofits to make the best choices in their particular circumstances, rather than eliminating options that might be prove to be the best choice for some of them.

Finally, the Postal Service is concerned that adoption of the proposed conditions may create conflicts with state or federal statutes and that, if such conflicts occur, mailers would be placed in the untenable position of determining whether to comply with the statutes or with postal regulations. Indeed, as discussed in the notice announcing the proposed rule in 65 FR 23939 , ensuring that our customers ''do not unintentionally violate the laws of those states that regulate the financial arrangements between nonprofits and certain types of professional fundraisers'' was one of the motives underlying the rulemaking. The Postal Service is aware that all states have agencies with oversight over charitable solicitations, including state Attorney Generals; Secretaries of State; and Departments of Consumer Protection, Consumer and Regulatory Affairs, Agriculture and Consumer Services, Commerce, Commerce and Consumer Protection, Professional and Financial Regulation, Business Regulation, or Regulation and Licensing, or a combination of such state agencies. The Postal Service is aware also that most states have laws regulating the relationship between professional fundraisers and their nonprofit clients. At the present time, it appears that at least 28 states have enacted some type of financial distribution requirement on charitable fundraisers and, if anything, we understand that the trend toward such state oversight is increasing. Additionally, there are a number of federal agencies with the authority and expertise to enact and enforce standards concerning these relationships, such as the Federal Trade Commission, Internal Revenue Service, and Department of Justice. Under an exemption of fundraising mailings from the cooperative mail rule, the states and federal agencies will be able to adopt and enforce their standards without concern that such action might be in conflict with postal rules.

As alluded to above, the Postal Service has determined to adopt a condition concerning donor lists (*i.e.*,

the lists of persons contributing donations in response to the solicitation). Under this condition, the exemption from application of the cooperative mail rule will apply only where the nonprofit organization is given a list of the donors, contact information for those persons, and the amount of their donations. Based on past reviews of fundraising agreements, the Postal Service believes that this condition is already generally followed in the fundraising industry. Moreover, compliance with this condition generally can be determined by postal officials from review of the agreement between the fundraiser and the nonprofit. Finally, to guard against the possibility that some nonprofits will be better served financially if not subject to this condition, postal standards will allow them to waive the receipt of this listing, as long as that is done in writing.

Based on these considerations, the Postal Service has determined not to adopt at this time the remaining restrictions suggested by some comments. Nevertheless, they do raise significant concerns and the Postal Service's Consumer Advocate will monitor implementation of the rule to determine whether abuses are occurring. As promised in the proposal, if such abuses or other unintended consequences occur after the rulemaking, the Postal Service will consider a further rulemaking or other administrative actions.

Several commenters, although in favor of the proposal, assert that the rulemaking did not go far enough. They assert that the exemption from the cooperative mail rule should also cover the sale of products and services, at least those of nominal value, as well as a variety of documents including brochures, thank you letters, letters confirming the amount of donations, newsletters, and ''chase'' letters. The Postal Service understands the latter to refer to letters that follow up on telemarketing fundraising campaigns and remind donors that their pledges have not been paid. Assuming that understanding of ''chase'' letters is correct, the Postal Service considers them to be a solicitation for monetary donations within the proposal. Accordingly, as long as they do not contain other disqualifying material, such letters would be exempt from application of the cooperative mail rule.

The Postal Service has determined not to expand the proposal to provide that pieces promoting the sale of products and services also be exempted from application of the cooperative mail rule. As explained in the proposal, the exemption is strictly limited to fundraising mailings seeking monetary donations and does not apply to mailings promoting any goods or services. The suggestion goes beyond the consensus agreement that led to the rulemaking. Moreover, as the Postal Service explained in the notice discussing the proposal, adoption of the suggestion would create significant potential for abuse by commercial organizations and may place small businesses and other for-profit organizations who sell similar goods and services at a competitive disadvantage. The suggestion that the proposal be expanded to cover only products and services of nominal value does not alter these considerations; if anything, it could create concerns in administering what is included within that standard.

The Postal Service also has determined not to expand this rulemaking to cover the other documents (*e.g.*, thank you letters, newsletters, confirmations of donations) identified in the comments. These suggestions are beyond the scope of the rulemaking as well as the consensus favoring the exemption of certain fundraising mailings from application of the cooperative mail rule. Moreover, the need for a rulemaking to address these documents is unclear. The Postal Service is not aware of any general concern regarding its policies involving these documents. Some of them may, in fact, be generally sent as First-Class Mail, and thereby they are not eligible for Nonprofit Standard Mail rates in any case.

Finally, several commenters suggest that the proposed policy be made retroactive. The Postal Service has determined not to do so and, as explained in its proposal, the change in policy is prospective only, effective on the date of enactment. A retroactive change could open the Postal Service to an undetermined number of refund claims.

For these reasons, the Postal Service adopts the rule as proposed but, in addition to the condition described above, makes three minor changes. First, the proposed revision was to apply only to nonprofit organizations authorized to mail at the nonprofit rates. The rule is changed to apply to all customers authorized to mail at Nonprofit Standard Mail rates. Second, the proposed rule is revised to make clear that the exception from application of the cooperative mail rule applies only where the monetary donations solicited are for the entity authorized to mail at nonprofit rates. Finally, the language is revised to make clear that the exception is prospective only.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Add the following to Domestic Mail Manual section E670.5.3: ''Exception: effective November 13, 2003, this standard no longer applies to mailings by an organization authorized to mail at Nonprofit Standard Mail rates soliciting monetary donations to the authorized mailer and not promoting or otherwise facilitating the sale or lease of any goods or service. This exception applies only where the organization authorized to mail at Nonprofit Standard Mail rates is given a list of each donor, contact information (*e.g.*, address, telephone number) for each, and the amount of the donation or waives in writing the receipt of this list.''

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 03–25643 Filed 10–8–03; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–46–1–7615a; FRL–7571–1]

Approval and Promulgation of Implementation Plans; New Mexico; Revision to Motor Vehicle Emission Budgets in Bernalillo County, New Mexico Carbon Monoxide Air Quality Maintenance Plan Using MOBILE6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action approving the State Implementation Plan (SIP) revisions for Bernalillo County, New Mexico, which is a carbon monoxide maintenance area. This SIP revision was submitted to EPA by the Governor of New Mexico on May 15, 2003. More specifically, EPA is approving the county's revised Motor Vehicle Emissions Budget (MVEB) for carbon monoxide (CO) for 1996, 1999, 2002, 2005 and 2006. This budget was developed using EPA's latest emissions

modeling program, MOBILE6. This submittal updates the maintenance plan by establishing new transportation conformity MVEBs for use by the Mid-Region Council of Governments, the area's Metropolitan Planning Organization (MPO). These budgets will continue to maintain the total on-road mobile source emissions for the area at or below the attainment level for the CO National Ambient Air Quality Standard (NAAQS).

DATES: This rule is effective on November 24, 2003 without further notice, unless EPA receives adverse comment by November 10, 2003. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 office listed below. Electronic comments should be sent either to *Diggs.Thomas@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the Final Action part of this document. Copies of the State's submittal and other documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas, 75202–2733.

City of Albuquerque Environmental Health Department, 1 Civic Plaza, Albuquerque, New Mexico 87103. Telephone 505–768–2600.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Wade, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas, 75202–2733, telephone (214) 665–7247 or *Wade.Peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we'', ''us'', or ''our'' is used, we mean the EPA.

Outline

I. Background

In 1990, the City of Albuquerque/Bernalillo County (Albuquerque) in New Mexico had a CO design value of 11.1 parts per million, exceeding the National Ambient Air Quality Standard (NAAQS) of 9 parts per million (8-hour average basis). Consequently, Albuquerque was classified as a moderate nonattainment area for CO under the Clean Air Act (the Act). As required by the Act, on November 5, 1992, New Mexico submitted for EPA approval a revision to the SIP to address Albuquerque's CO nonattainment.

Different parts of the November 1992 SIP submittal were approved at different times, with approval of all aspects completed in June of 1996.

Air quality data in the Albuquerque area showed no violations of the CO NAAQS between 1992 and 1995, meeting the first criterion for redesignation. On April 14, 1995, New Mexico submitted a request that Albuquerque be redesignated to attainment for CO. EPA proposed approval of this request on February 16, 1996. This approval was made effective on July 15, 1996.

The Act also requires a periodic inventory of all emissions from area, mobile, and stationary sources. The 1993 emission inventory found the following CO emissions levels, in tons per day: Stationary sources, 3.18; area sources, 111.60; On-road mobile sources, 274.16; and nonroad mobile sources, 45.74. Total CO emissions were 434.69 tons per day.

This inventory was further updated in 1996. This updated inventory reflected the following CO emissions levels, in tons per day: On-road mobile sources, 266.99; nonroad mobile sources, 50.90; area sources, 67.19; and stationary sources, 3.92. Total CO emissions were inventoried at 389.0 tons per day.

The Albuquerque/Bernalillo County area submitted further revisions to its maintenance plan emissions budgets on February 4, 1999, using the MOBILE5 emission factor modeling program. These revisions, for years 1996–2006, increased the budgets for mobile and stationary source emissions but decreased the budget for area source emissions, resulting in an overall decrease in budgeted emissions. These revisions also established a 2010 emissions budget. A direct final rule approving these revisions was published December 20, 1999. However, adverse comments were received and the direct final approval was withdrawn. After addressing the comments received, the EPA gave final approval to the budget revisions for 1996–2010 on May 24, 2000 (65 FR 33455). The revised MVEBs are as follows, in tons of CO emissions per day: 1996, 266.99; 1999, 229.09; 2002, 209.1; 2005, 205.67; 2006, 205.86; and 2010, 222.46.

II. What Is MOBILE6?

MOBILE6 is the latest in a series of EPA emissions factor models for estimating pollution from on-road motor vehicles in states outside of California and represents the first major update of the preexisting MOBILE model since 1993. The release of this model was announced in a **Federal Register** notice published on January 29, 2002 (67 FR 4254). This date marks the beginning of the two-year grace period, after which all areas must use MOBILE6 for emissions factor modeling for transportation conformity purposes. MOBILE6 calculates emissions of carbon monoxide and other pollutants from passenger cars, motorcycles, buses, and light-duty and heavy-duty trucks. The model accounts for the emission impacts of factors such as changes in vehicle emissions standards, changes in vehicle populations, and variation in local conditions such as temperature, humidity, fuel quality, and air quality programs.

MOBILE6 is used to calculate current and future inventories of motor vehicle emissions at the national and local level. These inventories are used to make decisions about air pollution policies and programs at the local, state and national level. Inventories based on MOBILE6 are also used to meet the federal Clean Air Act's SIP and transportation conformity requirements.

The MOBILE model was first developed in 1978 and MOBILE6 is the first major update of the model since 1993. It has been updated many times to reflect changes in vehicle fleet composition and fuels, to incorporate EPA's growing understanding of vehicle emissions, and to cover new emissions regulations and modeling needs.

III. Analysis of the State's Submittal

A. Why Were Updated Carbon Monoxide Budgets Established?

The existing MVEBs for CO were last modified through a SIP revision approved and made effective by EPA on May 24, 2000 (65 FR 33455).

To address and accommodate the release of MOBILE6 as the latest EPA-approved emissions factor model, the

governor of New Mexico submitted a SIP revision to EPA on May 15, 2003. The MVEBs contained in the current CO maintenance plan were calculated with a previous emissions factor model, MOBILE5a. This submittal revises the Motor Vehicle Emissions Budgets for the years 1996, 1999, 2002, 2005 and 2006 using MOBILE6. Note that only the MVEBs are being revised using the MOBILE6 model; budgets for the other source categories will remain unchanged as the MOBILE6 model does not affect these categories. However, changes in the estimated amount of CO produced by the on-road mobile source category will affect the CO baseline level and the CO totals by year. Therefore, the baseline level and amounts of total CO by year will be revised in response to the MOBILE6 analysis.

The EPA guidance document, Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity, issued by John Seitz on January 18, 2002 (''MOBILE6 Guidance''), states that nonattainment and maintenance areas may forgo the requirement to update all planning assumptions when updating the MVEBs with MOBILE6, if the area can demonstrate that these assumptions have not changed since the last budget revision. For CO, population is the most important assumption underlying the CO forecasts as it has a direct impact on the number of miles driven. Comparing the Albuquerque/Bernalillo County population figure for the year 2000 used in the last SIP revision (556,248) to the population for the same area recorded in the 2000 Census (556,678) results in a difference of 0.077%, less than 1%. Because the estimated figure matches so closely with the actual census count, the requirement that the latest planning assumptions continue to be valid is met and this SIP revision continues to use these estimates. Additionally, work has already begun on the required second ten-year maintenance plan, due to EPA in June of 2004. With this expected submission, the MPO will update the emissions inventory in its entirety with the latest planning assumptions and demographic data.

B. Recalculating the Motor Vehicle Emissions Budget With MOBILE6

Because of the significant difference in modeling results between the previous version of the emissions factor model, MOBILE5a, and the updated version, MOBILE6, the on-road mobile source category in the emissions inventory was recalculated for all years represented in the ten-year maintenance time frame of the SIP using MOBILE6. This inventory provides the basis for determining the MVEBs for CO. The MVEBs are the same as the total estimated CO, in tons per day, for the on-road mobile source category in the emissions inventory. For all years beyond 2006 (the last modeled year), the MVEB will be held at the 2006 level.

The table below compares the existing MVEBs with the revised MVEBs submitted with this SIP revision.

MOTOR VEHICLE EMISSION BUDGETS

Year	Existing (CO in tpd)	Proposed (CO in tpd)	Change
1996	266.90	416.31	149.32
1999	229.09	373.05	143.96
2002	209.01	369.53	160.52
2005	205.67	367.28	161.61
2006	205.86	312.65	106.79

For all budget years, MOBILE6 estimates a greater production of CO than MOBILE5a. Although the MOBILE6 emissions are estimated to be higher than that previously predicted by MOBILE5a, the model still demonstrates greater relative emissions reductions benefits. Recall that only the budget estimates for on-road mobile source emissions (the MVEBs) are being revised with the MOBILE6 model. Changes in the MVEBs will, however, affect the overall CO budgets and CO baseline level even though the amount of CO in the other source categories (nonroad mobile, area, and stationary) will remain unchanged. The MOBILE6 Guidance provides that nonattainment and maintenance areas may revise the on-road mobile emissions inventory and MVEBs without revising the entire SIP and other emission inventory categories, if the SIP continues to demonstrate maintenance of the standard when the MOBILE5a-based on-road mobile source inventories are replaced with MOBILE6 inventories. To demonstrate this, the following table shows the entire emission inventory, with the on-road mobile source category replaced with the resultant MOBILE6-derived estimates. The revised MVEBs are shown, along with the currently approved inventories from the other source categories. These inventories were approved in a revision to the CO maintenance plan on May 24, 2000 (65 FR 33455).

INVENTORY SOURCE CATEGORY

[CO in tpd]

Year	Proposed MOBILE6 MVEBs	Off-road mobile sources	Area sources	Stationary sources	Revised total inventory
1996	416.31	50.90	67.19	3.92	538.32
1999	373.05	52.68	69.87	27.40	523.00
2002	369.53	54.46	72.60	27.54	524.13
2005	367.28	56.25	75.25	27.68	526.46
2006	312.65	56.84	76.09	27.72	473.30

The 1996 figure found in the revised total column, 538.32 tpd, is the new CO baseline level as calculated with MOBILE6. The original baseline level, as approved on May 24, 2000, was 389.0 tpd. This level represents the amount of CO, in tons per day, which may be emitted by all sources and still allow the Albuquerque/Bernalillo County area to be in attainment of the NAAQS. Essentially, this baseline represents the ''cap'' of emissions from all sources. The results of MOBILE6 modeling, which raises the baseline level, indicates that the initial CO baseline, as determined using MOBILE5a, was set too low. This new analysis indicates that the Albuquerque/Bernalillo County area actually had a larger amount of CO in the airshed in 1996, yet still met the NAAQS. The following table illustrates the relative gain in emissions reductions when comparing the MOBILE5a-derived estimates with those of MOBILE6.

Year	Cap under MOBILE5a (in tpd)	Cap under MOBILE6 (in tpd)	Difference (in tpd)
1996	389.0	538.32	164
2006	366.51	473.30	106.79
Decrease in CO Emissions (in tpd)	−22.49	−65.02	
Percent Reduction	5.78	12.08	

The greater decline in emissions seen with MOBILE6 between 1996 and 2006 can be attributed to the sensitivity of the model to local parameters incorporated into MOBILE6 and the control programs in place in Albuquerque/Bernalillo County. So, although the emissions cap is higher with MOBILE6, that difference is due to the sensitivity of the newer model.

MOBILE6 offers a more robust and accurate estimate of emissions than prior versions of the model. Comparing just the MOBILE5a and MOBILE6 on-road mobile source estimates indicates that MOBILE6 shows a relative reduction in CO emissions that is approximately twice as much as that seen with MOBILE5a.

IV. Final Action

We have evaluated the State's submittal and have determined that it meets the applicable requirements of the Act and EPA regulations, and is consistent with EPA policy. Therefore, we are approving Albuquerque's request to revise the MVEBs in its carbon monoxide maintenance SIP using MOBILE6, EPA's latest emission factor modeling program.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on November 24, 2003 without further notice unless we receive adverse comment by November 10, 2003. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

A. How Can I Get Copies of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* The EPA has established an official public rulemaking file for this action under NM–46–1–7615. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official record, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Planning Section, EPA Region 6, 1445 Ross Avenue, Dallas, Texas, 75202. The EPA requests that, if at all possible, you contact the rulemaking contact listed as the Further Information Contact to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

2. *Copies of the State submittal are also available for public inspection during official business hours, by appointment at the local air agency.* City of Albuquerque Environmental Health Department, 1 Civic Plaza, Albuquerque, New Mexico 87103. Telephone 505–768–2600.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, which are open for comment.

The EPA's policy on public comments indicates that, whether submitted electronically or in paper, all comments will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose 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 the official public rulemaking file. The entire printed comment, included the copyrighted material, will be available at the Regional Office for public inspection.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number, NM–46–1–7615, in the subject line on the first page of your comment. Please ensure your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures you can be identified as the source of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public file, and made available in EPA's electronic public record. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider you comment.

i. *Electronic Mail (e-mail).* Comments may be sent by e-mail to Thomas Diggs *(Diggs.Thomas@epa.gov).* The EPA's e-

mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public file, and made available in EPA's electronic public record.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then select EPA at the top of the page and to ''Go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word, or ASCII file format. Avoid the use of special characters and any form of encryption.

iv. *By Mail.* Send your comments to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas, 75202–2733, Attention: NM–46–1–7615.

v. *By Hand Delivery or Courier.* Deliver your comments to: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas, 75202–2733. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

V. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 8, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Reporting and recordkeeping requirements.

Dated: September 30, 2003.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart GG—New Mexico

■ 2. In § 52.1620, the table in paragraph (e) entitled ''EPA approved nonregulatory provisions and quasi-regulatory measures in the New Mexico SIP'' is amended by adding one new entry to the end of the table to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Explanation
* * *	*	*	*	*
Maintenance plan for carbon monoxide—Albuquerque/Bernalillo County, New Mexico: Update of carbon monoxide budgets using MOBILE6.	Bernalillo County	February 12, 2003	[October 9, 2003 and FR page citation].	.....
* * *	*	*	*	*

[FR Doc. 03–25543 Filed 10–8–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1503

[Docket No. TSA–2003–14702; Amendment Nos. 1500–1, 1502–1, 1503–1, 1510–3, 1511–2, 1540–5, 1542–1, 1544–4, 1546–1 1548–1, and 1550–1]

RIN 1652–AA20

Transportation Security Administration Transition to Department of Homeland Security; Technical Amendments Reflecting Organizational Changes; Correction

AGENCY: Transportation Security Administation (TSA), DHS.

ACTION: Final rule; correction.

SUMMARY: The document contains a correction to the final rule published in the **Federal Register** on August 19, 2003. That rule makes technical changes to various provisions of chapter XII, title 49 of the Code of Federal Regulations, mainly in response to enactment of the Homeland Security Act of 2002. In addition, the rule revises any references to our location address or mailing address, as necessary due to TSA's physical move of its headquarters facilities and personnel from Washington, DC, to Arlington, Virginia. TSA inadvertently left out the correct mailing address for the Enforcement Docket in certain sections of part 1503. This document adds the correct mailing address to these sections.

DATES: Effective October 9, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Mullen, Office of the Chief Counsel, TSA–2, Transportation Security Administration, West Building, Floor 8, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 277–2706; e–mail *marisa.mullen@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

On August 19, 2003, TSA published a final rule in the **Federal Register** (68 FR 49718), making technical changes to various provisions of chapter XII, title 49 (Transportation) of the Code of Federal Regulations (CFR), mainly in response to enactment of the Homeland Security Act of 2002 (HSA). In addition, the rule revises any references to our location address or mailing address, as necessary due to TSA's physical move of its headquarters facilites and personnel from Washington, DC, to Arlington, Virginia. TSA inadvertently left out the correct mailing address for the Enforcement Docket in certain sections of part 1503. This document adds the correct mailing address to these sections, changing the address from 400 Seventh Street, SW., Washington, DC 20590 to 601 South 12th Street, Arlington, VA 22202–4220.

Correction

In rule FR Doc. 03–20927, published on August 19, 2003 (68 FR 49718), make the following correction:

On page 49720, in the second column, add to the end of amendatory instruction 9. for §§ 1503.5(b)(2), 1503.16(f), 1503.209(b), 1503.210(a), and 1503–233(a) the following instructions: ''and remove the words '400 Seventh Street, SW., Washington, DC 20590' and add in their place, the words '601 South 12th Street, Arlington, VA 22202–4220'.''

Issued in Arlington, Virginia, on October 3, 2003.

Mardi Ruth Thompson,

Deputy Chief Counsel for Regulations.

[FR Doc. 03–25574 Filed 10–8–03; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 092603D]

Fisheries of the Northeastern United States; Tilefish Fishery; Continuation of Specifications for the 2004 Fishing Year

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

ACTION: Notification of continuation of specifications for fishing year 2004.

SUMMARY: NMFS announces that it will continue the 2003 quota specifications for the golden tilefish fishery for the 2004 fishing year. Accordingly, the total allowable landings (TAL) for the 2004 fishing year will remain at 1.995–million lb (905,172–kg). The intent of this action is to notify the public that there will be no change in the fishery specifications for tilefish for the fishing year beginning November 1, 2003.

DATES: Effective from November 1, 2003, through October 31, 2004.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, 978–281–9141; fax 978–281–9135; e-mail *Douglas.Christel@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The final rule implementing the Tilefish Fishery Management Plan (FMP) became effective on November 1, 2001 (66 FR 49136, September 26, 2001). Pursuant to the tilefish regulations at 50 CFR 648.290, the Tilefish FMP Monitoring Committee (Monitoring Committee) will meet after the completion of each stock assessment, or at the request of the Mid-Atlantic Fishery Management Council (Council) Chairman, to review tilefish landings information and any other relevant available data to determine if the annual quota requires modification to respond to changes to the stock's biological reference points or to ensure

that the rebuilding schedule is maintained. Additional management measures or revisions to existing measures could also be considered at this time to ensure that the TAL would not be exceeded. Furthermore, up to 3 percent of the TAL could be set aside for a given fishing year for the purpose of funding research. In the event that a new stock assessment is not completed or the Council Chairman does not request that the Monitoring Committee meet, the regulations further specify that the previous year's specifications will remain effective and that NMFS will issue notification in the **Federal Register** to inform the public.

A new tilefish stock assessment is not scheduled to occur until 2004. Consequently, the Council Chairman did not request that the Monitoring Committee meet to determine if the annual quota requires modification to respond to stock conditions. Furthermore, the Council, at its August 2003 meeting, voted on research set-aside proposals that did not include a request for a tilefish research set-aside allocation for the upcoming fishing year. Therefore, NMFS informs the public that the 2003 quota specifications of 1.995–million lb (905,172–kg) for the golden tilefish fishery will remain in effect for the 2004 fishing year (November 1, 2003, through October 31, 2004).

A recent decision in the case of *Hadaja* v. *Evans* set aside the permit categories for the tilefish fishery. However, the TAL for the fishery is not affected by this decision. Accordingly, for the 2004 fishing year, unless otherwise modified by the Council and NMFS, the 1.995–million lb (905,172–kg) TAL is applicable to the entire fishery and will not be distributed among permit categories according to the regulations at § 648.290(b).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

October 3, 2003.Bruce C. Morehead,Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–25641 Filed 10–8–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 196
Thursday, October 9, 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 39

[Docket No. 2001–NM–266–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Bombardier DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, that currently requires inspections to detect breakage in the struts of the rear mount strut assemblies on the left and right engine nacelles, and replacement of any broken struts. The existing AD also requires eventual replacement of all currently installed struts with new and/or reworked struts, as terminating action for the inspections. This action would require new repetitive inspections of the strut assemblies for cracking of struts replaced per the existing AD, and replacement of any cracked strut with a new, machined strut. This action also would change the applicability of the existing AD by adding certain airplanes and removing certain other airplanes, and would include an optional terminating action for the repetitive inspections. The actions specified by the proposed AD are intended to prevent failure of the engine rear mount struts, which could result in reduced structural integrity of the nacelle and engine support structure. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 10, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–266–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. 2001–NM–266–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 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7523; fax (516) 568–2716.

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 2001–NM–266–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. 2001–NM–266–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On February 14, 1994, the FAA issued AD 94–04–09, amendment 39–8829 (59 FR 8393, February 22, 1994), applicable to certain Bombardier Model DHC–8–100 and DHC–8–300 airplanes, to require inspections to detect breakage in the engine rear mount strut assemblies, and replacement of broken struts. That AD also requires eventual replacement of all currently installed struts with new and/or reworked struts, as terminating action for the inspections. That action was prompted by several reports of failure of the engine rear mount struts, due to fracture at one of the rosette welds on the shank of the strut where full weld depth was not achieved during manufacture. The requirements of that AD are intended to prevent failure of the engine rear mount struts, which could reduce the structural integrity of the nacelle and engine support structure.

Actions Since Issuance of Previous Rule

Since the issuance of AD 94–04–09, we have been advised by Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, of reports from the manufacturer and operators of Model DHC–8–100 and DHC–8–300 airplanes indicating that replacement struts installed per that AD have developed cracks. Therefore, the engine rear mount strut has been redesigned and is pressed fit assembled instead of welded which improves the endurance of the strut to prevent failure due to cracking and/or fracture.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin 8–71–24, dated August 21, 2001, which describes procedures for replacing the existing rear mount struts in a nacelle with new, improved struts. TCCA previously issued Canadian airworthiness directive CF–2001–20, dated May 16, 2001, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

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

Explanation of Requirements of 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 supersede AD 94–04–09 to require new repetitive inspections of the strut assemblies for cracking of the struts replaced per the existing AD, and replacement of any cracked strut with a new, machined strut. This proposed AD also would change the applicability of the existing AD by adding certain airplanes and removing certain other airplanes, and would include an optional terminating action for the repetitive inspections.

Consistent with the findings of TCCA, this proposed AD would allow repetitive inspections to continue in lieu of the terminating action. In making this determination we considered that long-term continued operational safety in this case will be adequately ensured by repetitive inspections to find cracking before it represents a hazard to the airplane.

Changes to the Applicability of the Existing AD

This proposed AD would expand the applicability in the existing AD to include Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes; serial numbers 003 through 509 inclusive. Model DHC–8–102 and –103 series airplanes, serial numbers 003 through 310 inclusive; and Model DHC–8–301, –311, and –314 series airplanes, serial numbers 100 through 311 inclusive, were identified in the existing AD.

Additionally, this proposed AD would remove Model DHC–8–314 airplanes, which were added to the applicability of the existing AD but are not U.S. type-certificated.

Cost Impact

There are approximately 192 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 94–04–09 take approximately 16 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts are provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the currently required actions is estimated to be $1,040 per airplane.

The new detailed inspection that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $12,480, or $65 per airplane, per inspection cycle.

The cost impact figures discussed above are 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 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.

The optional terminating action, if done, would take approximately 16 work hours per strut to accomplish, at an average labor rate of $65 per work hour. Required parts would cost approximately $800 per strut. Based on these figures, the cost impact of the optional terminating action is estimated to be $1,840 per strut, 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 removing amendment 39–8829 (59 FR 8393, February 22, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2001–NM–266–AD. Supersedes AD 94–04–09, amendment 39–8829.

Applicability: Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315

airplanes; serial numbers 003 through 509 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the engine rear mount struts on the left and right engine nacelles, which could result in reduced structural integrity of the nacelle and engine support structure, accomplish the following:

Repetitive Inspections

(a) Within 1,000 flight hours since installation of any new or reworked rear mount strut per the replacement required by paragraph (b) of AD 94–04–09, amendment 39–8829, or within 250 flight hours after the effective date of this AD, whichever is later; do a detailed inspection for cracking of each rear mount strut in the left and right engine nacelles.

Note 1: Bombardier Service Bulletin 8–71–24, dated August 21, 2001, does not contain inspection procedures for the detailed inspection required by paragraph (a) of this AD; however, the definition of a detailed inspection is specified in Note 2 of this AD.

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.''

(1) If no crack is found, repeat the inspection at intervals not to exceed 250 flight hours, until accomplishment of paragraph (b) of this AD.

(2) If any crack is found, before further flight, replace the strut with a new, improved strut per Bombardier Service Bulletin 8–71–24, dated August 21, 2001. Repeat the inspection thereafter at intervals not to exceed 500 flight hours, for that nacelle only.

Optional Terminating Action

(b) Replacement of both rear mount struts in a nacelle with new, improved struts, by doing all the actions specified in the Job Set-up, Procedure, and Close-out sections of the Accomplishment Instructions of Bombardier Service Bulletin 8–71–24, dated August 21, 2001, ends the repetitive inspections required by this AD for that nacelle only. Replacement of both rear mount struts on both the left and right engine nacelles ends the repetitive inspections required by this AD.

Parts Installation

(c) As of the effective date of this AD, no person shall install an engine rear mount strut, P/N 87110016–001, –003, –005, –007, –009, or –011, on any airplane.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–20, dated May 16, 2001.

Issued in Renton, Washington, on October 3, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–25590 Filed 10–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–283–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 900EX 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 certain Dassault Model Falcon 900EX series airplanes. This proposal would require modification of the front attachment area of the No. 2 engine. This action is necessary to prevent failure of the fail-safe lugs of the hoisting plate of the forward engine mount, and subsequent cracking of the pick-up folded sheet of the pylon forward rib. Such cracking could rupture the mast case box, which could result in loss of the two forward engine mounts and consequent separation of the engine from the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 10, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–283–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. 2001–NM–283–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 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

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 2001–NM–283–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. 2001–NM–283–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Dassault Model Falcon 900EX series airplanes. The DGAC advises that fatigue tests revealed that the fail-safe lugs of the forward engine mount may not have adequate fatigue strength. Failure of the lugs could result in cracking of the pick-up folded sheet of the pylon forward rib, and consequent rupture of the mast case box. Such conditions, if not corrected, could result in loss of the two forward engine mounts and consequent separation of the engine from the airplane.

Explanation of Relevant Service Information

Dassault has issued Service Bulletin F900EX–103, dated May 23, 2001, which describes procedures for modification of the No. 2 engine front attachment area. The modification involves replacing the No. 2 engine hoisting shield with a reinforced shield at the safety device attachments, and replacing the front attachment pickup doublers with new, thicker doublers. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2001–160–027(B), dated May 2, 2001, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have 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 AD

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 accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed AD and French Airworthiness Directive

The French airworthiness directive specifies a compliance time of ''Before 3,750 flights since new,'' for accomplishment of the modification of the front attachment area of the No. 2 engine. However, this proposed AD would require a compliance time of ''Prior to the accumulation of 3,750 flight cycles since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever occurs first.'' This decision is based on our determination that ''since new'' may be interpreted differently by different operators. We find that our proposed terminology is generally understood within the industry, and records will always exist that establish these dates with certainty.

Cost Impact

We estimate that 36 airplanes of U.S. registry would be affected by this proposed AD, that it would take about 85 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $65 per work hour. Required parts would cost about $14,479 per airplane. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $720,144, or $20,004 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 AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations 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:

Dassault Aviation: Docket 2001–NM–283–AD.

Applicability: Model Falcon 900EX series airplanes, serial numbers 1 through 60 inclusive; certificated in any category; except those on which Dassault Modifications M2754 and M2925, identified in Dassault Service Bulletin F900EX–103, dated May 23, 2001, have been accomplished.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the fail-safe lugs of the forward engine mount, and consequent cracking of the pick-up folded sheet of the pylon forward rib, which could rupture the mast case box and result in loss of the two forward engine mounts and consequent separation of the engine from the airplane, accomplish the following:

Modification

(a) Prior to the accumulation of 3,750 flight cycles since the date of issuance of the

original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever occurs first: Modify the front attachment area of the No. 2 engine by doing all the actions per Paragraphs 2.A. through 2.D. of the Accomplishment Instructions of Dassault Service Bulletin F900EX–103, dated May 23, 2001.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in French airworthiness directive 2001–160–027(B), dated May 2, 2001.

Issued in Renton, Washington, on October 3, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–25589 Filed 10–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–78–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400, –401, and –402 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 certain Bombardier Model DHC–8–400, –401, and –402 airplanes. This proposal would require a one-time inspection of the forward engine mount assemblies on the left and right engine nacelles for installation of pre-production engine mount assemblies, and follow-on corrective actions if necessary. This action is necessary to prevent failure of the forward engine mount, which could result in reduced structural integrity of the nacelle and engine support structure. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 10, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–78–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–78–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 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Douglas G. Wagner, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7506; fax (516) 568–2716.

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–78–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–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–400, –401, and –402 airplanes. TCCA advises that the manufacturer of the forward engine mount assembly has indicated that an unapproved pre-production engine mount assembly was found installed in place of a production engine mount assembly. Pre-production engine mount assemblies are more susceptible to fatigue cracking than production engine mount assemblies. In addition, there is a possibility that pre-production assemblies having part number (P/N) 96042–07 are incorrectly marked with P/N 96042–09, which is the P/N on the production assemblies. Operation with pre-production engine mount assemblies could result in failure of the forward engine mount, and consequent reduced structural integrity of the nacelle and engine support structure.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin A84–71–06, Revision ''A,'' dated December 5, 2001, which describes procedures for a visual inspection to determine the P/N and configuration of the forward engine mount assemblies on the left and right engine nacelles. If the inspection shows that any pre-production engine mount assembly is installed, the service bulletin describes procedures for follow-on corrective actions for that assembly.

Those actions include repetitive detailed visual inspections of each assembly for cracking at intervals of 250 flight cycles, and replacement of the pre-production engine mount assembly with a production engine mount assembly before further flight if cracking is found. If no cracking is found, the service bulletin specifies that the pre-production engine mount assembly may remain in service for up to 1,000 flight cycles after the initial inspection, and then reworked or replaced with a production engine mount assembly. If both engine mounts on the same nacelle have the pre-production configuration, the service bulletin specifies that one pre-production engine mount assembly must be replaced with a production engine mount assembly before further flight. The service bulletin also includes a repair letter issued by the engine manufacturer which contains rework procedures for the pre-production engine mount assembly. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2002–07, dated January 21, 2002, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

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

Explanation of Requirements of 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 accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Canadian Airworthiness Directive, Service Bulletin, and Proposed Rule

The service bulletin and Canadian airworthiness directive specify a visual inspection to determine the P/N and configuration of the forward engine mount assemblies, but this proposed rule would require a general visual inspection. A note has been added to the proposed rule to define that inspection.

The service bulletin and Canadian airworthiness directive also specify a detailed visual inspection for cracking if a pre-production engine mount is installed, but this proposed rule would require a detailed inspection. A note has been added to the proposed rule to define that inspection.

Cost Impact

We estimate that 11 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,430, or $130 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 AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations 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:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2002–NM–78–AD.

Applicability: Model DHC–8–400, –401, and –402 airplanes; serial numbers 4005, 4006, 4008 through 4016 inclusive, 4018 through 4051 inclusive, and 4053; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the forward engine mount, which could result in reduced structural integrity of the nacelle and engine support structure, accomplish the following:

Inspection

(a) Within 100 flight cycles after the effective date of this AD: Do a general visual inspection of the forward engine mount assemblies on the left and right engine nacelles for installation of pre-production assemblies (determine the part number and configuration for each assembly), per the Accomplishment Instructions of Bombardier Alert Service Bulletin A84–71–06, Revision ''A,'' dated December 5, 2001. If no pre-production engine mount assembly is installed, no further action is required by this AD.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the

inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Follow-On Corrective Actions

(b) If any pre-production engine mount assembly is installed, do all the applicable follow-on corrective actions (including repetitive detailed inspections for cracking, and rework or replacement of the pre-production engine mount assembly, if necessary) per all the actions specified in the Accomplishment Instructions of the service bulletin, at the applicable times specified in Paragraph I., Part D., ''Compliance,'' of the service bulletin. Any replacement due to cracking must be done before further flight.

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

Optional Terminating Action for Follow-On Repetitive Inspections

(c) Installation of production engine mount assemblies on all four forward engine mounts ends the repetitive inspection requirements of paragraph (b) of this AD.

Part Installation

(d) As of the effective date of this AD, no person may install an engine mount assembly having a pre-production configuration and/or part number 96042–07 on any airplane, unless the assembly has been reworked per Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A84–71–06, Revision ''A,'' dated December 5, 2001.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–07, dated January 21, 2002.

Issued in Renton, Washington, on October 3, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–25588 Filed 10–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–32–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Model PA–46–500TP Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The New Piper Aircraft, Inc. (Piper) Model PA–46–500TP airplanes. This proposed AD would require you to replace all electronic control modules in the airplane electrical system with newly designed modules. This proposed AD is the result of reports of smoke in the cockpit and loss of electrical systems function. We are issuing this proposed AD to prevent short circuit failure and electrical arcing of the electronic control modules, which could result in loss of the electrical systems components or burning of wiring insulation and cause smoke in the cockpit. Such a condition could lead to the inability to properly control the airplane.

DATES: We must receive any comments on this proposed AD by December 9, 2003.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE–32-AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2003–CE–32–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.

You may get the service information identified in this proposed AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; facsimile: (772) 978–6584.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–32–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kenneth B. Mobley, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6046; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. 2003–CE–32–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

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

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Discussion

What Events Have Caused This Proposed AD?

We have received several reports that a condition exists in some of the electrical control modules in the airplane electrical system.

FAA analysis indicates that there is inadequate clearance and inadequate electrical isolation between the load terminal and metal case. The modules load terminal is cutting through the rubber insulating grommet and contacting the module's metal case. This causes the electrical short circuit and electrical arcing.

The following electrical system components are potentially affected by this condition:

Engine start
Strobe light
Left/right taxi light

Liquid crystal display (LCD) dimming
Dual flasher (recognition light)
Left/right pitot heat
Avionics dimming (Bezel buttons for radios)
Prop heat
Left/right fuel pump
Position light landing light
Instrument panel light dimming
Ice light
Vent defog (vent blower)
Hi/low blower
Stall heat
Dimmer switch lighting (overhead switch panel switches)

What Are the Consequences if the Condition Is Not Corrected?

If not corrected, short circuit failure and electrical arcing of the electronic control modules could result in loss of the electrical systems components or burning of wiring insulation and cause smoke in the cockpit. Such a condition could lead to the inability to properly control the airplane.

Is There Service Information That Applies to This Subject?

Piper has issued the Service Bulletin No. 1132, dated June 4, 2003.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for:

—Removing the pilot's circuit breaker panel assembly (part-number (P/N) 102228–002); the co-pilot's circuit breaker panel assembly (P/N 102228–006); the dimmer lighting module assembly (P/N 102226–002); the stall vane heat module assembly (P/N 102227–002); and the propeller heat module assembly (P/N 102227–006);
—Returning the panel assemblies and remote module parts to the manufacture for modification;
—Visually inspecting all remaining exposed wires and equipment for evidence of heat damage;
—Repairing any damage found; and
—Installing the newly modified panel assemblies and remote module parts.

FAA's Determination and Requirements of This Proposed AD

What Has FAA Decided?

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing AD action.

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, we 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 altered products, special flight permits, and alternative methods of compliance. 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.

Costs of Compliance

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 130 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 this proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
22 × $65 per hour = $1,430	Parts will be covered under warranty by the manufacturer.	$1,430	$1,430 × 130 = $185,900

Regulatory Findings

Would This Proposed AD Impact Various Entities?

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

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

For the reasons discussed above, I certify that this proposed AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2003–CE–32–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 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. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The New Piper Aircraft, Inc.: Docket No. 2003–CE–32–AD

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by December 9, 2003.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model PA–46–500TP airplanes, serial numbers 4697001 through 4697140 and 4697142 through 4697153, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of smoke in the cockpit and loss of electrical system functions. We are issuing this AD to prevent short circuit failure of the electronic control modules, which could result in loss of the electrical system components or

burning of wiring insulation and cause smoke in the cockpit. Such a condition could lead to the inability to properly control the airplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Remove the following parts: (i) The pilot's circuit breaker panel assembly (part-number (P/N) 102228–002); (ii) The co-pilot's circuit breaker panel assembly (P/N 102228–006); (iii) The dimmer lighting module assembly (P/N 102226–002); (iv) The stall vane heat module assembly (P/N 102227–002); and (v) The propeller heat module assembly (P/N 102227–006)	Within the next 100 hours time-in-service (TIS) after the effective date of this AD.	Per the instructions in Piper Service Bulletin No. 1132, dated June 4, 2003.
(2) Return the circuit breaker panels and the remote modules identified in paragraph (e)(1) of this AD to the manufacturer listed in paragraph (g) of this AD for modification.	Prior to further flight after doing the actions required in paragraph (e)(1) of this AD.	Per the instructions in Piper Service Bulletin No. 1132, dated June 4, 2003.
(3) Visually inspect all remaining exposed wires and equipment for evidence of heat damage and repair any damage found.	Prior to further flight after doing the actions required in paragraph (c)(1) of this AD.	Per the instructions in Piper Service Bulletin No. 1132, dated June 4, 2003.
(4) Install the modified circuit breaker panel assemblies and the remote modules received from the manufacturer.	Prior to further flight after doing the actions required in paragraphs (e)(1), (e)(2), and (e)(3) of this AD.	Use the instructions in Piper Service Bulletin No. 1132, dated June 4, 2003.
(5) Do not install any part referenced in paragraph (e)(1) of this AD unless it has been modified per Piper Service Bulletin No. 1132, dated June 4, 2003.	As of the effective date of this AD	Not applicable.

What About Alternative Methods of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Atlanta Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Kenneth B. Mobley, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6046; facsimile: (770) 703–6097.

How Do I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; facsimile: (772) 978–6584. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 3, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–25581 Filed 10–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–31–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–535 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Rolls-Royce plc (RR) models RB211–535C–37, RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines with radial drive steady bearing part number (P/N) LK76084 installed. This proposed AD would require initial and repetitive visual inspections of the engine oil scavenge filter for evidence of radial drive steady bearing failure, and if necessary radial drive steady bearing inspection for damage and evidence of bearing debris. This proposed AD is prompted by reports of seven low time failures of radial drive steady bearings within a four-month period. We are proposing this AD to prevent a possible dual-engine in-flight shutdown caused by radial drive steady bearing failure.

DATES: We must receive any comments on this proposed AD by December 8, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- *By mail:* Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–31–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- *By fax:* (781) 238–7055.
- *By e-mail: 9-ane-adcomment@faa.gov.*

You can get the service information identified in this proposed AD from Rolls-Royce plc, P.O. Box 31 Derby, DE24 8BJ, United Kingdom (UK); telephone 011–44–1332–242424; fax 011–44–1332–249936.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–31–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the U.K., recently notified the FAA that an unsafe condition may exist on RR models RB211–535C–37, RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines with radial drive steady bearing P/N LK76084 installed. The CAA received reports of seven low time failures of radial drive steady bearings within a four-month period. These failures were not detected through routine magnetic chip detector monitoring because the failed bronze bearing cages are nonmagnetic, and the cage failure mode is rapid.

Relevant Service Information

We have reviewed and approved the technical contents of RR Mandatory Service Bulletin (MSB) No. RB.211–72–C815, Revision 3, dated October 5, 2000, that describes procedures for scavenge filter inspection, and if necessary, radial drive steady bearing inspection for failure debris. The CAA classified this MSB as mandatory and issued airworthiness directive 005–07–99, dated July 30, 1999, in order to ensure the airworthiness of these RR models RB211–535C–37, RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines in the U.K.

Differences Between This Proposed AD and the Manufacturer's Service Information

Although RR MSB No. RB.211–72–C815, Revision 3, dated October 5, 2000, Accomplishment Instructions require an engine acceptance inspection, this proposal does not require an engine acceptance inspection because pre-Service Bulletin RB.211–72–C925 new or low time radial drive steady bearings are no longer available. Also, instead of the MSB requirement that inspections be triggered when a continuous illumination of the filter blockage warning light occurs, this proposal adds a repetitive inspection at 500 engine operating hour intervals after initial inspection to coincide with every airframe ''A'' check.

FAA's Determination and Requirements of the Proposed AD

These RR models RB211–535C–37, RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines, manufactured in the U.K., are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept us informed of the situation described above. We have examined the CAA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require initial and repetitive visual inspections of the engine oil scavenge filter for evidence of radial drive steady bearing failure, and if necessary, radial drive steady bearing inspection for damage and evidence of bearing debris. Radial drive steady bearings with engine operating hours of 3,000 or more are not affected by this proposed AD. The proposed AD would require you to use the service information described previously to perform these actions.

Changes to 14 CFR Part 39—Effect on the Proposed AD

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. 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.

Costs of Compliance

There are about 1,078 RR model RB211–535C–37, RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines of the affected design in the worldwide fleet. We estimate that 288 of these model engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about four work hours per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. Required replacement scavenge filters would cost about $100 per engine. Based on these figures, we estimate the total cost of one inspection per year in the proposed AD, to U.S. operators to be $97,920.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

For the reasons discussed above, I certify that the 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. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–31–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 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. The FAA amends § 39.13 by adding the following new airworthiness directive:

Rolls-Royce plc: Docket No. 2003–NE–31–AD.

Comments Due Date

(a) The FAA must receive comments on this airworthiness directive (AD) action by December 8, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) models RB211–535C–37, RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines with radial drive steady bearing part number LK76084 installed with fewer than 3,000 engine operating hours accumulated on the bearing. Radial drive steady bearings with engine operating hours of 3,000 or more are not affected by this proposed AD. These engines are installed on, but not limited to Boeing 757 and Tupolev Tu204 airplanes.

Unsafe Condition

(d) This AD was prompted by reports of seven low time failures of radial drive steady bearings within a four-month period. We are issuing this AD to prevent a possible dual-engine in-flight shutdown caused by radial drive steady bearing failure.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Initial Visual Inspection

(f) Perform an initial inspection of the engine scavenge filter for evidence of radial drive steady bearing failure, within 300 engine operating hours or 45 days after the effective date of this AD, whichever occurs first, and replace parts as necessary. Use paragraph 3.B. of Accomplishment Instructions of RR Mandatory Service Bulletin (MSB) No. RB.211–72–C815, Revision 3, dated October 5, 2000, to do the inspection and parts replacements.

Repetitive Visual Inspections

(g) Thereafter, for radial drive steady bearings with less than 3,000 engine operating hours, perform repetitive inspections of the engine scavenge filter for evidence of radial drive steady bearing failure, at intervals not to exceed 500 engine operating hours since the previous inspection, and replace parts as necessary. Use paragraph 3.C. of Accomplishment Instructions of RR MSB No. RB.211–72–C815, Revision 3, dated October 5, 2000, to do the inspections and parts replacements.

Rejected Bearings

(h) Send rejected bearings, together with the associated scavenge filter, to Rolls-Royce for analysis.

Reporting Requirements

(i) The Office of Management and Budget (OMB) has approved the reporting requirements specified in paragraph 3. of RR MSB No. RB.211–72–C815, Revision 3, dated October 5, 2000, and assigned OMB control number 2120–0056.

Alternative Methods of Compliance

(j) You must request AMOCs as specified in 14 CFR 39.19. All AMOCs must be approved by the Manager, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803–5299.

Material Incorporated by Reference

(k) You must use Rolls-Royce plc Mandatory Service Bulletin No. RB.211–72–C815, Revision 3, dated October 5, 2000, to perform the inspections and parts replacements required by this AD. Approval of incorporation by reference from the Office of the Federal Register is pending.

Related Information

(l) CAA airworthiness directive 005–07–99, dated July 30, 1999, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on October 3, 2003

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–25578 Filed 10–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AL54

Loan Guaranty: Hybrid Adjustable Rate Mortgages

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its loan guaranty regulations by making two changes to conform to the Veterans Benefits Act of 2002. To implement section 303 of the law, VA proposes to incorporate into the regulations a new authority for hybrid adjustable rate mortgages. This will allow VA to guarantee loans with interest rates that remain fixed for a period of not less than the first three years of the loan, after which the rate can be adjusted annually. To implement section 307 of the law, VA proposes to increase the fee paid for assuming a VA guaranteed loan from .50 percent to 1.00 percent of the loan amount. The fee increase is already being carried out under the authority of the statute.

DATES: Comments must be received on or before November 10, 2003.

ADDRESSES: Mail or hand deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or fax comments to (202) 273–9026; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to ''RIN 2900–AL54.'' All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Finneran, Assistant Director for Policy and Valuation (262), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION:

A. Background

Under 38 U.S.C. chapter 37, VA guarantees loans made by private lenders to veterans for the purchase, construction, and refinancing of homes owned and occupied by veterans. Prior to fiscal year 1993, VA had authority to guarantee fixed rate mortgages only. During fiscal years 1993, 1994, and 1995 VA was authorized to guarantee loans with adjustable interest rates. These rates were adjusted on an annual basis, except that the first adjustment had to occur no sooner than 12 months nor later than 18 months from the date of the borrower's first mortgage payment. Authority for these loans expired at the end of fiscal year 1995.

Section 303 of Pub. L. 107–330 authorizes a demonstration project during fiscal years 2004 and 2005, whereby VA will guarantee loans with hybrid adjustable interest rates. Effective October 1, 2003, or as soon thereafter as practicable, VA proposes to guarantee loans that have interest rate adjustment provisions that (1) specify an initial rate that is fixed for a period of not less than the first three years of

the loan; and (2) provide for an initial adjustment in the interest rate at the end of the initial fixed rate period. While the initial adjustment may not occur until 36 months after the first payment is due, it is not required to occur prior to any set date.

In connection with its previous adjustable rate mortgage program VA issued regulations which are currently at 38 CFR 36.4311. VA proposes to amend that section to provide for a hybrid adjustable rate mortgage with adjustment provisions that conform to the requirements of section 303 of Pub. L. 107–330.

B. Proposed Rule

This proposed rule would make changes to the time at which the initial interest rate must occur and minor changes to the wording of the regulations. Except for these changes the proposed regulations are the same as those for the previous adjustable rate mortgage program. They provide that the interest rate adjustments: (1) Correspond to changes in the weekly average yield on one year Treasury bills adjusted to a constant maturity; (2) be made by adjusting the monthly payment on an annual basis; (3) be limited with respect to any single annual interest rate adjustment, to a maximum increase or decrease of 1 percentage point; and (4) be limited, over the term of the mortgage, to a maximum increase of 5 percentage points above the initial contract interest rate.

Because the new program is proposed to become effective October 1, 2003, VA proposes to add the words ''Effective October 1, 2003,'' to the beginning of the introductory text of paragraph (d) of § 36.4311.

VA proposes to change the time at which the initial interest rate adjustment must occur, as required by Pub. L. 107–330. Section 36.4311(d)(2) provides ''that the first adjustment may occur no sooner than 12 months nor later than 18 months from the date of the borrower's first mortgage payment.'' This proposed rule would amend the first sentence of this paragraph by changing ''12 months'' to ''36 months'' and by deleting the words ''nor later than 18 months.''

Because VA no longer sets maximum interest rates this proposed rule would remove from paragraph (d)(4) of § 36.4311 the second sentence which reads, ''The rate must be reflective of adjustable rate lending.'' The interest rate on all VA loans is negotiated between the borrower and the lender.

VA proposes to change language concerning the pre-loan disclosure in paragraph (d)(6) of § 36.4311. This proposed rule would remove the second part of the first sentence, which states that the lender must explain the nature of the obligation ''no later than on the date upon which the lender provides the prospective borrower with an application,'' and in its place add ''at the time of loan application.'' This change is necessary to conform with industry practice whereby lenders make a copy of the loan application available to the borrower for review prior to the actual beginning of the loan application process. This proposed rule would also remove the language that states a copy of the signed certification shall be ''included in the loan submission to VA'' and in its place add ''furnished to VA upon request.'' This change is necessary to conform to current practice whereby paper copies of loan application papers are retained by lenders until such time as they are requested by VA.

The VA guaranteed hybrid adjustable rate mortgage with the above features will be similar to the adjustable rate mortgages eligible for Federal Housing Administration (FHA) insurance. This should facilitate pooling of these mortgages together in Government National Mortgage Association (GNMA) mortgage-backed securities pools.

Because there has been no activity in the manufactured home loan program for the past several years, this pilot program for VA hybrid adjustable rate mortgages will not be made available for manufactured homes under the provisions of 38 U.S.C. 3712. However, manufactured housing which qualifies as conventional housing under the provisions of 38 U.S.C. 3710 (a)(9) will be eligible.

Section 307 of Pub. L. 107–330 increases the fee payable to VA by a person assuming a VA guaranteed loan from .50 percent to 1.00 percent of the loan amount. VA is making conforming changes to 38 CFR 36.4312 to reflect the increase. Under the provisions of Pub. L. 107–330, this increase is effective for the period beginning December 13, 2002, and ending September 30, 2003.

Administrative Procedure Act

Section 6(a)(1) of Executive Order 12866 indicates that, in most cases, a comment period should be ''not less than 60 days.'' However, section 303 of Pub. L. 107–330 only permits a limited, 2 year test program for Hybrid ARMs between October 1, 2003 and September 30, 2005. We believe that this proposed rule is essential to the efficient and consistent implementation of the Hybrid Adjustable Rate Mortgage demonstration program created by that section. In order to avoid delays in implementing this program, we believe it is important that final regulations be published expeditiously. For this reason, we have shortened the comment period for this rulemaking action to 30 days.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The addition of hybrid adjustable rate mortgages will benefit lenders by providing an additional loan product for use in making VA-guaranteed loans. Therefore, pursuant to 5 U.S.C. 605(b) this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers applicable to this rule are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Flood insurance, Housing, Indians, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: August 20, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is proposed to be amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

2. Section 36.4311 is amended by:

a. Revising paragraph (d) introductory text;

b. In paragraph (d)(2), removing ''12 months nor later than 18 months'', and adding, in it's place, ''36 months'';

c. Revising paragraph (d)(4) introductory text;

d. In paragraph (d)(5) introductory text, removing ''no later than on the date upon which the lender provides the prospective borrower with a'', and adding, in its place, ''at the time of''; and by removing, ''included in the loan submission to VA'', and adding, in its place, ''furnished to VA upon request''; and

e. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 36.4311 Interest rates.

* * * * *

(d) Effective October 1, 2003, adjustable rate mortgage loans which comply with the requirements of this paragraph (d) are eligible for guaranty.

* * * * *

(4) *Initial rate and magnitude of changes.* The initial contract interest rate of an adjustable rate mortgage shall be agreed upon by the lender and the veteran. Annual adjustments in the interest rate shall correspond to annual changes in the interest rate index, subject to the following conditions and limitations:

* * * * *

(Authority: 38 U.S.C. 3707A, 3710)

3. In § 36.4312, paragraph (e)(2), in the first sentence, is amended by removing ''one-half of''; and by revising the authority citation at the end of the paragraph to read as follows:

§ 36.4312 Charges and fees.

* * * * *

(Authority: 38 U. S. C 3729(b))

[FR Doc. 03–25560 Filed 10–8–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–46–1–7615b; FRL–7571–2]

Approval and Promulgation of Implementation Plans; New Mexico; Revision to Motor Vehicle Emission Budgets in Bernalillo County, NM Carbon Monoxide Air Quality Maintenance Plan Using MOBILE6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan (SIP) revisions for Bernalillo County, New Mexico, which is a carbon monoxide maintenance area. This SIP revision was submitted to EPA by the Governor of New Mexico on May 15, 2003. More specifically, EPA is proposing approval of the county's revised Motor Vehicle Emissions Budget (MVEB) for carbon monoxide (CO) for 1996, 1999, 2002, 2005 and 2006. This budget was developed using EPA's latest emissions modeling program, MOBILE6. This submittal updates the maintenance plan by establishing new transportation conformity MVEBs for use by the Mid-Region Council of Governments, the area's Metropolitan Planning Organization (MPO). These budgets will continue to maintain the total on-road mobile source emissions for the area at or below the attainment level for the CO National Ambient Air Quality Standard (NAAQS).

DATES: Written comments must be received on or before November 10, 2003.

ADDRESSES: Comments on this action may submitted either by mail or electronically. Written comments should be mailed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L),U.S. Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Comments may also be submitted electronically via email to *Diggs.Thomas@epa.gov* or to *http://www.regulations.gov* which is an alternative method for submitted electronic comments to EPA. To submit comments, please follow the detailed instructions described in the ''Final Action'' section of the direct final rule which is located in the Rules and Regulations section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Wade of the EPA Region 6 Air Planning Section at (214)665–7247 or *Wade.Peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comment. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the Direct Final rule which is located in the Rules and Regulations section of this **Federal Register**.

Dated: September 30, 2003.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 03–25544 Filed 10–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–7572–2]

Ocean Disposal; Proposed Rule; Proposed Designation of Dredged Material Disposal Sites in the Central and Western Portions of Long Island Sound, CT; Extension of Comment Period and Addition of One Public Hearing; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period; correction.

SUMMARY: In response to public request, EPA is extending the comment period for its proposed action to designate dredged material disposal sites in the Central and Western Long Island Sound, Connecticut. EPA is extending the comment period by an additional 21 days, announcing the addition of a public hearing and correcting site location information in the proposed rulemaking published on September 12, 2003 (68 FR 53687–53696).

DATES: Comments must be received by 5 p.m. on or before November 17, 2003. Public comments on this document are requested and will be considered before taking final action on this designation.

ADDRESSES: Comments may be mailed to Ms. Ann Rodney, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA—New England, One Congress Street, Suite 1100 (CWQ), Boston, MA 02114–2023 or electronically to *Rodney.Ann@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Ann Rodney, (617) 918–1538 or e-mail *Rodney.Ann@epa.gov.*

SUPPLEMENTARY INFORMATION:

EPA is extending the public comment period for the Draft Environmental Impact Statement for the proposed designation of dredged material disposal sites in the Central and Western Long Island Sound, Connecticut, and announcing the addition of a public hearing.

Corrections

The September 12, 2003 document (68 FR 53687–53696), is corrected on page 53688, 53689, 53690 and 53695 as follows:

1. On page 53688 in the preamble, first column, following the caption **DATES:**, the language is corrected to read: ''Comments must be received by 5 p.m. on or before November 17, 2003. The additional public hearing date is November 13, 2003 from 4p.m.–8p.m.''. On page 53689 the language is corrected to read as follows: ''Comments must be received by 5 p.m. on or before November 17, 2003.''.

2. On page 53688, in the preamble, first column, following the caption **ADDRESSES:**, Public Hearing Locations section, the language is corrected to read: ''The Public Hearing locations are: 1. September 30, 2003—New York at SUNY, Stony Brook, NY 11794–1603—Charles B. Wang Asian-American Center 2. October 1, 2003 and November 13, 2003—Westin Stamford, One First Stamford Place, Stamford, CT 06902.''.

3. On page 53688, in the preamble, first column, following the caption **SUPPLEMENTARY INFORMATION:**, the language is corrected to include the addition of libraries and is corrected to read: ''Public Review of Documents: The file supporting this proposed designation is available for inspection at the following locations: In person. The Proposed Rule and the Draft Environmental Impact Statement (DEIS) which includes the Site Management and Monitoring Plans (Appendix J), are available for inspection at the following locations: A. EPA New England Library, 11th Floor, One Congress Street, Suite 1100 (CWQ), Boston, MA 02114–2023. For access to the documents, call Peg Nelson at (617) 918–1991 between 10 a.m. and 3 p.m. Monday through Thursday, excluding legal holidays, for an appointment. B. Mamaroneck Public Library Inc., 136 Prospect Ave., Mamaroneck, NY. C. Port Jefferson Free Library, 100 Thompson Street, Port Jefferson, NY. D. E. Bridgeport Public Library, 925 Broad Street, Bridgeport, CT. E. Milford City Library, 57 New Haven Ave., Milford, CT. F. New Haven Free Public Library, 133 Elm Street, New Haven, CT. G. New London Public Library, 63 Huntington Street, New London, CT. H. Norwalk Public Library, 1 Belden Ave., Norwalk, CT. I. Acton Public Library, 60 Old Boston Post Road, Old Saybrook, CT. J. Ferguson Library, 752 High Ridge Road, Stamford, CT. K. Boston Public Library, 700 Boylston Street, Copley Square, Boston, MA . L. New York State Library, Cultural Education Center, 6th Floor, Empire State Center, Albany, NY. M. Information Service Division, CT State Library, 231 Capital Ave., Hartford, CT. Electronically. You also may review and/or obtain electronic copies of these documents and various support documents from the EPA home page at the **Federal Register**, *http://www.epa.gov/fedrgstr/,* or on the EPA New England Region's home page at *http://www.epa.gov/region1/eco/lisdreg/.''*

4. On page 53690, Section D. Site Descriptions, second column is corrected to read as follows: CLIS 41°9.5′ N., 72°54.4′ W.; 41°9.5′ N., 72°51.5′ W.; 41°8.4′ N., 72°51.5′ W.; 41°8.4′ N., 72°54.4′ W. The third column is corrected to read as follows: WLIS 41°001′ N., 73°29.8′ W.; 41°00.1′ N., 73°28.0′ W.; 40°58.9′ N., 73°28.1′ W.; 40°58.9′ N.,73°29.8′ W.

§ 228.15 [Corrected]

5. On page 53695, in amendment 2. for § 228.15 paragraph (b)(3)(i) is corrected to read as follows: (i) Location: Corner Coordinates (NAD1983) 41°9.5′ N., 72°54.4′ W.; 41°9.5′ N., 72°51.5′ W.; 41°8.4′ N., 72°51.5′ W.; 41°8.4′ N., 72°54.4′ W. Paragraph (b)(4)(i) is corrected to read as follows: (i) Location: Corner Coordinates (NAD1983) 41°00.1′ N., 73°29.8′ W.; 41°00.1′ N., 73°28.0′ W.; 40°58.9′ N., 73°28.1′ W.; 40°58.9′ N., 73°29.8′ W.

Dated: October 3, 2003.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. 03–25636 Filed 10–8–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 091603E]

National Marine Fisheries Service, Notice of Intent to Prepare an Environmental Assessment

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

ACTION: Notice of intent to prepare an environmental assessment (EA); request for written comments; notice of public scoping meetings.

SUMMARY: NMFS announces its intent to prepare an EA and to hold scoping meetings to inform interested parties of the potential impacts on the human environment of the implementation of the regulatory changes resulting from the recently extended Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (Treaty). As part of this process, NMFS intends to conduct two scoping meetings to allow stakeholders the opportunity to express their views regarding information that NMFS should consider in preparing the EA for the implementation of the regulatory changes required under the recently re-negotiated Treaty.

DATES: The dates for the public scoping meetings are:

1. October 24, 2003, in San Diego, California.

2. November 13, 2003, in Pago Pago, American Samoa.

ADDRESSES: The scoping meeting locations are:

1. Embassy Suites Hotel, San Diego Bay, 4 p.m. – 10 p.m.

2. Utulei Convention Center, 4 p.m. – 7 p.m.

Written comments on the issues, range of alternatives, impacts that should be discussed in the EA, and requests to be included on a mailing list of persons interested in the EA should be sent to Raymond Clarke, International Affairs Division, Pacific Islands Regional Office, NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814. Comments may be sent to the Regional Office via facsimile (fax) at 808–973–2941 and must be received by December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Charles Karnella or Raymond Clarke, telephone (808) 973–2937.

SUPPLEMENTARY INFORMATION:

Background

The Treaty entered into force in 1988. The Treaty is between the 16 members of the Pacific Islands Forum, an intergovernmental body that represents 16 sovereign Pacific Island Countries (PICs), and the United States of America. After an initial 5–year agreement, the Treaty was renewed in 1993 allowing access for up to 50 U.S. purse seiners (with an option for 5 more if agreed to by all parties) to the Exclusive Economic Zones (EEZs) of the following countries: Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, New Zealand, Nauru, Niue, Palau, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Vanuatu, Samoa. The Treaty Area is approximately 10 million square miles in the western and central Pacific Ocean.

The Treaty sets out the terms and conditions associated with certain aspects of U.S. purse seine vessel operations and obtaining access to the PICs= EEZs. Treaty terms and conditions include, but are not limited to, various fees, area closures, reporting, and observer coverage requirements. Additionally, the United States Government has certain Treaty obligations that include, but are not limited to, administrative requirements, economic assistance fees, as well as the collection, compilation, and summarization of fishery related data.

Commencing in 2000, the U.S. and the PICs entered into a series of negotiations that led to an agreement to amend and extend the Treaty for 10 years or until June 14, 2012. The agreement recognizes that all parties involved in the negotiations were required to obtain the consent of their various legislative and/or executive bodies before the Treaty entered into law. The parties agreed to abide by the negotiated terms and conditions of the extension of the Treaty after June 15, 2003 B or when key provisions of the previous Treaty expired. This allowed the U.S. purse seine fleet to continue to operate and allowed the PICs to continue to benefit from the economic assistance associated with the Treaty. As of this writing all the parties have not ratified the re-negotiated Treaty.

Under the current agreement, the U.S. is obligated to pay an annual amount of $21 million. The U.S. Government annually provides $18 million under a technical assistance agreement, and the U.S. purse seine tuna industry, provides the additional $3 million. These funds are paid to the Forum Fisheries Agency (FFA) located in Honiara, Solomon Islands. Under the current (re-negotiated) Treaty, the U.S. is now limited to 40 vessels (and up to 5 additional vessels operating under joint venture agreements with PICs).

The changes to the operational requirements of the Treaty include: recognition of electronic media as an allowed method for meeting reporting requirements and information transmittal by the purse seine vessels, the use of electronic vessel monitoring systems while vessels operate in the Treaty Area, modifications by certain PICs to the areas in which fishing is permitted by U.S. purse seine vessels and correcting an unintended consequence of the drafting of the Treaty that prohibited pelagic longlining by U.S. vessels on the high seas areas (areas outside the 200- mile EEZ of any country) within the Treaty Area.

NEPA Process

The authorization by NMFS to the FFA to provide U.S. purse seine vessels a license to fish in the Treaty Area, which includes access to the EEZs of PICs is a Federal action. Under the National Environmental Policy Act (NEPA), Federal agencies must insure that analysis of the environmental impacts of a range of alternative proposals is available to public officials and citizens before Federal decisions are made and before Federal actions are taken. The purpose is to promote management and policy decisions that will prevent or eliminate damage to the environment, stimulate the health and welfare of the public, and enrich the understanding of the ecological systems and natural resources important to the nation. A key element of the NEPA process is the identification of the proposed action as well as a set of alternatives to the proposed action. The NEPA process, involving public review of the alternatives, is designed to provide the agency with information that enables identification of issues, concerns and reasonable alternatives. The proposed action now under consideration and the subject of this EA is the FFA's authorization of U.S. purse seine vessels to operate in the EEZs of certain PICs under the terms and conditions of the Treaty as amended and extended until June 2012.

NMFS is accepting written comments on the range of actions, alternatives, and impacts it should consider in the EA. These comments will be part of the public record.

Alternatives

At present the range of alternatives to be considered in the EA will probably include, but would not be limited to:

NMFS does not propose a regulation to implement the changes proposed for the Third Extension of the Treaty (No Action Alternative). Under this alternative, the Treaty would continue in the manner it has since June 15, 2003, pursuant to the Memorandum of Understanding (MOU) signed on May 9, 2002. That non-legally binding document represents the political commitment of the signatories to apply the amendments to the Treaty and Annexes that were not in force by June 15, 2003.

NMFS proposes a regulation to implement the changes proposed for the Third Extension of the Treaty. Under this alternative, the U.S. would implement the regulatory changes that have been agreed upon for the third extension of the Treaty. No new legislation would be required for the United States to implement such changes. Regulations would, however, have to be promulgated to require that U.S. tuna purse seine vessels licensed to fish under the Treaty comply with the prescribed vessel monitoring system (VMS) procedures and requirements. This action would implement VMS requirements that are consistent with FFA specifications and be applicable to persons and vessels subject to the Treaty and the jurisdiction of the United States. Operators wishing to fish under the Treaty would be required to install, carry, activate and operate, repair or replace a VMS unit while in the Treaty Area. This alternative also includes modifications to the regulations that would allow U.S. longline vessels to fish on the high seas within the Treaty Area, as well as modifications to the areas of fishing in the EEZs of the Solomon Islands and Papua New Guinea.

NMFS recommends that the U.S. withdraw from the Treaty. In effecting withdrawal, the U.S. would first submit an instrument signifying withdrawal to the depositary, after which it would become effective 1 year later. The decision to withdraw from the Treaty could be taken if the U.S. believed it was no longer in the nation=s best interest to continue participation. There are several scenarios under which such a withdrawal might occur.

The termination of U.S. Purse Seine industry participation in the Treaty. The organization of the Treaty provides the potential that the Treaty could continue without the participation of the U.S. purse seine industry. For instance, the United States Government could continue to provide economic assistance to the PICs called for under the Treaty. This economic assistance is now the only significant source of U.S. economic

support to the region (outside payments made to the Compact States of the Republic of the Marshall Islands, the Federated States of Micronesia and the Republic of Palau).

Other alternatives that may be explored may address non-target, associated and dependent species related to purse seine fishing. Comments on these alternatives, as well as issues and concerns are invited.

Additional Information Available

Information on the text of the Treaty, the authorizing legislation or the implementing regulations are available from the NOAA Fisheries Pacific Islands Regional Office.

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Raymond Clarke, telephone 808–973–2937, fax 808–973–2941 at least 5 days before the scheduled meeting date.

Authority: 973–973r. *et seq.*

Dated: October 3, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–25640 Filed 10–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 402

[ID 092603B]

RIN 1018–AJ02; RIN 0648–AR05

National Marine Fisheries Service; Joint Counterpart Endangered Species Act Section 7 Consultation Regulations

AGENCIES: U.S. Fish and Wildlife Service, Interior; Bureau of Land Management, Interior; National Park Service, Interior; Bureau of Indian Affairs, Interior; Forest Service, Agriculture; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule; reopening of comment period and notice of availability of Environmental Assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service and National Marine Fisheries Service, (Services) announce the reopening of the comment period for the proposed joint counterpart regulations and the availability of the Environmental Assessment for the Healthy Forests Initiative Counterpart Regulations. The Services are evaluating the environmental effects of establishing counterpart regulations pursuant to Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA). These counterpart regulations are being proposed in cooperation with the U.S. Department of Agriculture, Forest Service (FS) and the Department of the Interior's Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and National Park Service (NPS) (jointly, Action Agencies). The proposal supports the President's Healthy Forests initiative and is intended to streamline ESA section 7 consultations on proposed projects that support the National Fire Plan (NFP).

We are reopening the comment period to allow all interested parties to comment simultaneously on the proposed rule and the associated Environmental Assessment. Comments previously submitted on the proposed rule that was published in the **Federal Register** on June 5, 2003 (68 FR 33805), need not be resubmitted as they will be incorporated into the public record as part of this reopened comment period and will be fully considered in the final rule.

DATES: Comments on this environmental assessment or the associated proposed rule must be received by November 10, 2003 to be considered in the final decision.

ADDRESSES: Electronic copies of this Environmental Assessment or the associated proposed rule may be obtained from the USFWS World Wide Web Consultation Home Page at: *http://endangered.fws.gov/consultations/forestplan.html.* Written copies of this Environmental Assessment or the associated proposed rule may be obtained from the Chief of the Division of Consultation, Habitat Conservation Planning, Recovery, and State Grants, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203, or the Chief of the Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, Maryland 20910.

Comments or materials concerning the Environmental Assessment or the associated proposed rule should be sent to the Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203. Comments can also be accepted if submitted via e-mail to *healthyforests@fws.gov.* Comments and materials received in conjunction with this rulemaking will be available for inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, at the above address (Telephone 703/358–2171, Facsimile 703/358–1735) or Phil Williams, Chief, Endangered Species Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 (301/713–1401; facsimile 301/713–0376).

SUPPLEMENTARY INFORMATION:

Background

In response to several years of catastrophic wildland fires throughout the United States culminating in the particularly severe fire season of 2000, when over 6.5 million acres of wildland areas burned, President Clinton directed the Departments of the Interior and Agriculture to develop a report outlining a new approach to managing wildland fires and restoring fire-adapted ecosystems. The report, entitled Managing the Impact of Wildfires on Communities and the Environment, was issued September 8, 2000. This report set forth ways to reduce the impacts of fires on rural communities, a short-term plan for rehabilitation of fire-damaged ecosystems, and ways to limit the introduction of invasive species and address natural restoration processes. The report, and the accompanying budget requests, strategies, plans, and direction, have become known as the NFP. The NFP is intended to reduce risk to communities and natural resources from wildland fires through rehabilitation, restoration and maintenance of fire-adapted ecosystems, and by the reduction of accumulated fuels or highly combustible fuels on forests, woodlands, grasslands, and rangelands.

In August 2002, during another severe wildland fire season in which over 7.1 million acres of wildlands burned, President Bush announced the Healthy Forests Initiative. The initiative was intended to accelerate implementation of the fuels reduction and ecosystem restoration goals of the NFP in order to minimize the damage caused by catastrophic wildfires by reducing unnecessary regulatory obstacles that

have at times delayed and frustrated active land management activities. As part of the initiative, the agencies were tasked with streamlining the section 7 consultation process for projects implementing the NFP.

The Action Agencies published a proposed rule to establish Joint Counterpart Endangered Species Act section 7 regulations on June 5, 2003 (68 FR 33805). The proposed counterpart regulations, authorized in general at 50 CFR 402.04, will provide an optional alternative to the existing section 7 consultation process described in 50 CFR part 402, subparts A and B. The counterpart regulations complement the general consultation regulations in part 402 by providing an alternative process for completing section 7 consultation for agency projects that authorize, fund, or carry out actions that support the NFP.

In the Environmental Assessment, we considered three alternatives that would streamline the consultation process. The Memorandum of Understanding/Programmatic consultation alternative was eliminated from further consideration. The no action alternative would keep the current section 7 consultation process in place. The preferred alternative is to finalize the proposed counterpart regulation. The proposed action is to establish an alternative consultation process that would eliminate the need to conduct informal consultation and eliminate the requirement to obtain written concurrence from the applicable Service for those NFP actions that the Action Agency determines are ''not likely to adversely affect'' (NLAA) any listed species or designated critical habitat.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 3, 2003.

Julie MacDonald,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Dated: October 3, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–25621 Filed 10–8–03; 8:45 am]

BILLING CODE 3510–22–P; 4310–55–P

Notices

Federal Register
Vol. 68, No. 196
Thursday, October 9, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. CN–03–006]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension for and revision to a currently approved information collection for the National Research, Promotion, and Consumer Information Programs.

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

FOR FURTHER INFORMATION CONTACT: Interested persons are invited to submit written comments concerning this notice to Whitney A. Rick, Research and Promotion Staff, Cotton Program, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Washington, DC 20250–0224, telephone (202) 720–2259 and facsimile (202) 690–1718. Comments should be submitted in triplicate. Comments may also be submitted electronically to *cottoncomments@usda.gov.* All comments should reference the docket number and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at Cotton Program, AMS, USDA, Room 2641–S, 1400 Independence Ave., SW., Washington, DC 20250 during regular business hours. A copy of this notice may be found at *http://www.usda.gov/cotton/rulemaking.htm*.

Whitney Rick, Research and Promotion Staff, Cotton Program, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Washington, DC 20250–0224, telephone (202) 720–2259, facsimile (202) 690–1718, or e-mail at *whitney.rick@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date of Approval: Current expiration date is 07/31/04.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: National research and promotion programs are designed to strengthen the position of a commodity in the marketplace, maintain and expand existing domestic and foreign markets, and develop new uses and markets for specified agricultural commodities. The U.S. Department of Agriculture has the responsibility for implementing and overseeing programs for a variety of commodities including cotton, dairy, eggs, beef, pork, soybeans, honey, potatoes, watermelons, mushrooms, hass avocados, popcorn, and peanuts. The enabling legislation includes the Beef Promotion and Research Act of 1985 [7 U.S.C. 2901–2911]; Cotton Research and Promotion Act of 1966 [7 U.S.C. 2101–2118]; the Dairy Production Stabilization Act of 1983 [7 U.S.C. 4501–4514]; the Fluid Milk Promotion Act of 1990 [7 U.S.C. 6401–6417]; the Egg Research and Consumer Information Act [7 U.S.C. 2701–2718]; the Pork Promotion, Research and Consumer Information Act of 1985 [7 U.S.C. 4801–4819]; the Soybean Promotion, Research, and Consumer Information Act [7 U.S.C. 6301–6311]; the Honey Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 4601–4613]; the Potato Research and Promotion Act [7 U.S.C. 2611–2627]; the Watermelon Research and Promotion Act [7 U.S.C. 4901–4916]; the Hass Avocado Promotion, Research, and Information Act [7 U.S.C. 7801–7813]; the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101–6112]; the Popcorn Promotion, Research and Consumer Information Act [7 U.S.C. 7481–7491]; and the Commodity Promotion, Research, and Information Act of 1996 [7 U.S.C. 7411–7425].

These programs carry out projects relating to research, consumer information, advertising, sales promotion, producer information, market development, and product research to assist, improve, or promote the marketing, distribution, and utilization of their respective commodities. Approval of the programs is required through referendum of those who would be covered. Industry boards administer the programs. These boards usually composed of producer, handler, processor, and in some cases, importer and public members, are appointed by the Secretary of Agriculture to administer the programs. The funding for such programs is from assessments on designated industry segments. The appointed boards are responsible for collecting assessments from the affected persons covered under these programs.

The Secretary also approves the boards' budgets, plans, and projects. These responsibilities have been delegated to the Agricultural Marketing Service (AMS). The applicable commodity program areas within AMS have direct oversight of the respective programs.

The information collection requirements in this request are essential to carry out the intents of the various Acts authorizing such programs, thereby providing a means of administering the programs. The objective in carrying out this responsibility includes assuring the following: (1) Funds are collected and properly accounted for; (2) expenditures of all funds are for the purposes authorized by the enabling legislation; and (3) the board's administration of the programs conforms to USDA policy. The applicable commodity programs within AMS have direct oversight of these freestanding programs. The forms covered under this collection require the minimum information necessary to effectively carry out the requirements of the respective orders, and their use is necessary to fulfill the intents of the Acts as expressed in the orders. The information collected is used only by authorized employees of the various boards and authorized employees of USDA.

The boards administering the various programs utilize a variety of forms to carry out the responsibilities. Such forms may include reports concerning status information such as handler and

importer reports; transaction reports; exemption from assessment forms and reimbursement forms; forms and information concerning referenda including ballots; forms and informaiton concerning board nominations and selection and acceptance statements; certification of industry organizations; and recordkeeping requirements. The forms and information covered under this information collection require the minimum information necessary to effectively carry out the requirements of the programs and their use is necessary to fulfill the intent of the applicable authorities.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .08 hours per response.

Respondents: Producers, processors, handlers, and/or importers of a variety of agricultural commodities.

Estimated Number of Respondents: 321,098.

Estimated Number of Responses: 4,469,027.

Estimated Number of Responses per Respondent: 13.9.

Estimated Total Annual Burden on Respondents: Estimated total annual burden is 350,920 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) 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. Comments may be sent to Whitney A. Rick, Research and Promotion Staff, Cotton Program, AMS, USDA, Stop 0224, Room 2641–S, 1400 Independence Ave., SW. Washington, DC 20250–0224, or by e-mail at *cottoncomments@usda.gov*. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

AMS is committed to implementation of the Government Paperwork Elimination Act, which provides for the use of information resources to improve the efficiency and effectiveness of governmental operations, including providing the public with the option of submitting information or transacting business electronically to the extent possible.

Dated: October 6, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–25619 Filed 10–8–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Crawford Timber Sale, Malheur National Forest, Grant County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) on a proposal action to treat forested stands, using harvest methods to decrease tree density, increase representation of fire-adapted tree species, as well as decrease existing and activity fuel levels. The connected actions of log hauling will require constructing new road and temporary road, and maintaining and reconstructing existing road. This proposed action would implement a Road Access Travel Management Plan that would close and decommission roads. The alternatives will include the proposed action, no action, and additional alternatives that respond to issues identified during scoping. The agency will give notice of the full environmental analysis and decision making process so interested and affected people may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by November 15, 2003.

ADDRESSES: Send written comments to Michelle Putz, District Writer Editor, Blue Mountain Ranger District, P.O. Box 909, John Day, Oregon 97845 or on-line at *comments-pacificnorthwest-malheur-bluemountain@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Michelle Putz, District Writer Editor, Blue Mountain Ranger District. Phone: (541) 575–3000.

SUPPLEMENTARY INFORMATION: The alternatives being considered were proposed in the original Crawford Vegetative Management Environmental Assessment (EA). The Decision Notice, which selected Alternative 3 was signed on April 26, 2002, was appealed and then remanded back to the Forest for further work following appeal; this EIS has been renamed and is intended to address many of the same needs. Some items in the original EA have been removed from the proposed actions in this EIS, including pre-commercial thinning that is outside of the harvest units to decrease small diameter trees, planting hardwoods, conifer removal from hardwood areas and meadows, cutting hardwoods to stimulate reproduction, caging shrubs, fencing to protect hardwoods, and slashing junipers to create barriers to hardwoods. These items will be addressed in other types of environmental documents under the heading of a categorical exclusion. In addition, this document plans to keep 5.4 miles of Forest Road 1940 open to travel (there had been 4.3 miles of Road 1940 planned for closure in previous NEPA documents). The regeneration Salvage Treatment was dropped for wildlife habitat objectives, following interdisciplinary team review.

Purpose and Need for Action. The purposes and needs for action in this project now are: *Move vegetation towards* a status more closely resembling *historical conditions* while protecting soil productivity and protecting or enhancing water quality and *reduce fuels* to decrease potential fire severity. This project would change the species composition and structure of the vegetation to improve the resiliency of the forested component of the ecosystem. *Existing stand densities are higher than historical stand densities*, and retard growth to the large tree stage, thus there is *a need to increase the number of large trees* across the landscape *and increase* the representation of *fire tolerate tree species.*

Move toward an efficient, properly located road system that provides adequate public and administrative access, while reducing the risk of sediment reaching streams. Maintain and/or reconstruct remaining roads to limit delivery of sediment into streams and to facilitate harvest activities while improving water quality. To protect water quality and to decrease movement of sediment into streams, unneeded roads causing resource damage need to be decommissioned or closed.

Three previously designated *Dedicated Old Growth areas have no Replacement Old Growth (ROG)* areas designated; three ROG areas need to be designated. The Malheur National Forest Plan directs the Forest to provide Replacement Old Growth and to complete this process in conjunction with the timber sale planning process.

Capture economic value of material and help achieve a stable economy in the local area.

Proposed Action. The proposal would decrease tree density by harvesting and thinning. Stand treatments include the following harvest methods: shelterwood (167 acres); partial cut (1,343 acres); and commercial thinning (2,568 acres). Treatment would decrease small tree density, reducing competition for nutrients for remaining trees. Timber yarding systems to be utilized are tractor (3,522 acres) and skyline (556 acres). The estimated volume of timber harvested is 11.1 million board feet. Fire and fuel reduction treatments include the following activities: prescribed burning (9,498 acres); fuel reduction (2,130 acres); and burning within harvest units (517 acres). Three new areas for Replacement Old Growth (ROGs) areas to Dedicated Old Growth (DOGs) stands are provided for pileated woodpecker and pine marten.

The Crawford Roads Analysis reviewed a portion of the roads within the analysis area. Roads needed for the proposal would include the following: new construction (12.8 miles), temporary construction (4.6 miles), reconstructed (0.1 miles), maintained (60.9 miles), closed (15.2 miles) and decommissioned (24.5 miles). The Road Analysis concentrated on roads within Riparian Habitat Conservation Areas (RHCAs) and roads that might be needed for proposed activities, as haul routes. Roads within RHCAs contributing sediment or which potentially could contribute sediment were considered as candidates for decommissioning. No new road construction is proposed within RHCAs. This is permanent, new road construction that remains a part of the transportation system.

Proposed activities would occur in the Crawford Creek, Mill Creek, Phipps Meadow, Dry Fork, Clear Creek, Bridge Creek, Squaw Creek, and Idaho/Summit Creek subwatersheds of the Upper Middle Fork John Day watershed.

Issues. Preliminary issues were identified and include the potential effects of the proposed action on: management indicator species, threatened, endangered, and sensitive species, and neotropical migratory birds associated with dense forest habitat; soil compaction; increase sediment movement into streams; reduce water quality; and continued vehicle access in the area.

Alternatives. A full range of alternatives will be considered including a ''No Action'' alternative in which none of the activities proposed above would be implemented. Based on the issues gathered through scoping, the action alternatives could differ in the silvicultural and post-harvest treatments prescribed, the amount and location of harvest, or the amount and location of fuels reduction activity.

Scoping Process. The public will have an opportunity to participate at several points during the analysis including the scoping period after publication of the Notice of Intent, and the draft EIS in the **Federal Register.** Notification of these opportunities will also appear in subsequent issues of the Malheur National Forest's Schedule of Proposed Activities; letters to agencies, organizations, and individuals who have previously indicated their interest in such activities; and in the Blue Mountain Eagle. Public meetings may be scheduled during the winter of 2003/2004 and the spring of 2004. The scoping process will include identifying potential issues, identifying major issues to be analyzed in depth, eliminating non-significant issues, considering additional alternatives based on themes which will be derived from issues recognized during scoping activities, and identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects).

Comments. Public comments about this proposal are requested in order to assist in properly scoping issues, to determine how to best manage the resources, and to fully analyze environmental effects. Comments received to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 and 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality and, where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The draft EIS will be filed with Environmental Protection Agency (EPA) and available for public review by May 2004. The comment period on the draft EIS will be 45 days from the date EPA publishes the notice of availability of the draft in the **Federal Register.** The final EIS will be released in September 2004.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft ESI. The Forest Service is the lead agency. The Responsible Official is the Forest Supervisor for the Malheur National Forest. The Responsible Official will decide where and whether or not to implement the proposed projects and will document the Crawford Timber Sale and Thinning decision and reasons for the decision in the Record of Decision. That decision will be subject

to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: September 30, 2003.

Roger W. Williams,

Forest Supervisor.

[FR Doc. 03–25584 Filed 10–8–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region, Arizona, New Mexico, West Texas, and West Oklahoma Amendment of Land and Resource Management Plans in the Southwestern Region

AGENCY: Forest Service, USDA.

ACTION: Cancellation notice.

SUMMARY: On August 7, 2001, a Notice of Intent (NOI) to prepare an environmental impact statement to amend National Forest land and resource management plans in the Southwestern Region to modify standards and guidelines for Mexican spotted owl and northern goshawk within wildland-urban interface areas and to emphasize the management of wildland-urban interface areas throughout the southwest was published in the **Federal Register** (66 FR 41198–41200). This 2001 NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Peter Gaulke, Regional Environmental Coordinator, USDA Forest Service Southwestern Regional Office, 333 Broadway Blvd., SE., Albuquerque, NM 87102–3498, telephone (505) 842–3256.

SUPPLEMENTARY INFORMATION: The need to amend forest plans to modify standards and guidelines for Mexican spotted owl and northern goshawk within wildland-urban interface areas varied throughout the forests and grasslands of the Southwestern Region. As such, a region wide amendment of all forest plans was not deemed necessary. Those forest that have a need to their respective plans may do so on a case-by-case basis. As the forests of the Southwestern Region begin the Forest Plan revision process in Fiscal Year 2004, they can address this need in context with other resource and social issues.

Dated: September 29, 2003.

Lucia M. Turner,

Deputy Regional Forester.

[FR Doc. 03–25565 Filed 10–8–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Brochure for Glenn/Colusa, (5) Ski-High Project/ Possible Action, (6) How to Solicit Projects, (7) Bear Wallow Trail, (8) Status of Members, (9) General Discussion, (10) Next Agenda.

DATES: The meeting will be held on October 27, 2003, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by October 22, 2003, will have the opportunity to address the committee at those sessions.

Dated: October 2, 2003.

James F. Giachino,

Designated Federal Official.

[FR Doc. 03–25570 Filed 10–8–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Idaho Resource Advisory Committee; Caribou-Targhee National Forest, Idaho Falls, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Caribou-Targhee National Forests' Eastern Idaho Resource Advisory Committee will meet Wednesday, November 12, 2003 in Idaho Falls for a business meeting. The meeting is open to the public.

DATES: The business meeting will be held on November 12, 2003 from 10 a.m. to 1 p.m.

ADDRESSES: The meeting location is the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Jerry Reese, Caribou-Targhee National Forest Supervisor and Designated Federal Officer, at (208) 524–7500.

SUPPLEMENTARY INFORMATION: The business meeting on November 12, 2003, begins at 10 a.m., at the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho. Agenda topics will include looking at funding for this upcoming year, briefed on project status from last year's approved projects, and welcoming new members.

Dated: October 2, 2003.

Jerry B. Reese,

Caribou-Targhee Forest Supervisor.

[FR Doc. 03–25587 Filed 10–8–03; 8:45 am]

BILLING CODE 3410–11–M

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Annual Meeting

TIME AND DATE: 10 a.m.–12 p.m., October 28, 2003.

PLACE: Harrisburg Hilton and Towers, One North Second Street, Harrisburg, PA 17101.

STATUS: Most of the meeting will be open to the public. If there is a need for an executive session (closed to the public), it will be held at about 9:30 a.m.

Matters To Be Considered

PORTIONS OPEN TO THE PUBLIC: The primary purpose of this meeting is to (1) Review the independent auditors' report of Commission's financial statements for fiscal year 2002–2003; (2) Review the Low-Level Radioactive Waste (LLRW) generation information for 2002; (3) Consider a proposal budget for fiscal year 2004–2005; (4) Review recent national developments regarding LLRW

management and disposal; (5) Review and discuss issues concerning waste from the Safety Light Site in Pennsylvania and the Aberdeen Proving Grounds in Maryland; and (6) Elect the Commission's Officers.

PORTIONS CLOSED TO THE PUBLIC: Executive Session, if deemed necessary, will be held at about 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: Richard R. Janati, Pennsylvania Staff member on the Commission, at 717–787–2163.

Richard R. Janati,

PA Staff Member on the Commission.

[FR Doc. 03–25601 Filed 10–8–03; 8:45 am]

BILLING CODE 0000–00–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 51–2003]

Foreign-Trade Zone 25—Broward County, FL; Proposed Foreign-Trade Subzone, Chevron Products Company (Petroleum Product Storage), Port Everglades, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Broward County, Florida, grantee of FTZ 25, requesting special-purpose subzone status for the petroleum product storage facility of Chevron Products Company (Chevron), located in Port Everglades, Florida. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 2, 2003.

The Chevron terminal facility (21.53 acres) consists of a single site of two parcels and a pipeline in Port Everglades, Florida, (Broward County): *Parcel 1,* East Tank Farm (15 tanks, 434,327 barrel capacity, 10.56 acres) located at 1400 S.E. 24th St.; and, *Parcel 2,* West Tank Farm (3 tanks, 137,953 barrel capacity, 9.39 acres) located at 900 S.E. 24th St. The Chevron connecting pipeline is used for routing of petroleum products to the storage terminals from arriving vessels at the docks.

The storage facility is primarily used for the receipt, storage, and distribution of jet fuel by pipeline to the Miami and Fort Lauderdale International Airports. The company also uses the facility to store and distribute gasoline, diesel fuel, distillate fuels, and blending stocks. Some of the products are or will be sourced from abroad or from U.S. refineries under FTZ procedures.

Zone procedures would exempt Chevron from Customs duties and federal excise taxes on foreign status jet fuel used for international flights. On domestic sales, the company would be able to defer Customs duty payments until the products leave the facility. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

No specific manufacturing request is being made at this time. Such a request would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions Via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or
2. *Submissions Via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is December 8, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 23, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 200 E. las Olas Blvd. (Sun Sentinel Bldg.), Suite 1600, Ft. Lauderdale, Florida 33301–2284.

Dated: October 2, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–25628 Filed 10–8–03; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1302]

Approval for Expansion of Subzone 2J, Murphy Oil USA, Inc. (Oil Refinery), Meraux, Louisiana

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Port of New Orleans, grantee of FTZ 2, has requested authority on behalf of Murphy Oil USA, Inc. (Murphy), to expand the scope of authority under zone procedures within the Murphy refinery in Meraux Louisiana (FTZ Docket 4–2003, filed 1/17/2003);

Whereas, notice inviting public comment has been given in the **Federal Register** (68 FR 4757, 1/30/03);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby orders:

The application to expand the scope of authority under zone procedures within Subzone 2J, is approved, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the petrochemical complex shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.10, #2709.00.20, #2710.11.25, #2710.11.45, #2710.19.05, #2710.19.10, #2710.19.45, #2710.91.00, #2710.99.05, #2710.99.10, #2710.99.16, #2710.99.21 and #2710.99.45 which are used in the production of:

—Petrochemical feedstocks (examiners report, Appendix ''C'');

—Products for export;

—And, products eligible for entry under HTSUS #9808.00.30 and#9808.00.40 (U.S. Government purchases).

Signed at Washington, DC, this 24th day of September 2003.

James J. Jochum,

Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–25629 Filed 10–8–03; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1303]

Approval for Expanded Manufacturing Authority (Addition of Medical Imaging Products, and Expansion of Production of Color Negative Photographic Film and Paper) Within Foreign-Trade Subzone 38C; Fuji Photo Film, Inc.; Greenwood, South Carolina

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 38, has applied on behalf of Fuji Photo Film, Inc. (Fuji), to expand the scope of manufacturing authority under zone procedures within Subzone 38C, at the Fuji plant in Greenwood, South Carolina, to include additional finished products (medical imaging products, components, and related products), and to increase the overall level of production authorized under FTZ procedures of color negative photographic paper and film (FTZ Doc. 63–2002; filed 12–17–2002);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 79048–79049, 12–27–2002); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 24th day of September, 2003.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–25630 Filed 10–8–03; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Honey From Argentina: Rescission of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty new shipper review.

SUMMARY: On February 6, 2003, the Department published the initiation of a new shipper review of the antidumping duty order of honey from Argentina covering the period of May 11, 2001 to November 30, 2002. *See Honey From Argentina: Initiation of New Shipper Antidumping Duty Administrative Review,* 68 FR 6114 (February 6, 2003) (New Shipper Initiation). This review covers one exporter, Nutrin S.A. (Nutrin) of Argentina. For the reasons discussed below, we are rescinding this new shipper review in its entirety.

EFFECTIVE DATE: October 9, 2003.

FOR FURTHER INFORMATION CONTACT: Angela Strom or Donna Kinsella at (202) 482–2704 and (202) 482–0194, respectively; AD/CVD Enforcement, Office 8, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Scope of the Review

The merchandise under review is honey from Argentina. For purposes of this review, the products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise under review is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Bureau of Customs and Border Protection purposes, the Department's written description of the merchandise under this order is dispositive.

Background

On February 6, 2003, the Department published the initiation of a new shipper review of the antidumping duty order of honey from Argentina. This review involves one exporter, Nutrin S.A. of Argentina, and covers the period of May 11, 2001 through November 30, 2002. *See* New Shipper Initiation. On July 14, 2003, the Department extended the time limit for the completion of the preliminary results of this new shipper review until November 28, 2003. *See Honey From Argentina: Extension of Time Limit for Preliminary Results of New Shipper Review* 68 FR 41557 (July 14, 2003).

On February 19, 2003, the Department issued Sections A through C of the Department's antidumping questionnaire to Nutrin. Nutrin responded on March 14, 2003 and April 7, 2003. Petitioners submitted comments on Nutrin's questionnaire responses on April 4, 2003 and May 2, 2003. On May 23, 2003, the Department issued its first supplemental questionnaire, and Nutrin submitted its supplemental questionnaire response on June 13, 2003. Petitioners again commented on Nutrin's responses on July 1, 2003, and August 4, 2003.

Analysis of New Shipper Review

On August 15, 2003, the Department issued a memorandum detailing our analysis of the *bona fides* of Nutrin's U.S. sale and our intent to rescind this review because we preliminarily determined that Nutrin's U.S. sale was not a bona fide transaction based on the totality of the circumstances of the sale. See Memorandum from Angela Strom through Richard Weible to Barbara E. Tillman: New Shipper Review of the Antidumping Duty Order on Honey from Argentina: Intent to Rescind, dated August 21, 2003 (Nutrin Intent to Rescind Memo). In this memorandum, the Department preliminarily determined that the single U.S. sale made by Nutrin was not *bona fide* due to (1) the conflicting information contained in different copies of the sales invoice for Nutrin's U.S. sale; (2) Nutrin's failure to disclose other apparent changes in the terms of the U.S. sale; (3) conflicting information and insufficient documentation regarding the date on which the essential terms of sale and final destination of goods were established; (4) inconsistent invoicing practices regarding the U.S. sale and other like sales; (5) atypical payment terms and (6) highly unusual sales and shipping arrangements. The totality of the facts on the record lead the Department to

conclude that the sale was neither commercially reasonable nor *bona fide.*

Comments

The Department provided parties an opportunity to comment on the Intent to Rescind Memo dated August 21, 2003. The initial deadline for comments for all parties was August 29, 2003; however, Nutrin requested a seven day extension of time to file its comments. The Department granted the extension and set an extended due date of September 5, 2003. On September 5, 2003, Nutrin requested yet another extension of time; however, the Department denied this additional request given its statutory and regulatory time constraints in completing this review. Nutrin did not submit comments regarding the Department's Intent to Rescind even though it had two weeks to do so. Petitioners submitted comments supporting the Department's position to rescind the new shipper review with respect to Nutrin.

Rescission of New Shipper Reviews

We received no comments rebutting or in disaccord with the Department's findings in its Intent to Rescind Memo regarding Nutrin. Therefore, for the reasons stated above and pursuant to section 751(a)(2)(B) and 19 CFR 351.214(f), we are rescinding this new shipper review.

Notification

The Department will notify the U.S. Bureau of Customs and Border Protection that bonding is no longer permitted to fulfill security requirements for shipments of Argentine honey by Nutrin entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the **Federal Register,** and that a cash deposit of 30.24 percent ad valorem should be collected for any entries exported by Nutrin.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act.

Dated: October 2, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–25627 Filed 10–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–001]

Potassium Permanganate From the People's Republic of China: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of the antidumping duty administrative review of potassium permanganate from the People's Republic of China.

SUMMARY: In response to requests from the petitioner, Carus Chemical Company (Carus), and a U.S. importer, Groupstars Chemicals, LLC, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on potassium permanganate from the People's Republic of China (PRC) covering the period January 1, 2002 through December 31, 2002. Because Carus withdrew its review request, and Groupstars Chemicals, LLC's review request does not identify the PRC exporter to be reviewed, the Department is rescinding this administrative review.

EFFECTIVE DATE: October 9, 2003.

FOR FURTHER INFORMATION CONTACT: John Conniff or Drew Jackson, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1009 and (202) 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 1984, the Department published in the **Federal Register** (49 FR 3897) the antidumping duty order on potassium permanganate from the PRC (the order). On January 2, 2003, the Department issued a notice of ''Opportunity to Request Administrative Review'' of the order on a number of products including potassium permanganate from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 68 FR 80. On January 28, 2003, Groupstars Chemicals, LLC requested that the Department conduct an administrative review of the order. On January 31, 2003, Carus requested an administrative review of Groupstars Chemicals Co., Ltd.-Shandong, Groupstars Chemical Co., Ltd.-Yunan (a joint venture owned by Groupstars Chemicals, LLC and the Yunan Jianshui County Chemical Industry Factory (JCC)), JCC and the Jianshui Chemical Plant (also translated as Jianshui Chemical Factory and Jianshui General Chemical Plant).

On February 27, 2003, and March 25, 2003, the Department published in the **Federal Register** notices initiating administrative reviews of the requested companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 68 FR 9048 and *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 68 FR 14394 (this notice includes companies inadvertently omitted from the February 27, 2003, initiation notice).

On March 17, 2003, the Department issued its antidumping questionnaire to the respondents. Groupstars Chemicals Co., Ltd. (which includes both the Shandong and Yunan operations) (Groupstars) responded to the Department's questionnaire on April 21, 2003 and May 8, 2003. On May 29, 2003, Groupstars submitted a letter to the Department on behalf of JCC (also referred to as Jianshui County Chemical Industry Factory) stating that JCC and the Jianshui General Chemical Plant are the same company, and this company did not have any sales to the United States during the POR. The Department issued a supplemental questionnaire to Groupstars on May 15, 2003. In Groupstars' June 10, 2003, response to the supplemental questionnaire, it stated that Groupstars Chemical Co., Ltd.-Yunan did not have any sales of the subject merchandise to the United States during the POR. *See* Groupstars' June 10, 2003, supplemental response at 6.

In a letter dated September 11, 2003, Groupstars notified the Department that it will no longer participate in the administrative review. On September 16, 2003, Carus withdrew its request for an administrative review and urged the Department to immediately rescind the administrative review.

The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Rescission of Review

On January 28, 2003, Groupstars Chemicals, LLC submitted a letter to the Department in which it requested ''an antidumping administrative review in the above-referenced matter {potassium permanganate from the People's Republic of China;} for the review period covering January 1, 2002 to December 31, 2002.'' On January 31,

2003, Carus requested an administrative review of Groupstars Chemicals Co., Ltd.-Shandong, Groupstars Chemical Co., Ltd.-Yunan, JCC and the Jianshui Chemical Plant. Based on these requests, the Department initiated an administrative review of Groupstars Chemicals, LLC, Groupstars Chemicals Co., Ltd.-Shandong, Groupstars Chemical Co., Ltd.-Yunnan, JCC and the Jianshui Chemical Plant.

The Department is rescinding its review of the companies named in Carus' request for review because Carus has withdrawn its request. *See* Carus' September 16, 2003 letter to the Department. Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Although Carus withdrew its request after the 90-day period, there were no other requests to review any of the companies for which Carus requested a review, and the review for these companies had not yet progressed beyond a point where it would have been unreasonable to allow Carus to withdraw its request for a review. This action is consistent with the approach taken in past antidumping proceedings. *See Frozen Concentrated Orange Juice From Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 67 FR 40913, 40914 (June 14, 2002) where, pursuant to a request filed after the 90 day deadline, the Department rescinded the review. Additionally, 19 CFR 351.213(d)(1) provides that the Secretary may extend the time limit for withdrawal requests where it is reasonable. Therefore, for the above stated reasons, the Department pursuant to 19 CFR 351.213(d)(1), has decided that it is reasonable to accept Carus' withdrawal of its request for review.

Furthermore, with respect to the remaining review request, we have determined that it is appropriate to rescind the review of Groupstars Chemicals, LLC because this company is a U.S. importer, rather than an exporter or producer, of subject merchandise and it failed to identify the exporter(s) or producer(s) to be reviewed. *See* Groupstars Chemicals, LLC's January 28, 2003 letter to the Department. Section 351.213(b) of the Department regulations requires that reviews be requested for particular exporters or producers. *See* 19 CFR 351.213(b)(1) stating that domestic interested parties may request an administrative review of ''specified individual exporters or producers''; 19 CFR 351.213(b)(2) stating that an exporter or producer may request an ''administrative review of only that person;'' 19 CFR 351(b)(3) stating that an importer of subject merchandise may request an administrative review of only an ''exporter or producer * * * of the subject merchandise imported by that importer.'' Moreover, the courts have held that the party requesting the review, not the Department, bears the burden of naming and selecting the proper party to be reviewed. *See e.g., Floral Trade Council* v. *United States,* 888 F.2d 1366, 1369 (Fed. Cir. 1989) (where the Court of Appeals for the Federal Circuit held that a request for an administrative review must be for review of ''specified individual * * * producers [] or exporters''). Additionally, in past PRC cases, the Department has rescinded administrative reviews when requesting parties failed to identify the actual PRC exporter of the subject merchandise in their review requests. *See Iron Construction Castings from the People's Republic of China: Rescission of Antidumping Duty Administrative Review,* 68 FR 33103–01 (June 3, 2003) (in which the Department rescinded the review because the company for which the review was requested and initiated was not an exporter of subject merchandise, but a producer of subject merchandise); *see also Certain Cased Pencils From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 66 FR 1638–02 (January 9, 2001) (in which a party requested a review of the producer of subject merchandise, rather than the exporter of subject merchandise); *see also* Laizhou City Guangming Pencil-Making Co. Ltd., Et Al., v. United States, No. 02–151, Slip Op. 02–151, 01–00047 (Ct. Int'l Trade December 18, 2002). Because Groupstars Chemicals, LLC is not a PRC exporter of the subject merchandise, and failed to identify any PRC exporter(s) of the subject merchandise in its review request, and with Carus' withdrawal of its review requests, the Department is rescinding this review with respect to Groupstars Chemicals, LLC.

The Department will issue appropriate assessment instructions to the U.S. Bureau of Customs and Border Protection.

Notification to Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with 19 CFR 351.213(d)(4) and, sections 751(a)(2)(c)) and 777(i)(1) of the Act.

Dated: October 2, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–25631 Filed 10–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On October 3, 2003, the Canadian Wheat Board filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final determination of Sales at Less Than Fair Value made by the United States Department of Commerce, International Trade Administration, respecting Certain Durum Wheat and Hard Red Spring Wheat from Canada. This determination was published in the **Federal Register**, (68 FR 52741) on September 5, 2003. The NAFTA Secretariat has assigned Case Number USA–CDA–2003–1904–04 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite

2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on October 3, 2003, requesting panel review of the final determination described above.

The Rules provide that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is November 3, 2003);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is November 18, 2003); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: October 6, 2003.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 03–25632 Filed 10–8–03; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904, NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On October 3, 2003, the Government of Canada filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Second requests were filed on behalf of the Canadian Wheat Board, the Government of Saskatchewan, and the Government of Alberta, respectively. Panel review was requested of the final affirmative Countervailing Duty determination made by the United States Department of Commerce, International Trade Administration, respecting Certain Durum Wheat and Hard Red Spring Wheat from Canada. This determination was published in the **Federal Register**, (68 FR 52747) on September 5, 2003. The NAFTA Secretariat has assigned Case Number USA–CDA–2003–1904–05 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

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(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: October 6, 2003.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 03–25633 Filed 10–8–03; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090903C]

Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Survey in the Northwest Atlantic Ocean Near Bermuda

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

ACTION: Notice of receipt of application and proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from the Lamont-Doherty Earth Observatory (LDEO) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting an oceanographic survey in

the Northwest Atlantic Ocean near Bermuda. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to LDEO to incidentally take, by harassment, small numbers of several species of cetaceans and pinnipeds for a limited period of time within the next year.

DATES: Comments and information must be received no later than November 7, 2003.

ADDRESSES: Comments on the application should be addressed to the Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here. Comments cannot be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Sarah C. Hagedorn, Office of Protected Resources, NMFS, (301) 713–2322, ext 117.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce 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 either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under Section 3(18)(A), the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

The term ''Level A harassment'' means harassment described in subparagraph (A)(i). The term ''Level B harassment'' means harassment described in subparagraph (A)(ii).

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On July 16, 2003, NMFS received an application from LDEO for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey by the *R/V Maurice Ewing* within the Northwest Atlantic Ocean off the coast of Bermuda near the Bermuda Rise area, between 29° and 35° N and between 61° and 68° W, during November and early December 2003. These operations will take place within the Exclusive Economic Zone (EEZ) of Bermuda and adjacent international waters. Clearance to conduct the seismic survey in the foreign EEZ has been requested from Bermuda (U.K.). The purpose of this project is to determine what physical and chemical changes have been imparted to the tectonic plate as a result of the eruption of the Bermuda volcano. By understanding what portion of the uplift of the seafloor is caused by thermal (temporary) versus chemical (permanent) changes to the plate, it will be possible to predict the rate that volcanoes in the middle of plates will sink beneath the waves.

Description of the Activity

The seismic survey will involve a single vessel, the *R/V Maurice Ewing*, which will conduct the seismic work. The *Maurice Ewing* will deploy an array of 20 airguns as an energy source, and a receiving system consisting of Ocean Bottom Hydrophones (OBH's), 96 sonobuoys, and/or a 6–km (3.2–nm) towed hydrophone streamer. The energy to the airgun array is compressed air supplied by compressors on board the source vessel. As the airgun array is towed along the survey lines, the towed hydrophone streamer or OBH's will receive the returning acoustic signals and transfer the data to the on-board processing system. The OBH's and sonobuoys will be deployed by the *R/V Maurice Ewing*.

All planned geophysical data acquisition activities will be conducted by LDEO scientists, with on-board assistance from the scientists who have proposed the study. The survey will be conducted in the deep ocean depths (>1000 m or 3281 ft) of the Bermuda Rise. The survey program will consist of approximately 2400 km (1296 nm) of survey lines. There will be two intersecting seismic reflection and refraction lines, each approximately 600 km (324 nm) long. One line will be oriented north-south along a magnetic isochron, and the other line will be oriented east-west along the presumed track of the hotspot. The point of intersection of these two lines will be in close vicinity of Bermuda Island. Each of the two lines will be surveyed twice. Along each line, the upper crustal structure will be determined by acquiring multibeam sonar, multichannel seismic (MCS), and sonobuoy refraction data. Then, a linear array of OBH's will be deployed for refraction shooting. The specific configuration of the airgun array will differ between the MCS and OBH surveys (described later in this document). There will be additional operations associated with equipment testing, startup, line changes, and repeat coverage of any areas where initial data quality is sub-standard.

The procedures to be used for the 2003 seismic survey will be similar to those used during previous seismic surveys by LDEO, e.g., in the equatorial Pacific Ocean (Carbotte *et al.*, 1998, 2000). The proposed program will use conventional seismic methodology with a towed airgun array as the energy source and a towed streamer containing hydrophones as the receiver system. In addition, sonobuoys and OBH's will also be used at times as the receiver system. In addition, a multi-beam bathymetric sonar will be operated from the source vessel continuously throughout the entire cruise, and a lower-energy sub-bottom profiler will also be operated during most of the survey. Seismic surveys will likely commence on November 6, 2003, and continue until the first week of December, 2003. Exact dates of the activity may vary by a few days due to

weather conditions of the need to repeat some lines if data quality is substandard.

The *R/V Maurice Ewing* will be used as the source vessel. It will tow the 20–airgun array and a streamer containing hydrophones along predetermined lines. During seismic acquisition, the vessel will travel at 4–5 knots (7.4–9.3 km/hr). During the MCS survey, the airgun array to be used will consist of 20 2000–psi Bolt airguns. The standard 20–gun array will include airguns ranging in chamber volume from 80 to 850 in^3, with a total volume of 8,575 in^3. These airguns will be spaced in an approximate rectangle of dimensions of 35 m (115 ft)(across track) by 9 m (30 ft)(along track). Seismic pulses will be emitted at intervals of approximately 20 seconds. The 20–sec spacing corresponds to a shot interval of about 50 m (164 ft). After the line has been surveyed using MCS, the hydrophone streamer will be retrieved and OBH's will be deployed. During the OBH refraction survey, an augmented 20–gun array will be used and configured for a total volume of approximately 11,000 in3 by changing smaller gun chambers for larger volume chambers (ranging from 145 to 875 in^3) after the completion of the MCS reflection lines. Seismic pulses will be emitted at intervals of 240 seconds during OBH acquisition. LDEO believes that even though the augmented 20–gun array will have a total air discharge volume of approximately 2400 in^3 more than the standard 20–gun array, this will not significantly increase the source output since the number of guns has a greater effect on source output than discharge volume.

The dominant frequency components for both airgun arrays is 0 – 188 Hz. The standard 20–airgun array (MCS survey) will have a peak sound source level of 255 dB re 1 μPa or 262 dB peak-to-peak (P-P), and will be towed at a depth of 7.5 m (24.5 ft). The augmented 20–airgun array (OBH survey) will have a peak sound source level of 256 dB re 1 μPa or 263 dB P-P, and will be towed at a depth of 9.0 m (29.5 ft). Because the actual source is a distributed sound source (20 guns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level. Also, because of the directional nature of the sound from the airgun array, the effective source level for sound propagating in near-horizontal directions will be substantially lower.

Along with the airgun operations, two additional acoustical data acquisition systems will be operated during most or all of the cruise. The ocean floor will be mapped with an Atlas Hydrosweep DS–2 multibeam 15.5–kHz bathymetric sonar, and a 3.5–kHz sub-bottom profiler will also be operated along with the multi-beam sonar. These mid-frequency sound sources are commonly operated from the *Maurice Ewing* simultaneous with the airgun array.

The Atlas Hydrosweep is mounted in the hull of the *R/V Maurice Ewing*, and it operates in three modes, depending on the water depth. The first is a shallow-water mode when water depth is <400 m (1312.3 ft). The source output is 210 dB re 1 μPa-m rms and a single 1–millisec pulse or ''ping'' per second is transmitted, with a beamwidth of 2.67 degrees fore-aft and 90 degrees in athwartship. The beamwidth is measured to the 3 dB point, as is usually quoted for sonars. The other two modes are deep-water modes. The Omni mode is identical to the shallow-water mode except that the source output is 220 dB rms. The Omni mode is normally used only during start up. The Rotational Directional Transmission (RDT) mode is normally used during deep-water operation and has a 237–dB rms source output. In the RDT mode, each ''ping'' consists of five successive transmissions, each ensonifying a beam that extends 2.67 degrees fore-aft and approximately 30 degrees in the cross-track direction. The five successive transmissions (segments) sweep from port to starboard with minor overlap, spanning an overall cross-track angular extent of about 140 degrees, with tiny (<1 millisec) gaps between the pulses for successive 30–degree segments. The total duration of the ''ping'', including all 5 successive segments, varies with water depth but is 1 millisec in water depths <500 m (1640.5 ft) and 10 millisec in the deepest water. For each segment, ping duration, is 1/5th of these values or 2/5th for a receiver in the overlap area ensonified by two beam segments. The ''ping'' interval during RDT operations depends on water depth and varies from once per second in <500 m (1640.5 ft) water depth to once per 15 seconds in the deepest water.

The sub-bottom profiler is normally operated to provide information about the sedimentary features and bottom topography that is simultaneously being mapped by the Hydrosweep. The energy from the sub-bottom profiler is directed downward by a 3.5–kHz transducer mounted in the hull of the *Maurice Ewing*. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. Pulse interval is 1 second but a common mode of operation is to broadcast five pulses at 1–s intervals followed by a 5–s pause. Most of the energy in the sound pulses emitted by this multi-beam sonar is at mid-frequencies, centered at 3.5 kHz. The beamwidth is approximately 30° and is directed downward. Maximum source output is 204 dB re 1 μPa, 800 watts, while nominal source output is 200 dB re 1 μPa, 500 watts. Pulse duration will be 4, 2, or 1 ms, and the bandwith of pulses will be 1.0 kHz, 0.5 kHz, or 0.25 kHz, respectively.

Along the two selected seismic lines, data will first be acquired using multibeam sonar, multichannel seismic, and sonobuoys. A total of 96 sonobuoys will be available, and the Ewing system allows two sonobuoys to be recorded at any time. The sonobuoy profiles will be analyzed during the MCS shooting and streamer recovery on each line. The preliminary results from the sonobuoy refraction will be used to plan the OBH deployment pattern on the subsequent deep refraction survey. Twenty OBH's will be deployed for each line.

Additional information on the airgun arrays, Atlas Hydrosweep, and sub-bottom profiler specifications is contained in the application, which is available upon request (see **ADDRESSES**).

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Northwest Atlantic Ocean and its associated marine mammals can be found in a number of documents referenced in the LDEO application as well as in the LDEO application itself, and is not repeated here. Approximately 32 species of cetaceans may be found within the proposed study area near Bermuda. These species are the sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), dwarf sperm whale (*Kogia sima*), Cuvier's beaked whale (*Ziphius cavirostris*), True's beaked whale (*Mesoplodon mirus*), Gervais' beaked whale (*Mesoplodon europaeus*), Sowerby's beaked whale (*Mesoplodon bidens*), Blainville's beaked whale (*Mesoplodon densirostris*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops truncatus*), Pantropical spotted dolphin (*Stenella attenuata*), Atlantic spotted dolphin (*Stenella frontalis*), spinner dolphin (*Stenella longirostris*), clymene dolphin (*Stenella clymene*), striped dolphin (*Stenella coeruleoalba*), short-beaked common dolphin (*Delphinus delphis*), Fraser's dolphin (*Lagenodelphis hosei*), Atlantic white-sided dolphin (*Lagenorhynchus acutus*), Risso's dolphin (*Grampus griseus*), melon-headed whale (*Peponocephala electra*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), killer whale (*Orcinus orca*), long-finned pilot whale (*Globicephala melas*), short-

finned pilot whale (*Globicephala macrorhynchus*), North Atlantic right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), sei whale (*Balaenoptera borealis*), fin whale (*Balaenoptera physalus*), and the blue whale (*Balaenoptera musculus*). Another three species are known to occur just outside of the study area and are not likely to be seen within the study area - the northern bottlenose whale (*Hyperoodon ampullatus* (not usually found south of Nova Scotia)), the white-beaked dolphin (*Lagenorhynchus albirostris* (does not normally occur south of Cape Cod)), and Fraser's dolphin (*Lagenodelphis hosei* (usually found further south)). Pinnipeds are unlikely to be seen in the study area although vagrants of grey (*Halichoerus grypus*) and hooded (*Cystophora cristata*) seals could occur. Additional information on most of these species is contained in Caretta et al. (2001, 2002) which is available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html*.

Potential Effects on Marine Mammals

The sound pressure fields for the standard and augmented 20–gun arrays have been modeled by LDEO, in relation to distance and direction from the airguns. As determined by the models, the pressure fields are similar for both the 8575 in3 and the 11,000 in3 arrays. Table 1 in the application (LDEO Bermuda 2003) shows the maximum distances from both 20–airgun array configurations where sound levels of ≥190, 180, 170, and 160 dB re 1 μPa (rms) are predicted to be received:

20–Airgun Array Volume	*Predicted RMS Radii in meters/ft*			
	190 dB	*180 dB*	*170 dB*	*160 dB*
8575 in^3	275/902	900/2953	2600/8531	9000/29,529
11,000 in^3	300/984	925/3035	2900/9515	9200/30,185

An earlier notice of an LDEO application and proposed IHA was published in the **Federal Register** on April 14, 2003 (68 FR 17909). That notice described, in detail, the characteristics of the *Ewing's* acoustic sources and, in general, the anticipated effects on marine mammals including masking, disturbance, and potential hearing impairment and other physical effects. That information is not repeated here. In addition, details on acoustic sources from, and possible effects of, the sub-bottom profiler, which was not used in the project described in the April 14, 2003, notice, were described on July 28, 2003 (68 FR 44294). The subject LDEO Bermuda application also provides information on what is known about the effects on marine mammals of the types of seismic operations planned by LDEO.

Estimates of Take by Harassment for the Bermuda Cruise

As described previously (68 FR 17909, April 14 2003), animals subjected to sound levels ≥160 dB may alter their behavior or distribution, and therefore might be considered to be taken by Level B harassment. However, the 160–dB criterion is based on studies of baleen whales. Odontocete hearing at low frequencies is relatively insensitive, and dolphins and pilot whales generally appear to be more tolerant of strong sounds than are most baleen whales. Delphinidae have their best hearing in the higher frequencies and are unlikely to be as sensitive as the mysticete whales to the low frequency of the airgun array. Therefore, they are less likely to experience Level B harassment at 160 dB. A more likely threshold for onset of Level B harassment in response to seismic sounds is at about 170 dB.

The estimates of takes by harassment are based on the number of marine mammals that might be exposed to seismic sounds ≥160 dB re 1 μPa (rms) by operations with the 20–airgun array planned for the project. Taken from year-round marine mammal density aerial survey data that has been summarized by geographic location and calendar season (CETAP 1982), LDEO used densities for the ''Entire Atlantic Stratum'' during the autumn period to estimate the numbers of marine mammals that are likely to be present in the proposed survey area near Bermuda. These densities are probably overestimates of the numbers that are likely to be present, because much of the proposed seismic survey area is farther from shore, in greater water depths, and in generally much less productive waters. Because the CETAP (1982) surveys were conducted from an airplane, few beaked whales were seen or identified, and densities of beaked whales were estimated to be zero during the autumn surveys. More than likely there are small numbers of beaked whales in the proposed survey area throughout the year, so LDEO used the mean density for the entire year to estimate the densities of beaked whales that might be present.

Except for beaked whales, LDEO used its best estimate of density to compute a best estimate of the number of marine mammals that may be exposed to seismic sounds≥160 dB re 1 μPa (rms) (NMFS' current criterion for onset of Level B harassment). The best density estimates were multiplied by the linear extent of the proposed survey (1200 km or 648 n.mi. for each of the 8575 and approximately 11,000 in3 arrays) and by twice the 160–dB safety radius around the applicable 20–airgun arrays to estimate the ''best estimate'' of the numbers of animals of each species that might be exposed to sound levels ≥160 dB re 1 μPa (rms) during the proposed seismic survey program.

Based on this method, Table 3 in the LDEO application gives the best estimates, as well as maximum estimates, of densities for each species or species group of marine mammal that might be exposed to received levels ≥160 dB re 1 μPa (rms), and thus potentially taken by Level B harassment during seismic surveys in the proposed study area of the Northwest Atlantic Ocean near Bermuda. It is assumed that the 20–airgun array would be used for all surveys but that air volume would be 8575 in^3 for half of the survey and approximately 11,000 in^3 for half of the survey.

Delphinidae would account for 94 percent of the overall estimate for potential taking by harassment (i.e., 10,292 of 10,910), with short-beaked common dolphins (3941) and pilot whales (3345) believed to account for about 71 percent of all delphinids in the area of the proposed seismic survey, and with smaller numbers of bottlenose dolphins (1871), Risso's dolphins (858), and striped dolphins (277) accounting for most of the remaining 29 percent. While there is no agreement regarding any alternative ''take'' criterion for dolphins exposed to airgun pulses, if only those dolphins exposed to ≥170 dB re 1 μPa (rms) were to be affected sufficiently to be considered taken by Level B harassment, then the best estimate for common dolphins would be 1191 rather than 3941 during the Bermuda Rise cruise, and for pilot whales it would be 1011 instead of

3345. These are based on the predicted 170–dB radius around the 20–airgun arrays (2600 m or 8530 ft for the 8575 in^3 array and 2900 m or 9514 ft for the approximately 11,000 in^3 array), and are considered to be more realistic estimates of the number of these species that may be disturbed. Therefore, the total number of animals likely to be harassed is considerably lower than the 10,910 animals that LDEO has estimated in Table 3 (LDEO Bermuda 2003).

Conclusions-Effects on Cetaceans

The proposed airgun array configurations are larger than those used in many seismic projects; however, shot intervals are longer than during many surveys and so marine mammals will be exposed to fewer seismic pulses than during many other similar seismic surveys. The pulse interval for the 8575 in^3 gun array is 20 seconds and is 240 seconds for the 11,000 in^3 array.

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6 to 8 km (3.2 to 4.3 n.mi.) and occasionally as far as 20–30 km (10.8–16.2 n.mi.) from the source vessel. Some bowhead whales avoided waters within 30 km (16.2 n.mi.) of the seismic operation. However, reactions at such long distances appear to be atypical of other species of mysticetes, and even for bowheads may only apply during migration.

Odontocete reactions to seismic pulses, or at least those of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. In fact, there are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment.'' In the cases of mysticetes, these reactions are expected to involve small numbers of individual cetaceans. LDEO's best estimate is that 501 fin whales, or 1.1 percent of the estimated North Atlantic fin whale population (IWC 2003) will be exposed to sound levels ≥160 dB re 1 μPa (rms) and potentially affected during the proposed cruise near Bermuda. In light of all these factors, these potential takings by Level B harassment are expected to have no more than a negligible impact on the affected species or stock.

Larger numbers of odontocetes may be affected by the proposed activities, but the population sizes of the main species also are larger and the numbers potentially affected are small relative to the population sizes. 38 sperm whales or 0.3 percent of the estimated North Atlantic sperm whale population would receive seismic sounds ≥160 dB. Similarly, only 78 beaked whales from the 5 beaked whale species may be affected by the proposed activities. This is 2.4 percent of the estimated total of all 5 species of beaked whales (3196) that occur along the northeast coast of the U.S. Because the CETAP (1982) surveys were conducted from an airplane, few beaked whales were seen, or at least identified, and densities of beaked whales were estimated to be zero during the autumn surveys. However, LDEO believes there are probably small numbers of beaked whales in the proposed survey area throughout the year, so LDEO used the mean density for the entire year to estimate the densities of beaked whales that might be present during autumn. Most of the proposed seismic survey area is outside of the area for which this 3196 estimate was made, and only a very small part of beaked whale habitat in the North Atlantic was included in the estimate. Thus the actual estimate is more than likely much larger than 3196, and the percentage of animals that might receive seismic sounds ≥160 dB during the proposed cruise is believed to be less than 1 percent of the 3196 estimated North Atlantic population of the 5 species of beaked whales.

The best estimate of the total number of common dolphins, pilot whales, bottlenose dolphins, Risso's dolphins and striped dolphins that might be exposed to ≥160 dB re 1 μPa (rms) in the proposed survey area near Bermuda are 3941, 3345, 1871, 858 and 277, respectively. Of these, about 1191, 1011, 565, 259 and 84, respectively might be exposed to ≥170 dB. These figures are <0.1 to <1.1 percent of the North Atlantic population estimates of these species. However, the actual population sizes are much larger than the estimates so the percentage of the various populations that might be affected are considerably lower than the <0.1 to <1.1 percent mentioned above. The values based on the ≥170 dB criterion are believed to be a more accurate estimate of the number potentially affected.

Mitigation measures such as controlled speed, look-outs, non-pursuit, ramp-ups, and power- and shut-down procedures when within defined ranges (See Mitigation) should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

Conclusions-effects on Pinnipeds

Very few if any pinnipeds are expected to be encountered during the proposed seismic survey near Bermuda. However, a few stray hooded and grey seals could be encountered. The best estimate of the numbers of each of the more common (but unlikely) species that might be taken by Level B harassment is no more than two and is most likely zero. It is estimated that a maximum of 10 pinnipeds (five for each species) may be affected by the proposed seismic surveys. None of the pinniped species is considered endangered or vulnerable.

No pinnipeds regularly occur in the proposed survey area and thus none are expected to be encountered. If pinnipeds are encountered, the proposed seismic activities would have, at most, a short-term effect on their behavior and no long-term impacts on individual seals or their populations. Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment. Taking these factors into account, impacts are expected to be no more than negligible.

Mitigation

For the proposed seismic operations in the Bermuda Rise area in 2003, LDEO will use a 20–airgun array. The airguns comprising these arrays will be spread out horizontally, so that the energy from the arrays will be directed mostly downward.

The sound pressure fields have been modeled by LDEO in relation to distance and direction from the standard and augmented 20–gun array as shown in Figures 5 and 6, respectively (LDEO Bermuda 2003). Since the sound pressure fields around both configurations of the 20–gun array are similar, the marine mammal safety radii for the augmented 20–gun array will be used for the duration of the cruise. The radius around the augmented 20–gun array where the received level would be 180 dB re 1 μPa (rms) (the level for onset of Level A harassment applicable to cetaceans) is estimated as 925 m (3035 ft). The radius around the augmented 20–gun array where the received level would be 190 dB re 1 μPa (rms), (the level for onset of Level A harassment applicable to

pinnipeds), is estimated as 300 m (984 ft).

Vessel-based observers will monitor marine mammals in the vicinity of the arrays. LDEO proposes to power-down the seismic source if marine mammals are observed within the proposed safety radii. Also, LDEO proposes to use a ramp-up procedure when commencing operations using the 20–gun array. Ramp-up will begin with the smallest gun in the array (80 in^3 for the standard array and 145 in^3 for the augmented array), and guns will be added in a sequence such that the source level of the array will increase at a rate no greater than 6 dB per 5–minute period over a total duration of about 25 minutes. Please refer to LDEO's application for more detailed information about the mitigation measures that are an integral part of the planned activity.

Operational Mitigation

The directional nature of the airgun array to be used in this project is an important mitigating factor, resulting in lower sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the stated nominal source level. Because the actual seismic source is a distributed sound source rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level.

Proposed Safety Radii

Received sound levels have been modeled for the 20–gun array. Based on the modeling, estimates of the 190-, 180-, 170-, and 160–dB re 1 μPa (rms) distances (safety radii) for these arrays have been provided previously in this document.

Airgun operations will be suspended immediately when cetaceans are seen within or about to enter the appropriate 180–dB (rms) radius, or if pinnipeds are seen within or about to enter the 190–dB (rms) radius. These 180- and 190–dB criteria are consistent with guidelines listed for cetaceans and pinnipeds by NMFS (2000) and other guidance by NMFS. A calibration study was conducted prior to these surveys to determine the actual radii corresponding to each sound level. These actual radii will be implemented for this study. Until then, or if those measurements appear defective, LDEO will use a precautionary 1.5 times the modeled 180–dB (cetaceans) and 190–dB (pinnipeds) radii predicted by the model as the safety radii.

Mitigation During Operations

The following mitigation measures, as well as marine mammal monitoring, will be adopted during the proposed seismic survey program, provided that doing so will not compromise operational safety requirements: (1) Speed or course alteration; (2) power-down procedures; (3) shut-down procedures; and (4) ramp-up procedures.

Course Alteration

If a marine mammal is detected outside the safety radius and, based on its position and the relative motion, is likely to enter the safety radius, the vessel's speed and/or direct course will be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safey radius, further mitigative actions will be taken, i.e., either further course alterations or power-down of the airguns.

Power-down and Shut-down Procedures

If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's course and/or speed cannot be changed to avoid having the marine mammal enter the safety radius, the airguns will be powered-down before the mammal is within the safety radius. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be powered-down immediately. A power-down involves decreasing the number of airguns in use such that the radius of the 180–dB zone is decreased to the extent that marine mammals are not in the safety radii. A power-down may also occur when the vessel is moving from one seismic line to another.

For the power-down procedure, one airgun (either 80 or 145 in^3) will be operated during the interruption of seismic survey. Airgun activity (after both power-down and shut-down procedures) will not resume until the marine mammal has cleared the safety radii. The animal has cleared the safety radii if it is visually observed to have left the safety radii, or if it has not been seen within the radii for 15 min (small odontocetes and pinnipeds) or 30 min (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales).

If a cetacean is detected close to the airgun array during a power-down, modeled safety radii for a single gun will be maintained. If the standard 20–gun array is used, the single gun that will be firing is 80 in^3, and for the augmented array, it is 145 in^3. The safety radii for the larger 145 in^3 gun will be used for mitigation purposes. Since no calibrations have been done to confirm the modeled safety radii for this single gun, conservative (1.5 times the safety radius) radii will be used: 48 m or 158 ft (the conservative radius is 72 m or 236 ft) for cetaceans, and 17 m or 56 ft (the conservative radius is 26 m or 85 ft) for pinnipeds. If a marine mammal is seen within the appropriate safety radius of the array while the guns are powered-down, airgun operations will be shut-down. Airgun operations will not resume until the marine mammal is outside the safety radius.

Ramp-up Procedure

A ''ramp-up'' procedure will be followed when the airgun array begins operating after a specified-duration period without airgun operations. Under normal operational conditions (vessel speed of about 4 knots or 7.4 km/hr), the *Maurice Ewing* would travel 900 m (3117 ft) in about 8 minutes and a ramp-up would be required after a power-down or shut-down period lasting 8 minutes or longer if the Ewing tows a 20–airgun array. Based on the same calculation, a ramp-up procedure would be required after a 6 minute period if the speed of the source vessel was 5 knots. During the ramp-up procedures, the safety zone for the full-gun array will be maintained.

If the airguns are started up at night, two marine mammal observers will monitor for marine mammals near the source vessel for 30 minutes prior to start up of airgun operations and during the subsequent ramp-up procedures. If the safety radius has not been visible for that 30 minute period (e.g., during darkness or fog), ramp-up will not commence unless at least one airgun was operating during the interruption of seismic survey operations.

Monitoring and Reporting

LDEO proposes to conduct marine mammal monitoring of its 2003 seismic program near Bermuda in order to satisfy the anticipated requirements of the IHA.

Vessel-based Visual Monitoring

At least two vessel-based observers dedicated to marine mammal observations will be stationed aboard LDEO's seismic survey vessel for the seismic survey near Bermuda. At least one experienced marine mammal observer will be on duty aboard the seismic vessel, and observers will be

appointed by LDEO with NMFS concurrence. Observers will be on duty in shifts of duration no longer than 4 hours. Use of two simultaneous observers will increase the proportion of the marine mammals present near the source vessel that are detected.

It is proposed that one or two marine mammal observers aboard the seismic vessel will search for and observe marine mammals whenever seismic operations are in progress during daylight hours, and if feasible, observations will also be made during periods without seismic activity. Two observers will monitor for marine mammals near the seismic source vessel for at least 30 minutes prior to and during all daylight airgun operations including ramp-ups, after an extended shut-down, and during any nighttime startups of the airguns. Airgun operations will be suspended when marine mammals are observed within, or about to enter, designated safety radii, where there is a possibility of Level A harassment. Observers will not be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals during this period and will call for the airguns to be powered-down if marine mammals are observed in or about to enter the safety radii. At least one marine mammal observer will be on ''standby'' at night, in case bridge personnel see a marine mammal. An image-intensifier night-vision device (NVD) will be available for use at night. Ramp-up will not occur if the safety radius has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime. The 30–minute observation period is only required prior to commencing seismic operations following a shut-down of the 20–gun array for more than 1 hour. After 30 minutes of observation, the ramp-up procedure will be followed.

The *R/V Maurice Ewing* is a suitable platform for marine mammal observations. Observers will watch for marine mammals from the highest practical vantagepoint on the vessel, which is either the bridge or the flying bridge. The observer's eye level will be approximately 11 m (36 ft) above sea level when stationed on the bridge, allowing for good visibility within a 210° arc for each observer. If observers are stationed on the flying bridge, the eye level will be 14.4 m (47.2 ft) above sea level. The proposed monitoring plan is summarized later in this document. The observer(s) will systematically scan the area around the vessel with 7 X 50 Fujinon reticle binoculars or with the naked eye during the daytime. At night, night vision equipment will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent). Laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. If a marine mammal is seen well outside the safety radius, the vessel may be maneuvered to avoid having the mammal come within the safety radius (see Mitigation). When mammals are detected within or about to enter the designated safety radii, the airguns will be powered-down immediately. The observer(s) will continue to maintain watch to determine when the animal is outside the safety radius. Airgun operations will not resume until the animal is outside the safety radius or until the specified intervals (15 or 30 min) have passed without a re-sighting.

Reporting

The vessel-based monitoring will provide data required to estimate the numbers of marine mammals exposed to various received sound levels, to document any apparent disturbance reactions, and thus to estimate the numbers of mammals potentially taken by Level B harassment. It will also provide the information needed in order to shut down the airguns at times when mammals are present in or near the safety zone. When a mammal sighting is made, the following information about the sighting will be recorded: (1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to seismic vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace; and (2) time, location, heading, speed, activity of the vessel (shooting or not), sea state, visibility, cloud cover, and sun glare. The data listed under (2) will also be recorded at the start and end of each observation watch and during a watch, whenever there is a change in one or more of the variables.

All mammal observations and airgun shutdowns will be recorded in a standardized format. Data will be entered into a custom database using a laptop computer when observers are off-duty. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical or other programs for further processing and archiving.

Results from the vessel-based observations will provide (1) the basis for real-time mitigation (airgun power-down); (2) information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS; (3) data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted; (4) information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and (5) data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

A report will be submitted to NMFS within 90 days after the end of the seismic program in the Bermuda Rise area. The end of the seismic program is predicted to occur on or about December 9, 2003. The report will describe the operations that were conducted and the marine mammals that were detected near the operations, and will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The 90–day report will summarize the dates and locations of seismic operations, sound measurement data, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential ''take'' of marine mammals by harassment or in other ways. The draft report will be considered the final report unless comments and suggestions are provided by NMFS within 60 days of its receipt of the draft report.

Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to the issuance of an IHA.

National Environmental Policy Act (NEPA)

The National Science Foundation has prepared an EA for the Bermuda Rise survey. NMFS is reviewing this EA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA. A copy of the NSF EA for this activity is available upon request (see **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the impact of conducting a seismic survey program in the Bermuda Rise

portion of the Northwest Atlantic Ocean will result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document. In addition, the proposed seismic program will not take place in or near subsistence hunting areas.

Proposed Authorization

NMFS proposes to issue an IHA to LDEO for conducting a seismic survey program in the Bermuda Rise portion of the Northwest Atlantic Ocean, provided the proposed mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: October 3, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–25639 Filed 10–08–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100603A]

North Pacific Fishery Management Council; Notice of Public Meeting

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

ACTION: Meeting of the North Pacific Fishery Management Council's Scallop Plan Team.

SUMMARY: The Scallop Plan Team will meet October 29–30, 2003, at the NMFS Sustainable Fisheries Conference Room in Juneau, AK. You may call in on the conference line at 907–586–7977.

DATES: The meeting will meet on October 29–30, 2003, 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the NMFS, 709 W 9th Avenue, Juneau, AK 99801.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Stram, Council staff, Phone: 907–271–2809.

SUPPLEMENTARY INFORMATION: Agenda – (1) Membership and Officers (2) Draft Terms of Reference for Scallop Plan Team (3) Review Status of Stocks and Stock Assessment and Fishery Evaluation report (4) Discuss updating the Scallop Fishery Management Plan (5) Update on Alaska Board of Fisheries regulation changes from the 2003 meeting (6) New Business.

Although other non-emergency issue not on the agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the Council will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been informed of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: October 06, 2003.

Richard W. Surdi,

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

[FR Doc. 03–25642 Filed 10–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100303A]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Joint meeting of the South Atlantic Council's Habitat Advisory Panel and Coral Advisory Panel (AP).

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a joint meeting of its Habitat AP and Coral AP to further the Council's integrated process to update Essential Fish Habitat information and consider ecosystem-based management through the development of a Fishery Ecosystem Plan for the South Atlantic Region.

DATES: The joint meeting will take place October 22 and 23, 2003.

ADDRESSES: The meeting will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC, 29407; phone: 800–334–6660 or 843–571–1000.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, S.C., 29407; phone 843–571–4366 or 866–SAFMC–10; FAX 843–769–4520.

SUPPLEMENTARY INFORMATION: Meeting participants will meet from 1 until 5 p.m. on October 22, 2003, and again from 8:30 a.m. until 5 p.m. on October 23, 2003. Items for discussion at the joint meeting include: (1) a summary of the workshop process to facilitate revision of Essential Fish Habitat (EFH) and EFH Habitat Areas of Particular Concern (EFH-HAPC) designations and development of a South Atlantic Fishery Ecosystem Plan; (2) deepwater coral habitat research and protection; (3) habitat policy statement review and development; (4) review of regulations protecting EFH and any remaining fishing and non-fishing activities impacting habitat; and (5) research and monitoring needs to refine the designation and protection of EFH and EFH-HAPCs and to support ecosystem-based management.

Although non-emergency issues not contained in this notice may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically

listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by October 21,2003.

Dated: October 03, 2003.

Richard W. Surdi,

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

[FR Doc. 03–25557 Filed 10–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

[I.D. 082803]

Marine Mammals and Endangered Species; National Marine Fisheries Service File Nos. 764–1703, 1038–1693, and 116–1691; U.S. Fish and Wildlife Service File Nos. PRT–068532, PRT–064776, and PRT–062475

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; U.S. Fish and Wildlife Service (FWS), Interior.

ACTION: Receipt of applications for permits from NMFS and FWS.

SUMMARY: Notice is hereby given that the following applicants have applied in due form for permits from NMFS and FWS to take parts from species of marine mammals for purposes of scientific research: (1) The National Museum of Natural History, Department of Systematic Biology, MRC 108, P.O. Box 37012, Washington, D.C. 20013–7012 (File No. 764–1703/PRT–068532, Charles Potter, Principal Investigator (PI)); (2) Darla Rae Ewalt, USDA, APHIS, National Veterinary Services Laboratories, 1800 Dayton Road, Ames, Iowa 50010 (File No. 1038–1693/PRT–064776); and (3) Sea World, Inc., 7007 Sea World Drive, Orlando, Florida 32821 (File No. 116–1691/PRT–062475, Dr. Todd Robeck, PI).

DATES: Written or telefaxed comments must be received on or before November 10, 2003.

ADDRESSES: The application requests and related documents are available for review upon written request or by appointment in the following office(s): see **SUPPLEMENTARY INFORMATION**.

Written comments or requests for a public hearing on these requests should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore, Amy Sloan, or Ruth Johnson (301)713–2289 or email: Jennifer.Skidmore@noaa.gov or Amy.Sloan@noaa.gov, Ruth.Johnson@noaa.gov.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR parts 18 and 216), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 17 and 222–226).

The National Museum of Natural History (File No. 764–1703/PRT–068532) requests a permit to salvage, collect, import/export, analyze samples, carcasses, hard and soft parts taken from pinnipeds, sirenians, sea and marine otters, and cetaceans to obtain information about the biology and life history of marine mammals and the role they play in the environment. Additionally, samples will be archived and curated at the Natural History Museum. No live animal takes are requested. A permit is requested for a period of five years.

Darla Ewalt (File No. 1038–1693/PRT–064776) requests authorization to receive from Canada tissue samples taken from legally harvested beluga whales (Delphinapterus leucas), narwhals (Monodon monoceros), walrus (Odobenus rosmarus) and ringed seals (Phoca hispida). Tissues to be imported include blood, lymph nodes, lungs and reproductive organs. These samples will be utilized in brucellosis research investigating the presence of Brucella in subsistence harvested marine mammals. The applicant is requesting a five year permit.

Sea World, Inc. (File No. 116–1691/PRT–062475) requests authorization to collect, receive, import, and export an unlimited number of pinniped and cetacean specimens including but not limited to reproductive cells and organs, urine, feces, saliva, ocular secretions, and whole blood taken from dead or captive individuals to study reproductive physiology, including endocrinology, gamete biology, and cryophysiology. Specimens may be collected under the following circumstances for dead animals: directly taken in fisheries for such animals, in countries or situations where such activity is permitted; killed incidental to fishing or other operations; found dead at sea or beached; or that died of natural causes. For captive animals, specimens may be collected from animals that are being housed in countries or situations where such activity is legal and from animals that have been behaviorally conditioned for specimen donation as part of routine husbandry procedures. Specimens may be taken at anytime of the year and in all areas worldwide where pinnipeds and cetaceans are found. The requested duration of the permit is five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018;

Protected Species Coordinator, Pacific Area Office, NMFS, 1601 Kapiolani Blvd., Rm, 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320; and

U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Arlington, VA 22203 (1–800–358–2104).

Dated: October 2, 2003.

Stephen L. Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: October 2, 2003.

Charlie R. Chandler, Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 03–25558 Filed 10–8–03; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

Notice of Schedule of Meetings

Listed below are the schedule of meetings of the Commission of Fine Arts for 2004. The Commission's office is located at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. The meetings are held on the 3rd Thursday of each month, excluding August. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, September 29, 2003.

Charles H. Atherton,

Secretary.

Commission meetings	Submission deadlines
January 15	December 31, 2003*.
February 19	February 5.
March 18	March 4.
April 15	April 1.
May 20	May 6.
June 17	June 3.
July 15	July 1.
September 21*	September 2.
October 21	October 7.
November 18	November 4.
December 16	December 2.

*The 31 December 2003 Commission deadline and the 21 September Commission meeting have been changed from the regular Thursday dates because of proximity to holidays.

[FR Doc. 03–25624 Filed 10–8–03; 8:45 am]

BILLING CODE 6330–01–M

COMMISSION OF FINE ARTS

Notice of Schedule of Meetings

Listed below are the schedule of meetings of the Old Georgetown Board for 2004. The Commission's office is located at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. The Old Georgetown Board meetings are held on the 1st Thursday of each month, excluding August. Items of discussion affecting the appearance of Georgetown in Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our web site: *www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed in Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, September 29, 2003.

Charles H. Atherton,

Secretary.

Georgetown meetings	Submission deadlines
January 5*	December 11, 2003.
February 5	January 15.
March 4	February 12.
April 1	March 11.
May 6	April 15.
June 3	May 13.
July 1	June 10.
September 2	August 12.
October 7	September 16.
November 4	October 14.
December 2	November 11.

*The 5 January Old Georgetown Board meeting has been changed from the regular Thursday date because of proximity to the holiday.

[FR Doc. 03–25625 Filed 10–8–03; 8:45 am]

BILLING CODE 6330–01–M

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for October 16, 2003 at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call (202) 504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 29 September 2003.

Charles H. Atherton,

Secretary.

[FR Doc. 03–25626 Filed 10–18–03; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Coastal Engineering Research Board

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Dates of Meeting: October 28–30, 2003.

Place: The Hilton Portland, Portland, Oregon.

Time: 4:45 p.m. to 8 p.m. (October 28, 2003). 8 a.m. to 5 p.m. (October 29, 2003). 7:30 a.m. to 6:15 p.m. (October 30, 2003).

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to Thomas W. Richardson, Acting Executive Secretary, Coastal and Hydraulics Laboratory, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199.

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* The theme of the meeting is ''Navigation and Regional Sediment Management in the Northwest.'' On Tuesday evening, October 28, there will be a joint icebreaker boat trip with PIANC. On Wednesday, October 29, presentations will include: ''Functional Performance of Navigation Projects;'' ''Northwest Harbor Operational Issues;'' ''IOOS Regional Coastal Program for the Northwest;'' ''Northwest Regional Sediment Management (RSM) Issues;'' ''Mouth of the Columbia (MCR) RSM Project;'' ''Environmental Challenges at the MCR;'' ''Environmental Data Collection Challenges at the MCR;'' ''RSM in the Columbia River Basin;'' ''Wave Data Needs and Analysis in the North Pacific;'' ''Climatic Variability and Trends in the Columbia River Basin from 1750–2003 and Projections of Climate Change Impacts for the 21st Century;'' ''Columbia River Littoral Cell (Geological Framework);''''Developing Analytical Tools to Support RSM, Grays Harbor, and Willapa Bay;'' and ''Applying Technology for Project RSM Grays Harbor and Willapa Bay.'' On Thursday morning, October 30, of the Board will tour the Mouth of the Columbia River Basin via helicopter and will meet in an Executive Session Thursday afternoon.

These meetings are open to the public; participation by the public is scheduled for 4 p.m. on October 29.

The entire meeting is open to the public, but since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Thomas W. Richardson,

Director, Coastal and Hydraulics Laboratory, Acting Executive Secretary.

[FR Doc. 03–25622 Filed 10–8–03; 8:45 am]

BILLING CODE 3710–61–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Patent application 10/601,893: TWO BAND IMAGING SYSTEM. A two band imaging system with two infrared focal plane array detectors, two filters of known band-pass, a dichroic beam splitter and an image processor. Each filter is placed in front of a corresponding infrared focal plane array detector, and the dichroic beam splitter is disposed within the system at a 45-degree angle to the optical axis such that light entering the system is split and is simultaneously directed to each of the two infrared focal plane array detectors. The image processor simultaneously converts the light entering the two infrared focal plane array detectors into a real time absolute image.

ADDRESSES: Requests for copies of the invention cited should be directed to the Naval Surface Warfare Center, Crane Div., Code OCF, Bldg. 64, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell Boggess, Naval Surface Warfare Center, Crane Div., Code OCF, Bldg. 64, 300 Highway 361, Crane, IN 47522–5001, telephone (812) 854–1130. To download an application for license, see: *http://www.crane.navy.mil/foia_pa/CranePatents.asp.*

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: September 29, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–25566 Filed 10–8–03; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, October 15. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the commissioners and staff will begin at 9:30 a.m. Topics of discussion will include: an update on development of the Water Resources Plan for the Delaware River Basin, including a proposed resolution authorizing the executive director to solicit public comment on the draft plan; an update on establishment of the TMDLs for PCBs in the Delaware Estuary; an update on activities concerning the TMDL Implementation Advisory Committee (IAC), including a summary of a meeting among the regulatory agency participants, IAC membership status, fundraising and plans for an initial two-day meeting on October 21–22; a discussion on the status of the Lake Wallenpaupack drought operating plan approved by Resolution No. 2002–33 on November 25, 2002, including a proposal to extend beyond December 3, 2003 the credit granted PPL to satisfy its consumptive use compensation requirement; and a presentation by a representative from PSEG, updating their Estuary Enhancement Program.

The subjects of the public hearing to be held during the 1:30 p.m. business meeting include the dockets listed below:

1. *Borough of Jim Thorpe D–81–71 CP RENEWAL 3.* An application for the renewal of a ground water withdrawal project to continue withdrawal of 14.1 million gallons per 30 days (mg/30 days) to supply the applicant's public distribution system from existing Wells Nos. 1 and 4 in the Maunch Chunk Formation in the Silkmill Run Watershed. The project is located in Jim Thorpe Borough, Carbon County, Pennsylvania.

2. *Borough of Alpha D–87–62 CP RENEWAL 2.* An application to renew a ground water withdrawal of 13.0 mg/30 days to supply the applicant's public distribution system from existing Wells Nos. 1, 2, and 3 in the Lopatcong Creek and Pohatcong Creek watersheds. The

project is located in Alpha Borough, Warren County, New Jersey.

3. *City of Bridgeton D–98–50 CP.* An application to replace Wells Nos. 3, 6, 7, 8, and 9 in the applicant's public water distribution system, which have become unreliable, with replacement Wells Nos. 18, 19, 20, and 21; and to add new Wells Nos. 22, 23, and 24. The applicant requests that the combined allocation for the new wells be limited to 60 mg/30 days of water, and that the total withdrawal from all wells be limited to 170 mg/30 days. The project is located in the Cohansey River Watershed in the City of Bridgeton, Cumberland County, New Jersey.

4. *Saville Rustin Water Company D–2003–19 CP.* An application for approval of a ground water withdrawal project to supply up to 1.296 mg/30 days of water to the applicant's public water distribution system from new Well No. 6, and to retain the existing withdrawal from all wells of 7.5 mg/30 days. The project well is located in the Little Bushkill Watershed in Lehman Township, Pike County, Pennsylvania.

5. *East Penn Manufacturing D–2003–23.* An application for approval of a ground water withdrawal project to supply up to 15 mg/30 days of water to the applicant's industrial facility from new Wells Nos. 2, 4, 5, 6, 7, 8, and 9 in the Leithsville and Hardyston Formations, and to establish the withdrawal from all wells at 15 mg/30 days. The project wells are located in the Moselem Creek Watershed in Richmond Township, Berks County, Pennsylvania.

6. *Great Lakes Companies, Inc. D–2003–25.* An application to construct a 0.09 mgd STP to provide tertiary treatment of wastewater from the proposed Great Wolf Lodge, a 400-unit hotel with an indoor water park. The project is located on the northwest corner of the intersection of State Route 611 and Interstate Route 80 in Pocono Township, Monroe County, Pennsylvania. Following tertiary treatment, a portion of the effluent will be spray applied to on-site areas. The remaining effluent will be discharged to Scot Run, a tributary of Pocono Creek in the Brodhead Creek Watershed, approximately 18 river miles upstream from DRBC Special Protection Waters.

In addition to the public hearing items, the Commission will address the following at its 1:30 p.m. business meeting: Minutes of the September 3, 2003 business meeting; announcements; a report on Basin hydrologic conditions; a report by the executive director; a report by the Commission's general counsel; a resolution suspending the authority of the applicant to proceed with its project set forth in Docket D–98–11 CP (''the Cornog Quarry Project''), at the applicant's request, pending a further decision of the Commission; a resolution authorizing the executive director to solicit public comment on the draft Water Resources Plan for the Delaware River Basin; a resolution authorizing the executive director to enter into a contract for the development of public outreach materials for the Basin Plan; and a resolution for the minutes amending the Administrative Manual: By-Laws, Management and Personnel by increasing the limit on employee contributions to Unreimbursed Medical Spending Accounts (UMSAs), in accordance with Section 125 of the Federal Internal Revenue Code.

Draft dockets scheduled for public hearing on October 15, 2003 are posted on the Commission's Web site, *http://www.drbc.net,* where they can be accessed through the Notice of Commission Meeting and Public Hearing. Additional documents relating to the dockets and other items may be examined at the Commission's offices. Please contact Thomas L. Brand at 609–883–9500 ext. 221 with any docket-related questions.

Persons wishing to testify at this hearing are requested to register in advance with the Commission secretary at 609–883–9500 ext. 203. Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the hearing should contact the Commission secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission may accommodate your needs.

Dated: October 1, 2003.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 03–25571 Filed 10–8–03; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 10, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or recordkeeping burden. OMB invites public comment.

Dated: October 6, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Annual Performance Report for the Gaining Early Awareness for Undergraduate Programs (GEAR UP) Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 316.

Burden Hours: 11,060.

Abstract: The purpose of this information collection is accountability for program implementation and student outcomes for the Gaining Early Awareness and Readiness for

Undergraduate Programs (GEAR UP). The information collected enables the U.S. Department of Education to demonstrate its progress in meeting the GEAR UP performance objectives as reflected in the indicators.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2294. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivan.Reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–25607 Filed 10–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 10, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 6, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: European Community-United States Cooperation Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 60.

Burden Hours: 1,800.

Abstract: The European Community-United States Programs will support new types of cooperation in curriculum development and student exchange between the U.S. and the European union.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2349. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–25608 Filed 10–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket Nos. PP–66–2 and PP–82–3]

Application To Amend Presidential Permits; Vermont Electric Power Company, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Vermont Electric Power Company, Inc. (VELCO) has applied to amend Presidential Permit PP–66 to change way the subject facilities are authorized to operate. VELCO also has applied to amend Presidential Permit PP–82 to change the names of the owners of the interconnection facilities and to increase the amount of power imports allowed over these facilities.

DATES: Comments, protests or requests to intervene must be submitted on or before November 10, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–318–7761).

FOR FURTHER INFORMATION CONTACT: Dr. Jerry Pell (Program Office) 202–586–3362, *Jerry.Pell@hq.doe.gov,* or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038. Upon issuance of such a Presidential permit, no material change may be made in the way the facilities are operated unless

such change has been approved by the Department of Energy (DOE).

On June 21, 1979, DOE issued Presidential Permit PP–66 to Citizens Utilities Company (now Citizens Communications Company; ''Citizens'') for one 120,000-volt (120-kV) electric transmission line that crosses the United States border with Canada near Derby Line, Vermont, and interconnects with similar transmission facilities in Canada owned by Hydro Quebec. On August 21, 2003, Citizens and VELCO (collectively, the ''Applicants'') jointly filed an application with DOE to transfer Presidential Permit PP–66 from Citizens to VELCO. VELCO is a Vermont corporation comprised of several electric utilities operating in Vermont (as further described in the application). VELCO currently owns and operates most of the bulk transmission facilities in Vermont, other than those currently owned by Citizens.

VELCO has proposed to purchase from Citizens transmission facilities in northern Vermont, including the international transmission facilities authorized by Presidential Permit PP–66. Notice of the VELCO and Citizens' application to transfer PP–66 appeared in the **Federal Register** on September 2, 2003, (68 FR 52187) and that matter is still pending.

On September 3, 2003, VELCO applied to amend Presidential Permit PP–66 to authorize a change in the operation of the facilities (''Derby Interconnection Facilities'') as part of VELCO's Northern Loop Project. VELCO claims that the ''Northern Loop Project'' would improve the reliability of VELCO's bulk transmission system in northern Vermont and that the requested change will reduce peak imports over the Derby Interconnection Facilities from TransEnergie in the Canadian Province of Quebec. In that same application, VELCO also requested that Presidential Permit PP–82 be amended to change the names of the companies that comprise the Joint Owners of the Highgate Project (the permit holder) and to increase the allowable level of imports over the PP–82 facilities to 250 MW.

In its application, VELCO states that the effect of the Northern Loop Project would be to shift load supplied in Northwestern Vermont from the PP–66 facilities to the PP–82 facilities. This would result in a decrease in electricity imports from Canada over the PP–66 facilities and an increase in imports over the PP–82 facilities.

In its application, VELCO states that implementation of the Northern Loop Project may require the following physical modifications:

- Replacement of the existing 48-kilovolt (kV) transmission line between VELCO's Irasburg Substation and the so-called ''Mosher's Tap'' with a new, double-circuit 115 kV/48 kV line;
- Connection of this line's 115-kV circuit to one circuit of the existing Mosher's Tap-Highgate Substation line, now operated at 120 kV but to be operated thereafter at 115 kV;
- Connection of this 115-kV circuit at Highgate Substation to VELCO's existing 115-kV line from Georgia to Highgate via a new bus constructed at the Highgate Substation;
- Consolidation of VELCO's and Citizens' now-separate substations in Highgate, a project that may also connect the Highgate Interconnection Facilities (north of the converter terminal) to the 120-kV bus in Highgate Substation (the ''Highgate Tap''); and,
- Related improvements to VELCO's St. Johnsbury, Irasburg and St. Albans Substations.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on VELCO's application to amend the Presidential Permit PP–66 for the Derby Interconnection Facilities should be clearly marked with Docket PP–66–2. Comments on VELCO's application to amend Presidential Permit PP–82 should be clearly marked with Docket PP–82–3. Additional copies are to be filed directly with L. Russell Mitten, Esq., V.P., General Counsel, Citizens Communications Company, 3 High Ridge Park, Stamford, CT 06905; Mr. Gary Parker, V.P., Director of Planning, Engineering, Construction and Transmission, Vermont Electric Power Company, Inc., 366 Pinnacle Ridge Road, Rutland, VT 05701; *AND* Kenneth G. Hurwitz, Esq., Haynes and Boone, LLP, 550 11th Street, NW., Suite 650, Washington, DC 20004–1314; and John H. Marshall, Esq., Downs Rachlin Martin PLLC, 90 Prospect Street, P.O. Box 99, St. Johnsbury, VT 05819–0099.

Before a Presidential permit may be issued or amended, DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action (*i.e.*, granting the Presidential permit with any conditions and limitations, or denying it) pursuant to the National Environmental Policy Act of 1969. DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Electricity Regulation home page at *http://www.fe.doe.gov/programs/electricityregulation/*. Select ''Pending Proceedings'' from the options menu.

Issued in Washington, DC, on October 3, 2003.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 03–25620 Filed 10–8–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–085]

ANR Pipeline Company; Notice of Service Agreement Filing

October 2, 2003.

Take notice that on September 24, 2003 subject to Section 4 of the Natural Gas Act (NGA) and Part 154 of the Regulations of the Federal Energy Regulatory Commission (Commission), ANR Pipeline Company (ANR), 9 E Greenway Plaza, Houston, Texas 77046, tendered for filing and approval, ten service agreements (Agreements) between ANR and Kaztex Energy Management Inc., pursuant to ANR's Rate Schedule FTS–1. ANR requests the Commission find that the Agreements contain acceptable material deviations from ANR's Form of Service Agreement and accept the attached tariff sheet which references the Agreements as non-conforming agreements.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary 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 eFiling link.

Protest Date: October 6, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00032 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project 2210–090]

Appalachian Power Company; Notice of Extension of Comment Period

October 2, 2003.

This notice applies to the Smith Mountain Pumped Storage Project, FERC No. 2210. The project is licensed to Appalachian Power Company, a part of American Electric Power and is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

On September 10, 2003, a Notice of Application for Amendment of License andSoliciting Comments, Motions to Intervene, and Protests was issued for the amendment of license to approve a shoreline management plan filed on September 3, 2003. The comment period ends October 10, 2003. This notice extends the comment period for 90 days until January 10, 2004.

The Commission staff will prepare a Draft Environmental Assessment (DEA) of the application. Once this DEA is completed, it will be noticed to provide an opportunity for Federal, state, and local agencies, as well as the public, to provide comments. All comments will be used in preparing the Final Environmental Assessment to be considered by the Commission when acting on this application.

For further information, contact Heather Campbell at (202) 502–6182.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00011 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF03–2011–000]

United States Department of Energy, Bonneville Power Administration; Order Approving Rates on an Interim Basis and Providing Opportunity for Additional Comments

Issued: October 1, 2003.

Before Commissioners: Pat Wood III, Chairman; William L. Massey, and Nora Mead Brownell.

1. In this order we approve on an interim basis, pending our full review for final approval, the Bonneville Power Administration's (Bonneville) proposed modification to the Safety-Net and Financial-Based Cost Recovery Adjustment Clauses (CRACs), and to the Dividend Distribution Clause, under the 2002 Wholesale Power Rate Schedule General Rate Schedule Provisions (GRSPs). We also provide an additional period of time for the parties to file comments. The proposed rates will allow Bonneville to recover its costs and repay the U.S. Treasury for the Federal investment.

Background

2. On July 29, 2003, Bonneville filed a request for interim and final approval to modify its CRACs and the Dividend Distribution Clause under the 2002 Wholesale Power Rate Schedule General Rate Schedule Provisions (GRSPs), in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) [1] and subpart B of part 300 of the Commission's regulations.[2] The Commission previously granted final approval of the 2002 GRSPs for a five-year period ending September 30, 2006.[3] Bonneville contends that the CRACs allowed BPA to keep rates low while still addressing any financial shortfalls, rather than instituting higher base rates for the entire rate period.

3. In accordance with the statutory procedure,[4] Bonneville seeks interim approval of this adjustment effective October 1, 2003, and final approval effective October 1, 2003 through September 30, 2006.

Notice of Filing and Interventions

4. Notice of Bonneville's filing was published in the **Federal Register**, 68 FR 47561 (2003), with comments, protests, or motions to intervene due on or before September 3, 2003.

5. Avista Corporation, Generating Public Utilities, Eugene Water & Electric Board, Golden Northwest Aluminum, Inc., PacifiCorp, Portland General Electric, Puget Sound Energy, Inc., and the City of Tacoma, Department of Public Utilities, Light Division, d/b/a Tacoma Power filed timely motions to intervene raising no issues. Northwest Requirements Utilities (NRU) filed a motion to intervene out of time.

6. In addition, Alcoa, Inc., Generating Public Utilities, Industrial Customers of Northwest Utilities, Golden Northwest Aluminum, Inc., Pacific Northwest Generating Cooperative, Public Power Council, and the Columbia River Inter-Tribal Fish Commission, Confederated Tribes of the Umatilla Reservation, and the Yakama Nation (collectively, Protesters) filed timely motions to intervene and protests.

Discussion

Procedural Matters

7. Under Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2003), the notices of intervention and timely, unopposed motions to intervene make the entities that filed them parties to this proceeding. We will grant NRU's untimely, unopposed motion to intervene because: NRU's interests cannot be adequately represented by other parties; NRU intervened at an early stage of the proceeding; and no prejudice or additional burden upon existing parties will result from permitting the intervention.

Standard of Review

8. Under the Northwest Power Act, the Commission's review of Bonneville's regional power and transmission rates is limited to determining whether Bonneville's proposed rates meet the three specific requirements of section 7(a)(2):

They must be sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over

[1] Sections 7(a) and 7(i)(6) of the Northwest Power Act, 16 U.S.C. 839e(a)(2) and 839e(i)(6) (2000).

[2] 18 CFR part 300 (2003).

[3] United States Department of Energy—Bonneville Power Administration, 104 FERC ¶ 61,093 (2003).

[4] Sections 7(a) and 7(i)(6) of the Northwest Power Act, 16 U.S.C. 839e(a)(2) and 839e(i)(6) (2000).

a reasonable number of years after first meeting the Administrator's other costs;

They must be based upon the Administrator's total system costs; and

Insofar as transmission rates are concerned, they must equitably allocate the costs of the Federal transmission system between Federal and non-Federal power.[5]

9. Commission review of Bonneville's non-regional, non-firm rates also is limited. Review is restricted to determining whether such rates meet the requirements of section 7(k) of the Northwest Act,[6] which requires that they comply with the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act (Transmission System Act). Taken together, those statutes require Bonneville to design its non-regional, non-firm rates:

(1) To recover the cost of generation and transmission of such electric energy, including the amortization of investments in the power projects within a reasonable period;

(2) To encourage the most widespread use of Bonneville power; and

(3) To provide the lowest possible rates to consumers consistent with sound business principles.

10. Unlike the Commission's statutory authority under the Federal Power Act, the Commission's authority under sections 7(a) and 7(k) of the Northwest Power Act does not include the power to modify the rates. The responsibility for developing rates in the first instance is vested with Bonneville's Administrator. The rates are then submitted to the Commission for approval or disapproval. In this regard, the Commission's role can be viewed as an appellate one: To affirm or remand the rates submitted to it for review.[7]

11. Moreover, review at this interim stage is further limited. In view of the volume and complexity of a Bonneville rate application, such as the one now before the Commission in this filing, and the limited period in advance of the requested effective date in which to review the application,[8] the Commission generally defers resolution of issues on the merits of Bonneville's application until the order on final confirmation. Thus, the proposed rates, if not patently deficient, generally are approved on an interim basis and the parties are afforded an additional opportunity to raise issues.[9]

Interim Approval

12. Protesters contend that Bonneville has not shown the need for the rate increase. They argue that the proposed GRSPs will operate to preclude the Commission's statutorily mandated review of future SN CRAC rate adjustments, as required under the Northwest Power Act. They contend that Bonneville has not based the rates on its total system costs, as required by the Northwest Power Act. Protesters also argue, among other things, that (1) Bonneville's application is deficient and fails to comply with the Northwest Power Act, (2) Bonneville failed to file a complete evidentiary record, (3) Bonneville relied on data and information that was not included in the evidentiary record, (4) Bonneville denied the parties in this proceeding due process, and (5) Bonneville submitted materials and a Notice of Filing that do not comply with the Commission's regulations.

13. The Commission's preliminary review indicates that Bonneville's filing appears to meet the minimum threshold filing requirements of part 300 of the Commission's regulations and the statutory standards. Because the Commission's preliminary review of Bonneville's submittal indicates that they do not contain any patent deficiencies, the proposed modifications will be approved on an interim basis pending our full review for final approval. We note, as well, that no one will be harmed by this decision because interim approval allows Bonneville's rates to go into effect subject to refunds with interest if the Commission later determines in its final decision not to approve the rates.[10]

14. In addition, we will provide an additional period of time for the parties to file comments and reply comments on all issues related to final confirmation and approval of Bonneville's proposed rates. This will ensure that the record in this proceeding is complete.

The Commission Orders

(A) Protesters' requests to reject Bonneville's filing are hereby denied.

(B) Interim approval of Bonneville's filing is hereby granted, to become effective on October 1, 2003, subject to refund with interest as set forth in section 300.20(c) of the Commission's regulations, 18 CFR 300.20(c) (2003), pending final action on either its approval or disapproval.

(C) Within thirty (30) days of the date of this order, all parties who wish to do so may file additional comments regarding final confirmation and approval of Bonneville's proposed rates. All parties who wish to do so may file reply comments within twenty (20) days thereafter.

(D) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03–25573 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

[5] 16 U.S.C. 839e(a)(2) (2000). Bonneville also must comply with the financial, accounting, and ratemaking requirements in Department of Energy Order No. RA 6120.2.

[6] 16 U.S.C. 839e(k) (2000).

[7] *E.g.*, United States Department of Energy—Bonneville Power Administration, 67 FERC ¶ 61351 at 62216–17 (1994); *see also, e.g., Aluminum Company of America* v. *Bonneville Power Administration*, 903 F.2d 585, 592–93 (9th Cir. 1989) and cases cited therein.

[8] 18 CFR 300.10(a)(3)(ii) (2003).

[9] *See, e.g.*, United States Department of Energy—Bonneville Power Administration, 64 FERC ¶ 61375 at 63606 (1993); United States Department of Energy—Bonneville Power Administration, 40 FERC ¶ 61351 at 62059–60 (1987).

[10] 18 CFR 300.20(c) (2003).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–621–000]

CenterPoint Energy-Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 2, 2003.

Take notice that on September 29, 2003, CenterPoint Energy Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet to be effective October 1, 2003:

Seventh Revised Sheet No. 11
Third Revised Sheet No. 249A

MRT states that the purpose of this filing is to revise the provisions of the General Terms and Conditions of MRT's tariff in order to clarify that it possesses the authority to bill taxes, levies, and other charges imposed on Customers by regulatory agencies or taxing authorities where MRT is required by law to collect such amounts from Customer(s) and remit these amounts to the respective agencies or authorities.

MRT states that copies of the revised tariff sheet are being mailed to all parties on MRT's official service list, to MRT's jurisdictional customers, and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance

with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. 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.

Comment Date: October 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00024 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–407–002]

CenterPoint Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 2, 2003.

Take notice that on September 24, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheet:

Second Substitute Original Sheet No. 556C

This tariff sheet has a July 1, 2003 effective date. CEGT states that the purpose of this filing is to comply with the Commission's Letter Order issued September 9, 2003 in the above-referenced docket.

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 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 eLibrary 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 eFiling link.

Protest Date: October 6, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00013 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–617–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 2, 2003.

Take notice that on September 26, 2003 Colorado Interstate Gas Company (CIG) tendered for filing three Firm Transportation Service Agreements (FTSAs), a Letter Agreement and Ninth Revised Sheet No. 1 to its FERC Gas Tariff, First Revised Volume No. 1.

CIG states that the FTSAs and Letter Agreement are being submitted for Commission review under the Commission's material deviation policies and have been listed on the tendered tariff sheet as non-conforming agreements. GIG states that two of the FTSAs are being submitted for review under the Commission's negotiated rate policies. CIG request that the tariff sheet is proposed to become effective October 27, 2003.

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 § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. 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.

Comment Date: October 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00020 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–619–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 2, 2003.

Take notice that on September 26, 2003, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to, bearing a proposed effective date of October 26, 2003:

Seventh Revised Sheet No. 501
Second Revised Sheet No. 501A
Seventh Revised Sheet No. 503
Second Revised Sheet No. 503.01

Columbia states it is filing to revise its Tariff to insert a footnote, along with associated ADQ and DDQ columns in Appendix A to its Rate Schedule FTS, NTS and OPT pro forma service agreements. Columbia further states the inclusion of the proposed language will help make the pro forma service agreements for all of Columbia's firm transportation services consistent in this regard.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. 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.

Comment Date: October 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00022 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–627–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 2, 2003.

Take notice that on September 30, 2003, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised the following revised tariff sheets Second Revised Volume No. 1, the following revised tariff sheets bearing a proposed effective date of November 1, 2003:

Sixty-fifth Revised Sheet No. 25
Sixty-fifth Revised Sheet No. 26
Sixty-fifth Revised Sheet No. 27
Twenty-ninth Revised Sheet No. 30A

Columbia states that this filing is being submitted pursuant to Stipulation I, Article I, Section E, True-up Mechanism, of the Settlement (Settlement) in Docket No. RP95–408, *et al.* Pursuant to the true-up mechanism, Columbia is required to true-up its collections from the Settlement Component for twelve-month periods commencing November 1, 1996. In accordance with the Settlement, the true-up component of the Settlement Component is to be removed effective November 1 of each year. Columbia states that the instant filing is being made to remove such true-up component from the currently effective Settlement Component effective November 1, 2003.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. 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.

Comment Date: October 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00028 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–623–000]

Dominion Transmission, Inc.; Notice of Annual TCRA Filing

October 2, 2003.

Take notice that on September 29, 2003, Dominion Transmission Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 2003:

Eighteenth Revised Sheet No. 31
Twenty-Second Revised Sheet No. 32
Twelfth Revised Sheet No. 34
Fifteenth Revised Sheet No. 35
Eighth Revised Sheet No. 39

DTI states that the purpose of this filing is to update DTI's effective Transportation Cost Rate Adjustment through the mechanism described in Section 15 of the General Terms and Conditions of DTI's tariff.

DTI states that copies of the filing have been sent to DTI's customers and interested stated commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. 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.

Comment Date: October 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00025 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–624–000]

Dominion Transmission, Inc.; Notice of Annual EPCA Filing

October 2, 2003.

Take notice that on September 29, 2003, Dominion Transmission Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, with an effective date of November 1, 2003:

Seventeenth Revised Sheet No. 31
Twenty First Revised Sheet No. 32
Eleventh Revised Sheet No. 34
Fourteenth Revised Sheet No. 35
Seventh Revised Sheet No. 39

DTI states that the purpose of its filing is comply with the Electric Power Cost Adjustment provision of Section 17 of its the General Terms and Conditions of its FERC Gas Tariff.

DTI states that copies of the filing have been sent to DTI's customers and interested stated commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. 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.

Comment Date: October 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00026 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–13–008]

East Tennessee Natural Gas Company; Notice of Negotiated Rate Filing

October 2, 2003.

Take notice that on September 24, 2003, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fourth Revised Sheet No. 177, included in Appendix A thereto, proposed to be effective on November 1, 2003, or such later date as the facilities constructed for the Patriot Project are placed into service.

East Tennessee states that the purpose of this filing is to implement four negotiated rate agreements and one discounted rate agreement for firm service to be rendered to four customers on East Tennessee's Patriot Project (Docket No. CP01–415), and to update the list of non-conforming agreements contained in Section 45 of the General Terms and Conditions.

East Tennessee requests that the Commission accept this filing by October 15, 2003. In addition, East Tennessee requests that the Commission grant any authorizations and waivers of the Commission's regulations to the extent necessary to permit the tariff sheet and the agreements to be made effective as proposed.

East Tennessee states that copies of the filing were mailed to all affected customers of East Tennessee and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC OnlineSupport 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 eFiling link.

Protest Date: October 6, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00030 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–357–000]

Eastern Shore Natural Gas Company; Notice of Application

October 2, 2003.

Take notice that on September 26, 2003, Eastern Shore Natural Gas Company (Eastern Shore), 417 Bank Lane, Dover, Delaware 19904, filed an application with the Commission in Docket No. CP03–357–000 under Section 7 of the Natural Gas Act, as amended, seeking authority to construct and operate a metering and regulating station in Seaford, Sussex County, Delaware, to serve an existing customer, all as more fully stated in the application.

Any questions regarding the application should be directed to Elaine B. Bittner, Director of Eastern Shore Natural Gas Company, Eastern Natural Gas Company, 417 Bank Lane, Dover Delaware 19904, or at (302) 734–6710.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. 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, 18CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: October 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00034 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–485–002]

Honeoye Storage Corporation; Notice of Proposed Change in FERC Gas Tariff

October 2, 2003.

Take notice that on September 24, 2003, Honeoye Storage Corporation (Honeoye) tendered for filing as part of its FERC Gas Tariff, First Revised Volume 1A, one revised tariff sheet to be effective July 1, 2003. The revised tariff sheet is designated as:

Substitute Third Revised Sheet No. 105
Superceding Third Revised Sheet No. 105

Honeoye states that the purpose of this filing is to comply with the Commission's September 12, 2003 Letter Order which directed Honeoye to remove the reference to certain WGQ Standards incorporated by reference in section 11.12 of its tariff.

Honeoye states that copies of the filing are being mailed to Honeoye's jurisdictional customers and interested state regulatory agencies.

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 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 eLibrary 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 eFiling link.

Protest Date: October 6, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00014 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–626–000]

Iroquois Gas Transmission System, L.P.; Notice Filing

October 2, 2003.

Take notice that on September 30, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing its report relating to its Deferred Asset Surcharge. Iroquois states that there is no change in the Deferred Asset Surcharge, no tariff sheet is being submitted.

Iroquois states that it is filing the supporting workpapers as part of its annual update of its Deferred Asset Surcharge to reflect the annual revenue requirement associated with the Deferred Asset for the amortization period commencing November 1, 2003. Iroquois further states as shown in those workpapers, there is no change in the rate for the Deferred Asset Surcharge for the period commencing November 1, 2003; accordingly, no revised tariff sheet is necessary.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. 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.

Comment Date: October 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00027 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–18–000]

Katy Storage and Transportation, L.P.; Notice of Petition for Rate Approval

October 2, 2003.

Take notice that on September 23, 2003, Katy Storage and Transportation, L.P. (KST) filed a petition for rate approval of market-based rates for storage services pursuant to § 284.123(b)(2) of the Commission's Regulations. KST requests approval of its proposed rates as being fair and equitable as it will lack the requisite market power to charge rates in excess of amounts that interstate pipelines and storage providers could charge for similar services.

KST affirms that it is an intrastate pipeline within the meaning of section 2(16) of the Natural Gas Policy Act (NGPA). Consistent with the Commission's approval of its Section 311 rates in Docket No. PR03–18–000, KST proposes to make its section 311 rates effective as of September 23, 2003.

Pursuant to section 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 date as indicated below. 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 ''eLibrary'' link. Enter the docket number excluding the last three digits I the docket number field to access the document. For Assistance, call (866) 208–3676 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: October 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00012 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–618–000]

Midwestern Gas Transmission Company ; Notice of Proposed Changes in FERC Gas Tariff

October 2, 2003.

Take notice that on September 26, 2003, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of Midwestern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective November 1, 2003:

Second Revised Sheet No. 90
Original Sheet No. 100B
First Revised Sheet No. 90A
Second Revised Sheet No. 91
Original Sheet No. 100C
First Revised Sheet No. 91A
Original Sheet No. 91A.01
Second Revised Sheet No. 101
Second Revised Sheet No. 92
Third Revised Sheet No. 100
Second Revised Sheet No. 102
First Revised Sheet No. 100A
Fourth Revised Sheet No. 230B
Third Revised Sheet No. 266B
First Revised Sheet No. 266C

Midwestern states that the purpose it its filing is to: (1) Eliminate the OBA PAL Scheduling Penalty in Rate Schedule LMS–MA, (2) provide further clarification regarding the applicability of its Daily Imbalance Charge, and (3) clarify the procedures to be utilized to avoid penalty charges.

Midwestern states that it is not proposing any substantive changes to its remaining penalty provisions under Rate Schedules LMS–MA and LMS–PA, it is only seeking minor clarifications to more clearly articulate the applicability of the penalty provisions thereby minimizing any confusion and reducing the potential imposition of a penalty charge.

Midwestern states that copies of this filing have been sent to all of Midwestern's shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. 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.

Comment Date: October 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00021 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–615–000]

MIGC, Inc.; Notice of Filing

October 2, 2003.

Take notice that on September 24, 2003, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No.1, the following tariff sheets, to become effective November 1, 2003:

Sixth Revised Sheet No. 90A
Second Revised Sheet No. 90B

MIGC states that the purpose of this filing is to update MIGC's tariff to combine revisions which were previously approved in separate proceedings. MIGC further states that these proposed revisions are necessary to finalize MIGC's compliance with FERC Order's No. 587–O and 587–R.

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 § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. 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 ''eFiling'' link.

Comment Date: October 6, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00018 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–050]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

October 2, 2003.

Take notice that on September 30, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A., Eighteenth Revised Sheet No. 15, First Revised Sheet No. 17, Fourth Revised Sheet No. 18, and Third Revised Sheet No. 21B, with an effective date of October 1, 2003.

GTN states that these sheets are being filed to update GTN's reporting of negotiated rate transactions that it has entered into.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

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 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 eLibrary 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: October 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00008 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–620–000]

Portland Natural Gas Transmission System; Notice of Proposed Changes in FERC Gas Tariff

October 2, 2003.

Take notice that on September 26, 2003, Portland Natural Gas Transmission System (PNGTS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, with an effective date of November 1, 2003:

Seventh Revised Sheet No. 100

PNGTS states that it is also tendered for filing two alternate tariff sheets:

Alternate Fifth Revised Sheet No. 100, to be effectiveNovember 12, 2002; and
Alternate Sixth Revised Sheet No. 100, to be effectiveJune 1, 2003.

PNGTS states that its filing proposes to reduce the Firm Transportation (FT) Seasonal Recourse Reservation Rate so that it is equal to 1.9 times the FT Recourse Reservation Rate. PNGTS states that the purpose of this change is to ensure that PNGTS offers seasonal service on a nondiscriminatory basis as directed by the Commission and to ensure that no existing or future seasonal contracts inadvertently raise issues regarding a trigger of the discount clause (referred to as Most Favored Nations or MFN clause) in PNGTS's FT contracts. PNGTS states that the primary tariff sheet reduces the seasonal recourse rate to equal 1.9 times the FT recourse rate effective November 1, 2003. PNGTS further states that, along with the primary tariff sheet, PNGTS is requesting that the Commission reconsider and vacate its June 9, 2003 Order in Docket No. RP02–13–010, which accepted the current seasonal recourse rate. PNGTS's alternate tariff sheets would reduce the seasonal recourse rate to equal 1.9 times the FT recourse rate effective as of November 12, 2002. PNGTS states that finally, in the event that the Commission declines to adopt the primary or alternate proposals, PNGTS requests that the Commission ''grandfather'' the two existing negotiated seasonal contracts, and continue to recognize those contracts as negotiated relative to the FT recourse rate.

PNGTS states that copies of this filing are being served on all jurisdictional customers and interested state commissions, as well as all parties in Docket No. RP02–13–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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 ''eLibrary''. 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.

Comment Date: October 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00023 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–612–000]

Questar Southern Trails Pipeline Company; Notice of Tariff Filing

October 2, 2003.

Take notice that on September 24, 2003, Questar Southern Trails Pipeline Company (Southern Trails) pursuant to 18 CFR 154.7 of the Commission's Regulations, submitted for filing the following tariff sheets to Original Volume No. 1 of its FERC Gas Tariff to be effective October 24, 2003.

Original Volume No. 1
First Revised Sheet Nos. 72 through 78

Southern Trails is proposing to update the Measurement section of its tariff to comport with current industry measurement standards and practices.

Southern Trails states that a copy of this filing has been served upon its customers and the Public Service Commissions of Utah, New Mexico, Arizona, and California.

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 § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. 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 ''eFiling'' link.

Comment Date: October 6, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00015 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–060]

TransColorado Gas Transmission Company; Notice of Compliance Filing

October 2, 2003.

Take notice that on September 30, 2003, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Fourth First Revised Volume No. 1, Fourth Revised Sheet Nos. 21 and Fourth Revised Sheet No. 22A to Tariff to be effective October 1, 2003.

TransColorado states that the filing is being made in compliance with the Commission's Letter Order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets propose to revise TransColorado's Tariff to reflect a negotiated-rate contract with Chevron USA, Inc.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (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: October 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00031 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–613–000]

Transwestern Pipeline Company; Notice of Tariff Filing

October 2, 2003.

Take notice that on September 24, 2003, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), the following tariff sheet to become effective November 1, 2003:

Second Revised Volume No. 1
Fifteenth Revised Sheet No. 5B.02

Transwestern's states that its Stipulation and Agreement filed on May 2, 1995, in Docket Nos. RP95–271, *et al.*, as amended by Transwestern's Stipulation and Agreement filed on May 21, 1996, provided for annual adjustments to the Settlement Base Rates (SBRs) beginning November 1, 1998.

Transwestern states that the purpose of the instant filing is to set forth the factors and calculations used in determining the adjustments to the SBRs and to revise the SBRs to be effective November 1, 2003.

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 § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' 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 ''eFiling'' link.

Comment Date: October 6, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00016 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–614–000]

Transwestern Pipeline Company; Notice of Tariff Filing

October 2, 2003.

Take notice that on September 24, 2003, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), the following tariff sheet to become effective November 1, 2003:

Second Revised Volume No. 1
Thirteenth Revised Sheet No. 5B.03

Pursuant to section 25 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Transwestern states that it is filing a tariff sheet, which sets forth the new TCR II Reservation Surcharges that Transwestern proposes to put into effect on November 1, 2003.

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 § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. 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 ''eFiling'' link.

Comment Date: October 6, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00017 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–616–000]

Viking Gas Transmission Company; Notice of Tariff Filing

October 2, 2003.

Take notice that on September 25, 2003, Viking Gas Transmission Company (Viking) tendered for filing to become part of Viking's FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 34, to become effective November 1, 2003.

Viking states that the purpose of this filing is to add language to Rate Schedule LMS which would automatically cause a monthly imbalance of less than 1000 Dekatherms to be cashed out at the 0–5 ''no penalty'' percentage level regardless of the actual monthly imbalance percentage. Viking states that it does not desire to penalize parties whose monthly imbalances are less than 1000 Dekatherms because such imbalance is insignificant in nature and not a source of major harm to its pipeline system.

Viking states that copies of this filing have been sent to all of Viking's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' (FERRIS). 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.

Comment Date: October 7, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00019 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–086]

ANR Pipeline Company; Notice of Negotiated Rate Filing

October 2, 2003.

Take notice that on September 25, 2003, ANR Pipeline Company (ANR) tendered for filing and approval amendments to two Service Agreements between ANR and Aquila, Inc., which terminate the negotiated rate agreements between the parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary 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 eFiling link.

Protest Date: October 7, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00033 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–13–009]

East Tennessee Natural Gas Company; Notice of Negotiated Rates

October 2, 2003.

Take notice that on September 30, 2003, East Tennessee Natural Gas Company (East Tennessee) tendered for filing a corrected Exhibit A for Carolina Power & Light Company Contract No. 410103.

East Tennessee states the various contracts and negotiated rate agreements were filed with the Commission on September 24, 2003 in Docket No. RP97–13–008. Footnote 16 to the transmittal letter for such filing noted that there was a typographical error on Exhibit A to the service agreement with Carolina Power & Light (Contract No. 410103), and that the parties were in the process of correcting the error. The parties have now corrected the error,

and East Tennessee hereby files the corrected Exhibit A.

East Tennessee states that copies of the filing were mailed to all affected customers of East Tennessee and interested state commissions, and all parties on the service lists.

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, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. 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.

Comment Date: October 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00029 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Draft License Application and Preliminary Draft Environmental Assessment and Request for Preliminary Terms and Conditions

October 2, 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–2150–026.

c. *Date Filed:* October 1, 2003.

d. *Applicant:* Puget Sound Energy, Inc.

e. *Name of Project:* Baker River Hydroelectric Project.

f. *Location:* On the Baker River, near the Town of Concrete, in Whatcom and Skagit Counties, Washington. The project occupies about 5,168.5 acres of lands within the Mt. Baker-Snoqualmie National Forest managed by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Connie Freeland, Puget Sound Energy, Inc. P.O. Box 97034 PSE–09S Bellevue, WA 98009–9734; (425) 462–3556 or *connie.freeland@pse.com.*

i. *FERC Contact:* Steve Hocking, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; (202) 502–8753 or *steve.hocking@ferc.gov.*

j. *Status of Project:* With this notice the Commission is soliciting (1) preliminary terms, conditions, and recommendations on the Preliminary Draft Environmental Assessment (PDEA), and (2) comments on the Draft License Application.

k. *Deadline for filing:* January 2, 2004.

All comments on the PDEA and Draft License Application should be sent to the addresses noted above in Item (h), with one copy filed with FERC at the following address: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All comments must include the project name and number and bear the heading Preliminary Comments, Preliminary Recommendations, Preliminary Terms and Conditions, or Preliminary Prescriptions.

Comments and preliminary recommendations, terms and conditions, and prescriptions 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.

l. 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 ''eLibrary'' 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.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Puget Sound Energy, Inc. has mailed copies of the PDEA and Draft License Application to interested entities and parties. Additional copies may be obtained from the contact person listed in item (h) above.

m. With this notice, we are initiating consultation with the Washington State Historic Preservation Officer as required by Section 106 of National Historic Preservation Act and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00009 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Draft License Application and Draft Preliminary Draft Environmental Impact Statement (DPDEIS) and Request for Preliminary Terms and Conditions

October 2, 2003.

Take notice that the following draft hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2195.

c. *Applicant:* Portland General Electric Company.

d. *Name of Project:* Clackamas River Hydroelectric Project P–2195 (formerly Oak Grove, P–135 and North Fork P–2195 projects).

e. *Location:* On the Oak Grove Fork of the Clackamas River on the Mount Hood National Forest, and on the Clackamas River, in Clackamas County, Oregon, near Estacada, Oregon.

f. *Applicant Contact:* Julie Keil, Portland General Electric, 121 SW Salmon Street, 3WTC–BRHL, Portland, Oregon, 97204, Phone: 503–464–8864.

g. *FERC Contact:* John Blair at (202) 502–6092; e-mail *john.blair@ferc.gov.*

h. PGE mailed a copy of the Clackamas River Hydroelectric Project draft Preliminary Draft Environmental Impact Statement (dPDEIS) and Draft Application to interested parties on September 30, 2003. A copy of the dPDEIS and Draft application was filed with Commission on September 29, 2003.

i. With this notice we are soliciting preliminary terms, conditions,

prescriptions and recommendations on the dPDEIS and draft license application. All comments on the dPDEIS and draft license application should be sent to Portland General Electric at the address above in item (f), with one copy filed with the Commission at the following address: Federal Energy Regulatory Commission, Magalie R. Salas, Secretary, 888 First St. NE, Washington, DC 20426. All comments must include the project name and number, and bear the heading ''Preliminary Comments,'' Preliminary Recommendations,'' ''Preliminary Terms and Conditions,'' or ''Preliminary Prescriptions.'' Any party interested in commenting must do so by December 31, 2003.

j. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

k. *Locations of the application:* A copy of the application is available for review at the Commission's Public Reference Room, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-library link—Dockets'' Enter the project number P–2195. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, (202) 502–8659. The application also can be provided by Portland General Electric from the contact name and telephone number in item (f) above.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00010 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7569–3]

Watershed Initiative: Call for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Following the completion of its inaugural year, EPA is announcing the continuation of the Watershed Initiative by issuing the second call for nominations of watershed proposals. The Watershed Initiative is a competitive grant program designed to support studies of a series of approaches to watershed protection and restoration to determine if those approaches produce short-term environmental results and have the potential for long term maintenance in a watershed. The President's fiscal year (FY) 2004 budget, which is now before Congress, incorporates a request for $21 million for the Watershed Initiative. Subject to the availability of appropriations for this purpose, EPA plans to select through a competitive process up to 20 watersheds throughout the country for grants to support the study of promising watershed-based approaches to improving water quality. This notice sets forth the process that will be used for selecting the watersheds and serves as the call for nominations from Governors and Tribal Leaders. For the most part, this process is similar to that of the FY 2003 solicitation. This year, however, EPA will place a somewhat larger emphasis on studies of (1) market-based approaches to water quality protection and restoration, and (2) specific approaches to decreasing hypoxia in the Gulf of Mexico.

DATES: The deadline for EPA receipt of nominations, both in hard copy and in electronic form, is January 15, 2004. Nominations and supporting materials received after this deadline will not be considered.

ADDRESSES: Two hard copies of the nomination packages must be submitted in their entirety by express mail or courier service. Deliver the original to Carol Peterson, Office of Wetlands, Oceans, and Watersheds, USEPA, Room 7136, 1301 Constitution Avenue, NW., Washington, DC 20004; telephone 202–566–1304. The other copy of the nomination package is to be delivered to the appropriate EPA Regional office (see section IV.C for names and addresses for the regions). Please mark all submissions ATTN: Watershed Initiative.

In addition to the hard copies, a portion of the nomination package must also be submitted electronically to the e-mail address provided. Please follow the detailed instructions provided in section IV of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Carol Peterson, USEPA, 1200 Pennsylvania Ave., NW (4501T), Washington, DC, 20460; telephone: 202–566–1304; e-mail: *initiative.watershed@epa.gov* or one of the regional contacts listed in section IV.C of the **SUPPLEMENTARY INFORMATION** section below. Additional information and any updated guidance will be posted on EPA's Watershed Initiative Web site at *http://www.epa.gov/owow/watershed/initiative.*

SUPPLEMENTARY INFORMATION:

I. Introduction

A. The Watershed Initiative

The Watershed Initiative is predicated on the fundamental concept of the Agency's holistic watershed approach to water resources management. Both the watershed approach and the Watershed Initiative focus on multi-faceted plans for protecting and restoring water resources. Isolated efforts do not provide comprehensive and effective protection and restoration of the resources. Rather, the nominations selected to receive Watershed Initiative funding will be for studies of approaches that go beyond implementing separate, detached activities and will, instead, focus on the effectiveness of an integrated ecosystem-based approach to conservation and restoration throughout a watershed. The selected nominations will include water quality and ecosystem monitoring and evaluation to provide quantitative data to determine the effectiveness of addressing water quality issues at the watershed level.

Last year the Agency conducted a national competition and in May 2003 selected 20 watersheds to award $15 million in grants appropriated for the new Watershed Initiative. The selected nominations were those that were most ready to go and likely to achieve environmental results in a relatively short time period. Those grants will fund watershed partnerships that are undertaking studies of a variety of promising activities to support comprehensive watershed-based approaches to protecting and restoring water resources. For example, over seventy percent of the selected projects address agricultural pollution; fifty percent address urban and industrial runoff; fifty percent address the relationship between water quality and habitat restoration for wildlife and endangered and/or threatened species; and thirty percent have projects aimed at the homeowner. Moreover, several projects will study a more innovative, market-based approach to attaining water quality. These latter watershed partnerships will test possibilities such as pollutant trading and crop insurance. More information on these projects can be found on the Watershed Initiative's Web site listed above.

B. Goals for 2004

The 2004 Watershed Initiative will continue to build upon the Agency's watershed approach to water resources

management. The Initiative will support studies of coalition-based strategies for activities, such as attaining water quality standards, protecting and restoring the natural and beneficial uses of floodplains, and, in general, improving water resources on a watershed level. Water quality standards establish water quality goals for specific water bodies and play an important role in watershed management. Coalition-based strategies that focus on addressing designated uses in watershed initiatives can help build support for control actions at the watershed level.

The goal of the Watershed Initiative is to study practical and efficient models that can be adapted to local circumstances across the country. The cornerstone of the Initiative is to provide study results that will help advance the successes of partnerships and coalitions that have completed the necessary watershed assessments and have a technically sound watershed plan ready to carry out. EPA believes the Watershed Initiative will help document the kind of pro-active, incentive-based protection and restoration measures that will ultimately yield cleaner water.

In 2004, the Agency plans to continue its focus on studies of approaches aimed to provide quick, measurable results; partnerships; innovation; and integration (formerly called program compatibility). More emphasis, however, will be placed on studies of (1) market-based approaches and other socio-economic strategies, and (2) the serious and growing hypoxia problem facing the Gulf of Mexico. A portion of the appropriation will be devoted to study projects in the Mississippi River basin that address nutrient loadings related to hypoxia. EPA hopes that this targeted approach to the problem of hypoxia will help promote needed changes that are essential to attaining and maintaining clean water and that can be adapted to other areas throughout the country.

1. Studies of Market-Based Approaches

Finding solutions to complex water quality problems requires innovative approaches that can be aligned with core water programs. Market-based approaches create social and economic incentives for the implementation of creative pollution reduction strategies, emerging technologies, and watershed protection measures. Properly designed programs can improve water quality at substantially lower costs and provide incentives for voluntary reductions from all sources, point and nonpoint.

Water quality trading is one important approach that offers flexibility and efficiency in achieving water quality goals on a watershed basis. Trading allows a source with relatively higher pollution control costs to meet a water quality goal or requirement by using pollution reduction credits created by another source with lower costs. This approach enables sources in the same watershed to work together to meet a common goal. EPA considers trading to be an important component of the Watershed Initiative. Properly designed trading programs can improve water quality at substantially lower costs and provide incentives for voluntary reductions from all sources, especially sources that are not regulated under the Clean Water Act (CWA).

One example is a nonpoint source selenium load trading program in the Grassland's Drainage Area in California's San Joaquin Valley. The selenium load trading program is a cap-and-trade environmental program. A regulatory agency sets the cap on the selenium that the Grassland Area Farmers, a group of irrigation and drainage districts, administer through an internal selenium load trading program. Pursuant to the trading program, the total allowable selenium load is allocated among the member irrigation and drainage districts. The districts can either meet their load allocation or buy selenium load allocations from other districts. The tradeable loads program has assisted Grassland Area Farmers in meeting environmental goals in a cost-effective manner.

To promote the concept of trading in relation to fostering environmental progress, EPA has developed a new Water Quality Trading Policy, published in the **Federal Register** on January 13, 2003 (68 FR 1608) and posted on the Web site *http://www.epa.gov/owow/watershed/trading/*. The purpose of this policy is to encourage States, interstate agencies, and Tribes to develop and implement water quality trading programs for nutrients, sediments, and other pollutants where opportunities exist to achieve water quality improvements at reduced costs. More specifically, the policy is intended to encourage voluntary trading programs that facilitate the implementation of Total Maximum Daily Loads (TMDL), reduce the costs of compliance with CWA regulations, establish incentives for voluntary reductions and promote watershed-based initiatives. Any trading nominations submitted in response to this solicitation must conform to this policy.

Some market-based programs already in progress blend regulatory components and nonregulatory components to achieve environmental improvements. Market-based approaches can include incentive programs to encourage conservation land use or management practices. For example, King County, Washington provides rebates and other tax breaks as an incentive for property owners to reduce impervious surfaces within the County. The money raised through this levy on impervious surfaces is used to provide myriad surface water management services for the County. Other examples of market-based approaches include flood insurance programs that insure against loss through investment in the creation or restoration of wetlands and floodplains, or programs that insure against agricultural crop loss where management practices to reduce pollution have been implemented. Still other examples of market-based approaches involve state-private partnership programs to reduce regulatory compliance costs, implement pollution controls, or institute operational changes that benefit water quality.

Market-based approaches have tremendous potential to instigate change. Trading programs and other market-based approaches can be powerful tools to encourage innovative pollution control technologies and land management practices. EPA wants to fund Watershed Initiative projects that utilize market-based approaches and other socio-economic strategies to determine if they produce real, measurable environmental results.

2. Studies of Hypoxia in the Gulf of Mexico

By far, the largest watershed within the United States is the Mississippi River Basin. Draining all or parts of 31 States, it covers 1.2 million square miles (40% of the US) and travels over 2,300 miles before discharging 612,000 cubic feet of water per second into the Gulf of Mexico. On the Gulf's Texas-Louisiana continental shelf, an area of hypoxia forms during the summer months. This ''dead zone,'' characterized by diminished sunlight and low oxygen levels, is an area virtually devoid of marine life. The hypoxic area has been growing significantly over the years and, at 7,000 square miles, it is double the size it was in 1993. While there are many factors contributing to the Gulf hypoxia, scientific evidence indicates that excess nutrients, particularly nitrogen and to a lesser extent phosphorus, from the Mississippi River

drainage basin drive its onset and duration. Studies show that a significant portion (90%) of the nitrates entering the Gulf comes from a variety of human activities, including discharges from sewage treatment plants, and stormwater runoff from city streets and agricultural farms. Much of the nutrient load comes from wastewater discharges and agricultural lands in Iowa, Illinois, Indiana, Minnesota and Ohio.

Reducing hypoxia in the Gulf of Mexico has been an Agency priority since the 1998 passage of the Harmful Algal Bloom and Hypoxia Research and Control Act. The Act called for the creation of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force, which was then charged with developing an Action Plan to reduce hypoxia in the Gulf. The Action Plan was completed and delivered to Congress in January 2001. The Action Plan can be found at *http://www.epa.gov/msbasin/actionplan.htm.*

EPA sees the Watershed Initiative as an opportunity to invoke watershed approaches in the Mississippi drainage basin to ascertain if they result in real, measurable reductions in excessive nutrient levels. As part of this year's Initiative, the Agency is seeking proposals that look at holistic strategies consistent with the Action Plan to reduce the amount of nutrients, particularly nitrogen and phosphorus, entering the Gulf with the goal of testing approaches to stay the further growth of the hypoxic area. Such field studies may include, for example, determining the measurable results of: improving nutrient management programs on farms, restoring or constructing wetlands and vegetated riparian areas, floodplain management and restoration, and enhancing denitrification and nitrogen retention opportunities throughout the river basin and along the coastal plain of Louisiana.

From a national perspective, the nutrient enrichment and resultant hypoxic condition in the Gulf of Mexico is significant in terms of its sheer size, persistence, and location. However, the concern about coastal eutrophication is not limited to the inner shelf off Louisiana. In 1990, it was estimated that nearly half of the nation's estuaries were susceptible to eutrophication. EPA envisions that results from the selected watersheds within the Mississippi River basin will enhance knowledge and understanding of hypoxia and that successful nutrient reduction approaches related to the causes of hypoxia can be adapted to other bays and estuaries along our coasts.

C. Funding Availability

The Administration has requested $21 million for FY 2004 which is subject to the availability of Federal appropriations. EPA will announce when funds become available on its Web site *(http://www.epa.gov/owow/watershed/initiative/),* and provide, to the extent possible, information regarding the appropriation request as it goes through the Congressional budget process.

EPA expects to use most of the money to support competitive grants for up to 20 selected watersheds—a portion of those watersheds being within the Mississippi River Basin. EPA anticipates that typical grant awards for the selected watersheds will range from $300,000 to $1,300,000, depending on the amount requested and the overall size and need of the project. The total number and amount of the awards will depend on the amount of funds Congress appropriates.

Also, as in 2003, about five percent of the total appropriation will go toward (1) a national conference for the watershed organizations selected to receive grants, and (2) assistance agreements to organizations offering capacity building programs for all watershed organizations. This latter effort will entail enhancing national tools, training, and technical assistance that will help local partnerships be more effective at improving watershed health, so that all watershed organizations, from fledgling groups to sophisticated coalitions, will benefit from the Initiative.

II. Statutory Authority and Eligibility Requirements

A. Authority

EPA expects to award the Watershed Initiative grants under the authority of section 104(b)(3) of the Clean Water Act. Regulations pertaining to EPA grants and other assistance agreements are in Title 40 of the Code of Federal Regulations (CFR) parts, 30, 31, and 40.

All costs incurred under this program must be allowable under the applicable OMB Cost Circulars: A–87 (States and local governments), A–122 (nonprofit organizations), or A–21 (universities). Copies of these circulars can be found at *http://www.whitehouse.gov/omb/circulars/.* In accordance with EPA policy and the OMB circulars, as appropriate, any recipient of funding must agree not to use assistance funds for lobbying, fund-raising, or political activities (*e.g.*, lobbying members of Congress or lobbying for other Federal grants, cooperative agreements or contracts).

B. Eligible Activities

Section 104(b)(3) of the Clean Water Act authorizes the Agency to award grants to ''conduct and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of [water] pollution.'' Grant funds awarded as part of this Initiative may only be used for these activities and all grant-funded activities must support the watershed workplan submitted.

These activities seek to advance the state of knowledge, gather information, or transfer information. Demonstrations are projects that exhibit new or experimental technologies, methods, or approaches and disseminate the results so that others can benefit from the knowledge gained. Research projects may include the application of established practices when they contribute to learning about an environmental concept or problem.

1. The Watershed Initiative under 104(b)(3). The Watershed Initiative is designed to award grants to support studies of a series of possible approaches to watershed restoration to determine if those approaches produce short-term measurable environmental results in a watershed, or to support demonstration projects to test new and innovative approaches to water quality. For example, if a watershed organization identifies particular environmental threats or impairments to its waters, and proposes to look at a group or series of interrelated projects to address those impairments and includes measurement tools to achieve and judge their success, the proposal could be considered a study under section 104(b)(3). Activities involving the implementation of pollution control measures are eligible for funding only to the extent they are necessary to carry out the study or demonstration project(s). Activities involving wildlife are eligible only to the extent they are conducted as part of a study or demonstration relating to the causes, effects, extent, prevention, reduction or elimination of water pollution.

2. Exceptions. While certain projects may fall within the scope of section 104(b)(3), the Agency has decided that particular activities do not fit the goals or intentions of the Watershed Initiative. These include any proposals to directly support regulatory activities required under the CWA. Primarily this entails funds for the development of TMDLs, Phase II Stormwater projects, and other Office of Water regulatory programs.

Proposals to study the effectiveness of implementing TMDLs, however, are eligible. The construction of buildings or other major structures also will not be funded under this Initiative. Proposals containing subgrant programs (also called pass-through grants) are allowed, but the subgrant portion must account for no more than 20% of the requested funding amount.

C. Eligible Applicants

Under section 104(b)(3) of the CWA, the following entities are eligible to receive grants: State and Tribal water pollution control agencies, interstate or inter-tribal agencies, other public or non-profit private agencies, institutions, organizations, and individuals. The term ''State'' is defined to include the District of Columbia, Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. All non-profit watershed organizations are eligible, including those in the Agency's National Estuary Program. Watershed organizations that were selected for funding in 2003 can not apply until their previous Watershed Initiative funding is exhausted.

III. Competing for a Watershed Initiative Grant

EPA will select watersheds and the watershed grantees through a national competition. Activities proposed for funding via the Watershed Initiative are not necessarily expected to address the entire watershed, but they are expected to have been developed based on comprehensive assessments and plans for the watershed. Interjurisdictional watershed partnerships, that is, those that involve adjacent authorities, or that transcend international boundaries, are encouraged. Watershed nominations that encompass more than governmental authority will be considered interjurisdictional provided that the appropriate water agency in the adjacent jurisdiction is a partner or otherwise supports the project(s).

For practical purposes, in this context, the term ''nomination'' is meant to include the proposed workplan along with the required supporting materials. The ''nominee'' in this case is the watershed organization that is vying for the grant. Watershed nominations may include a single project or multiple projects within the watershed. Nominations will be selected based on the quality of the written materials received, and adherence to the selection criteria and goals of the Initiative. Emphasis will be placed on those proposed projects with clear, measurable environmental indicators and an executable monitoring plan. Funding decisions will be made based on the evaluation criteria outlined in section III.C of this notice. EPA will invite only nominees whose initial proposals are selected under this Initiative to submit detailed final proposals (see section V.A).

A. Nomination and Selection Process

Watersheds must be nominated by Governors or Tribal Leaders. (For the purposes of this notice, a tribal nomination may be submitted by a Tribal Official.) Each Governor or Tribal Leader may prepare or solicit watershed proposals from eligible entities in a manner most appropriate to their State or Tribe, and nominate the most meritorious to EPA.

Governors or Tribal Leaders are invited to nominate a maximum of two State or Tribal watersheds each. There is, however, no limit on the number of inter-state or joint State and Tribal watersheds that can be nominated. For inter-state or joint State and Tribal watersheds, any of the involved Governors/Tribal Leaders may submit the nomination. Such watershed nominations must include the endorsement of all partnering State Governors or Tribal Leaders or Officials in their nomination package.

Governors and Tribal Leaders are to submit their watershed nominations to EPA (see section IV for details). All nominations will be screened by EPA staff prior to review to determine if they are eligible, complete, and in accordance with the instructions provided in this notice. If any of the required elements of the nomination package are not submitted, EPA may choose to contact the nominee.

Once received by EPA, the nominations will undergo two levels of review—one at the regional level and one at the national level. Each of the Agency's Regional Offices will convene a Review and Evaluation Panel that will assess how well the nominations meet the evaluation criteria described below. Regions 3, 4, 5, 6, 7 and 8 will convene a separate panel session to review and evaluate hypoxia plans. Hypoxia proposals not ranked sufficiently high to merit recommendation for the hypoxia funds will be placed in competition with the other nominations received for general Watershed Initiative funds. Based on the panel review and recommendation, each Regional Administrator will then forward the Region's top four candidates to EPA's Office of Water at Headquarters. Regions 3, 4, 5, 6, 7 and 8 will seek to include a minimum of one hypoxia nomination in their transmittal.

Upon receipt of the Regional recommendations, the Office of Water will convene a Technical Advisory Panel at the national level consisting of representatives from the Agency's Program and Regional Offices to review and rank the watershed nominations. Other Federal agencies may be invited to participate in this review. Again, hypoxia proposals will be evaluated and scored separately. In addition to the evaluation criteria listed below, factors such as geographic diversity, project diversity, watershed size, urban/rural mix, and cost will be considered in ranking nominations for consideration by the Administrator. The Administrator will select the watersheds to be funded.

EPA expects to announce the watershed nominations selected under this Initiative early in calendar year 2004 and to complete the grant award process, including final grant workplan negotiations through the appropriate EPA Regional Office, by spring 2004. In general, grants awarded will be one-time awards and grant recipients should use the funds within 2–3 years. Subsequent funding would involve a new call for watershed nominations and is predicated on continued appropriations. Therefore, any proposal for work beyond the initial funding period would need to be submitted through the competitive process and will not receive preferential consideration based on the applicant's previous award.

B. Required Components of the Nomination Package

In preparing nomination materials, nominees are to keep in mind the evaluation criteria by which their overall nomination, *i.e*, interrelated individual projects, will be judged. Within these required components, nominees should address completely and to the best of their ability the criteria the Agency will be using in its evaluation as outlined in section III.C below.

Each nomination package must contain the components listed in this section. Failure to include any of this information could result in disqualification and removal from the selection process. Conversely, additional, unsolicited material is strongly discouraged and any such material submitted will not be considered.

1. Nomination Letter. A letter signed by the Governor or Tribal Leader formally nominating the watershed for consideration for funding under the Watershed Initiative must accompany each nomination package.

2. Title Page. The title page must indicate: (1) The name of the watershed along with the designated 8-digit HUC code(s), (2) nominee contact information, *i.e.*, name, affiliation, address, telephone, and e-mail of the person with whom the Agency should correspond, and (3) whether the nomination is devoted to hypoxia in the Gulf of Mexico.

3. Abstract. A 150-word or less summary of the nomination.

4. Workplan Description. The narrative description of the workplan components is limited to a total of ten, double-spaced pages in which the following components described below are addressed. Note that the page limits for each component below add up to greater than 10 pages and that nominees should adjust their nomination packages in a manner that best fits their needs. (See section IV.A for complete formatting instructions.)

(a) Introduction (2 pages maximum)

Characterize the watershed and overall watershed planning efforts. Describe what efforts have been undertaken to improve watershed health, next steps, and future plans. An assessment of the natural resource and environmental conditions, and an identification of problem sources and areas for treatment are required. These include:

(1) A description of the watershed's biological, physical, and, if relevant, social and/or cultural characteristics.

(2) An identification of the threats and impairments facing the watershed, focusing on those that will be addressed by the proposal.

(3) An overall description of the watershed plan including short- and long-term watershed goals.

(4) An identification of the assessments and plans that have been completed to date.

(b) Description of the Proposed Study Projects (7 pages maximum)

Describe the projects to be funded under the Watershed Initiative grant. These should be described in terms of applied field studies or demonstrations to yield potentially positive environmental results. The following information must be included:

(1) An explanation of how the project or aggregation of the individual projects is expected to affect watershed health.

(2) A detailed description of each project (if more than one) including: (i) a description of the components and goals of the project(s), (ii) a schedule for implementing the project(s); (iii) a summary of the costs of the project(s) with reference to the appended itemized budget for details; and (iv) milestones for determining whether or not the intended goals of the watershed study project(s) are being realized.

(3) A monitoring and evaluation component along with identified environmental indicators. Attention should be given to baseline data requirements. This component should include performance measures and progress goals, as well as a description of how the ultimate success of the projects will be measured. Performance measures must be environmental (*e.g.*, chemical or microbial levels attained). Other measures to be monitored should be infrastructural (*e.g.*, additional partnerships formed) and implementational (*e.g.*, best management practices instituted). The progress and performance of the projects must be measurable by technically sound practices.

(4) A description of how the projects complement or are consistent with other EPA, Federal, and/or State programs or mandates. Other Federal contributors or supporting partners should also be identified.

(c) Description of Project Management (2 pages maximum)

Provide a biography on the project leader(s) (not to exceed one-half page each) describing qualifications for managing the project(s) and focusing on grant management and watershed management capabilities and experience. Identify the entity that will be the grantee and thus responsible for the administration of the grant workplan and for being the fiscal agent receiving the funds. Include academic experience only if relevant to the proposal. Do not send resumes.

(d) Description of Outreach Activities (1 page maximum)

Describe the information and outreach plan that will be used to enhance public understanding of the watershed and encourage participation in the local project or projects, and future activities regarding implementing the goals of the watershed plan. Because the selected watersheds are intended to serve as models for other communities, this outreach plan must include activities for transferring the knowledge gained from this effort to other areas.

5. Budget. Provide a detailed breakdown of cost by category for each project.

(a) Standard Budget Form. To facilitate the compilation and review of financial information, the Agency is providing a standard form for potential applicants to use when submitting project budgets. This form (Table 1) may be reconstructed or downloaded from the Watershed Initiative Web site at *http://www.epa.gov/owow/watershed/initiative/budget.form.* All budget information, including matching funds and other leveraged services, and travel cost to the annual conference, must be provided on this form. (Information on matching funds and the annual conference is described in sections III.B(b) and (c) below). Nominees should include cost estimates for each of the proposed project activities to be conducted under the grant. Explanations of the costs associated with each entry should be included in the narrative description portion of the nomination package.

TABLE 1. BUDGET INFORMATION—EPA WATERSHED INITIATIVE GRANT PROGRAM [1]

SECTION A—BUDGET SUMMARY

Watershed Project, Activity or Work Plan Element	Federal	Non-Federal	Total
1.	$	$	$
2.	$	$	$
3.	$	$	$
4.	$	$	$
Totals	$	$	$

TABLE 1. BUDGET INFORMATION—EPA WATERSHED INITIATIVE GRANT PROGRAM [1]—Continued

SECTION B—BUDGET CATEGORIES

	Watershed Project, Activity or Work Plan Element				Total
Budget Categories	(1)	(2)	(3)	(4)	
a. Personal b. Fringe Benefits	$	$	$	$	$
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum line a–h)					
j. Indirect Charges					
Totals (sum line i–j)	$	$	$	$	$

[1] Excerpted from Standard Form 424A, OMB Circular A–102.

(b) Matching Requirement. EPA is requiring applicants to demonstrate a minimum non-Federal match of 25% of the total cost of the project or projects (*i.e.*, EPA will fund a maximum of 75% of the total cost, including matching funds). The Agency considers this matching contribution as evidence of community support and commitment, and an opportunity to increase the overall scope of the proposed project. EPA encourages applicants to leverage as much investment as possible. In addition to cash, matching funds can come from in-kind goods and services such as the use of volunteers and their donated time, equipment, expertise, etc., consistent with the regulation governing matching fund requirements (40 CFR 31.24 or 40 CFR 30.23). Other Federal funds may not be used to meet the match requirement for this grant program unless authorized by the statute governing the use of the other Federal funds.

Tribes and Tribal watershed groups may be exempt from this match requirement if they are constrained to such an extent that fulfilling the match requirement would impose undue hardship. EPA acknowledges the limited means of many Tribes and the difficulty they may have in obtaining non-Federal matching contributions. Tribes wishing to be exempt from the minimum 25% match requirement must submit a one-page written request with justification. Exemption requests should be sent directly to the EPA Headquarters contact listed in section IV.C 45 days prior to the nomination deadline. If approved, the nomination will be scored as if it met the minimum 25% match.

(c) Annual Conference. Watershed organizations selected for grant funding will be required to attend an annual two-day National Watershed Initiative Conference. The purpose of this conference is to provide these watershed organizations with training and support to better restore, protect, and manage their watersheds, and to help position them to teach other watershed groups by their example. The goals of this conference are to:

(1) Transfer information about innovative technical tools available for watershed restoration, protection and management. Provide assistance on how and where to get more information at the Federal, State, Tribal and local levels.

(2) Provide training to conference attendees on how to maximize the use of Federal programs in implementing their Watershed Initiative projects, for example, integration and use of other resources available under the CWA and Safe Drinking Water Act.

(3) Plan for translating individual project successes into models to be replicated by other local watershed organizations across the country.

(4) Provide grant recipients with opportunities to share successful approaches with each other and other peer-to-peer learning opportunities.

Attendance at the conference will be mandatory and will be one of the Terms and Conditions of the grant. The grantee will be allowed to use the grant funds to pay for travel and lodging. The cost of holding the conference will be paid for by EPA. If the recipient wishes to use the award money for travel expenses, these costs must be included in the submitted proposed budget. The Agency will make every effort to hold the two-day conference in a central location to minimize travel costs.

(d) Information Technology. Also as a Term and Condition of the grant, recipients will be required to institute standardized reporting requirements into their workplans and include such costs in their budgets. All environmental data will be required to be entered into the Agency's Storage and Retrieval (STORET) data system. STORET is a repository for water quality, biological, and other physical data used by State environmental agencies, EPA and other Federal agencies, universities, private citizens, and many other organizations. Training on how to use STORET will be provided at the annual conference. Watershed organizations may also want to contact their State agency responsible for entering data into the system. More information about STORET can be found at *http://www.epa.gov/STORET.*

6. *Appendices.* To substantiate the information contained in the narrative portion of the submission, documentation to verify partnerships and matching funds is required. Items that must accompany the narrative

description and may be submitted as appendices include the following.

(a) Signed letter(s) from active partners indicating their commitment to implementing the workplan or for specific proposed projects.

(b) A minimum of one signed letter from an entity committing to provide matching funds, either in cash or in-kind goods and services, including the total value of the commitment toward the projects.

(c) For interjurisdictional nominations, a signed letter(s) from the appropriate organization in the adjacent State, Tribe, or country expressing their support and participation in the proposed project(s). For example, a letter from another governor, Tribal leader, State water commissioner, State water quality director, environmental director, or similar positions in Canada or Mexico is acceptable.

(d) Maps (optional).

(e) Supplementary Technical Information (optional). If the proposal includes a new or otherwise not widely known technology or methodology, a one-page description may be appended.

C. Evaluation Criteria

Watershed nominations will be reviewed, evaluated, and scored based on the following criteria with a possible total score of 60 points. In addition to the points awarded for the criteria, up to 5 additional points will be awarded to nominations that are interjurisdictional and have been submitted with the proper supporting letter(s). Rather than having a bonus category, these points will be a subsection of the Broad Support category described below.

1. Innovation (10 points). Reviewers will be looking for progressive and forward-thinking projects when evaluating the nominations, and as such, watershed nominations that undertake unique, innovative, or novel approaches to environmental problem-solving will be scored higher. While the Agency recognizes that there can be innovative approaches that are not market-based, maximum points will be awarded to nominations that incorporate market-based approaches to water quality.

2. Measurement of Environmental Results (total of 30 points). Successful nominees must demonstrate an in-depth knowledge of the watershed ecology and present a sound approach for potentially combating threats or impairments to the water system. For this criteria, reviewers will focus on the following components:

(a) Feasibility (10 points). Reviewers will look at the readiness of the nomination. Those projects that can be implemented quickly will receive more points. Nominations will be evaluated on the technical merit and adequacy of each project. Reviewers will favor nominations that describe projects that are part of larger comprehensive watershed assessments and plans, and reflect an ecosystem-based approach to conservation and restoration. Points will be awarded based on the overall soundness of the nomination from both an ecological and design perspective. In summary, higher scores will be given to those nominees that have demonstrated an understanding of priority water resource problems within the watershed, have substantially completed the assessment and planning phase, and are prepared to begin work.

(b) Experience (5 points). Nominations will be scored based on the qualifications of the nominee focusing on management and technical capabilities. Reviewers will assess the past experience of project leader(s) and/or partners in designing, implementing, and effectively managing and coordinating activities. Communities or organizations that have no prior experience and have developed their preliminary workplan will be evaluated on the basis of their proposal and their potential to effectively manage and oversee all phases of the proposed workplan and demonstrated working relationship with their partners.

(c) Tangible Measures (10 points). A nomination will be scored based on how well it is supported by a clearly articulated set of performance and progress measures, and identified environmental indicators. A more detailed monitoring and data collection strategy will be preferred. Reviewers will evaluate the workplan in relation to its likelihood to achieve predicted measurable, defensible environmental results in a relatively short time period, including potentially attaining performance expectations, reaching project goals, and producing on-the-ground, quantifiable environmental change using sound science.

(d) Integration (5 points). Reviewers will evaluate the extent to which the workplan and proposed project(s) are linked to other existing State or Federal programs. Points will be awarded to those watershed nominations that integrate the common goals and complement the ongoing efforts occurring at the Federal, State, or local level.

3. Broad Support (total of 10 points). Acknowledging and responding to representative interests from a broad and varied perspective is quintessential to any successful watershed enterprise. This criteria can be met by illustrating and substantiating a strong collaborative effort.

(a) Partnerships (5 points). Watershed nominations that incorporate a wide variety of public, private, and non-profit participation will be favored. The score for this criterion will be based on the level to which a nominee can demonstrate strong and diverse stakeholder stewardship and support. Reviewers will look for documented, effective working relationships among State and local entities, along with evidence of broad-based community involvement.

(b) Interjurisdictionality (5 points). Points will be awarded to nominations that actively involve more than one governmental entity, be it municipal, county, State, Tribe, Federal or country. Reviewers will look at the depth and breadth of jurisdictional participation and will also take into consideration any significant parties that are noticeably absent in lending their support of the nomination.

4. Outreach (5 points). Proposals will be judged on the design and breadth of their outreach program. Those proposals that demonstrate a clear strategy for transferring the knowledge and experience garnered over the next few years to other watersheds with similar environmental conditions will score higher. Points will also be awarded for training and educational approaches to disseminating watershed information.

5. Financial Integrity (5 points). Points will be awarded based on the adequacy of the budget information provided, and whether the budget is reasonable and clearly presented. Proposals that exceed the minimum match requirement or can certify a broad range of leveraging capacity will be scored higher.

IV. Call for Nominations

EPA invites each Governor and Tribal Leader to submit nominations for grants under the 2004 Watershed Initiative.

A. Format of Nomination Package

Each nomination package must contain: (1) A one-page cover letter signed by the Governor or Tribal Leader, (2) a title page with appropriate information, (3) an abstract, (4) a workplan description, (5) the budget form, and (6) letter(s) and certification(s) of support. Maps and supplementary technical information are optional. The workplan description of the nomination must be no more than ten double-spaced pages long, using a 12-point conventional font and one inch margins. This section must include all of the required components listed in section III.B. To ensure a fair and equitable

evaluation of the nominations, please do not exceed the above limits. A nomination that contains a workplan narrative that exceeds ten double-spaced pages will not be considered. The title page and 150-word or less abstract will not count toward the 10-page limit. The entire nomination package should be printed on one side only of 8½″x11″ paper and unbound. Appended project budget form, maps, letters of support, and match certifications will not count toward the 10-page limit.

B. Submission of Nominations

1. Electronic. EPA is requiring that a portion of the nomination be submitted electronically. Please send an electronic copy of *only* the title page, abstract, workplan description, and budget form to the electronic mailbox at *initiative.watershed@epa.gov*. Electronic submissions are limited to 120 KB in size and one submission per nomination. Please *do not* send maps, letters of support, match certifications, or pictures of any kind via the electronic mailbox. The subject line must be in the format ''STATE—Watershed Name'' (*e.g.*, MD—Rock Creek). No confidential business information should be sent via e-mail. The deadline for all electronic submissions is 12:00 pm Eastern time on January 15, 2004. If unusual or extraordinary circumstances prevent electronic submission of the nomination, please contact the appropriate Regional contact person listed below to discuss alternate arrangements.

2. Paper. Two hard copies of the complete nomination package (including all nominating and support letters) are required to be delivered—the original package to EPA Headquarters and a copy to the appropriate Regional Office. All names and addresses are listed below. Mark all submissions: ATTN: EPA Watershed Initiative.

All paper nominations must be received by EPA by January 15, 2004.

C. Addresses and EPA Contacts

Please direct questions to your Regional contact person listed below.

Headquarters

Submissions must be delivered to: Carol Peterson, Office of Wetlands, Oceans, and Watersheds; U.S. EPA; Rm. 7136; 1301 Constitution Avenue; NW, Washington, DC 20004. Headquarters Contact: Carol Peterson, telephone 202–566–1034; e-mail *initiative.watershed@epa.gov*.

Regions

Region I—Connecticut, Maine, Massachusetts, Rhode Island, Vermont, New Hampshire

Submissions must be delivered to: William Walsh-Rogalski; U.S. EPA Region 1; 1 Congress Street, Suite 1100-Mail Code RAA; Boston, MA 02114–2023. Contacts: William Walsh-Rogalski or Lynne Hamjian, telephones 617–918–1035 and 617–918–1601; e-mails *walshrogalski.william@epa.gov* and *hamjian.lynne@epa.gov,* respectively.

Region II—New Jersey, New York, Puerto Rico, U.S. Virgin Islands

Submissions must be delivered to: Paul Molinari; U.S. EPA Region 2; 290 Broadway; 24th Floor; New York, NY 10007–1866; telephone 212–637–3886.

Contacts: Theresa Faber or Cyndy Belz, telephones 212–637–3844 and 212–637–3832; e-mails *faber.theresa@epa.gov* and *belz.cyndy@epa.gov,* respectively.

Region III—Delaware, Maryland, Pennsylvania, Virginia, West Virginia, Washington, DC

Submissions must be delivered to: Marion White; U.S. EPA Region 3; Mail Code 3WP12; 1650 Arch Street; Philadelphia, PA 19103–2029.

Contact: Marion White, telephone 315–814–5714; e-mail *white.marion@epa.gov*.

Region IV—Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Kentucky, Tennessee

Submissions must be delivered to: William L. Cox; U.S. EPA Region 4; Sam Nunn Atlanta Federal Center; 15th Floor; 61 Forsyth Street, SW; Atlanta, GA 30303–3104.

Contact: William L. Cox, telephone 404–562–9351; e-mail *cox.williaml@epa.gov*.

Region V—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Submissions must be delivered to: Paul Thomas; U.S. EPA Region 5; Mail code WW–16J; 77 W. Jackson Blvd; Chicago, IL 60604.

Contact: Paul Thomas, telephone 312–886–7742; e-mail *thomas.paul@epa.gov*.

Region VI—Louisiana, Texas, Oklahoma, Arkansas, New Mexico

Submissions must be delivered to: Brad Lamb; U.S. EPA Region 6; Mail Code 6WQ–EW; 1445 Ross Avenue; Dallas, TX 75202.

Contact: Brad Lamb, telephone 214–665–6683; e-mail *lamb.brad@epa.gov*.

Region VII—Iowa, Kansas, Missouri, Nebraska

Submissions must be delivered to: Julie Elfving; U.S. EPA Region 7; WWPD/GPCB; 901 North 5th Street; Kansas City, KS 66101.

Contact: Julie Elfving, telephone 913–551–7475; e-mail *elfving.julie@epa.gov*.

Region VIII—Colorado, Montana, North Dakota, South Dakota, Utah

Submissions must be delivered to: Ayn Schmit; U.S. EPA Region 8; Mail code 999; 18th Street, Suite 300; Denver, CO 80202–2466.

Contact: Ayn Schmit, telephone 303–312–6220; e-mail *schmit.ayn@epa.gov*.

Region IX—Arizona, California, Hawaii, Nevada, American Samoa, Mariana Islands, Guam

Submissions must be delivered to: Sam Ziegler; U.S. EPA Region 9; Mail Code WTR–3; 75 Hawthorne Street; San Francisco, CA 94105.

Contact: Sam Ziegler, telephone 415–972–3399; e-mail *ziegler.sam@epa.gov*.

Region X—Alaska, Idaho, Oregon, Washington

Submissions must be delivered to: Bevin Reid; U.S. EPA Region 10; Mail code ECO–086; 1200 Sixth Avenue; Seattle, WA 98101.

Contact: Bevin Reid, telephone 206–553–1566; e-mail *reid.bevin@epa.gov*.

V. Post-Selection Regulatory Requirements

A. Applying for a Grant

EPA will invite only nominees whose initial nominations are selected under this Initiative to submit detailed final proposals. Once selected to submit a grant application, the nominees will have 60 days to complete the formal grant application process (*i.e.*, Application for Federal Assistance, Standard Form 424 *et al*). The standard EPA grants application package must be filed according to Agency guidelines. Detailed information and assistance, including an application kit, required forms, and a check list, can be found at *http://www.epa.gov/ogd/AppKit/*. In anticipation of this process, all potential nominees may want to explore the above Web site for useful and pertinent information prior to preparing and submitting their nomination materials.

The Catalog of Federal Domestic Assistance number for this program is 66.439 Targeted Watershed Initiative. Any disputes regarding proposals or applications submitted in response to these guidelines will be resolved in accordance with 40 CFR 30.63 and part 31, subpart F. Applicants should clearly

mark information they consider confidential. EPA will make final confidentiality determinations in accordance with regulations in 40 CFR part 2, subpart B.

Although the selections will be announced at the national level, Watershed Initiative grants will be awarded and managed by the respective EPA Regional Offices. Selected nominees may be asked to modify objectives, workplans, or budgets prior to final approval of the grant award. The exact amount of funds to be awarded, the final scope of activities, the duration of the projects, and specific role of the EPA Regional project coordinator will be determined in the pre-award negotiations between the selected nominee and EPA. The designated EPA Regional Contact listed in section IV.C will be available to provide additional guidance in completing the grant application, and other necessary forms, and answering any questions. EPA will also work with the applicant to comply with the Intergovernmental review requirements of Executive Order 12372 and 40 CFR part 29. EPA reserves the right reject all proposals and make no awards.

B. Project Implementation and Management

Project monitoring and reporting requirements can be found in 40 CFR 30.50–30.54, 40 CFR 31.40–31.45 and 40 CFR 40.160. In general, grantees are responsible for managing the day-to-day operations and activities supported by the grant to assure compliance with applicable Federal requirements, and for ensuring that established milestones and performance goals are being achieved. Performance reports and financial reports must be submitted quarterly and are due 30 days after the reporting period. The final report is due 90 days after the grant has expired. Grant managers should consult, and work closely with, their Regional contact person throughout the award period.

Certain quality assurance and/or quality control (QA/QC) and peer review requirements are applicable to the collection of environmental data. Applicants should allow sufficient time and resources for this process in their proposed projects. Environmental data are any measurements or information that describe environmental processes, location, or condition; ecological or health effects and consequences; or the performance of environmental technology. Environmental data also include information collected directly from measurements, produced from models, and obtained from other sources such as data bases or published literature.

Regulations pertaining to QA/QC requirements can be found in 40 CFR 30.54 and 31.45. Additional guidance can be found at *http://www.epa.gov/quality/qa_docs.html#noeparqt*.

Dated: September 29, 2003.

G. Tracy Mehan,

Assistant Administrator for Water.

[FR Doc. 03–25401 Filed 10–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0057; FRL–7330–5]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 18, 2003 to September 5, 2003, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2003–0057 and the specific PMN number or TME number, must be received on or before November 10, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0057. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available

docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose 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 EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2003–0057. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0057 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0057 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior

notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 18, 2003 to September 5, 2003, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 28 PREMANUFACTURE NOTICES RECEIVED FROM: 08/18/03 TO 09/05/03

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0773	08/18/03	11/15/03	CBI	(G) Industrial intermediate which is compounded with pigments and binders before being coated onto paper for carbonless copy paper applications.	(G) Zincated resin system
P–03–0774	08/19/03	11/16/03	PPG Industries, Inc.	(G) Coating with open use	(G) Cationic acrylic copolymer
P–03–0775	08/19/03	11/16/03	PPG Industries, Inc.	(G) Coating with open use	(G) Cationic acrylic copolymer
P–03–0776	08/19/03	11/16/03	PPG Industries, Inc.	(G) Coating with open use	(G) Cationic acrylic copolymer
P–03–0777	08/19/03	11/16/03	CBI	(G) Emulsifier	(G) Polyalkyl carboxylic acid polyol esters
P–03–0778	08/20/03	11/17/03	The Dow Chemical Company	(G) Additive for plastics	(G) Phenol, polymer with formaldehyde and phenol derivative
P–03–0779	08/20/03	11/17/03	CBI	(G) Intermediate used in closed processes	(S) 3-oxatricyclo[4.1.1.02,4]octane, 2,7,7-trimethyl-, (1r,2r,4s,6r)-
P–03–0780	08/20/03	11/17/03	CBI	(G) Dehydration agent	(G) Polyester
P–03–0781	08/22/03	11/19/03	Petroferm Inc.	(S) Slip and leveling additive to uv- and eb-cured inks, paints and coatings; oligomer in the manufacture of polymeric materials	(G) Allyl ethoxylate methacrylate
P–03–0782	08/22/03	11/19/03	Petroferm Inc.	(S) Slip and leveling additive to uv- and eb-cured inks, paints and coatings; oligomer in the manufacture of polymeric materials	(G) Combed silicone acrylate
P–03–0783	08/22/03	11/19/03	Petroferm Inc.	(S) Slip and leveling additive to uv- and eb-cured inks, paints and coatings; oligomer in the manufacture of polymeric materials	(G) Combed silicone methacrylate
P–03–0784	08/22/03	11/19/03	Petroferm Inc.	(S) Slip and leveling additive to uv- and eb-cured inks, paints and coatings; oligomer in the manufacture of polymeric materials	(G) Linear silicone methacrylate
P–03–0785	08/22/03	11/19/03	CBI	(G) Defoamer	(G) Propoxylated fatty alcohol esters
P–03–0786	08/22/03	11/19/03	Ashland Inc., Environmental Health and Safety	(G) Lamination adhesive	(G) Polyurethane dispersion - lamination adhesive
P–03–0787	08/22/03	11/19/03	Crompton Corporation	(S) By-product of erucamide production to be recycled	(S) 13-docosenoic acid, potassium salt, (13z)-

I. 28 PREMANUFACTURE NOTICES RECEIVED FROM: 08/18/03 TO 09/05/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0788	08/22/03	11/19/03	Crompton Corporation	(S) By-product of amide production to be recycled	(S) Docosanoic acid, potassium salt
P–03–0789	08/22/03	11/19/03	CBI	(S) Polymerisable photoinitiator for uv-curable coatings	(G) Derivatized butyl ester photoinitiator
P–03–0790	08/25/03	11/22/03	CBI	(G) Component of foam	(G) Polyester polyol
P–03–0791	08/25/03	11/22/03	E.I. Du Pont De Nemours and Company, Inc. (dupont)	(G) Molding resin	(G) Ethylene interpolymer
P–03–0792	08/25/03	11/22/03	Dupont Textiles and Interiors	(S) Emulsifier, corrosion inhibitor, and lubricant for metalworking fluid	(S) Cyclododecane, oxidized, by-products from, acidified, oil phase
P–03–0793	08/26/03	11/23/03	UBE America Inc.	(S) External donor for olefin polymerization	(S) Silanamine, 1,1,1-triethoxy-n,n-diethyl-
P–03–0794	08/29/03	11/26/03	BASF Corporation Perfomance Chemicals	(G) Oxidation catalyst	(S) Alanine, n,n-bis (carboxymethyl)-, iron sodium complexes
P–03–0795	08/29/03	11/26/03	CIBA Specialty Chemicals Corporation	(S) Photo-cure for imaging / electronics industry	(G) Organo-titanium complex
P–03–0796	08/29/03	11/26/03	CBI	(G) Raw material	(G) Halogenated heteropolycycle
P–03–0797	08/29/03	11/26/03	CBI	(G) Raw material	(G) Halogenated heteropolycycle
P–03–0798	08/29/03	11/26/03	CBI	(G) Synthetic industrial lubricant for contained use.	(G) Pentaerythritol, mixed esters with straight and branched fatty acids
P–03–0799	08/29/03	11/26/03	CBI	(G) Synthetic industrial lubricant for contained use.	(G) Dipentaerythritol, mixed esters with straight and branched fatty acids
P–03–0800	08/29/03	11/26/03	CBI	(G) Synthetic industrial lubricant for contained use	(G) Pentaerythritol, mixed esters with straight chain and branched fatty acids
P–03–0801	08/29/03	11/26/03	CBI	(G) Synthetic industrial lubricant for contained use	(G) Dipentaerythritol, mixed esters with straight chain and branched fatty acids

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 17 NOTICES OF COMMENCEMENT FROM: 08/18/03 TO 09/05/03

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0552	08/25/03	07/26/03	(G) Salicylic acid, zirconium salt
P–01–0443	08/26/03	08/07/03	(G) Copolymer of polyoxyethylene allyl methyl ether
P–01–0813	08/22/03	07/29/03	(G) Cerium-based organic compound
P–02–0574	08/22/03	08/16/03	(G) Amine functional epoxy based resin salted with an organic acid
P–02–0638	08/25/03	07/13/03	(G) Hexanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol, 1,6-hexanediol, hexanedioic acid amide derivative, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid and 1,1′-methylenebis[4-isocyanatocyclohexane], compound with nu, nu-diethylethaneamine
P–02–0946	08/19/03	07/22/03	(G) Substituted benzoic acid, alkali salt
P–02–0992	08/26/03	07/25/03	(G) Ethylene oxide-propylene oxide copolymer allyl alkyl ether
P–03–0067	08/25/03	07/31/03	(G) Fluoroalkene substitutedalkene polymer
P–03–0078	08/20/03	07/27/03	(G) Sulphonated azo dye
P–03–0291	08/25/03	08/11/03	(G) Corn by product
P–03–0292	08/25/03	08/13/03	(G) ThermoChemical mechanical processed maize fiber
P–03–0325	08/20/03	08/07/03	(S) Oxazolidine, 3,3′-methylenebis[5-methyl-
P–03–0398	08/27/03	06/09/03	(G) Modified hydrocarbylpolysilicate
P–03–0410	08/25/03	08/15/03	(G) Styrene acrylic copolymer
P–03–0462	08/21/03	08/01/03	(G) Bisphenol a type epoxy resin, salt
P–03–0474	08/20/03	08/11/03	(G) Hydrophobically modified acetylenic glycol
P–99–1225	08/26/03	07/22/03	(G) Acrylic copolymer resin

List of Subjects

Environmental protection, Chemicals, Premanufacture notices

Dated: October 2, 2003.

Sandra Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–25638 Filed 10–8–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7572–1]

New York State Prohibition on Marine Discharges of Vessel Sewage; Final Affirmative Determination

Notice is hereby given that EPA has made a final affirmative determination regarding the petition received from the State of New York on April 29, 1999 requesting a determination by the Regional Administrator, Environmental Protection Agency (EPA), pursuant to Section 312(f)(3) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the Hudson River and its tributaries including, but not limited to, Rondout Creek, Esopus Creek and Catskill Creek. This petition was made by the New York State Department of State, in conjunction with the New York State Department of Environmental Conservation. New York State certified in the petition a need for greater protection and enhancement. The certification states that the discharge of vessel waste often contain chemical additives such as formaldehyde, phenols and chlorine. These wastes increase loadings of nutrients, pathogens and chemical loading particularly in shallow, poorly flushed waterbodies, and may adversely affect water quality, sensitive and important resources, and uses of these waters. The Hudson River provides habitat for fish and wildlife species. Congress has designated the Hudson River as a National Heritage Area under the purview of the National Park Service, and in 1998, the Hudson River was designated an American Heritage River. Upon receipt of this final affirmative determination, the State of New York will completely prohibit the discharge of sewage, whether treated or not, from any vessel, with the exception of commercial vessels that are greater than 225 feet in overall length or are greater than 20 feet in draft, on the Hudson River in the area north of the Battery in Manhattan, New York and south of Federal Dam in Troy, New York in accordance with Section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a). For vessels that are greater than 225 feet in overall length or are greater than 20 feet in draft, the prohibition will be applicable one year from the date of publication in the **Federal Register**.

Previously, EPA established on December 13, 1995 two No Discharge Areas (NDAs) to protect drinking water intake zones. Zone 1 is bounded by the northern confluence of the Mohawk River on the south and Lock 2 on the north. It is approximately 8 miles long. Zone 2 is bounded on the south by the Village of Roseton on the western shore and bounded on the north by the southern end of Houghtaling Island. Zone 2 is approximately 60 miles long.

The southern boundary of the proposed NDA in this application would begin at the Battery in Manhattan, New York and the northern boundary would be the Federal Dam in Troy, New York. This area includes waters up to the New Jersey-New York boundary and does not include waters in New Jersey. The area proposed by the State of New York is 153 miles long and encompasses approximately 81,000 acres of tidal waters and wetlands.

On October 24, 2000, EPA published a Receipt of Petition and Tentative Determination and accepted comments from the public for a thirty (30) day period. The comment period was extended until December 22, 2000 at the request of one of the commenters. EPA received letters from the following individuals:

1. Harold Gorman, 2332 Fort Lyon Drive, Stanton, VA
2. Edward V. Weber, 60 Round Hill Road, Poughkeepsie, NY 12603–5125
3. Ned Sullivan, Executive Director, Scenic Hudson, Inc., 9 Vassar Street, Poughkeepsie, NY 12601
4. Andrew J. Spano, County Executive, Westchester County, Michaelian Office Building, White Plains, NY 10601
5. Manna Jo Greene, Environmental Director, Clearwater, Inc., 112 Little Market Street, Poughkeepsie, NY 12601
6. Joseph P. Gehegan, Jr., Vice President, Spentonbush/Red Star Companies, P.O. Box 392, Brooklyn, NY 11231
7. Joseph Tesoriero, Safety Director, McAllister Towing and Transportation Company, Inc., 17 Battery Place, New York, NY 10004–1260
8. Kenneth L. Peterson, Jr., Port Captain, Reinauer Transportation Companies, 1983 Richmond Terrace, Staten Island, NY 10302
9. Robert J. Hughes, Jr., Hughes Marine Firms, Raritan Plaza I, Raritan Center, Edison, NJ 08837
10. John C. Tobin, New York State Waterways Association, Inc., 174 Washington Avenue, Albany, NY 12210
11. Kevin A. Nugent, Vice President, Bouchard Transportation Co., Inc., 77 Newbridge Road, Hicksville, NY 11801
12. Richard M. Larrabee, Director, Port Commerce Dept., The Port Authority of New York & New Jersey, One World Trade Center, 34S, New York, NY 10048–0682
13. Linda O'Leary, Vice President—Atlantic Coast Region, American Waterways Operators, 241 Water Street, New York, NY 10038

One commenter expressed confusion over the boundaries of the Hudson River NDA. His confusion was caused by the statement that some vessel operators while docked at the Brooklyn Naval Yard have their holding tanks pumped out by waste haulers. Since the Brooklyn Naval Yard is on the East River, he asked whether the prohibition included the East River. It does not include the East River, but boaters may choose to use pumpout facilities located outside of the NDA because the facilities are more convenient for them. For example, a boater who keeps his boat in a Staten Island marina may choose to use the pumpout at his home marina because it is convenient. The southern boundary of the proposed No Discharge Area (NDA) in this application would begin at the Battery in Manhattan, New York and the northern boundary would be the Federal Dam in Troy, New York. This area includes waters up to the New Jersey-New York boundary and does not include waters in New Jersey. It does not include the East River, the Harlem River, the Long Island Sound nor the Raritan Bay. No change to the determination is necessary based on this comment.

Three commenters expressed their support for the complete prohibition of the discharge of sewage from vessels. They believe that this determination is an important step in maintaining the vitality of the Hudson River. No change to the determination is necessary based on these comments.

One commenter compared the prohibition to a ''chamber pot'' approach and questioned whether making waste disposal more difficult for boaters effectively eliminates sewage. The commenter stated that marine sanitation devices (MSDs) must be

allowed to operate and discharge. In response, EPA notes that the pumpout and subsequent treatment of wastes at a sewage treatment plant generally results in a higher level of treatment than an MSD can provide. A holding tank is a total retention/no discharge alternative. A flow through device (Type I or Type II) treats the waste to some degree and then discharges into the water. This discharge contains pathogens, nutrients and various chemicals. This commenter also expressed concern about the capacity of a holding tank capacity (2 days of waste), the distance between pumpouts (15.5 miles) and the speed at which most vessels travel (5 knots per hour). The capacity of a holding tank is determined by several factors, volume, size of the crew, and the use of shore bathroom facilities when available. The greatest distance between pumpout facilities, based on the charts submitted in the application, is 12 miles. The speed at which vessels travel is determined by whether the vessel is a sailing or power vessel. These are all factors, including fuel, weather, supplies and charts, which the operator of the vessel needs to consider when planning his trip. No changes to the determination are necessary based on these comments.

Several commenters expressed concerns regarding the ability of large commercial vessels to dispose of sewage due to the lack of facilities and the draft restriction at pumpout facilities. These vessels may exceed 200 feet in length and have drafts in excess of 20 feet. The commenters also stated that many, if not all, of these commercial vessels have been equipped with Type II marine sanitation devices, which are a flow-through type treatment devices as opposed to a Type III MSD which are a holding tank. They stated that to retrofit tugs and barges with holding tanks would cost several thousand dollars and the time in dry dock would cost several thousand dollars in lost revenue. Some commenters requested that commercial vessels be exempted from the prohibition since no pumpout facilities were available for their vessels due to size and draft requirements. The same commenters requested that the NDA apply only to recreational boaters. While many of the commercial vessels are equipped with Type II MSDs, there are several commercial operators that utilize Type III MSDs and have their holding tanks pumped out at facilities that are available in their home ports or that make arrangements with waste haulers to pumpout their holding tanks when they dock to load, unload or take on supplies and fuels. EPA concludes that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available. One commenter stated that 50% of the petroleum transported by tug/barge units was delivered to Albany, 29% of the petroleum was delivered to Newburgh and 21% of the petroleum was delivered to various terminals along the Hudson River. This commenter contended that the imposition of the NDA on all vessels will cause a disruption in the petroleum delivery system, unduly harm the tug and barge industry, result in hardship to the residents of New York State and serve no useful purpose in terms of improving water quality or protecting environmental resources. Based on this information, EPA has decided that the complete prohibition of discharge of vessel sewage will not apply for one year from the date of **Federal Register** publication of this notice to commercial vessels which are greater than 225 feet in length or are greater than 20 feet in draft. The prohibition of discharge of vessel sewage will apply to all other vessels upon publication of this determination in the **Federal Register**.

The EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Hudson River, New York. A final determination on this matter will result in a New York State prohibition of any sewage discharges from vessels, with the exception of commercial vessels that are greater than 225 feet in length or are greater than 20 feet in draft, on the Hudson River from the Battery in Manhattan, New York to the Federal Dam at Troy, New York. For vessels that are greater than 225 feet in overall length or are greater than 20 feet in draft, the prohibition will be applicable on October 8, 2004.

Any questions regarding this notice should be addressed to Walter E. Andrews, U.S. Environmental Protection Agency, Region 2, Water Programs Branch, 290 Broadway, 24th Floor, New York, New York, 10007–1866. Telephone: (212) 637–3880.

Dated: September 3, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 03–25637 Filed 10–8–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

September 29, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments December 8, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at (202) 418–0214 or via the Internet at Judith-*B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0711.

Title: Implementation of Section 34(a)(1) of the Public Utility Holding Company Act of 1935, as amended by

the Telecommunications Act of 1996, (47 CFR Sections 1.5001–1.5007).

Form No.: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 15.

Estimated Time Per Response: 10 hours.

Frequency of Response: Third party disclosure and on occasion reporting requirements.

Total Annual Burden: 150 hours.

Total Annual Cost: $48,000.

Needs and Uses: 47 CFR Sections 1.5001–1.5007 implement Sction 34(a) of the Public Utility Holding Company Act. The rules provide filing requirements and procedures to expedite public utility holding company entry into the telecommunications industry. Persons seekings a determination of ETC status must file in good faith for determination by the Commission. The information will be used by the Commission to determine whether persons satisfy the statutory criteria for exempt telecommunications company status.

OMB Control No.: 3060–0745.

Title: Implementation of the Local Exchange Carrier Tariff Streamlining Provisions in the Telecommunications Act of 1996, CC Docket No. 96–187.

Form No.: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 1,520.

Estimated Time Per Response: 0.33–9.0 hours.

Frequency of Response: Recordkeeping, third party disclosure and on occasion reporting requirements.

Total Annual Burden: 1,150 hours.

Total Annual Cost: $5,100,000.

Needs and Uses: In CC Docket No. 96–187, the Commission adopted measures to streamline tariff filing requirements for local exchange carriers (LECs) of the Telecommunications Act of 1996. In order to achieve a streamlined and deregulatory environment for local exchanged carrier tariff filings, local exchange carriers are required to file tariffs electronically. Other carriers are permitted to file their tariffs electronically.

OMB Control No.: 3060–0943.

Title: 47 CFR Section 54.809, Carrier Certification.

Form No.: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 27.

Estimated Time Per Response: 1.5 hours.

Frequency of Response: Third Party Disclosure and annual reporting requirements.

Total Annual Burden: 41 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 54.809 of the Commission's rules requires each price cap or competitve LEC that wishes to receive universal support to file an annual certification with the Universal Service Administrative Company and the Commission. The certification must state that the carrier will use its interstate access universal service support only for the provision, maintenance, and upgrading of facilities and service for which the support is intended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–25598 Filed 10–8–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

Previously Announced Date & Time: *Wednesday, October 8, 2003 Meeting Closed to the Public. This Meeting Was Rescheduled for Thursday, October 9, 2003, Following the Open Meeting*

DATE AND TIME: Wednesday, October 15, 2003 at 10:00 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.

DATE AND TIME: Thursday, October 16, 2003 at 10:00 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.

Draft Advisory Opinion 2003–25: Weinzapfel for Mayor Committee by counsel, Neil P. Reiff.

Notice of Availability—Petition for Rulemaking Filed by America's Community Bankers.

Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–25832 Filed 10–7–03; 2:39 pm]

BILLING CODE 6715–01–M

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 November 3, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Partners Financial Holdings, Inc., Glen Carbon, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Partners Bank, Alton, Illinois.

Board of Governors of the Federal Reserve System, October 3, 2003.

Margaret M. Shanks,

Assistant Secretary of the Board.

[FR Doc. 03–25575 Filed 10–8–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m. (CDT), October 20, 2003.

PLACE: National Finance Center, Building 350, Conference Room 6, 13800 Old Gentilly Road, New Orleans, Louisiana.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

9:30 a.m. (CDT) Convene meeting

1. Approval of minutes of the September 15, 2003, Board meeting.
2. Thrift Savings Plan report by the Executive Director.

Parts Closed to the Public

3. Discussion of draft selection criteria for call center services.

FOR FURTHER INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: October 6, 2003.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 03–25684 Filed 10–6–03; 4:46 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health, National Institute for Occupational Safety and Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8:30 a.m.–5 p.m., October 28, 2003. 8:30 a.m.–4:30 p.m., October 29, 2003.

Place: Adams Mark St. Louis, 315 Chestnut Street (at 4th Street), St. Louis, Missouri 63102, telephone (314) 241–7400, fax (314) 241–0889.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 120 people.

Background: The Advisory Board on Radiation and Worker Health (''the Board'') was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President, through the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, evaluation of the scientific validity and quality of dose reconstructions conducted by the National Institute for Occupational Safety and Health (NIOSH) for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000, the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was renewed on August 3, 2003 and the President has completed the appointment of members to the Board to ensure a balanced representation on the Board.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: Agenda for this meeting will focus on Program Status Reports from NIOSH, Department of Labor, and Department of Energy; Research Issues; Dose Reconstruction Workgroup Report; Scientific Issues Workgroup Report; and a closed session to discuss Independent Government Cost Estimates.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 533–6825, fax (513) 533–6826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC, the Agency for Toxic Substances and Disease Registry.

Dated: October 2, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–25582 Filed 10–8–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Final Recommendations for Protecting Human Health From Potential Adverse Effects of Exposure to Agents GA (Tabun), GB (Sarin), and VX

The National Center for Environmental Health published a document in the September 17, 2003, edition (Volume 68, Number 180, Pages 54460–54462) of the **Federal Register** entitled ''Final Recommendations for Protecting Human Health from Potential Adverse Effects of Exposure to Agents GA (Tabun), GB (Sarin), and VX.'' A printing error altered a value in Table 1. The error has since been corrected. The document is being republished in its entirety for the convenience of the reader.

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, Department of Health and Human Services.

ACTION: Notice of final recommendations for protecting human health from potential adverse effects of exposure to agents GA, GB, and VX.

SUMMARY: Agents GA, GB, and VX are stored and are in the process of being destroyed by the Department of Defense (DoD). Public Law 99–145 (50 U.S.C. 1521) mandates that all unitary (self-contained) lethal chemical munitions be destroyed. Public Law 91–121 and Public Law 91–441 (50 U.S.C 1512) mandate that the Department of Health and Human Services (DHHS) review DoD plans for disposing of these munitions and make recommendations to protect public health.

EFFECTIVE DATE: January 1, 2005. An implementation period is necessary to allow the DoD to make program adjustments and allow time for changes to environmental permits as required.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Joe, Acting Chief, Chemical Demilitarization Branch, National Center for Environmental Health, CDC, 4770 Buford Highway, M/S F–16, Atlanta, Georgia 30341.

SUPPLEMENTARY INFORMATION: On January 8, 2002, DHHS, CDC published

proposed ''Airborne Exposure Limits for Chemical Warfare Agents GA (tabun), GB (sarin) and VX'' in the **Federal Register** (Vol. 67, No. 5, Pages 894–901, Tuesday, January 8, 2002), seeking public comment. This notice discusses major comments received, describes decisions regarding the public comments, and states the final recommendations. CDC received comments from the U.S. Army, the Agency for Toxic Substances and Disease Registry (ATSDR), the CDC's National Institute for Occupational Safety and Health (NIOSH), state of Utah, U.S. Army contractors, and two individuals.

The comments fell into the following general categories: assumptions used in the risk assessment, selection of uncertainty factors, determination of the relative potency factor for the VX exposure limits, and technical feasibility of air monitoring at the lower exposure limits. The key comments potentially impacting CDC's recommendations are discussed below.

The U.S. Army recommended that adjustment in the risk assessment algorithm for breathing rate be eliminated because the critical endpoint in deriving the exposure limits is miosis, a clinical sign that is recognized as a local effect on the muscles of the iris of the eye. This biologic endpoint is widely considered to be a direct effect of the nerve agent vapor on the surface of the eye (not related to breathing rate). Scientists from CDC/NIOSH however, indicated that the data do not completely rule out the potential contribution of inhaled agent to the miosis effect. The weight of the scientific data appears to support the Army's recommendation on this matter, and CDC has decided to eliminate the breathing rate adjustment. Eliminating the breathing rate adjustment increases the worker population limit (WPL) by a factor of slightly more than two. No significant change in the general population limit (GPL) would occur by eliminating the breathing rate adjustment.

In the derivation of the WPL for GB, CDC/NIOSH experts recommended that an additional uncertainty factor of three be added to account for individual worker variability. Although workers are medically screened, the recommendation is a reasonable public health decision. CDC therefore has incorporated the additional uncertainty factor of three into the risk assessment algorithm. Making this adjustment lowers the exposure limits by a factor of three. This adjustment and elimination of the breathing rate factor suggested above essentially cancel each other.

In the derivation of the VX exposure limits by using relative potency, the Army questioned the use of a relative potency of 12 with the application of a modification factor of three for the incomplete VX data set. The application of a relative potency of 12 with a modifying factor of three effectively resulted in a relative potency of 36 between the calculated exposure limits for GB and VX. As discussed in the January 8, 2002, **Federal Register** proposal, the relative potency factor of 12 was based on a 1971 British study that measured the ability of VX to cause 90 percent pupil constriction in rabbits. Because the critical effect in the study used to derive the GB exposure limit was miosis, CDC believes that miosis was appropriate to use as the health effect in determining the relative potency of VX. CDC/NIOSH experts and the state of Utah supported the proposed relative potency of 12 with a modifying factor of three. Therefore, CDC is retaining its relative potency assumptions for deriving the VX exposure limits.

As discussed in the January 8, 2002, **Federal Register** proposal, CDC adjusted the VX GPL because available air-monitoring methods do not reliably detect VX at the calculated value of 3×10^{-8} mg/m^3. In the adjustment, CDC assumed that potential exposure would be identified and corrected within three days, precluding chronic exposure. Several people who provided comments pointed out that a similar adjustment also could have been made for the GB GPL. CDC recognizes that the assumptions used to derive the GPLs for GB and VX differ. Indeed, this adjustment could be applied to the GB exposure limits; however, the air-monitoring technology is currently functioning near the recommended level. CDC recommends no upward adjustment of the GB exposure limits; this recommendation is consistent with the accepted industrial hygiene practice of keeping exposure to the minimum practicable level.

The derivation of the VX exposure limits may be biased low because of the inadequate VX toxicity database. CDC believes that reliable air monitoring is a crucial aspect for implementing the exposure limits. Although CDC would have preferred a better toxicity database for VX, as well as improved air-monitoring methods for VX, these items are not currently available. Consequently, CDC is not further adjusting the final recommendation to the GPL for VX. However, CDC will reevaluate the VX exposure limits in the future if significant new VX toxicity data are available for setting exposure limits, new risk assessment evaluation methods are demonstrated superior to methods used herein, or substantive technological advances in air monitoring methods are made.

Army contractors and CDC/NIOSH experts expressed concerns about the technical feasibility of meeting the new exposure limits. On the basis of these comments, CDC has adjusted the VX short-term exposure limit (STEL) to 1×10^{-5} mg/m^3 but added the provision that excursions to this special VX STEL should not occur more than once per day (in the typical STEL, four excursions per day are allowed). A lower STEL value would have required a longer response time for near real-time instruments; the recommended STEL is a result of balancing the detection capabilities and response time. A shorter instrument response time associated with the recommended STEL will minimize exposures. This adjustment to the VX STEL should not affect worker health.

To account for other technical feasibility concerns, CDC recommends that the GB and VX STEL be evaluated with near-real-time instrumentation, whereas the GB and VX WPLs and GPLs may be evaluated with longer-term historical air monitoring methods. CDC further recommends that, in implementing the WPLs, STELs and GPLs, specific reduction factors for statistical assurance of action at the exposure limits are not needed because of safety factors already built into the derivation of the exposure limit. This recommendation assumes that the sampling and analytical methods are measuring within ±25% of the true concentration 95% of the time. If this criterion is not met, an alarm level or action level below the exposure limit may be required.

The Army recently indicated to CDC that the exposure limits as listed and implemented in this announcement are technically feasible to detect with the instrumentation and methods currently in use. However, whether the agent destruction sites can monitor at these exposure limits and still meet current quality control standards has not been determined. To allow the Army to implement program changes, regulatory adjustments, and to evaluate quality control issues, the final recommended exposure limits will become effective January 1, 2005.

Final Recommendations: CDC presents final recommendations for airborne exposure limits (AELs) for the chemical warfare agents GA (tabun or ethyl N,N-dimethyl-phosphoramidocyanidate, CAS 77–81–6); GB (sarin or O-isopropyl-

methylphosphonofluoridate, CAS 107–44–8); and VX (O-ethyl-S–(2-diisopropylaminoethyl)-methylphosphonothiolate, CAS 50782–69–9). CDC based its recommendations on comments by scientific experts at a public meeting convened by CDC on August 23–24, 2000, in Atlanta, Georgia; the latest available technical reviews; and the risk assessment approach frequently used by regulatory agencies and other organizations. Additionally, CDC reviewed the substantial background information provided in the recent U.S. Army evaluations of the airborne exposure criteria for chemical warfare agents. AELs for chemical warfare agents GA, GB, and VX were reevaluated by using the conventional reference concentration risk assessment methodology for developing AELs described by the U.S. Environmental Protection Agency. This methodology is considered conservative; however, the calculated exposure limits are neither numerically precise values that differentiate between nonharmful and dangerous conditions, nor are they precise thresholds of potential human toxicity. The recommended changes to the AELs do not reflect change in, nor a refined understanding of, demonstrated human toxicity of these substances but rather the changes resulted from updated and minimally modified risk assessment assumptions. Overt adverse health effects have not been noted in association with the previously recommended exposure limits. This may be due to rigorous exposure prevention efforts in recent years as well as the conservative implementation of the existing limits (*i.e.*, 8-hour time-weighted average exposure limits have been implemented as short-duration ceiling values).

Recommended AELs for GB: CDC recommends a WPL value of 3×10^{-5} mg/m^3, expressed as an 8-hour time-weighted average (TWA). Additionally, CDC recommends a STEL of 1×10^{-4} mg/m^3 to be used in conjunction with the WPL. Exposures at the STEL should not be longer than 15 minutes and should not occur more than four times per day, and at least 60 minutes should elapse between successive exposures in this range. The STEL should not be exceeded during the work day, even if the cumulative exposure over the 8-hour TWA is not exceeded. CDC recommends a decrease in the GPL to 1×10^{-6} mg/m^3. The WPLs and GPLs values are approximately threefold lower than levels previously recommended by CDC in 1988. An immediately-dangerous-to-life-or-health (IDLH) value of 0.1 mg/m^3 is recommended for GB.

Recommended AELs for GA: Although not as well-studied as GB, GA is believed to be approximately equal in potency to GB. Therefore, CDC recommends the same exposure limits for GA as for GB.

Recommended AELs for VX: CDC recommends that the VX WPL, expressed as an 8-hour TWA, be decreased to 1×10^{-6} mg/m^3. Additionally, CDC recommends a VX STEL of 1×10^{-5} mg/m^3. An excursion to the STEL should not occur more than one time per day (compared to four times per day for a typical STEL). The recommended WPL is a factor of 10 lower than the CDC's 1988 recommendation. CDC recommends that the GPL for VX be decreased to 6×10^{-7} mg/m^3 (a factor of five lower than CDC's 1988 recommendation). An IDLH value of 0.003 mg/m^3 is recommended for VX. CDC's final recommendations are summarized in Table 1 below.

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Table 1 - Final Recommended Airborne Exposure Limits (AELs) for GA, GB, and VX

AEL (mg/m^3)	**General Population Limit (GPL)***	**Worker Population Limit (WPL)***	**Short-Term Exposure Limit (STEL)*** (Workers)	**Immediately Dangerous to Life or Health (IDLH)** (Workers)
GA, GB	1×10^{-6}	3×10^{-5}	1×10^{-4}	0.1
GA, GB - Previous (1988)	*3×10^{-6}*	*1×10^{-4}*	--	*0.2 (Army)*
VX	6×10^{-7}	1×10^{-6}	1×10^{-5}**	0.003
VX - Previous (1988)	*3×10^{-6}*	*1×10^{-5}*	--	*0.02 (Army)*
Averaging Time	24 hours	8 hours	15 minutes	≤30 minutes
Monitoring Method for Recommended Exposure Criteria	Historical monitor***	Historical monitor	Near-real-time monitor	Near-real-time monitor

* An additional reduction factor for statistical assurance of action at the exposure limit is not needed because of safety factors already built into the derivation of the exposure limit.

** VX STEL has been adjusted from 4×10^{-6} mg/m^3 (up to four times per day) as proposed in the **Federal Register** announcement to 1×10^{-5} mg/m^3 (not more than one time per day) based on technical capabilities of existing air-monitoring technologies.

*** Historical monitoring typically refers to long-term sampling and analytical methods. Air-monitoring results from historical methods are not known until laboratory analyses are complete.

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CDC does not specifically recommend the use of these AELs for uses other than transportation, worker protection during the destruction process, or general population protection. For example, the 8-hour WPL historically has been used for the Army-designated 3X decontamination, surveillance activities of leaking containers in storage, and charcoal unit mid-beds. CDC did not evaluate the applicability of the WPLs for these activities; the specific technical and safety requirements for each activity need to be considered individually.

This announcement does not address the allowable stack concentration (ASC). The ASC is a ceiling value that serves as a destruction process source emission limit and not as a health standard. It typically is used for monitoring the furnace ducts and final exhaust stack, providing an early indication of an upset condition. Modeling of worst-case credible events and conditions at each installation should confirm that the WPL is not exceeded on-site or that the GPL is not exceeded at the installation boundary as a consequence of a release at or below the ASC.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: October 3, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–25583 Filed 10–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee for People With Intellectual Disabilities (PCPID): Notice of Meeting

AGENCY: President's Committee for People With Intellectual Disabilities (PCPID), HHS.

ACTION: Notice of meeting.

DATES: Thursday, October 16, from 8:30 a.m. to 1:30 p.m. The full Committee meeting of the President's Committee for People with Intellectual Disabilities will be open to the public on Thursday, October 16, from 8:30 a.m. to 1:30 p.m.

ADDRESSES: The meeting will be held at the Aerospace Center Building, Aerospace Auditorium, 6th Floor East, 370 L'Enfant Promenade, SW., Washington, DC 20447. Individuals with disabilities who need special accommodations in order to attend and participate in the meeting (*i.e.,* interpreting services, assistive listening devices, materials in alternative format) should notify Executive Director, Sally Atwater, at 202–619–0634 no later than October 1, 2003. Effort will be made to meet special requests received after that date, but availability of special needs accommodations to respond to these requests cannot be guaranteed. All meeting sites are barrier free.

Agenda: The Committee plans to discuss critical issues relating to individuals with intellectual disabilities concerning education and transition, family services and support, public awareness, employment, and assistive technology and information.

FOR FURTHER INFORMATION CONTACT: Sally Atwater, Executive Director, President's Committee for People with Intellectual Disabilities, Aerospace Center Building, Suite 701, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone—(202) 619–0634, Fax—(202) 205–9519, E-mail—*satwater@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The PCPID acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a broad range of topics relating to programs, services, and supports for persons with intellectual disabilities. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs, services and supports for persons with intellectual disabilities, and for reviewing legislative proposals that impact the quality of life that is experienced by citizens with intellectual disabilities and their families.

Dated: September 25, 2003.

Sally Atwater,

Executive Director, President's Committee for People with Intellectual Disabilities.

[FR Doc. 03–25559 Filed 10–8–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1995N–0071]

Amirul Islam; Grant of Special Termination; Final Order Terminating Debarment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) granting special termination of the debarment of Amirul Islam. FDA bases this order on a finding that Mr. Islam provided substantial assistance in the investigations or prosecutions of offenses relating to a matter under FDA's jurisdiction and that special termination of Mr. Islam's debarment serves the interest of justice and does not threaten the integrity of the drug approval process.

DATES: This order is effective October 9, 2003.

ADDRESSES: Comments should reference Docket No. 1995N–0071 and be sent to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nicole K. Mueller, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In a **Federal Register** notice dated August 27, 1997 (62 FR 45423), Amirul Islam, the former vice president of technical services for Halsey Drug Co. Inc. (Halsey), and supervisor of Halsey's Quality Control Laboratory, was permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 306(c)(1)(B) and (c)(2)(A)(ii) of the act (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and section 201(dd) of the act (21 U.S.C. 321(dd))). The debarment was based on FDA's finding that Mr. Islam was convicted of a felony under Federal law for conduct relating to the development or approval of any drug product, or otherwise relating to the regulation of a drug product (21 U.S.C. 335a(a)(2)). On December 12, 1997, Mr. Islam applied for special termination of debarment under section 306(d)(4)(a) of the act, as amended by the Generic Drug Enforcement Act (GDEA).

Under section 306(d)(4)(C) and (D) of the act, FDA may limit the period of debarment of a permanently debarred individual if the agency finds that: (1) The debarred individual has provided substantial assistance in the investigation or prosecution of offenses described in section 306(a) or (b) of the act or relating to a matter under FDA's jurisdiction, (2) termination of the debarment serves the interest of justice, and (3) termination of the debarment does not threaten the integrity of the drug approval process. Special termination of debarment is discretionary with FDA.

FDA considers a determination by the Department of Justice concerning the substantial assistance of a debarred individual conclusive in most cases. Mr. Islam cooperated with the Department of Justice investigations and prosecutions of others, as substantiated by the letters submitted to the agency by the Assistant U.S. Attorney who prosecuted Mr. Islam's case. Accordingly, FDA finds that Mr. Islam provided substantial assistance as required by section 306(d)(4)(C) of the act.

The additional requisite showings that termination of debarment serves the interest of justice and poses no threat to the integrity of the drug approval process are difficult standards to satisfy. In determining whether these have been met, the agency weighs the significance of all favorable and unfavorable factors in light of the remedial, public health-related purposes underlying debarment. Termination of debarment will not be granted unless, weighing all favorable and unfavorable information, there is a high level of assurance that the conduct that formed the basis for the debarment has not recurred and will not recur, and that the individual will not otherwise pose a threat to the integrity of the drug approval process.

The evidence presented to FDA in support of termination shows that Mr. Islam was convicted for a first offense, that he has no prior or subsequent convictions for conduct described under the GDEA and has committed no other wrongful acts affecting the drug approval process, and that his character

and scientific ability are highly regarded by his professional peers. The evidence presented supports the conclusion that the conduct upon which Mr. Islam's debarment was based is unlikely to recur. For these reasons, the agency finds that termination of Mr. Islam's debarment serves the interest of justice and will not pose a threat to the integrity of the drug approval process. FDA's analysis in reaching this conclusion is contained in the docket.

Under section 306(d)(4)(D)(ii) of the act, the period of debarment of an individual who qualifies for special termination may be limited to less than permanent but to no less than 1 year. Mr. Islam's period of debarment has lasted more than 1 year. Accordingly, the Associate Commissioner for Regulatory Affairs, under section 306(d)(4) of the act and under authority delegated to him (21 CFR 5.20), finds that Amirul Islam's application for special termination of debarment should be granted, and that the period of debarment should terminate immediately, thereby allowing him to provide services in any capacity to a person with an approved or pending drug product application. The Associate Commissioner for Regulatory Affairs further finds that because Mr. Islam has waived his right to a hearing, and the agency is granting Mr. Islam's application, an informal hearing under section 306(d)(4)(C) of the act is unnecessary.

As a result of the foregoing findings, Amirul Islam's debarment is terminated effective October 9, 2003 (21 U.S.C. 335a(d)(4)(C) and (d)(4)(D)).

Dated: October 1, 2003.

John Marzilli,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 03–25594 Filed 10–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Reports, Forms, and Recordkeeping Requirements: Agency Information Collection Activity Under OMB Review; Transportation Worker Identification Credential (TWIC); Satisfaction and Effectiveness Measurement Data Collection Instruments

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: This notice announces that TSA has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on June 24, 2003, 68 FR 37510.

DATES: Send your comments by November 10, 2003. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Conrad Huygen, Office of Information Management Programs, TSA HQ, West Tower, Floor 4, TSA–17, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1954; facsimile (571) 227–2912.

SUPPLEMENTARY INFORMATION:

Transportation Security Administration (TSA)

Title: Transportation Worker Identification Credential; Satisfaction and Effectiveness Measurement Data Collection Instruments.

Type of Request: New collection.

OMB Control Number: Not yet assigned.

Forms(s): Transportation Worker Survey; Port Security Interview Guide.

Affected Public: Transportation Workers; Lead Stakeholders.

Abstract: TSA intends to evaluate and test certain technologies and business processes in the Technology Evaluation and Prototype Phases of the pilot project to fully develop the Transportation Worker Identification Credential (TWIC). TSA will gather demographic information required to issue credentials to a select group of transportation workers and then administer two instruments to collect data on the effectiveness of the TWIC credential. The first instrument will be a survey of a small representative percent of the TWIC users and the second instrument will be interviews conducted with the lead stakeholder at each site participating in the Technology Evaluation and Prototype Phases. Surveys and interviews will be voluntary and anonymous.

Number of Respondents: 30,780.

Estimated Annual Burden Hours: 5,195.

TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Issued in Arlington, Virginia, on October 3, 2003.

Susan T. Tracey,

Deputy Chief Administrative Officer.

[FR Doc. 03–25562 Filed 10–8–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–40]

Notice of Proposed Information Collection: Comment Request; Rental Schedule—Low Rent Housing

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 8, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410, or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Beverly J. Miller, Director, Office of Multifamily Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3730 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Rental Schedule—Low Rent Housing.

OMB Control Number, if applicable: 2502–0012.

Description of the need for the information and proposed use: This information is necessary for HUD to ensure that tenant rents are approved in accordance with HUD administrative procedures. Project owners utilize form HUD–92458 when requesting an adjustment to project rents due to anticipated or unavoidable increases in operating costs.

Agency form numbers, if applicable: HUD–92458.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 16,000 generating approximately 16,000 annual responses; the frequency of response is on occasion; the estimated time needed to prepare the response is 20 minutes; and the estimated total number of annual burden hours is 5,280.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: October 1, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–25561 Filed 10–8–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 USC 1531 *et seq.*). The U.S. Fish and Wildlife Service (''we'') solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before November 10, 2003 to receive our consideration.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–075898

Applicant: Sue Orloff, San Rafael, California.

The applicant requests a permit to take (harass by survey, capture, handle, and release) the Sonoma County distinct population segment of the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys in Sonoma County, California, for the purpose of enhancing its survival.

Permit No. TE–076322

Applicant: Kimberly Toal, La Crescenta, California.

The applicant requests a permit to take (capture, handle, and release) the Stephen's kangaroo rat (*Dipodomys stephensii*) in conjunction with surveys in Riverside, San Bernardino, and San Diego Counties, California, for the purpose of enhancing its survival.

Permit No. TE–076257

Applicant: San Luis Obispo Public Works Department, San Luis Obispo, California.

The applicant requests a permit to take (harass by survey) the Morro shoulderband snail (*Helminthoglypta walkeriana*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–076768

Applicant: Lisa Schicker, Los Osos, California.

The applicant requests a permit to take (harass by survey) the Morro shoulderband snail (*Helminthoglypta walkeriana*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–003483

Applicant: U.S. Geological Survey, Biological Resources Division, Hawaii National Park, Hawaii.

The permittee requests an amendment to take (translocate) the Laysan duck (*Anas laysanensis*) in conjunction with translocation activities and scientific research from Laysan to Midway Atoll, Hawaiian Islands, for the purpose of enhancing its survival.

Permit No. TE–006333

Applicant: Oregon State University, Department of Fish and Wildlife, Corvallis, Oregon.

The permittee requests an amendment to take (collect larvae) the Borax Lake chub (*Gila boraxobius*) in conjunction with research in Harney County, Oregon, for the purpose of enhancing its survival.

Permit No. TE–077053

Applicant: Jeffrey Manning, Fallbrook, California.

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax trailii extimus*) in conjunction with surveys in Los Angeles, Orange, Riverside, San Diego, San Bernardino, and Imperial Counties, California, for the purpose of enhancing its survival.

Permit No. TE–050450

Applicant: Lisa Allen, Dana Point, California.

The permittee requests an amendment to take (harass by survey and collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–074658

Applicant: Cecilia Meyer Lovell, San Diego, California.

The applicant requests a permit to take (harass by survey and collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–077388

Applicant: Oregon Zoo, Portland, Oregon.

The applicant requests a permit to take (captive breed) the California condor (*Gymnogyps californianus*) in conjunction with a recovery program for the species in Multnomah County, Oregon, for the purpose of enhancing its survival.

Permit No. TE–077392

Applicant: Peter Waldburger, Los Osos, California.

The applicant requests a permit to take (harass by survey) the Morro shoulderband snail (*Helminthoglypta walkeriana*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: October 2, 2003.

David J. Wesley,

Deputy Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 03–25580 Filed 10–8–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Re-Opening of the Comment Period for the Draft Recovery Plan for the Sierra Nevada Bighorn Sheep

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of re-opening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a re-opening of the comment period for public review of the Draft Recovery Plan for the Sierra Nevada Bighorn Sheep (*Ovis canadensis californiana*) for an additional 60 days. The original comment period closed on September 29, 2003. We are re-opening the comment period in response to specific requests from the Natural Resources Defense Council and the Sierra Nevada Bighorn Sheep Foundation to allow additional time for public review of this draft recovery plan. This draft recovery plan includes recovery criteria and measures for the Sierra Nevada bighorn sheep.

DATES: Comments on the draft recovery plan must be received on or before December 8, 2003.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003 (telephone 805–644–1766). Requests for copies of the draft recovery plan and written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. An electronic copy of this draft recovery plan is also available at *http://www.r1.fws.gov/ecoservices/endangered/recovery/default.htm.*

FOR FURTHER INFORMATION CONTACT: Carl Benz, Fish and Wildlife Biologist, at the above address.

SUPPLEMENTARY INFORMATION:

Background

On July 30, 2003, we published a Notice of Availability of the Draft Recovery Plan for the Sierra Nevada Bighorn Sheep, opening a 60-day public comment period that is scheduled to end on September 29, 2003. We have received requests from the Natural Resources Defense Council, the Wilderness Society, and the Sierra Nevada Bighorn Sheep Foundation to extend the comment period so that they might more thoroughly review the plan. Based on these requests, we determined to re-open the comment period for public review of this draft recovery plan.

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.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

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. We will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments may result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions.

This draft recovery plan was developed by the Sierra Nevada Bighorn Sheep Recovery Team. We coordinated with the California Department of Fish and Game, and a team of stakeholders, which included ranchers, landowners and managers, agency representatives, and non-government organizations.

The population of bighorn sheep in the Sierra Nevada of California was listed as an endangered species on January 3, 2000, (65 FR 20) following emergency listing on April 20, 1999, (64 FR 19300). At the time of listing, the bighorn sheep population was very small, with only about 125 adults known to exist among 5 geographic areas, with little probability of interchange among those areas. The bighorn sheep is threatened primarily by transmission of disease from domestic sheep and goats, and predation by mountain lions. Key elements for immediate action are: (1) Predator management; (2) augmentation of small herds with sheep from larger ones; and (3) elimination of the threat of a pneumonia epizootic resulting from contact with domestic sheep or goats. Actions needed to recover the bighorn

sheep include: (1) Protection of bighorn sheep habitat; (2) increase population growth by enhancing survivorship and reproductive output of bighorn sheep; (3) increase the numbers of herds, and thereby the number of bighorn sheep; (4) develop and implement a genetic management plan to maintain genetic diversity; (5) monitor status and trends of bighorn sheep herds and their habitat; (6) research; and (7) providing information to the public.

Public Comments Solicited

We solicit written comments on the draft recovery plan described. All comments received by the date specified above will be considered in developing a final recovery plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 24, 2003.

Steve Thompson,

Manager, California/Nevada Operations Office, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 03–25576 Filed 10–8–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION** section.

DATES: The Aquatic Nuisance Species Task Force will meet from 8 a.m. to 5:30 p.m. on Tuesday, November 4, and from 8 a.m. to 5 p.m. on Wednesday, November 5, 2003.

ADDRESSES: The ANS Task Force meeting will be held at the Holiday Inn, 4610 North Fairfax Drive, Arlington, Virginia 22203. Phone 703–243–9800.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force, at 703–358–2308, or by e-mail, at *sharon_gross@fws.gov*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered during the ANS Task Force meeting include: an update of activities from each of the Task Force's regional panels; status and updates from several other Task Force committees and working groups including the Prevention Committee, the Asian Carp working group, and the New Zealand mud snail working group, review of State ANS Management Plans from Hawaii, Indiana and Wisconsin; an update on ballast water management activities; an update on the activities of the National Invasive Species Council; a discussion on the National Aquatic Invasive Species Act; and other topics.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: October 2, 2003.

Mamie Parker,

Co-chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries and Habitat Conservation.

[FR Doc. 03–25647 Filed 10–8–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–03–1610–DR]

Notice of Availability of the Record of Decision for Proposed Farmington Resource Management Plan Revision and Environmental Impact Statement

AGENCY: Bureau of Land Management, New Mexico State Office, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the National Environmental Policy Act, the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Proposed Farmington Resource Management Plan (RMP) revision and Final Environmental Impact Statement (EIS). The revised plan addressed the oil and gas estate administered by BLM in the Farmington Field Office and the Albuquerque Field Office; the U.S. Forest Service (USFS), Jicarilla District of the Carson National Forest; portions of the Coyote and Cuba Districts of the Santa Fe National Forest, and the Bureau of Reclamation (BOR) for lands surrounding Navajo Reservoir. Other issues relating to landownership adjustments, Off-Highway Vehicle management, Specially Designated Areas, and coal leasing suitability were addressed only for lands administered by the Farmington Field Office. The USFS and BOR were cooperating agencies in preparation of the RMP. The Final EIS and Proposed RMP were available for protest from April 4, 2003, to May 5, 2003. All protests and comments were considered during the preparation of the ROD.

ADDRESSES: Copies of the ROD have been sent to affected Federal, State, and local Government agencies and to interested parties. The document will be available electronically on the following Web site: *http://www.nm.blm.gov/.* Copies of the ROD are available for public inspection at the following BLM office locations: Farmington Field Office, 1235 La Plata Highway, Farmington, NM 87401; and Albuquerque Field Office, 435 Montano Rd. NE, Albuquerque, NM 87107.

FOR FURTHER INFORMATION CONTACT: James Ramakka, RMP Project Manager, Bureau of Land Management, Farmington Field Office, 1235 La Plata Highway, Farmington, NM 87401 (505–599–6307).

SUPPLEMENTARY INFORMATION: This ROD approves the proposed revision to the Farmington RMP. The RMP provides guidance for managing approximately 1,415,300 acres of public land and 3,020,693 acres of Federal minerals in San Juan, McKinley, Rio Arriba and Sandoval Counties. The overall planning area encompasses 8,274,100 acres.

The ROD approves new decisions concerning oil and gas leasing and development, Off-Highway Vehicle (OHV) designations, landownership adjustments, management of Specially Designated Areas, and coal leasing suitability. These decisions are intended to replace goals, objectives, management actions and conditions of use described in the 1988 Farmington RMP and subsequent amendments related to these matters. No other decisions of the 1988 Farmington RMP or amendments are affected.

Dated: August 14, 2003.

Linda S.C. Rundell,

New Mexico State Director.

[FR Doc. 03–25616 Filed 10–8–03; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–0777–XM–241A]

Notice of Amendment of Meeting Date, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held on November 13, 2003, at the Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado beginning at 9:15 a.m. The public comment period will begin at approximately 9:30 a.m. and the meeting will adjourn at approximately 4 p.m.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Front Range Center, Colorado. Planned agenda topics include Manager updates on current land management issues and an update on the Gold Belt Travel Management Plan.

All meetings are open to the public. The public is encouraged to make oral comments to the Council at 9:30 a.m. or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Front Range Center Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management (BLM), Attn: Ken Smith, 3170 East Main Street, Canon City, Colorado 81212. Phone (719) 269–8500.

Dated: October 2, 2003.

John L. Carochi,

Acting Front Range Center Manager.

[FR Doc. 03–25586 Filed 10–8–03; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–530–1430–ES; COC–63839]

Notice of Realty Action: Proposed Classification of Public Lands for Recreation and Public Purposes Lease in Rio Grande County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This action corrects Notice of Realty Action: Proposed Classification of Public Lands for Recreation and Public Purposes lease in Rio Grande County, Colorado, 68 FR 35691, published June 16, 2003.

On page 35691, third column, top of the page, should be corrected from sec. 27, metes and bounds tract in lot 9 and the *NE1/44NE1/4* to sec. 27, metes and bounds tract in lot 9 and the *NE1/4SE1/4*.

Dated: September 15, 2003.

Dean H. Erhard,

Del Norte Field Manager.

[FR Doc. 03–25617 Filed 10–8–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–032–03–1430–EQ; MNES–050222]

Notice of Realty Action; Noncompetitive Permit of Public Lands, Minnesota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The surface estate of land located in St. Louis County, Minnesota is being considered for a noncompetitive permit pursuant to section 302 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1732).

FOR FURTHER INFORMATION CONTACT: Paul J. Salvatore, Realty Specialist, Bureau of Land Management, Milwaukee Field Office, 310 W. Wisconsin Ave., Suite 450, Milwaukee, Wisconsin 53203, (414) 297–4413.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to offer the use of the surface estate of the following described lands to Mr. David M. Stanton, by noncompetitive permit, at fair market value. The permit will allow for continued habitation on the site by Mr. Stanton and will resolve an inadvertent unauthorized use of public land.

Fourth Principal Meridian

Township 62 North, Range 17 West, Tract 37

The above lands aggregate 0.18 acre more or less.

The permit will be issued for 3 years. The permit may be renewed, in accordance with 43 CFR 2920.1–1(b) with the right of renewal through the remainder of Mr. Stanton's life. Upon expiration of the permitted use, all improvements will be removed from the public lands and the site rehabilitated. This action is consistent with the Minnesota Management Framework Plan and would serve important public objectives, which could not be achieved by other means. The planning document and environmental assessment covering the proposed permit are available for review at the Bureau of Land Management, Milwaukee Field Office, Milwaukee, Wisconsin.

For a period until November 24, 2003, interested parties may submit comments to the Field Manager, Milwaukee Field Office, Bureau of Land Management, 626 E. Wisconsin Avenue, Suite 200, Milwaukee, Wisconsin 53202–4617. Any adverse comments will be evaluated by the State Director, Eastern States Office, who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

This notice is being published in accordance with the regulations contained in 43 CFR 2920.4.

Dated: September 17, 2003.

James W. Dryden,

Milwaukee Field Manager.

[FR Doc. 03–25615 Filed 10–8–03; 8:45 am]

BILLING CODE 4310–PN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–1430–ES; N–74355]

Notice of Realty Action: Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Notice of realty action.

SUMMARY: The following described public land in the Las Vegas Valley, Clark County, Nevada, has been examined and found suitable for conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et. seq.*).

FOR FURTHER INFORMATION CONTACT: Anna Wharton, Supervisory Realty Specialist, (702) 515–5095.

SUPPLEMENTARY INFORMATION: The following described public land in the

Las Vegas Valley, Clark County, Nevada, has been examined and found suitable for conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et. seq.*).

The Clark County School District proposes to use the land for the maintenance, parking, cleaning, and fueling of school busses and as a radio communications center.

Mount Diablo Meridian, Nevada

T. 23 S., R. 61 E., MDM
Sec. 08: S½NW¼NW¼SE¼, SW¼NW¼SE¼, SW¼SE¼, NW¼NW¼SE¼SE¼
N½SW¼SE¼SE¼, N½SE¼SE¼SE¼ (that portion west of centerline of US 91).
Containing approximately 65.44 acres.

The land is not required for any Federal purpose. The conveyance is consistent with current Bureau planning for this area and would be in the public interest. The patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe. and will be subject to:

1. All valid and existing rights. The lands have been segregated from all forms of appropriation under the Southern Nevada Public Lands Management Act (Pub. L. 105–263). Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV, or by calling (702) 515–5000.

On October 9, 2003, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposal under the mineral material disposal laws.

For a period until November 24, 2003, interested parties may submit comments regarding the proposed conveyance for classification of the lands to the Las Vegas Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130–2301.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a bus yard/communications center. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for a bus yard/communications center. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, these realty actions will become the final determination of the Department of the Interior. The classification of the land described in this Notice will become effective December 8, 2003. The lands will not be offered for conveyance until after the classification becomes effective.

Dated: August 22, 2003.

Sharon DiPinto,

Acting Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 03–25612 Filed 10–8–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–075–2822–JL–F9947]

Notice of Closure; Bannock County, ID

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of Closure to Off-Highway Vehicle and recreation Use on public lands in Bannock County, Idaho.

SUMMARY: With the publication of this notice, all public lands administered by the Bureau of Land Management within the 2,234 acres of the Blackrock Fire (F947), including designated roads and trails are closed to all motorized vehicles, mountain biking, camping, horseback riding and other recreational activities. The closure will remain in effect until July 15, 2006 or until such time as the authorized officer of the Pocatello Field Office determines the closure may be lifted.

Exceptions to this Order are Granted to the Following: Law enforcement patrol, emergency services, and administratively approved access for actions such as monitoring, research studies, and access to private lands.

Other actions would be considered on a case-by-case basis by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Philip Damon, (208) 467–6340, the BLM Pocatello Filed Office, 1111 North 8th Ave., Pocatello, ID 83201.

SUPPLEMENTARY INFORMATION: This closure is a direct result of the Blackrook Fire, which burned this area in July, 2003 and of the subsequent rehabilitation efforts of the BLM. The closure will promote the reestablishment of vegetation, improve the potential for recovery of wildlife habitat, and reduce the potential for erosion and noxious weed invasion.

The closure is in accordance with 43 CFR 9268.3(d)(1). Violation of this order is punishable by a fine not to exceed $1,000.00 and/or imprisonment not to exceed 12 months.

The area of closure and impoundment affected by this notice is the burned portion of public lands administered by the BLM, specially described wholly or partially:

Boise Meridian:

T. 7 S., R. 35 E., Sec. 11, 12, 13, 14, and
T. 7 S., R 36 E., Sec. 7, 8, 17, 18, 19, 20.

Detailed maps of the area closed to OHV and recreational use are available at the Pocatello Field Office at the address above.

Dated: August 26, 2003.

Philip Damon,

Pocatello Field Manager.

[FR Doc. 03–25614 Filed 10–8–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–04–1420–BJ]

Montana: Filing of Plats of Amended Protraction Diagrams

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Filing of Plats of Amended Protraction Diagrams.

SUMMARY: The Bureau of Land Management (BLM) will file the plats of the amended protraction diagrams of the lands described below in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert L. Brockie, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 896–5125 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: The amended protraction diagrams were prepared at the request of the U.S. Forest Service and are necessary to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center. The lands for the prepared amended protraction diagrams are:

Principal Meridian, Montana

Tps. 11, 12, 13, 14, and 15 S., Rs. 5 E.
The plat, representing the Amended Protraction Diagram 3 Index of unsurveyedTownships 11, 12, 13, 14, and 15 South, Ranges 5 East, Principal Meridian, Montana, was accepted September 10, 2003.

T. 11 S., R. 5 E.
The plat, representing Amended Protraction Diagram 3 of unsurveyedTownship 11 South, Range 5 East, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 12 S., R. 5 E.
The plat, representing Amended Protraction Diagram 3 of unsurveyedTownship 12 South, Range 5 East, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 13 S., R. 5 E.
The plat, representing Amended Protraction Diagram 3 of unsurveyedTownship 13 South, Range 5 East, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 14 S., R. 5 E.
The plat, representing Amended Protraction Diagram 3 of unsurveyedTownship 14 South, Range 5 East, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 15 S., R. 5 E.
The plat, representing Amended Protraction Diagram 3 of unsurveyedTownship 15 South, Range 5 East, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

Tps. 1 and 2 N., Rs. 9, 10, and 12 W.
The plat, representing the Amended Protraction Diagram 13 Index of unsurveyedTownships 1 and 2 North, Ranges 9, 10, and 12 West, Principal Meridian,Montana, was accepted September 10, 2003.

T. 1 N., R. 10 W.
The plat, representing Amended Protraction Diagram 13 of unsurveyedTownship 1 North, Range 10 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 1 N., R. 12 W.
The plat, representing Amended Protraction Diagram 13 of unsurveyedTownship 1 North, Range 12 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 2 N., R. 9 W.
The plat, representing Amended Protraction Diagram 13 of unsurveyedTownship 2 North, Range 9 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 2 N., R. 10 W.
The plat, representing Amended Protraction Diagram 13 of unsurveyedTownship 2 North, Range 10 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

Tps. 1, 2, 3, and 4 N., Rs. 14 and 15 W.
The plat, representing the Amended Protraction Diagram 14 Index of unsurveyedTownships 1, 2, 3, and 4 North, Ranges 14 and 15 West, Principal Meridian,Montana, was accepted September 10, 2003.

T. 1 N., R. 14 W.
The plat, representing Amended Protraction Diagram 14 of unsurveyedTownship 1 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 2 N., R. 14 W.
The plat, representing Amended Protraction Diagram 14 of unsurveyedTownship 2 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 3 N., R. 14 W.
The plat, representing Amended Protraction Diagram 14 of unsurveyedTownship 3 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 4 N., R. 14 W.
The plat, representing Amended Protraction Diagram 14 of unsurveyedTownship 4 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 1 N., R. 15 W.
The plat, representing Amended Protraction Diagram 14 of unsurveyedTownship 1 North, Range 15 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 2 N., R. 15 W.
The plat, representing Amended Protraction Diagram 14 of unsurveyedTownship 2 North, Range 15 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 3 N., R. 15 W.
The plat, representing Amended Protraction Diagram 14 of unsurveyedTownship 3 North, Range 15 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 4 N., R. 15 W.
The plat, representing Amended Protraction Diagram 14 of unsurveyedTownship 4 North, Range 15 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

Tps. 21, 22, 23, and 24 N., Rs. 12, 13, 14, 15, and 16 W.
The plat, representing the Amended Protraction Diagram 34 Index of unsurveyedTownships 21, 22, 23, and 24 North, Ranges 12, 13, 14, 15, and 16 West,Principal Meridian, Montana, was accepted September 12, 2003.

T. 21 N., R. 12 W.
The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 21 North, Range 12 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 21 N., R. 13 W.
The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 21 North, Range 13 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 21 N., R. 14 W.
The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 21 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 22 N., R. 12 W.
The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 22 North, Range 12 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 22 N., R. 13 W.
The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 22 North, Range 13 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 22 N., R. 14 W.
The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 22 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 22 N., R. 15 W.
The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 22 North, Range 15 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 23 N., R. 12 W.
The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 23 North, Range 12 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 23 N., R. 13 W.
The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 23 North, Range 13 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 23 N., R. 14 W.
The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 23 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
T. 23 N., R. 15 W.
The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 23 North, Range 15 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
T. 23 N., R. 16 W.
The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 23 North, Range 16 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
T. 24 N., R. 12 W.
The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 24 North, Range 12 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
T. 24 N., R. 13 W.
The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 24 North, Range 13 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
T. 24 N., R. 14 W.
The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 24 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
T. 24 N., R. 15 W.
The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 24 North, Range 15 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
T. 24 N., R. 16 W.
The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 24 North, Range 16 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
Tps. 25, 26, 27, and 28 N., Rs. 13, 14, 15, and 16 W.
The plat, representing the Amended Protraction Diagram 37 Index of unsurveyedTownships 25, 26, 27, and 28 North, Ranges 13, 14, 15, and 16 West, PrincipalMeridian, Montana, was accepted September 12, 2003.
T. 25 N., R. 13 W.
The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 25 North, Range 13 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
T. 25 N., R. 14 W.
The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 25 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
T. 25 N., R. 15 W.
The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 25 North, Range 15 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
T. 25 N., R. 16 W.
The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 25 North, Range 16 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
T. 26 N., R. 13 W.
The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 26 North, Range 13 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
T. 26 N., R. 14 W.
The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 26 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
T. 26 N., R. 15 W.
The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 26 North, Range 15 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
T. 26 N., R. 16 W.
The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 26 North, Range 16 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
T. 27 N., R. 13 W.
The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 27 North, Range 13 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
T. 27 N., R. 14 W.
The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 27 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
T. 27 N., R. 15 W.
The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 27 North, Range 15 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
T. 27 N., R. 16 W.
The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 27 North, Range 16 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
T. 28 N., R. 13 W.
The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 28 North, Range 13 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
T. 28 N., R. 14 W.
The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 28 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
T. 28 N., R. 15 W.
The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 28 North, Range 15 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
T. 28 N., R. 16 W.
The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 28 North, Range 16 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.
Tps. 3 and 4 S., Rs. 17 and 18 W.
The plat, representing the Amended Protraction Diagram 53 Index of unsurveyed Townships 3 and 4 South, Ranges 17 and 18 West, Principal Meridian, Montana, was accepted September 10, 2003.
T. 3 S., R. 18 W.
The plat, representing Amended Protraction Diagram 53 of unsurveyedTownship 3 South, Range 18 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.
T. 4 S., R. 17 W.
The plat, representing Amended Protraction Diagram 53 of unsurveyedTownship 4 South, Range 17 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.
T. 4 S., R. 18 W.
The plat, representing Amended Protraction Diagram 53 of unsurveyedTownship 4 South, Range 18 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.
Tps. 5, 6, 7, and 8 S., Rs. 16, 17, and 18 W.
The plat, representing the Amended Protraction Diagram 54 Index of unsurveyedTownships 5, 6, 7, and 8 South, Ranges 16, 17, and 18 West, PrincipalMeridian, Montana, was accepted September 10, 2003.
T. 5 S., R. 16 W.
The plat, representing Amended Protraction Diagram 54 of unsurveyedTownship 5 South, Range 16 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.
T. 5 S., R. 17 W.
The plat, representing Amended Protraction Diagram 54 of unsurveyedTownship 5 South, Range 17 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.
T. 5 S., R. 18 W.
The plat, representing Amended Protraction Diagram 54 of unsurveyedTownship 5 South, Range 18 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 6 S., R. 17 W.

The plat, representing Amended Protraction Diagram 54 of unsurveyedTownship 6 South, Range 17 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 7 S., R. 16 W.

The plat, representing Amended Protraction Diagram 54 of unsurveyedTownship 7 South, Range 16 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 7 S., R. 17 W.

The plat, representing Amended Protraction Diagram 54 of unsurveyedTownship 7 South, Range 17 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 8 S., R. 16 W.

The plat, representing Amended Protraction Diagram 54 of unsurveyedTownship 8 South, Range 16 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

We will place copies of the plats of the amended protraction diagrams we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against these amended protraction diagrams, as shown on these plats, prior to the date of the official filings, we will stay the filings pending our consideration of the protest.

We will not officially file these plats of the amended protraction diagrams until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Dated: October 1, 2003.

Thomas M. Deiling,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 03–25579 Filed 10–8–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–933–03, 5410–10–A500; AZA–32409]

Notice of Receipt of Conveyance of Mineral Interest Application

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of minerals segregation.

SUMMARY: The reserved Federally-owned mineral interest, in the private lands described in this notice, aggregating approximately 4,000 acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws. The segregation is in response to an application for mineral conveyance under section 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1719).

FOR FURTHER INFORMATION CONTACT: Vivian Titus, Land Law Examiner, Arizona State Office, 222 N. Central Ave., Phoenix, Arizona 85004, (602) 417–9598.

SUPPLEMENTARY INFORMATION:

Gila and Salt River Base and Meridian, Yavapai County, Arizona

T. 4 N., R. 5 W.,
sec. 3, SW¼;
sec. 5, SE¼, SW¼;
sec. 8, W½;
sec. 9, All.
sec. 10, SE¼;
sec. 11, SE¼;
sec. 13, NW¼;
sec. 14, E½, SW¼;
sec. 15, W½, NE¼;
sec. 17, E½;
sec. 22, NE¼, SE¼;
sec. 23, W½, NE¼.

The reserved Federal mineral interests will be conveyed in whole or in part upon completion of a mineral examination. The purpose is to allow consolidation of surface and subsurface minerals ownership where there are no known mineral values or in those instances where the Federal mineral interest reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development. Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the lands covered by the mineral conveyance application are segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining and mineral leasing laws. The segregative effect shall terminate upon: issuance of a patent or deed of such mineral interest; upon final rejection of the mineral conveyance application; or October 11, 2005, whichever occurs first.

Dated: September 17, 2003.

Carl Rountree,

Associate State Director.

[FR Doc. 03–25613 Filed 10–8–03; 8:45 am]

BILLING CODE 4310–32–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional Nixon presidential historical materials. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (PRMPA, 44 U.S.C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR part 1275), the agency has identified, inventoried, and prepared for public access approximately 240 hours of Nixon White House tape recordings among the Nixon Presidential historical materials.

DATES: The National Archives and Records Administration (NARA) intends to make the materials described in this notice available to the public beginning December 10, 2003. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense on or before November 10, 2003.

ADDRESSES: The materials will be made available to the public at the National Archives at College Park research room, located at 8601 Adelphi Road, College Park, Maryland, beginning at 8:45 a.m.

Petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road, College Park, Maryland 20740–6001.

FOR FURTHER INFORMATION CONTACT: Karl Weissenbach, Director, Nixon Presidential Materials Staff, 301–837–3117.

SUPPLEMENTARY INFORMATION: NARA is proposing to open approximately 3073 conversations which were recorded at the Nixon White House from July 1972 to October 1972. These tape segments total approximately 240 hours of listening time.

This is the tenth opening of Nixon White House tapes since 1980. Previous releases included conversations constituting ''abuses of governmental power'' and conversations recorded in the Cabinet Room of the Nixon White House. NARA is processing the remaining tapes, which cover the period February 1971 to July 1973. The tapes now being proposed for opening consist of the fourth of five segments.

There are no transcripts for these tapes. Tape logs, prepared by NARA, are offered for public access as a finding aid to the tape segments and a guide for the

listener. There is a separate tape log entry for each segment of conversation released. Each tape log entry includes the names of participants; date, time, and location of the conversation; and an outline of the content of the conversation.

The tape recordings will be made available to the general public in the research room at 8601 Adelphi Road, College Park, Maryland, Monday through Friday between 8:45 a.m. and 4:30 p.m. Researchers must have a NARA researcher card, which they may obtain when they arrive at the facility. Listening stations will be available for public use on a first come, first served basis. NARA reserves the right to limit listening time in response to heavy demand. Copies of the tape log will be available for a fee in accordance with 36 CFR 1258.12.

Dated: October 1, 2003.

John W. Carlin,

Archivist of the United States.

[FR Doc. 03–25563 Filed 10–8–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board and Its Subdivisions; Sunshine Act Meeting

DATE AND TIME: October 15, 2003: 8 a.m.–5:30 p.m.

Concurrent Sessions:

8 a.m.–9:40 a.m.—Open Session
9:40 a.m.–10 a.m.—Closed Session
9 a.m.–10 a.m.—Open Session
10 a.m.–10:20 a.m.—Closed Session
10:20 a.m.–12 Noon—Open Session
12 Noon–12:30 p.m.—Open Session
12:30 p.m.–1 p.m.—Closed Session
1 p.m.–1:45 p.m.—Open Session
1:45 p.m.–2 p.m.—Closed Session
2 p.m.–4 p.m.—Open Session
4 p.m.–5 p.m.—Open Session

October 16, 2003: 8 a.m.–3:35 p.m.

Concurrent Sessions:

8 a.m.–9:15 a.m.—Closed Session
9:15 a.m.–10:30 a.m.—Open Session
10:45 a.m.–12:30 p.m.—Closed Session
1 p.m.–3:45 p.m.—Open Session

PLACE: The National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, *http://www.nsf.gov/nsb.*

FOR FURTHER INFORMATION CONTACT: NSF Information Center (703) 292–5111.

STATUS: Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

Matters To Be Considered

Wednesday, October 15, 2003

Open

Committee on Audit and Oversight (8 a.m.–9:40 a.m.) Room 1235:

- Minutes
- CFP Update
  - Advisory Committee on GPRA Performance Assessment
  - Business Analysis Update
  - National Academy of Public Administration's Review of NSF—Update
  - Federal Manager's Financial Integrity Act Reporting for FY 2003
  - Cost Sharing
- Presentation of the OIG FY 2004 Audit Plan

Subcommittee on S&E Indicators (9 a.m.–10 a.m.) Room 1295:

- Approval of Minutes
- Results of Agency Review
  - S&E Indicators 2004 Cover
  - S&E Indicators 2004 Companion Piece

Committee on Strategy and Budget (10:20 a.m.–12 noon) Room 1235:

- Approval of Minutes
- Review of Draft Report (required by Section 22 of the NSF Authorization Act)

Executive Committee (12 noon–12:30 p.m.) Room 1295:

- Minutes
- Guidelines for Closed NSB Sessions

Subcommittee on Polar Issues (1 p.m.–1:45 p.m.) Room 1235:

- Approval of Minutes
- OPP Director's Report:
  - International Polar Year Planning
  - Icebreaker Availability
  - Antarctic Treaty Issues
  - Tourism
  - Canada to Join ATCM
- Briefing on International Arctic Research Center
- Update on MREFC Projects
  - South Pole Station Modernization
  - LC–130 Conversion

Committee on Education and Human Resources (2 p.m.—4 p.m.) Room 1235:

- Minutes
  - Approval of Minutes
  - Comments from the Chair
  - Status of NWP Task Force Report
  - Reports form Working Groups (K–12, Undergraduate & Graduate)
  - Report from Subcommittee on S&E Indicators
  - Status Report on follow-up of the August 12th Workshop on Broadening Participation
  - Report from the EHR AD
  - New Business

Ad Hoc Task Group on Long-Lived Data Collections (4 p.m.–5 p.m.) Room 1235:

- Status Report on Workshop
  - Terms of Reference
  - Date
  - Invitees
  - Agenda
  - White Paper

Closed

Audit & Oversight (9:40 a.m.–10 a.m.) Room 1235:

- Briefing on an Active Investigation

Committee on Strategy & Budget (10 a.m.–10:20 a.m.) Room 1235:

- Budget Update

Executive Committee (12:30 p.m.–1 p.m.) Room 1295:

- Director's Items
  - Specific Personnel Matters
  - Future Budgets

Thursday, October 16, 2003

Open

Committee on Programs and Plans (9:15 a.m.–10:30 a.m.) Room 1235:

- Minutes/Announcements
- Long-lived Data Collections: Status Report
- Status of the Science & Technology Centers: Integrative Partnership Program
- Cyberinfrastructure
- Polar Subcommittee

Plenary Session of the Board (1 p.m.–3:45 p.m.) Room 1235:

- Minutes
- Closed Items, November 2003
- Chairman's Items
- Director's Items
- Discussion: Update on NSB Elections
- Presentation: Update on S&E visas
- Presentation: OMB Draft Peer Review Standards
- Committee Reports

Closed

Committee on Programs and Plans (8 a.m.–9:15 a.m.) Room 1235:

- NSB Award Action: Division of Ocean Sciences
- NSB Award Action: Division of Biological Infrastructure
- NSB Award Action: Office of Polar Programs

Plenary Session of the Board (10:45 a.m.–12:30 p.m.) Room 1235:

- Closed Minutes
- Award Actions
- Closed Session Committee Reports

Michael P. Crosby,

Executive Officer, NSB.

[FR Doc. 03–25847 Filed 10–7–03; 3:38 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–335 and 389]

Florida Power and Light Company, et al., St. Lucie Plant, Unit Nos. 1 and 2; Notice of Issuance of Renewed Facility Operating License Nos. DPR–67 and NPF–16 for an Additional 20-Year Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Renewed Facility Operating License Nos. DPR–67 and NPF–16 to Florida Power and Light Company (the licensee), the operator of the St. Lucie Plant, Unit Nos. 1 and 2 (St. Lucie, Units 1 and 2). Renewed Facility Operating License No. DPR–67 authorizes operation of St. Lucie, Unit 1, by the licensee at reactor core power levels not in excess of 2700 megawatts thermal in accordance with the provisions of the St. Lucie, Unit 1, renewed license and its Technical Specifications. Renewed Facility Operating License No. NPF–16 authorizes operation of St. Lucie, Unit 2, by the licensee at reactor core power levels not in excess of 2700 megawatts thermal in accordance with the provisions of the St. Lucie, Unit 2, renewed license and its Technical Specifications.

St. Lucie, Units 1 and 2, are pressurized, light water moderated and cooled, nuclear reactors located on Hutchinson Island in St. Lucie County, Florida.

The applications for the renewed licenses complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR chapter I, the Commission has made appropriate findings, which are set forth in each license. Prior public notice of the action involving the proposed issuance of these renewed licenses and of an opportunity for a hearing regarding the proposed issuance of these renewed licenses was published in the **Federal Register** on December 27, 2001 (66 FR 66946).

For further details with respect to this action, see (1) the Florida Power and Light Company's renewal application for St. Lucie, Units 1 and 2, dated November 29, 2001, as supplemented by letters dated January 8, June 25, August 26, September 26 (four letters), October 3, October 10, November 27, December 23, 2002, and January 9, February 4, March 27 (two letters), March 28, April 25, May 30, June 10, and June 23, 2003; (2) the Commission's safety evaluation report, September 2003 (NUREG–1779); (3) the licensee's updated final safety analysis report; and (4) the Commission's final environmental impact statements (NUREG–1437), Supplement 11, for St. Lucie, Units 1 and 2, dated May 19, 2003. These documents are available at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, first floor, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.*

Copies of Renewed Facility Operating License Nos. DPR–67 and NFP–16 may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of Regulatory Improvement Programs. Copies of the safety evaluation report (NUREG–1779), and the final environmental impact statements (NUREG–1437), Supplement 11, for St. Lucie, Units 1 and 2 may be purchased from the National Technical Information Service, Springfield, Virginia 22161–0002 (*http://www.ntis.gov*), 1–800–553–6847, or the Superintendent of Documents, U.S. Government Printing Office, requestor's Government Printing Office deposit account number or VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 2 day of October, 2003.

For The Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program,Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–25604 Filed 10–8–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Dominion Nuclear Connecticut, Inc., Millstone Power Station, Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of exemptions from Title 10 of the Code of Federal Regulations (10 CFR) part 50, section 50.44, section 50.46, and appendix K, for Facility Operating License No. NPF–49, issued to Dominion Nuclear Connecticut (the licensee), for operation of the Millstone Power Station, Unit No. 3 (MP3), located in Waterford, Connecticut. Therefore, pursuant to 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt MP3 from the requirements of 10 CFR part 50, section 50.44, section 50.46 and appendix K, to allow the use of up to eight Lead Test Assemblies (LTAs) fabricated with Optimized ZIRLO, a cladding material that contains a nominally lower tin content than previously approved cladding materials.

The proposed action is in accordance with the licensee's application dated July 1, 2003.

The Need for the Proposed Action

As the nuclear industry pursues longer operating cycles with increased fuel discharge burnups and more aggressive fuel management, the corrosion performance specifications for the nuclear fuel cladding become more demanding. Industry data indicates that corrosion resistance improves for cladding with a lower tin content. The optimum tin level provides a reduced corrosion rate while maintaining the benefits of mechanical strengthening and resistance to accelerated corrosion from abnormal chemistry conditions. In addition, fuel rod internal pressures (resulting from the increased fuel duty, use of integral fuel burnable absorbers and corrosion/temperature feedback effects) have become more limiting with respect to fuel rod design criteria. By reducing the associated corrosion buildup, and thus, minimizing temperature feedback effects, additional margin to fuel rod internal pressure design criteria is obtained.

As part of a program to address these issues, the Westinghouse Electric Company has developed an LTA program, in cooperation with the licensee, that includes a fuel cladding with a tin content lower than the currently licensed range for ZIRLO. The NRC's regulations in 10 CFR part 50, section 50.44, section 50.46, and appendix K, make no provision for use of fuel rods clad in a material other than Zircalloy or ZIRLO. The licensee has requested the use of up to eight LTAs with a tin composition that is less than that specified in the licensing basis for ZIRLO, as defined in Westinghouse design specifications. Therefore, use of the LTAs calls for exemptions from 10 CFR part 50, section 50.44, section 50.46, and appendix k.

Environmental Impacts of the Proposed Action

The NRC staff has completed its environmental evaluation of the

proposed action and concludes that the proposed exemptions would not increase the probability or consequences of accidents previously analyzed, and would not affect facility radiation levels or facility radiological effluents.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for MP3, dated December 1984.

Agencies and Persons Consulted

On August 22, 2003, the staff consulted with the Connecticut State official, Mr. Michael Firsick, of the Connecticut Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 1, 2003. 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 System (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's 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 2nd day of October 2003.

For The Nuclear Regulatory Commission.

James W. Clifford,

Chief, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–25605 Filed 10–8–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Meeting on Planning and Procedures, Revised Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on October 21, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, October 21, 2003—8:30 a.m.–10 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Howard J. Larson (Telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: October 2, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–25600 Filed 10–8–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 146th meeting on October 21–23, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, October 21, 2003

10:30 a.m.–10:40 a.m.: Opening Statement (Open)—The Chairman will open the meeting with brief opening remarks, outline the topics to be discussed, and indicate items of interest.

10:40 a.m.–12 Noon.: Summer Intern Project (Open)—The ACNW summer intern will provide her final report to the Committee on the project titled, ''Assessment Model Uncertainty in Performance Assessment.''

1 p.m.–1:30 p.m.: Biosphere Scenarios and Dose Calculation Working Group (Open)—The Committee will review the agenda and speakers for the Biosphere Working Group scheduled for February 24–26, 2004 in Rockville, Maryland.

1:30 p.m.–2 p.m.: Site Visit—Yucca Mountain, Nevada (Open)—The Committee will finalize its November 18, 2003, trip to Yucca Mountain and the Amargosa Valley, and its subsequent technical discussions in Las Vegas, NV with DOE representatives and stakeholders during the 147th ACNW Meeting, November 19–20, 3004.

2:15 p.m.–6 p.m.: Committee Retreat (Open/Closed)—The Committee will continue its discussion (from the 145th meeting) on technical topics it intends to examine over the next 12 to 18 months and ACNW activities and related matters.

Note: A portion of this session may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

Wednesday, October 22, 2003

8:30 a.m.–8:35 a.m.: Opening Statement (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–12:15 p.m.: Yucca Mountain Pre-Closure Safety and Drift Degradation Issues (Open)—The Committee will hear from representatives of the NRC staff on these issues. Presentations will include a summation of the status of related agreements, a demonstration of the pre-closure safety analysis tool, and the MECH–FAIL computer code used to evaluate drift degradation within a geologic repository.

1:30 p.m.–3:30 p.m.: Updated Staff Performance Assessment Code TPA 5.0 and Peer Review Comments (Open)—The Committee will hear from representatives of the NRC staff on the updated TPA Code 5.0 and how external peer review comments were incorporated into the code.

3:45 p.m.–4 p.m.: Waste Management—Related Safety Research Report (Open)—The Committee will discuss plans for ACNW review of NRC waste management-related safety research.

4 p.m.–6 p.m.: Preparation for Meeting with the NRC Commissioners (Open)—The next meeting with the NRC Commissioners is scheduled to be held at 10 a.m. in the Commissioners' Conference Room, One White Flint North on October 23, 2003. The Committee will review its proposed presentations.

Thursday, October 23, 2003

8:30 a.m.–8:35 a.m.: Opening Statement (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–9:30 a.m.: Update on Waste Management Topics (Open)—The Committee will receive its semi-annual update on waste management topics from the Director, Division of Waste Management, NMSS.

9:30 a.m.–9:45 a.m.: Discussion of Topics for Meeting with the NRC Commissioners (Open)—The Committee will discuss topics scheduled for the ACNW Meeting with the NRC Commissioners at 10 a.m.

10 a.m.–12 Noon: Meeting with the NRC Commissioners (Open)—The Committee will meet with the NRC Commissioners in the Commissioners' Conference Room, One White Flint North to discuss the following:

- Chairman's Report
- Status and Pathway to Closure on Key Technical Issues
- High-Level Waste Risk Insights
- Total System Performance Assessment (TSPA/TPA) Working Group
- Performance Confirmation Working Group

1 p.m.–2:45 p.m.: Preparation of ACNW Report (Open)—The Committee will discuss potential reports on Yucca Mountain Pre-Closure Safety and Drift Degradation Issues and Updated Staff Performance Code TPA 5.0 (tentative).

2:45 p.m.–3 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63459). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Mr. Howard J. Larson, Special Assistant (Telephone 301/415–6805), between 7:30 a.m. and 4 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: October 3, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–25602 Filed 10–8–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Consideration; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on September 18, 2003 (68 FR 54747). This action is necessary to correct an erroneous date.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–

0001, telephone (301) 415–7163, e-mail *mtl@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 54748, in the first column, in the fourth complete paragraph, in the first line, the date ''October 16, 2003'' should read ''October 20, 2003.''

Dated at Rockville, Maryland, this 3rd day of October, 2003.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 03–25603 Filed 10–8–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Circular A–4, Regulatory Analysis

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice.

SUMMARY: OMB announces the issuance of Circular A–4, Regulatory Analysis. This Circular provides the Office of Management and Budget's (OMB's) guidance to Federal agencies on the development of regulatory analysis as required under Section 6(a)(3)(c) of Executive Order 12866, ''Regulatory Planning and Review,'' the Regulatory Right-to-Know Act, and a variety of related authorities. The Circular also provides guidance to agencies on the regulatory accounting statements that are required under the Regulatory Right-to-Know Act. The new Circular can be accessed through the OMB Web site (*http://www.whitehouse.gov/omb/circulars/index.html*).

This Circular refines OMB's ''best practices'' document of 1996 (*http://www.whitehouse.gov/omb/inforeg/riaguide.html*), which was issued as a guidance in 2000 (*http://www.whitehouse.gov/omb/memoranda/m00–08.pdf*), and reaffirmed in 2001 (*http://www.whitehouse.gov/omb/memoranda/m01-23.html*). It replaces both the 1996 ''best practices'' and the 2000 guidance.

The effective date of this Circular is January 1, 2004 for regulatory analyses received by OMB in support of proposed rules, and January 1, 2005 for regulatory analyses received by OMB in support of final rules. In other words, this Circular applies to the regulatory analyses for draft proposed rules that are formally submitted to OIRA after December 31, 2003, and for draft final rules that are formally submitted to OIRA after December 31, 2004. (However, if the draft proposed rule is subject to the Circular, then the draft final rule will also be subject to the Circular, even if it is submitted prior to January 1, 2005.) To the extent practicable, agencies should comply earlier than these effective dates. Agencies may, on a case-by-case basis, seek a waiver from OMB if these effective dates are impractical.

A draft of this Circular was developed by OMB and the Council of Economic Advisors (CEA). The draft was subject to public comment, external peer review, and interagency review.

FOR FURTHER INFORMATION CONTACT: Keith Belton, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., New Executive Office Building, Room 10201, Washington, DC 20503 (tel. (202) 395–4815).

John D. Graham,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 03–25606 Filed 10–8–03; 8:45 am]

BILLING CODE 3110–01–P

PRESIDIO TRUST

Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice of public meeting.

SUMMARY: In accordance with § 103(c)(6) of the Presidio Trust Act, 16 U.S.C. § 460bb note, Title I of Public Law 104–333, 110 Stat. 4097, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held commencing 6:30 p.m. on Wednesday, October 29, 2003, at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purposes of this meeting are to: (1) Introduce the new members of the Board of the Trust; (2) provide the Executive Director's general status report; (3) hear from the three short-listed teams responding to a Request for Proposals for the rehabilitation and reuse of the Public Health Service Hospital (PHSH) complex; (4) receive oral scoping comments under the National Environmental Policy Act on the Trust's proposed environmental review for the PHSH project; and (5) receive public comment in accordance with the Trust's Public Outreach Policy.

TIME: The meeting will be held commencing at 6:30 p.m. on Wednesday, October 29, 2003.

ADDRESSES: The meeting will be held at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco.

FOR FURTHER INFORMATION CONTACT: Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: (415) 561–5300.

Dated: October 3, 2003.

Karen A. Cook,

General Counsel.

[FR Doc. 03–25585 Filed 10–8–03; 8:45 am]

BILLING CODE 4310–4R–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Vocational Report.

(2) *Form(s) submitted:* G–251.

(3) *OMB Number:* 3220–0141.

(4) *Expiration date of current OMB clearance:* 11/30/2003.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 6,000.

(8) *Total annual responses:* 6,000.

(9) *Total annual reporting hours:* 3,045.

(10) *Collection description:* Section 2 the Railroad Retirement Act provides for the payment of disability annuities to qualified employees and widower(s). The collection obtains the information needed to determine their ability to work.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room

10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–25567 Filed 10–8–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27733]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

October 3, 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 October 27, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 27, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Gulf Power Company (70–10154)

Gulf Power Company (''Gulf''), One Energy Place, Pensacola, Florida 32520, a wholly owned electric utility subsidiary of The Southern Company (''Southern''), 270 Peachtree Street, NW., Atlanta, Georgia 30303, a registered holding company, has filed an application-declaration (''Application'') under sections 6(a), 7, 9(a), 10 and 12 (b) of the Act and rules 45, 52 and 54. Gulf proposes to organize one or more subsidiaries for the purpose of effecting various financing transactions involving the issuance and sale of an aggregate of $150,000,000 of preferred securities, from time to time, through December 31, 2006.

In connection with the issuance of the preferred securities, Gulf proposes to organize one or more separate subsidiaries as a business trust under the laws of the State of Florida or a statutory trust under the laws of the State of Delaware or another comparable trust in any jurisdiction, or any other entity or structure, foreign or domestic, that is considered advantageous by Gulf (individually a ''Trust'' and collectively the ''Trusts'').[1] Gulf proposes that the Trusts will issue and sell from time to time preferred securities, as described in this Application (the ''Preferred Securities''), with a specified par or stated value or liquidation amount or preference per security. Gulf requests the Commission to reserve jurisdiction over the use of a foreign entity as a Trust.

Gulf has a total amount of $115,000,000 of Preferred Securities issued and outstanding through Trusts, as of June 30, 2003. The outstanding Preferred Securities were issued through Trusts rather than directly by Gulf as subordinated debt because certain rating agencies recognize preferred securities of this kind, issued through trusts, as having some equity content, rather than directly issued subordinated debt, which has no equity content. Gulf states that transactions of the Trusts are reported by Gulf on its financial statements and asserts that it is desirable for Gulf to continue to maintain a degree of similarity in its financial statements by issuing Preferred Securities through the Trusts rather than directly issuing subordinated debt.[2]

Gulf currently is authorized to issue Preferred Securities in an aggregate amount of up to $30,000,000 through December 31, 2005, pursuant to Commission orders dated January 16, 1998 and June 8, 2001 (HCAR No. 26817 and HCAR No. 27417, respectively). Gulf proposes that this Application's authorization of $150,000,000 supersede and replace the amounts remaining in these previous authorizations.

Gulf states that it will acquire all of the common stock of any Trust for an amount not less than the minimum required by any applicable law and not exceeding 21% of the total equity capitalization from time to time of the Trust (*i.e.*, the aggregate of the equity accounts of such Trust).[3] The aggregate of such investment by Gulf hereafter is referred to as the ''Equity Contribution.'' Gulf may issue and sell to any Trust, at any time or from time to time in one or more series, subordinated debentures, promissory notes or other debt instruments (individually a ''Note'' and collectively the ''Notes'') governed by an indenture or other document. The Trust will apply both the Equity Contribution made to it and the proceeds from the sale of Preferred Securities by it, from time to time, to purchase Notes. Alternatively, Gulf may enter into a loan agreement or agreements with any Trust under which the Trust will lend Gulf (individually a ''Loan'' and collectively the ''Loans'') both the Equity Contribution to the Trust and the proceeds from the sale of the Preferred Securities by the Trust, from time to

[1] Applicants state that the ability to use trusts in financing transactions can sometimes offer increased state and/or federal tax efficiency. Increased tax efficiency can result if a trust is located in a state or country that has tax laws that make the proposed financing transaction more tax efficient relative to the company's existing taxing jurisdiction. Decreasing tax exposure, however, is usually not the primary goal when establishing a trust. Use of a trust can provide potentially significant benefits to a company, even without a net improvement in its tax position. Trusts can increase a company's ability to access new sources of capital by enabling it to undertake financing transactions with features and terms attractive to a wider investor base. Trusts can be established in jurisdictions or on terms favorable to the sponsoring company and, at the same time, give targeted investors attractive incentives to invest and so provide financing. Many of these investors would not be participants in the company's bank group and, typically, would not hold company bonds or commercial paper. Consequently, they represent potential new sources of capital.

[2] Gulf notes that it reclassified $115,000,000 of outstanding mandatorily redeemable Preferred Securities as liabilities, effective July 1, 2003, pursuant to Financial Accounting Standards Board (''FASB'') Statement No. 150 ''Accounting for Certain Financial Instruments with the Characteristics of both Liabilities and Equity.'' In May 2003, FASB issued Statement 150, which requires reclassification of certain financial instruments within its scope, including shares that are mandatorily redeemable as liabilities, and Statement No. 150 is currently effective. Gulf states that the reclassification as a result of implementation of Statement No. 150 did not have a material effect on its Statements of Income and Cash Flows.

[3] The constituent instruments of each Trust, including its Trust Agreement, will provide, among other things, that the Trust's activities will be limited to the issuance and sale of Preferred Securities, from time to time, and the lending to Gulf of (i) the resulting proceeds, (ii) the Equity Contribution to the Trust, and (iii) certain other related activities. Consequently, Gulf proposes that a Trust's constituent instruments will not include any interest or dividend coverage nor will a Trust have capitalization ratio restrictions on its ability to issue and sell Preferred Securities. Because each issuance will be supported by a Note and Guaranty, capitalization ratio restrictions would not be relevant or necessary to enable a Trust to maintain an appropriate capital structure. Furthermore, each Trust's constituent instruments will state that its common stock is not transferable (except to certain permitted successors), that its business and affairs will be managed and controlled by Gulf (or permitted successor), and that Gulf (or permitted successor) will pay all expenses of the Trust.

time. Gulf will issue Notes, evidencing such borrowings, to the Trust.

Gulf also proposes to guarantee (individually a ''Guaranty'' and collectively the ''Guaranties'') (i) payment of dividends or distributions on the Preferred Securities of any Trust if, and to the extent, the Trust has funds legally available, (ii) payments to the Preferred Securities holders of amounts due upon liquidation of the Trust or redemption of the Preferred Securities of such Trust and (iii) certain additional amounts that may be payable by the Preferred Securities. Gulf's credit would support any Guaranty.

Gulf states that each Note will have a term of up to fifty (50) years. Prior to maturity, Gulf will pay interest only on the Notes at a rate equal to the dividend or distribution rate on the related series of Preferred Securities, which dividend or distribution rate may be either fixed or adjustable, to be determined on a periodic basis by auction or remarketing procedures, in accordance with a formula or formulae based upon certain reference rates, or by other predetermined methods.[4]

The interest payments will constitute each respective Trust's only income and will be used by it to pay dividends or distributions on its Preferred Securities and dividends or distributions on its common stock. Dividend payments or distributions on the Preferred Securities will be made on a monthly or other periodic basis and must be made to the extent that the Trust issuing the Preferred Securities has legally available funds and cash sufficient for such purposes. However, Gulf may have the right to defer payment of interest on any issue of Notes for five or more years. Each Trust will have the parallel right to defer dividend payments or distributions on the related series of Preferred Securities for five or more years, provided that, if dividends or distributions on the Preferred Securities of any series are not paid for eighteen (18) or more consecutive months, then the holders of the Preferred Securities of such series may have the right to appoint a trustee, special general partner or other special representative to enforce the Trust's rights under the related Note and Guaranty. The dividend or distribution rates, payment dates, redemption and other similar provisions of each series of Preferred Securities will be substantially identical to the interest rates, payment dates, redemption and other provisions of the Notes issued.

Gulf states that the Notes and related Guaranties will be subordinate to all other existing and future unsubordinated indebtedness for borrowed money of Gulf and will have no cross-default provisions with respect to other indebtedness of Gulf (*i.e.*, a default under any other outstanding indebtedness of Gulf would not result in a default under any Note or Guaranty). However, Gulf may be prohibited from declaring and paying dividends on its outstanding capital stock and making payments in respect of *pari passu* debt unless all payments then due under the Notes and Guaranties (without giving effect to the deferral rights discussed above) have been made.

The distribution rate to be borne by the Preferred Securities and the interest rate on the Notes will not exceed the greater of (i) 300 basis points over U.S. Treasury securities having comparable maturities or (ii) a gross spread over U.S. Treasury securities that is consistent with similar securities issued by other companies having comparable maturities and credit quality.

Gulf will use the proceeds from the sale of the securities in connection with its ongoing construction program, to pay scheduled maturities and/or refundings of its securities, to repay short-term indebtedness to the extent outstanding and for other general corporate purposes.

Gulf represents that it will maintain its common equity as a percentage of capitalization (inclusive of short-term debt) at no less than thirty (30) percent. Gulf further represents that no guaranties or other securities may be issued in reliance upon the requested authorization, unless (i) the security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of Gulf that are rated are rated investment grade; and (iii) all outstanding securities of Southern that are rated are rate investment grade. For purposes of this provision, a security will be deemed to be 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 Securities Exchange Act of 1934, as amended. Gulf requests that it, nevertheless, be permitted to issue a security that does not satisfy these conditions if the requirements of rule 52(a)(i) and rule 52(a)(iii) are met and the issue and sale of the security have been expressly authorized by the Florida Public Service Commission.[5] Gulf also requests the Commission to reserve jurisdiction over any guaranties or securities that do not satisfy these conditions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–25568 Filed 10–8–03; 8:45 am]

BILLING CODE 8010–01–P

[4] The Preferred Securities of any series may be redeemable at the option of the Trust issuing the series (with the consent or at the direction of Gulf) at a price equal to their par or stated value or liquidation amount or preference, plus any accrued and unpaid dividends or distributions, (i) at any time after a specified date not later than approximately ten (10) years from their date of issuance, or (ii) upon the occurrence of certain events, among them that (a) the Trust is required to withhold or deduct certain amounts in connection with dividend, distribution or other payments or is subject to federal income tax with respect to interest received on the Notes issued to the Trust, or (b) it is determined that the interest payments by Gulf on the related Notes are not deductible for income tax purposes, or (c) the Trust becomes subject to regulation as an ''investment company'' under the Investment Company Act of 1940, as amended. The Preferred Securities of any series may also be subject to mandatory redemption upon the occurrence of certain events. Gulf also may have the right in certain cases, or in its discretion, to exchange the Preferred Securities of any Trust for the Notes or other junior subordinated debt issued to the Trust. In addition, rather than issuing Preferred Securities of a Trust, Gulf may instead issue Notes or other junior subordinated debt directly to purchasers.

[5] Gulf is a Maine corporation doing business in the State of Florida and does not do business in the State of Maine.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48584; File No. SR–CSE–2003–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc., To Extend Its Liquidity Provider Fee and Rebate Pilot Program

October 2, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 2003, the Cincinnati Stock Exchange, Inc. (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has filed this proposal pursuant to section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) [4] thereunder, which renders the proposal effective upon filing with the Commission.[5] The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The CSE asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day

publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its pilot program for the Liquidity Provider Fee and Rebate (''Program'') through December 31, 2003. The pilot was originally proposed in SR–CSE–2002–16,[6] and is set to expire on September 30, 2003.[7] The CSE proposes no substantive changes to the Program, other than extending its operation through December 31, 2003. The text of the proposed rule change is available at the CSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 22, 2002, CSE filed SR–CSE–2002–16,[8] which proposed to establish a pilot transaction credit for liquidity providers that is paid by liquidity takers on each intra-CSE execution[9] in Nasdaq securities. Under the pilot, the Exchange amended CSE Rule 11.10A(g)(1) by adding subparagraph (B) to charge the liquidity taker, *i.e.*, the party executing against a previously displayed quote/order, $0.004 per share. The Exchange then passes on to the liquidity provider, *i.e.*, the party providing the displayed quote/order, $0.003 per share with the Exchange retaining $0.001 per share. With this rule filing, CSE is extending the Program through December 31, 2003.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act[10] in general, and furthers the objectives of section 6(b)(5)[11] in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest. The CSE believes that the proposed rule change is also consistent with section 6(b)(4) of the Act,[12] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CSE members by crediting members on a pro rata basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants orOthers

No written comments were solicited or received in connection with the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)[14] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay. The Commission believes that such waivers are consistent with the protection of investors and the public interest, for they will allow the pilot to continue without interruption. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CSE–2003–13 and should be submitted by October 30, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–25569 Filed 10–8–03; 8:45 am]

BILLING CODE 8010–01–P

operative delay. See Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] Securities Exchange Act Release No. 46848 (November 19, 2002), 67 FR 70793 (November 26, 2002) (''Original Pilot'').

[7] The pilot, which was originally set to expire on March 31, 2003, was subsequently extended until September 30, 2003. Securities Exchange Act Release No. 47596 (March 28, 2003), 68 FR 16594 (April 4, 2003) (SR–CSE–2003–03).

[8] See Original Pilot, supra note 6.

[9] An ''intra-CSE execution'' is any transaction that is executed on the Exchange for which the executing member on the buy-side of the transaction differs from the executing member on the sell-side of the transaction.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes only of accelerating the operative date of the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

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 November 5–6, 2003, at the Department of Veterans Affairs Central Office, 810 Vermont Ave, NW., Washington, DC. The meeting will be held in Room 930, beginning at 8 a.m. and concluding 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 and soldiers' lots and plots and on the selection of new national cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits. The Committee will make recommendations to the Secretary regarding these activities.

On November 5, the Committee will receive updates on the National Cemetery Administration's National Shrine Commitment, organizational assessment, and other issues related to the administration and maintenance of national cemeteries. The Committee will travel to Alexandria National Cemetery for talks related to the National Shrine Commitment.

On November 6, the Committee will receive an update on the construction of new national cemeteries and meeting veterans' burial needs. The meeting will conclude with any unfinished business and recommendations for future programs, meeting sites, and agenda topics.

No time will be allocated for receiving oral presentations from the public. Any member of the public wishing to attend the meeting is requested to contact Ms. Cynthia Riddle, Designated Federal Officer, at (202) 273–5223. The Committee will accept written comments; however, the writers must identify themselves and state the organizations, associations, or person(s) they represent. Comments can be transmitted electronically to the Committee at *Cynthia.riddle@mail.va.gov* or mailed to National Cemetery Administration (40), 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: October 2, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–25596 Filed 10–8–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee On Gulf War Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on October 27–28, 2003 at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 630, Washington, DC. The meeting on October 27 will convene at 8:30 a.m. and adjourn at 5 p.m. The meeting on October 28 will convene at 8:30 a.m. and adjourn at 3:30 p.m. Both meetings will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Persian Gulf War.

On October 27, the Committee will hear research presentations on birth defects and family health and identifying possible molecular targets of neurotoxic exposures in Gulf War illnesses. The Committee will also receive an update on VA-sponsored Gulf War research activities. On October 28, the committee will receive an update on published research. The committee will hear presentations on the following topics: possible role of vaccines in Gulf War veterans' illnesses, monitoring health outcomes in Gulf War veterans at VA and overview of federal research funding for Gulf War illnesses and chemical defense. Time will be available for public comment on both days.

Members of the public may submit written statements for the Committee's review to Ms. Laura O'Shea, Designated Federal Officer, Department of Veterans Affairs (008A1), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public seeking additional information should contact Ms. Laura O'Shea at (202) 273–5031.

Dated: October 1, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–25595 Filed 10–8–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 68, No. 196

Thursday, October 9, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 12

[CBP Decision 03–28]

RIN 1515-AD34

Import Restrictions Imposed on Archaeological Materials From Cambodia

Correction

In rule document 03–24085 beginning on page 55000 in the issue of Monday, September 22, 2003, make the following correction:

§12.104g [Corrected]

On page 55004, in §12.104g(a), in the table, under the heading ''T.D. No.'', ''CBP Dec. 03–BC28'' should read ''CBP Dec. 03–28''.

[FR Doc. C3–24085 Filed 10–8–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
October 9, 2003

Part II

Department of Labor

Office of Labor-Management Standards

29 CFR Parts 403 and 408
Labor Organization Annual Financial Reports; Final Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Parts 403 and 408

RIN 1215–AB34

Labor Organization Annual Financial Reports

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: The Department proposed to revise the forms used by labor organizations to file the annual financial report required by the Labor-Management Reporting and Disclosure Act (LMRDA). This document sets forth the Department's review of and response to comments on the proposal and the changes that will be made to the Form LM–2 used by the largest labor organizations to file the required report. The Department will require each labor organization that has annual receipts of $250,000 or more to file a Form LM–2 electronically and to itemize receipts and disbursements of $5,000 or more, as well as receipts not reported elsewhere from, or disbursements to, a single entity that total $5,000 or more in the reporting year, in specified categories. The Department has combined two proposed categories (''Contract Negotiation and Administration'' and ''Organizing'') into a single schedule entitled ''Representational Activities,'' added a category entitled ''Union Administration,'' combined the proposed categories for ''Political Activities'' and ''Lobbying'' into a single schedule, and eliminated the category entitled ''Other Disbursements.'' Reporting labor organizations will be permitted, however, to report sensitive information for some categories that might harm legitimate union or privacy interests with other non-itemized receipts and disbursements, provided the labor organization indicates that it has done so. Using this procedure, however, will constitute just cause for any union member to review the underlying data upon request. Moreover, under the statute (29 U.S.C. 436), the labor organization must maintain the records for inspection by the Department. The new Form LM–2 will have schedules for reporting information regarding delinquent accounts payable and receivable, but specific information need only be reported for accounts that total $5,000 or more during the reporting year. The revised Form LM–2 will require labor organizations to report investments that have a book value of over $5,000 and exceed 5% or more of the union's investments. A new schedule will require labor organizations to report the number of members by category, but will allow each labor organization to define the categories used for reporting. Reporting labor organizations must estimate the proportion of each officer's and employee's time spent in each of the functional categories on the Form LM–2 and report that percentage of gross salary in the relevant schedule.

Labor organizations that have $250,000 or more in annual receipts will be required to file a Form T–1 for any trust in which the labor organization is interested, if the trust has $250,000 or more in annual receipts and the labor organization contributed $10,000 or more to the trust during the reporting year, or that amount was contributed on the labor organization's behalf. Unions with less than $250,000 in annual receipts will not be subject to this requirement. No Form T–1 will be required if the trust files a report pursuant to 26 U.S.C. 527, or pursuant to the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1023 (ERISA), or if the organization files publicly available reports with a Federal or state agency as a Political Action Committee (PAC). Finally, a labor organization may substitute an audit that meets the criteria set forth in the Instructions for the financial information otherwise reported on a Form T–1 for a qualifying trust.

EFFECTIVE DATE: This rule will be effective on January 1, 2004, but will apply only to annual financial reports filed by unions for fiscal years beginning on or after January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Lary Yud, Deputy Director, Office of Labor-Management Standards (OLMS), U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5605, Washington, D.C., *olms-public@dol.gov,* (202) 693–1265 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Background

On December 27, 2002, the Department issued a notice of proposed rulemaking (67 FR 79820) proposing revisions of the forms used by labor organizations to file the annual financial reports required by section 201(b) of the LMRDA, 29 U.S.C. 431(b). As the notice explained, the proposed revisions were based upon the fact that the American workforce and labor organizations have changed dramatically over the last forty years and the fact that the form used by labor organizations to report financial information has not changed significantly in the same time period. The proposed revisions also reflected the Department's belief, based on the accumulated experience of investigators and other staff in the Employment Standards Administration's (ESA's) OLMS, that more detailed and transparent reporting of labor organizations' financial information would be more useful to union members, more effectively deter fraud, and enable OLMS investigators to more easily discover fraud when it occurs. Finally, the proposal noted the Department's view that, because of technological advances, these revisions will impose less burden on labor organizations than revisions proposed in previous years.

Before issuing this proposal, various Department officials met with many representatives of the regulated community, including union officials and their legal counsel, to hear their views on the need for reform and the likely impact of changes that might be made. The Department's proposal, developed with these discussions in mind, requested comments on numerous specific issues in order to base any revisions on a complete record reflecting the views of the parties affected and the Department's responses. In addition, the Department contracted with a professional provider of information technology services, SRA International (SRA), to assess the technical feasibility of electronically collecting and reporting the information that would be required by the proposed changes. The Department initially provided for a 60-day comment period, but later extended that period for an additional 30 days.

When the comment period closed, on March 27, 2003, ESA/OLMS had received over 35,000 comments. Most of the comments received were copies of approximately 110 different form letters signed by individuals who said they were members or officers of unions and commented in general terms. Although many of these form letters expressed opposition to the Department's proposal to revise the forms, many other form letters expressed support for the proposal. In addition, approximately 1,200 unique comments, including lengthy, substantive and specific comments, were received from union members, local, intermediate, national and international labor organizations, employers and trade organizations, public interest groups, accountants,

accounting firms, academicians, and Members of Congress. Some commenters addressed their comments to specific limited issues, others—most notably, the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO)—commented on virtually all aspects of the proposal. All comments have been carefully reviewed and considered. The Department's analysis of and responses to the comments are set forth below (*see* Sections II, III, and IV).

In addition, this rule makes minor changes to the forms and the Instructions that did not directly result from any comments. Many of these changes reflect the differences between the proposed and final rule, requiring the addition of lines to the forms, the re-labeling of others, and the combination of schedules. Many of the minor changes to the Instructions also reflect these differences. These differences are discussed in detail below in the Department's analysis of the comments. Many of the changes in the Instructions, however, simply correspond to changes in the format of the form and the need to rework the Instructions so that they inform the filers and the public, whether they rely on the electronic or paper formats, about how to complete and use the forms. In analyzing the comments and preparing the final rule, some inadvertent omissions were discovered, as were some ambiguities in the text of the Instructions, requiring the redrafting of some of the Instructions and, in some instances, changes to the form. In reviewing the schedules for reporting disbursements to officers and employees, it became apparent that a filer would benefit from seeing the names of the schedules from which information was to be obtained, and therefore line I in each schedule was revised to include the names of the five schedules.

The Department's review revealed some inadvertent omissions from the proposed Form LM–2. For example, in Schedule 12, lines 7 and 8 were omitted. The final form includes these lines. Line 7 will provide space for ''totals from continuation pages (if any),'' and line 8 will be used to report the ''total of lines 1–7.'' In Item 30, ''Schedule 8'' was omitted from the ''Form Schedule Number'' column. This omission has been corrected. The language of the attestation has been changed slightly to ensure that it complies substantially with 28 U.S.C. 1746.

In several other places, additional lines were added in order to reflect changes in the Instructions, including the need for additional lines to reflect subtotals of itemized and aggregated amounts for some categories or the need to add amounts from other parts of the form. Several titles of categories were revised to better reflect the information to be reported. Thus, the title of Item 36, ''Dues and Other Payments,'' has been changed to ''Dues and Agency Fees,'' the title of Schedule 1 was changed to ''Accounts Receivable Aging Schedule,'' and the title of Schedule 8 was changed to ''Accounts Payable Aging Schedule.'' In Schedule 9, ''Loans Payable,'' the Instructions were revised to state that interest paid must be reported in Schedule 18, ''General Overhead,'' in place of the reference to the now obsolete ''Other Disbursements Schedule.''

The text of the Instructions pertaining to some schedules and categories was revised where greater clarity was needed. Additional examples were included to assist filers in completing certain categories. For example, in Section X, a building corporation was added as an example of types of trusts, and new examples for ''Other Receipts'' were provided to better reflect the transactions to be reported on the schedule. Additional explanation for the ''Detailed Summary Page'' and the ''Initial Itemization Page'' was added. The ''Continuation Itemization Page'' was created for labor organizations that utilize the hardship exemption and do not file electronically. Some terms that might be unfamiliar to filers were explained, including terms such as ''net,'' ''basis,'' and ''book value.'' In Items 39 and 60, the following were added to illustrate items to be reported as supplies: union logo clothing, lapel pins, and bumper stickers.

Additional information about compliance assistance also was added. In the ''How to File'' section, filers are provided a website address for obtaining the filing software *www.olms.dol.gov;* the reference in the proposed instructions to a CD–ROM accompanying the report package was deleted as obsolete. Updated information is provided in the ''If You Need Assistance'' section at the end of the instructions. In Item 18, ''Changes in Constitution and Bylaws or Practices and Procedures,'' the language was revised to indicate that if the form is filed electronically, the constitution and bylaws must be submitted as an electronic attachment. In the second paragraph of the general instructions for completing Schedules 14 through 22, the statement relating to the compatibility of the Department's software was revised to reflect that the software will be compatible with the most commonly used electronic recordkeeping systems. A sentence was also added to indicate that information about the software and the technical specifications can be found at the OLMS Web site.

II. Comments on the Proposal and Responses to the Comments

A. General Comments

Before discussing the many specific comments that the Department received, it should be noted that the Department also received many comments that simply expressed general support for, or opposition to, the proposal. Union members, employers, and public interest organizations filed numerous general comments in support of the Department's proposed reform. One union member asked, ''Government is accountable to taxpayers and corporations are accountable to shareholders, shouldn't unions be accountable to dues-paying members?'' The commenters included a former vice president of a local union who expressed ''full support of the proposed anti-corruption initiative'' and wrote, ''We should all know how the money is being spent at every level.'' Other union members suggested that the proposal was ''long overdue.''

Some union members advocated more sweeping change. One union member commented, ''We need protection from our supposed labor leaders.'' Another commented, ''Just please be sure the unions cannot get around these [proposed] requirements through creative accounting tricks.'' A commenter who described himself as having been a union member for 33 years, wrote, ''I do not believe that these new regulations go far enough to hold unions more accountable.''

Some comments from union members centered on their difficulties in obtaining financial information from their union under the current reporting scheme. A shop steward said that repeated requests for information to the union leadership had ''gone unanswered'' and that he ''feel[s] it is time that unions be required to account for every penny of the dues they collect.'' Numerous other commenters joined in describing futile, or largely futile, attempts made to obtain information about union finances from the union leadership. Some commenters indicated that such requests for information generate resentment or invite retaliation from union leaders. Another union member wrote, ''You shouldn't have to beg or plead with your Business Manager/Agent to see financial reports for an organization you finance.''

Other commenters claimed to have witnessed questionable union expenditures, which increased disclosure would have revealed. Another comment asserted, ''Significant money is spent on items which many would consider a waste of funds if only the members knew.'' Others said that the greater detail in the proposed form ''will make thefts harder to cover up.'' Another member supported the initiative to ''help prevent fraud and corruption,'' as well as to permit ''informed decisions about workplace issues.'' A public interest organization commented that ''the information provided by the AFL–CIO in the Form LM–2 is not sufficient to give the average union member an accurate picture of how the AFL–CIO spends much of the dues collected.'' One commenter noted that requiring unions to estimate the amount of time spent by union officers and employees performing various duties will provide significant new information to union members. The commenter also stated that, together with reporting receipts and disbursements by functional categories, the proposed rule will provide information that will help ensure that union leadership is acting in the interests of its membership. Another public interest organization commented that more ''detailed financial reporting is needed'' to avoid ''waste, fraud and corruption.'' A 25-year union member stated, ''It will be a great victory for [the union's] membership when the reform is passed.''

Many commenters opposed the proposed changes, expressing their beliefs that the proposed rule is: political payback designed to punish organized labor; designed to weaken the union movement; intended to hamper the ability of unions to service their members; designed to strain union budgets; intended to expand the requirements of *Communication Workers of America* v. *Beck,* 487 U.S. 735 (1988); and intended to secure additional information for employers and anti-union organizations rather than union members. Although a number of unions and their members submitted helpful comments on the substance of the rule, some of the general comments in opposition simply criticized the Administration and Department officials, and lacked specific recommendations on the substance of the proposal. They nevertheless expressed strongly held feelings in opposition to the proposed changes.

Acknowledging that there are strong views on both sides of the issue, the Department has carefully considered all of the comments and the arguments made for and against the proposed revision of the forms used by labor organizations to report annual financial information as required by the LMRDA.

B. The Secretary's Statutory Authority

Some of the commenters questioned the Department's authority to make the proposed changes, arguing that the Department is upsetting the delicate balance between labor and management that was recognized by Congress in the National Labor Relations Act. Some unions complained that the proposal would require that labor organizations disclose confidential trade secrets, such as organizing strategy and negotiating plans, which some courts have ruled are not discoverable by union members and would give adversaries a greater knowledge of the inner workings of the labor organizations with which they may deal in connection with collective bargaining or organizing activities. These commenters argue that the Department's proposal is inconsistent with the principle that governmental intrusion into the affairs of labor organizations should be limited because the Constitution protects the right of association, there purportedly is no evidence that union members want this information, and, they alleged, other voluntary organizations are not subjected to this level of disclosure.

The Department takes seriously the concerns expressed that the proposed rule would intrude too deeply in the internal affairs of labor organizations and provide unfair advantages to the adversaries and competitors of such organizations. Accordingly, the Department has made numerous changes, described below, to avoid these unintended and unwanted results. In the Department's view, however, none of these changes is necessitated by any lack of authority on the part of the Department to revise the reporting forms or the manner in which reports must be filed. On the contrary, the LMRDA gives the Secretary of Labor authority to make such changes, for the reasons outlined in the Notice of Proposed Rulemaking (NPRM) and in this rule. Section 201(b) of the LMRDA, 29 U.S.C. 431(b), requires that:

> Every labor organization shall file annually with the Secretary a financial report signed by its president and treasurer or corresponding principal officers containing the following information *in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year* * * *

(Emphasis added.) In addition, section 208 of the LMRDA, 29 U.S.C. 438, states in part:

> The Secretary shall have authority to issue, amend and rescind rules and regulations prescribing the form and publication of reports required to be filed under this title and such other reasonable rules and regulations (including rules prescribing reports concerning trusts in which a labor organization is interested) as he may find necessary to prevent the circumvention or evasion of such reporting requirements.

These provisions make it clear that the Secretary has discretion to determine the format in which the information required by the statute must be provided, as well as the detail in which the information must be reported.

The statutory language describing the information that labor organizations are required to report is broad. Each labor organization must include in its annual financial report:

(1) Assets and liabilities at the beginning and end of the fiscal year;

(2) receipts of any kind and the sources thereof;

(3) salary, allowances and other direct or indirect disbursements (including reimbursed expenses) to each officer and also to each employee who, during such fiscal year, received more than $10,000 in the aggregate from such labor organization and any other labor organization affiliated with it or with which it is affiliated, or which is affiliated with the same national or international labor organization;

(4) direct and indirect loans made to any officer, employee, or member, which aggregated more than $250 during the fiscal year, together with a statement of the purposes, security, if any, and arrangements for repayment;

(5) direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment; and

(6) other disbursements made by it including the purposes thereof; all in such categories as the Secretary may prescribe.

29 U.S.C. 431(b)(1)–(6). Comments that the Secretary lacks authority to require that receipts and disbursements be itemized or that disbursements be reported in categories are inconsistent with the plain language of the statute. In fact, the statute authorizes the Secretary to require labor organizations to report every receipt and disbursement, in any amount, and in any categories prescribed by the Secretary. The statute's requirement that labor organizations report ''receipts'' and ''disbursements'' does not, as some comments argue, call for only aggregated receipts and disbursements. Neither the fact that the Secretary has not heretofore exercised the full extent

of her statutory authority nor the fact that forms previously required less detailed reporting diminishes the authority provided the Secretary by the LMRDA as enacted in 1959.

In the Department's view, this rule meets both the letter and the spirit of the LMRDA, both generally and with respect to its provisions specific to union reporting requirements. The rule promotes the two related overarching purposes of union reporting: to fully inform union members, on a yearly basis, about their union's ''financial condition and operations,'' 29 U.S.C. 431(b); and, by public disclosure of this information, to deter union officials and employees from abusing their stewardship duties and to allow members, the Department, and the public an opportunity to review a union's financial information as a check on the actions of its officials and employees. *See United States* v. *Budzanoski,* 462 F.2d 443, 450 (3d Cir.), *cert. denied,* 409 U.S. 949 (1972); *Int'l Bhd. of Teamsters, et al.* v. *Wirtz,* 346 F.2d 827, 831 (D.C. Cir. 1965). The Department's reforms also advance the LMRDA's declared purpose ''that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations.'' 29 U.S.C. 401(a).

The AFL–CIO commented that the proposed rule attempts to dictate to unions what they should treat as their ''most * * * important purposes'' in structuring their budgets and accounts and is contrary to the LMRDA insofar as the statute reflects the theory that, ''[g]iven certain minimum standards, 'individual members are fully competent to regulate union affairs' '' (*quoting* S. Rep. No. 85–1684, at 4–5 (1958)). In the view of the AFL–CIO, Congress deliberately established a two-step process, found in 29 U.S.C. 431, to inform members about their union's finances and operations. The process was established to protect unions from improper government intervention in their affairs and harassment from members that would divert them from their representational function. The first step requires the preparation of a financial report in such detail as needed to disclose the union's financial condition (29 U.S.C. 431(b)); the second step requires a union, upon a member's showing of just cause, to disclose additional information (29 U.S.C. 431(c)). In the AFL–CIO's view, the proposed rule collapses this two-part process and destroys protections for a union's confidentiality and trade secrets in violation of established protections.

In the Department's view, this argument is unpersuasive. The revised form calls for more detail than the previous form, but does not require disclosure of the underlying records necessary to verify the report. *See* 29 U.S.C. 431(c). The fact that the Secretary has exercised her authority to determine that more detailed financial information should be reported on a Form LM–2 than previously does not limit a union's ability to maintain additional information, in any format it desires, including the physical evidence of financial transactions (such as cancelled checks, bills, or receipts), nor does it eliminate each union member's right to examine such information, enforceable in district court upon a showing of ''just cause.'' Congress conditioned a union member's right to examine records necessary to verify the union's annual financial report on a showing of just cause in order to relieve unions from the harassment of repeated requests for documents based simply on curiosity. *See Kinslow* v. *American Postal Workers Union, Chicago Local,* 222 F.3d 269, 273 (7th Cir. 2000). This requirement, however, ''simply entails a showing that the union member had some reasonable basis to question the accuracy of the LM–2 or the documents on which it was based, or that information in the LM–2 has inspired reasonable questions about the way union funds were handled.'' *Id.* at 274; *see also Mallick* v. *Int'l Bhd. of Elec. Workers,* 749 F.2d 771, 781 (D.C. Cir. 1984). No matter how much detail a union provides on its Form LM–2, members have a right to examine the actual documents or other evidence of recorded transactions to determine, for example, whether the union accurately recorded the information. Moreover, as explained more fully below, in Section III(B)(2), in response to comments from numerous unions that making certain information available to the public at large would be harmful to legitimate interests, the Department will permit labor organizations to report some receipts and disbursements as part of the aggregated total, without specificity, provided, with limited exceptions, it indicates on the Form LM–2 that it has done so. If a labor organization uses this option, only those of its members who satisfy the ''just cause'' standard and the Department will be entitled to review the specific information related to these disbursements. Far from eliminating the method Congress provided members to review their union's finances in more detail pursuant to section 201(c), 29 U.S.C. 431(c), that statutory tool is central to these reforms.

C. Comparison With Reporting Requirements for Corporations and Non-Profit Organizations

Several commenters, asserting that corporate scandals have surpassed any union misconduct in recent years, argued that corporations should first be made to file disclosure reports like those proposed by the Department before unions are asked to do so. Some union members argued that labor organizations are already subject to more stringent reporting requirements than corporations or other non-profit organizations. Many commenters felt that unions are like small businesses and should be provided the same protections from intrusive reporting requirements that, they assert, small businesses are provided by the Department and other regulatory agencies.

Other commenters noted that corporations and their executives are subject to significantly more burdensome reporting requirements than are unions. One commenter noted that labor organizations, unlike corporations, are not subject to various external controls and scrutiny by such entities as Wall Street investment analysts, portfolio managers, financial media, and millions of shareholders. Another commenter found the comparison between labor organizations and corporations irrelevant because unlike commercial entities, which are accountable based on their profit or loss, labor unions are accountable only in terms of the stewardship responsibilities of their officers. One commenter also noted that like corporate disclosure requirements, which have been amended periodically, union disclosure requirements should be changed in order to keep pace with the times. Another commenter estimated that the reporting and disclosure burdens on businesses are many times the burden on labor organizations.

The Department has concluded that, while there are important differences among corporations, public interest organizations, and labor organizations, increased transparency is as important for labor organizations as for other such organizations. Moreover, for the reasons set forth below, the Department is not persuaded that the requirements imposed by this rule are more restrictive than those that apply to other entities. If anything, these requirements are less intrusive, less burdensome, and require less disclosure than reporting requirements governing other entities.

First, no comparison should be drawn between union reporting requirements and requirements imposed on a

privately held enterprise where the operator of the business is also the source of much of the venture's financing. Legally mandated financial disclosure regimes for both unions and publicly held corporations are designed primarily to address a fundamental problem common to both institutions: that managerial control of an entity lies beyond the direct control of the people who fund the entity. *See generally* Henn & Alexander, *Hornbook on Laws of Corporations § 186 et seq.* (1983). Corporate and union financial disclosure regimes are intended to reduce the informational advantages agents have over principals and permit principals to monitor and assess the performance of agents. *See* Fletcher, *Cyclopedia of the Law of Private Corporations §§ 2213 et seq.*, 6842–43 (perm. ed.), available on Westlaw at Fletcher-CYC. Adequate transparency encourages union officers and corporate directors (agents) who are elected by union members and corporate shareholders (principals) to conduct the business of their organizations in the best interests of the people who provide the operating funds. Agents failing to do so can be removed through the mechanisms of corporate and union democracy. *See Cyclopedia of the Law of Private Corporations § 351 et seq.*

In a privately held enterprise, where the operator of the business is also the source of the venture's financing, there is no principal to perform the monitoring and no agent to be monitored. *See generally Laws of Corporations § 257 et seq.; see also* Soderquist, *Understanding the Securities Laws* § 2:2.2 (2001), available on Westlaw at PLIREF–SECLAW. While privately held companies are required to make certain financial disclosures related to franchise taxes, Small Business Administration loans, Federal Communications Commission licenses and other regulatory schemes, these disclosures are designed to assess taxes, fees, or eligibility for government-provided benefits, not to ensure transparency of managerial performance. *See generally Cyclopedia of the Law of Private Corporations § 6666 et seq.* The only scenario in which it is instructive to compare the financial disclosure regime of a privately held company to a union is when a privately held firm creates a principal/agent relationship by accepting funding through the venture capital markets. This scenario, however, also offers no basis for comparison with the relationship between a union and its members because financial institutions and other entities that provide such funding can condition it on the disclosure of any financial information concerning the company seeking funding, can demand that the information be provided in any level of detail desired, and can use contractual remedies to enforce the condition. Union members, by contrast, are entitled only to the report that their union files with the Department of Labor pursuant to the LMRDA and, upon a showing of just cause, ''to examine any books, records, and accounts necessary to verify such report.'' 29 U.S.C. 431(b), (c).

Accordingly, the only reporting requirements applied to businesses that are relevant for comparison with the annual union financial report are those applied to publicly-traded companies. Generally speaking, the regulatory regime governing financial reporting by large and small public companies is much more extensive than the system that exists for labor organizations. *See generally* Hazen, *Law of Securities Regulation* §§ 3.2–3.7, 9.4 (2002), available on Westlaw at LAWSECREG; *Understanding the Securities Laws* § 2:2.2. Furthermore, the reporting requirements under the securities laws have been substantially increased since the enactment of the Sarbanes-Oxley Act, Pub. L. 107–204, 116 Stat. 745. *See generally* 68 FR 36636–01 *et seq.* (June 18, 2003) (amending various disclosure rules established by the Securities and Exchange Commission (''SEC''), including 17 CFR 240.13a–14, 240.13a–15, 240.15d–14, 240.15d–15, 249.220f). Labor organizations must file only one form a year, need not disclose qualitative information, and are not required to conduct certified audits of their financial statements. *See* 29 U.S.C. 431. The financial reporting scheme for public companies, as amended by the Sarbanes-Oxley Act, requires the disclosure of both quantitative and qualitative information and imposes strict audits and significant internal controls on public companies, their officers, directors, auditors, accountants and attorneys. *See generally* 17 CFR Parts 210–211, 228–32, 239, 241, 249 (Subparts A–D) (2003) (particularly provisions amended by 68 FR 4820 (Jan. 30, 2003), 68 FR 5110 (Jan. 31, 2003), 68 FR 15354–02 (Mar. 31, 2003), 68 FR 36636–01 (June 18, 2003). *See also* Bloomenthal, *Sarbanes-Oxley Act in Perspective* § 10 (2002), available on Westlaw at SEC–SOAP S 10. Small and large public companies are required to file annual and quarterly reports. *See* 17 CFR 240.13a–1 *et seq.; Cyclopedia of the Law of Private Corporations § 6842; Law of Securities Regulation* § 9.6[4]. All public companies must certify audits for the accuracy of information in their annual and quarterly reports. See 68 FR 36636 *et seq.* (discussed above); Bloomenthal & Wolff, *Securities and Federal Corporate Law* § 7:35.13 (2002). A substantial amount of quantitative financial information is contained in both annual and quarterly reports. These reports must disclose ''material'' financial information. *See Law of Securities Regulation* §§ 3.2–3.7, 9.4; *Understanding the Securities Laws* § 12–8; *Cyclopedia of the Law of Private Corporations* § 6862. In its Statement of Financial Accounting Concepts No. 2 (SFAC No. 2), the Financial Accounting Standards Board (FASB) stated the essence of the concept of materiality as follows:

> The omission or misstatement of an item in a financial report is material if, in the light of surrounding circumstances, the magnitude of the item is such that it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced by the inclusion or correction of the item.

Id. at ¶ 132. *See* discussion below in Section (II)(D). Due to the myriad factors involved in determining whether financial information meets this rather vague threshold, professional assistance is required. *See id.* at ¶¶ 123–132. As noted above, the SEC generally requires public companies to disclose in their annual reports ''material'' quantitative information on balance sheets or income statements related to numerous types of assets, accounts, and expenditures. *See Law of Securities Regulation* §§ 3.2–3.7, 9.4. Public companies must disclose ''material'' financial data on executive compensation, including: annual salary; bonuses; other annual compensation; restricted stock; and options. *Id.* They must also provide ''material'' quantitative information on computation of per share earnings and market risk. *Id.* The Sarbanes-Oxley Act added several additional categories of material, quantitative data that public companies must disclose, including disclosing in each annual and quarterly report all ''material'' off-balance sheet transactions, arrangements and obligations (including contingent obligations). *See* Title III, 116 Stat. 775, and Title IV, 116 Stat. 785.

Since its inception, the LM–2 reporting system has eschewed the use of a vague standard based on individualized judgments regarding materiality for determining what quantitative data a union must report, and has instead required specific information regarding all assets, liabilities and transactions. The Department has determined that it will

continue with this approach. This avoids forcing labor organizations to incur the expenses and burdens associated with making determinations about whether given items are ''material.'' Even those commenters that suggested that the Department should consider implementing a materiality standard recognized that such a standard would introduce an element of judgment in the reporting process with potential for complicating the investigative process. Although a commenter argued that such tradeoffs are similar to those necessitated by dollar thresholds for reporting, the Department believes that a dollar threshold is easier for reporting unions to apply, for the Department to enforce, and for union members to understand.

In addition to the detailed quantitative data, the annual and quarterly reports of large and small public companies must also disclose ''material'' qualitative data. *See Law of Securities Regulation* §§ 3.4, 3.6, 9.4. This includes narrative descriptions of ''material'' aspects of a company's businesses and principal products. *Id.* Public companies must also disclose information on relationships the company has that may have a ''material'' effect on current or future financial condition, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses of the company. *Id.* This includes an explanation of a company's dependence on customers whose loss would materially affect the company's financial health and an explanation of material changes in the mode of conducting business. *Id.* ''Material'' legal proceedings must be reported, including full identification of parties and the circumstances and basis of the proceedings. *Id.* ''Material'' property holdings must also be identified and described, including their use and any encumbrances upon them. *Id.*

Public companies are also required to make forward-looking statements about the future financial performance of the company, including analysis of all ''material'' risks facing the company. *Id.* Public companies must also report ''material'' information about market risk, such as potential loss in future earnings of cash flow based on changes in interest rates, foreign currency exchange rates, commodity prices and other relevant market factors. *Id.* A detailed explanation of internal controls and procedures must also be provided. *Id; see also* 68 FR 36636–01. The Department has decided not to require labor organizations to provide their members with any qualitative information on its finances, much less the detailed qualitative analysis public companies are required to disclose.

Following the passage of Sarbanes-Oxley, the SEC and the Public Company Accounting Oversight Board (''the Board'') oversee the audits of public companies; establish accounting and audit report standards and rules for public companies; and certify, investigate, inspect, and enforce compliance with standards applicable to professionals involved in the preparation of audits and financial reports by public companies. *See* Title I, 116 Stat. 750. Annual audits and financial reporting by public companies must be under the control of an audit committee composed exclusively of independent directors. *See* Title II, § 202, 116 Stat. 772–73; Title III, 116 Stat. 775–77. These independent committees must include at least one ''financial expert'' and are directly responsible for the appointment, compensation, and oversight of the certified firms that do private audits of public companies. *See* Title IV, § 408, 116 Stat. 790–91. To effectuate the whistleblower provisions of the Sarbanes-Oxley Act, these audit committees must also establish procedures for the receipt, retention and review of anonymous complaints by a public company's employees regarding accounting practices, internal financial controls, and auditing matters. *See* Title III, §§ 301–04, 116 Stat. 775–78. Public companies must give their audit committees the financial resources necessary to hire any independent advisors or attorneys required to carry out these responsibilities. *Id.*

The LMRDA does not require labor unions to perform any audits. It does not mandate that unions use governance structures that ensure independent oversight of financial operations, such as independent audit committees. Union members have no whistleblower rights. The Department does not enforce any independent system of certification, quality control, ethics, independence standards or other regulation of firms that some unions use to prepare annual Form LM–2 reports. There are also no restrictions on other services that a firm preparing Form LM–2 reports may perform for a labor organization. In contrast to the reviews the SEC performs on public companies not less than once every three years (*see* 15 U.S.C. 7266(c)), labor unions currently can expect, on average, to be audited by the Department of Labor approximately once every 150 years. Ten of the 25 largest unions have never been audited because of OLMS's limited resources.

Several commenters suggested that unions be required to file annual independent audits. Many unions, one individual commented, have constitutional provisions that already require an audit by an outside accounting firm. While some commenters argued that requiring unions to obtain annual audits is within the Department's statutory authority, no provision of the LMRDA vests the Secretary of Labor with any express authority to require unions to obtain audits and the Department has chosen not to attempt to impose such a requirement, to avoid imposing on the labor organizations that are not currently obtaining private audits any need to hire financial experts to conduct a qualitative analysis of the union's records. Simply permitting those unions that currently obtain annual audits to file whatever audit is currently performed is not likely to ensure that all of the statutorily-required information is reported, nor would it ensure that the information is provided in a standard format that is both readily understandable and accessible to union members. Information that may be meaningful to trained financial analysts or auditors may not be useful to many union members.

Accordingly, the statutory requirements, and the Secretary's longstanding implementation of those requirements, have been framed in terms of assets, liabilities, disbursements and receipts, rather than more general financial terms. The Department has concluded that continuing to require unions to report holdings and transactions, rather than third-party descriptions of their financial conditions, will provide understandable information to members, permit members to compare reports of different years, permit members to compare reports with those of other unions, and enhance the detection and deterrence of fraud.

Alternatively, commenters suggested, the Department should annually conduct a compliance audit of each union. The Department's responsibility for insuring the financial integrity of unions involves both requiring adequate reporting and conducting compliance audits. The statute does not contemplate the two components as mutually exclusive; in fact, the Department intends to increase the number of compliance audits, as resources permit, at the same time it implements the revised Form LM–2. Additional compliance audits would not, however, constitute a satisfactory alternative to the reforms embodied in the revised Form LM–2, as compliance audits would address the accuracy of the information provided in the existing

Form LM–2, but would not improve the transparency of labor organizations' finances, increase the information available to members, or make the data disclosed in reports more understandable and accessible.

As one commenter noted, it is even more difficult to deter financial mismanagement by labor organization officials than it is in a corporate setting because of the absence of natural market influences and because there are fewer regularly occurring checks on the financial performance of unions. The same commenter noted that the additional disclosure as a result of the proposed changes would make it more difficult, and more expensive, to hide fraud. Recognizing that achieving this goal will also make it more expensive for unions to report, and that disclosure alone will reduce but not entirely overcome fraud, the Department has attempted to achieve a balance in this rule between the benefits and burdens of more detailed disclosure, and intends to follow promulgation of the rule both with more effective enforcement, using the additional information disclosed to uncover fraud when it occurs, and with more compliance assistance to respond to questions and concerns.

The Department is also not persuaded by the comments that suggest that the reporting requirements for labor organizations should be comparable to those that govern non-profit organizations. The LMRDA was enacted in the aftermath of a congressional investigation in the 1950's that found corruption in union leadership and a disregard for the rights of the rank-and-file. *See Wirtz* v. *Hotel, Motel & Club Emp. Union, Local 6,* 391 U.S. 492, 497–98 (1968). The over-riding purpose of the reporting provisions of the LMRDA is to provide union members with ''all the vital information necessary for them to take effective action in regulating affairs of their organization.'' *See* S. Rep. 187, 86th Cong., 1st Session, p.9, 1959 U.S.C.C.A.N. 2318, 2325 (1959). The Senate Labor Committee declared: ''A union treasury should not be managed as the private property of union officers, however well intentioned, but as a fund governed by fiduciary standards appropriate to this type of organization. The members who are the real owners of the money and property of the organization are entitled to a full accounting of all transactions involving their property.'' *See* S. Rep. 187 at p. 8, 1959 U.S.C.C.A.N. at 2324. In light of these congressional directives, the Department is not persuaded as a general matter that a comparison between labor organizations and ordinary non-profit organizations is apt in the context of determining reporting standards. Nevertheless, although other reporting standards will not be treated as benchmarks or models, the Department has considered the specific comments of labor organizations and others in assessing the appropriateness of each proposed change to the reporting forms, as discussed in the succeeding sections.

D. Application of Generally Accepted Accounting Principles

Some commenters argued that the changes proposed by the Department depart from the generally accepted accounting principles (GAAP) promulgated by the FASB and the American Institute of Certified Public Accountants (AICPA). In particular, this position was advanced by a professor of accountancy whose comments were made on behalf of, and attached to the comment of, the AFL–CIO. This commenter said that many of the terms used and information required by the Department's proposal are inconsistent with various interpretations of GAAP. These assertions fail to recognize, however, that not all GAAP standards are consistent with the disclosure requirement of the LMRDA. 29 U.S.C. 431(b). Although the Department has considered the GAAP standards, and has accepted them in principle where they further the purposes of the LMRDA, the Department will not adopt GAAP standards when they are not consistent with these purposes. For example, as many commenters noted, the current Form LM–2 mandates reporting on a cash accounting basis, which is inconsistent with GAAP, but some cash accounting procedures are made necessary by the statute's requirement that the union disclose ''receipts'' and ''disbursements.'' *See* 29 U.S.C. 431(b). Further, Form LM–2 is a special-purpose financial report prepared for compliance with the LMRDA. Special financial reports to government regulatory bodies are generally prepared in conformity with Other Comprehensive Basis Of Accounting (OCBOA).

This commenter also argued that the Department's proposal calls for the presentation of disaggregated information, which is contrary to GAAP and confusing for the user of the reported information. Although GAAP precepts do not control the inquiry, the revised Form LM–2, like the current Form LM–2, includes Statements A and B, which provide aggregated totals of financial information. Form LM–2 users do not have to rely solely on the itemized information contained in the schedules to obtain an overall understanding of the reporting labor organization's financial performance. The Department proposed requiring labor organizations to provide certain itemized information in addition to the aggregated totals in order to provide users of the Form LM–2 with additional financial information on specific financial issues. In fact, the FASB recognizes the appropriate inclusion of disaggregated information in financial reporting:

> Disaggregated information that permits users of financial information to relate components of revenues to components of expenses also is often preferable to information provided by their aggregated amounts.

Financial Accounting Standard 117 (FAS 117), ¶ 118.

Several commenters asserted that the individual items reported on the Form LM–2 supporting schedules in and of themselves are not material financial information that will be relevant to the user. The FASB states that materiality of information is not measured solely on its magnitude. SFAC No. 2. ''Materiality is a pervasive concept that relates to the qualitative characteristics, especially relevance and reliability.'' *Id.* The Supreme Court, in deciding whether an omitted fact was material, described a general standard of materiality as:

> A substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable shareholder. Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ''total mix'' of information made available.

TSC Industries Inc. v. *Northway Inc.,* 426 U.S. 438, 449 (1976). The FASB agrees that the ''usefulness of information must be evaluated in relation to the purposes to be served, and the objectives of financial reporting are focused on the use of accounting information in decision making.'' *Id.* The Department has concluded, based on the experience of its investigators and the comments received from many union members, that the information that will be reported as a result of this revision of the Form LM–2, in fact, will have the capacity to make a difference in the ability of union members to make decisions regarding workplace and union governance issues. As indicated in Section III(B)(3), (4), the proper threshold for when a union must itemize and separately report a receipt or expenditure is subject to competing arguments. Setting the threshold lower (or eliminating it entirely) increases the number of receipts and expenditures

that must be reported, which correspondingly increases the information available for inspection. The availability of this information makes concealment of fraud more difficult, and allows members to evaluate the wisdom of the union's financial transactions. The threshold is significant: union members ordinarily protect their rights by reviewing these reports, unlike investors in public corporations and other individuals protected by the audit, oversight, and whistleblower provisions discussed in Section II(C). While a strong argument could be made that all expenditures are thus significant and should be itemized, a lower threshold would increase the accounting burden. The $5,000 threshold adopted strikes a balance between the opposing viewpoints. Thus, while the revised form neither permits nor necessitates individual assessments of the materiality of information about particular transactions, it requires the disclosure of information that is significant to union members.

Commenters also argued that proposed Form LM–2 violates GAAP because the costs of reporting the information exceed the benefits to users of the information. While the costs of the revised Form LM–2 are addressed in more detail in the Regulatory Flexibility and Paperwork Reduction Act Analyses, *see* Section V, the Department has determined that these costs are outweighed by benefits. FASB and other government regulatory bodies have discovered that the total benefits derived from shared information are nearly impossible to quantify. Information is different from other commodities because the benefits from information can extend beyond the immediate users. The revised Form LM–2 directly benefits union members because increased disclosure permits members to make better decisions about union governance and helps deter and detect fraud. The public also benefits from the deterrence of fraud, due to the costs fraud imposes on, for example, the criminal justice system, and from the promotion of ethical conduct in the administration of labor organization affairs, which increases the stability of labor organizations, and thus promotes the flow of commerce. *See* 29 U.S.C. 401 (''Declaration of Findings, Purposes, and Policy''). The information required on the revised Form LM–2 thus benefits a wide variety of users, which is consistent with SFAC No. 2, ¶ 143.

Commenters noted several issues related to the application of FAS 117, Financial Statements of Not-For-Profit Organizations, to labor organization financial reporting. The FASB has opined regarding the appropriate scope of financial statements for not-for-profit organizations:

> A complete set of financial statements of a not-for-profit organization shall include a statement of financial position as of the end of the reporting period, a statement of activities and a statement of cash flows for the reporting period, and accompanying notes to financial statements. FAS 117, ¶ 6.

FAS 117, however, applies only broad, general standards for reporting information in not-for-profit organization financial statements (FAS 117, ¶ 48), and the FASB recognizes that general purpose financial statements may not fulfill the special-purpose needs of regulatory requirements like those imposed by the LMRDA (FAS 117, ¶ 45). Even not-for-profit organizations subject to FAS 17 are required to report expenses by functional categories and to allocate costs among significant programs as applicable (*see* FAS 117, ¶ ¶ 26–28) because of differences in indicators of performance as compared to for-profit business organizations (FAS 117, ¶ 61).

Comments on the Department's proposal indicate some confusion regarding the question whether revisions to Form LM–2 will require labor organizations to maintain their financial records using a cash basis or accrual method. Some unions and individuals have read the proposed rules to require unions to maintain their financial records system on an accrual basis. In this regard, some of the commenters noted that Schedule 1 of the proposed Form LM–2 requires reporting of receivables, a concept associated with accrual accounting. Some of the commenters also expressed their view that the majority of unions use the cash method of accounting and that it would be a substantial burden for them to make the conversion to the accrual method. Some of the commenters also noted that cash basis reporting comports with IRS requirements.

A local union explained that its accounting system uses the cash basis method. It noted that the proposed Schedule 1 (Accounts Receivable) and Schedule 8 (Accounts Payable) call for information maintained by systems set up on the accrual method of accounting. The local explained that this information is not readily available from cash basis systems, noting that commercial accounting systems track income and expenses, not receipts and disbursements. The local expressed its concern that it would be able to provide the accounts receivable and accounts payable information only by undertaking manual searches through voluminous records. It also noted a specific concern regarding the reporting of membership information, noting that its system to track membership is not integrated with its general ledger, with the result that it has no general ledger account set up to capture written off or uncollected dues income. Similarly, one labor organization noted concerns with regard to reporting accounts receivable and accounts payable (insofar as they require ''aging'' information). The commenter explained that this change would require it to spend considerable additional time to properly complete a Form LM–2. It explained that many local unions have members' dues sent to third parties or their particular international and that the locals' portion of the dues is only later remitted to the locals. One commenter stated that the cash basis method better effectuates the LMRDA's focus on receipts and disbursements.

Some commenters, however, read the proposed rules as continuing the cash basis requirement. In their comments, they requested that the Department, as part of the final rule, allow unions the option to utilize the accrual method of accounting. In support of this approach, they noted that accrual accounting is required by GAAP, reflecting, in their view, the belief that accrual accounting provides a more effective gauge of an organization's financial condition. In this regard, one commenter noted that the Department itself once recognized, when it proposed revisions to the Form LM–2 in 1992 (later withdrawn in part), that ''accrual accounting generally provides a more accurate indication of an organization's financial condition and operations.'' 57 FR 49282 (Oct. 30, 1992). Other commenters noted that the current cash basis requirement forces them to convert information in their accrual-based system for the sole purpose of submitting a Form LM–2, an expensive and time-consuming undertaking. One labor organization noted that its accounting personnel last year spent nearly half of the 1,200 hours it spent in preparing the Form LM–2 in converting information from its accrual-based system to a cash basis mode. Several commenters also noted that the IRS accepts reports using the accrual method of accounting.

An international labor organization, the Air Line Pilots Association (ALPA), explained that it uses an accrual system to collect detailed information for its payroll, employee expense reports, member accounts receivable, and flight pay loss. ALPA noted that the current requirement that unions employ the cash method in preparing a Form LM–2 requires time-consuming conversion

of ALPA's financial information, preventing it from ever meeting the March 31 deadline imposed by the LMRDA. Another international, the International Brotherhood of Electrical Workers (IBEW), stated that it maintains its books on an accrual basis for two reasons: first, it enables the organization to match revenue and expenses to the proper time period; and second, it enables the organization to comply with accounting rules and to receive an ''unqualified'' opinion from an independent auditor as to the organization's financial health.

In the Department's 1992 rulemaking, the Department specifically proposed that unions would be required to utilize the accrual accounting method. In response to the comments submitted, however, the 1992 final rule allowed unions the option to utilize either the cash or accrual method of accounting in reporting their finances. This option was rescinded in December 1993. This action was taken in response to comments that only relatively few of the larger unions used the accrual method and to correct the mistaken perception held by some unions that the Department's rule, in practice, was encouraging unions to utilize accrual accounting, a departure from the cash basis method that had been prescribed for reports in the past and the method used by the vast majority of unions. One union commenter on the current rule, however, asserted that the option concept was well thought-out because it recognized that although some unions used the accrual method of accounting, imposing this method on many smaller unions would present a real hardship to these unions because they rely on volunteers, not accountants, to prepare the Form LM–2. As discussed immediately below, this option is indeed available to unions, which may choose to track their finances on a cash basis, accrual basis or some other method of accounting.

Since the 1992 rule was rescinded, the Form LM–2 has, in fact, required that receipts and disbursements be reported on a cash basis, but has also required the reporting of certain information more typically maintained in an accrual-based system (*e.g.*, Schedule 1 ''Loans Receivable, Schedule 8 ''Loans Payable, Accounts Payable, Mortgages Payable). Thus, requiring a combination of both types of information in one form, which might be characterized as modified cash basis accounting, represents no change from the existing Form LM–2 and was not identified as a change in the NPRM. The statement in the Instructions to the existing Form LM–2 that the form ''must be prepared using the cash method of accounting,'' was dropped, however, as it was not wholly accurate and could be misleading.

As explained in greater detail below, the Department has not proposed to require unions to establish a particular method to account for, and manage, their finances. Unions, for various reasons, may choose to track their finances on a cash basis, accrual basis, a hybrid of the two, or some other method of accounting. As noted by some commenters, the Form LM–2 reporting format requires unions to utilize some elements of both cash basis and accrual accounting. To a large extent, however, that format is driven by the fact that the statute itself requires both types of information. For example, the statement of ''receipts and disbursements'' required by the LMRDA is basically an accounting of the inflow and outflow of an organization's cash during the fiscal period. Consequently, a ''profit and loss'' statement prepared on the accrual basis is unacceptable as compliance with the Act since it reflects the income and expenses of an organization in the fiscal period and not the disposition of its cash. *See* 29 U.S.C. 431(b).

In contrast, the statement of ''assets and liabilities'' required by the LMRDA is essentially an accrual type of statement and provides for reporting all receivables, payables, accruals and deferred items. Consequently, it should be unnecessary for an organization that maintains its records on the accrual system of accounting to change its procedures in order to prepare the statement of assets and liabilities. Preparation of a ''cash receipts and disbursement'' statement when the accrual method of accounting is used normally requires only an analysis of the organization's cash receipts and disbursements records in order to properly reclassify the necessary cash transactions to conform to the types of accounting classifications represented by like items on the prescribed forms. More importantly, the necessary modifications to either a cash based or accrual based system that may be necessary to comply with the format of the revised Form LM–2 are no different than modifications that labor organizations currently perform to file the existing Form LM–2.

The Department believes it would be inappropriate to dictate the particular system by which a union keeps track of its finances. While some unions may find it easier to use the accrual method of accounting and convert information to complete Form LM–2 items reporting the inflow and outflow of funds, the reporting goals can be achieved without directing all unions to use accrual accounting as the foundation of their financial management systems. Such a mandate is unnecessary and has been rejected in light of the comments that most unions maintain their books on the cash basis. Nor is the Department persuaded that accrual accounting should be mandated because it accords with GAAP. As discussed above, GAAP practices are neither binding nor necessarily appropriate for all aspects of financial reporting, particularly insofar as the operations of not-for-profit entities are concerned. The Department's concern is in ensuring the disclosure of information that satisfies the statutory requirements of the LMRDA in a manner best suited to meet the purposes of the statute, which can be accomplished without requiring a labor organization to use an accounting method that may not be best suited to its overall needs.

E. Additional Reforms Considered

Several commenters suggested that the Department should undertake other reforms, in addition to those proposed. While some comments expressed general support for wide dissemination of information filed with the Department of Labor on the labor organization annual financial reports, others thought that more specific dissemination requirements should be imposed. One commenter suggested that unions be required to post their most recent labor organization annual financial report on union bulletin boards in union halls and on employer bulletin boards reserved for union use in employer workplaces, while another suggested that labor organizations should make their annual financial reports available at their membership meetings. One comment suggested that information reported on the labor organization annual financial reports should be sent by unions to their members by mail or included in newsletters, as well as be made available on the Internet. Finally, one comment urged the Department to implement the provisions of section 105 of the LMRDA, requiring ''[e]very labor organization [to] inform its members concerning the provisions of this Act.'' *See* 29 U.S.C. 415.

Section 205 of the LMRDA provides that the reports filed with the Department under Title II of the Act ''shall be public information'' and permits the Secretary of Labor to publish any information obtained. *See* 29 U.S.C. 435. Section 208 gives the Secretary of Labor authority to issue rules and regulations prescribing the

form and publication of reports required to be filed under Title II. *See* 29 U.S.C. 438. Neither sections 205 and 208 nor any other provision of the Act expressly vest the Secretary of Labor with any authority to require labor organizations to disseminate information filed with the Department of Labor on labor organization annual financial reports at membership meetings, on labor organization websites, in labor organization newsletters or otherwise by mail to the members, or on union or employer bulletin boards. Neither the terms of section 105, nor of any other provision of the LMRDA, vest the Secretary of Labor with any express authority to enforce section 105. *See* 29 U.S.C. 415.

The Department, however, has developed and implemented, with direction from Congress to do so, an extensive system for making available on the Internet the labor organization annual financial reports filed with the Department for the years 2000 and thereafter, as well as reports filed under section 203 of the LMRDA by labor relations consultants who engage in persuader activity and the employers who enter into agreements for such services. *See* 29 U.S.C. 433. Using this system, any member of a labor organization or the general public with Internet access can review all such reports (at *http://union-reports.dol.gov*) except those for the approximately 600 very small labor organizations whose national organizations file summary reports on their behalf pursuant to 29 CFR 403.4(b) because those small unions had no assets, liabilities, receipts, or disbursements during the reporting period.

III. Responses to Comments on Proposed Changes to Form LM–2

A. Which Labor Organizations Must File a Form LM–2

1. The Filing Threshold

Since 1994, only labor organizations with $200,000 or more in annual receipts have been required to file a Form LM–2; smaller unions are permitted to use the simpler Forms LM–3 or LM–4. Although the Department considered raising the threshold for filing a Form LM–2 in its 2002 NPRM, thus reducing the number of labor organizations affected by most of the changes proposed, it did not propose an increase. The Department did solicit comments, however, on the appropriate level of annual receipts to trigger a Form LM–2 obligation. Some commenters expressed the view that the current threshold is too high and some argued that all unions should be required to file the expanded form, without regard to the amount of their annual receipts. Other commenters argued that the current threshold is too low and should be raised.

Shortly after the LMRDA was enacted in 1959, the threshold for filing the more detailed Form LM–2 was set by the Secretary at $20,000. The threshold was raised by the Secretary in 1962 to $30,000 and again in 1981 to $100,000. If any of these levels were now adjusted for inflation, the amount would be less than the current threshold of $200,000. Nevertheless, the Department has decided to raise the threshold to $250,000, an amount that approximates an inflation adjustment of the current threshold. Although the overwhelming majority (79%) of all reporting labor organizations are currently exempt from filing Form LM–2, changing the threshold to $250,000 will reduce the recordkeeping and reporting burden for approximately 500 labor organizations. The Department will continue its past practice of periodically assessing the appropriateness of the filing threshold to ensure that it is relevant in terms of the current economy.

A number of labor organizations commented that the Department should permit unions to ''pass through'' funds received during the reporting period like per capita fees collected by local unions for transmission to a national or international labor organization and/or to use net dollar figures in order to avoid meeting the filing threshold. This concern should be alleviated somewhat by increasing the filing threshold to $250,000 but, more importantly, the Department does not agree that the concern is valid. Labor organizations should be accountable for all funds received and in their custody or control during the reporting period. Members who pay dues and per capita fees to their locals have a right to know what action their local took with respect to those funds. Similarly, members have a right to know how much money came into their union during the year, not just the net amount left at year's end.

Several commenters, including the AFL–CIO, cited the situation where a small labor organization with a history of filing either Form LM–3 or LM–4, *i.e.*, one with annual receipts below $200,000, by virtue of an unusual event during the year had receipts boosted to in excess of $200,000. For example, a small union with consistent annual receipts of $50,000 sells a surplus piece of real estate for $200,000, resulting in annual receipts for that year of $250,000. Under current practice, the union would be required to file Form LM–2, and under the new rule it would also meet the Form LM–2 filing level.

In this example, by virtue of a one-time-only event, annual receipts would be quintupled. This union would likely not keep records conducive to providing the kind of details required by Form LM–2—and particularly the details and new schedules envisioned in the revised Form LM–2. In addition, labor organizations with such small annual receipts would be less likely to have electronic recordkeeping than their larger counterparts.

In this situation, if a labor organization lacks the capability of filing electronically, it could invoke the continuing hardship exemption, and thereby be excused from filing electronically for that year. The Department has concluded that providing any other relief is unnecessary and could undermine the purpose of these reforms in situations where transparency and full disclosure are most important. First, union members are likely to be especially interested in how ''windfall'' funds are handled. Second, if a union's annual receipts meet the filing threshold only because of a one-time event, the union is unlikely to have many other transactions within the reporting period and fewer subject to the disclosure thresholds of the final rule. The union therefore will not face substantial burdens in collecting the information necessary to file a Form LM–2, even though it has not been required to keep track of this information in the past. There is no sound reason to permit a union that has $250,000 in annual receipts to avoid the reporting obligation imposed on all other unions with similar receipts simply because the union has not had similar receipts in other years.

2. Intermediate Unions Without Private Employee Members

Three labor organizations—the National Education Association (NEA), the American Federation of Teachers (AFT), and the AFL–CIO—and one individual union member submitted comments on the Department's proposal to adopt the holding of the U.S. Court of Appeals for the Ninth Circuit in *Chao* v. *Bremerton Metal Trades Council, AFL–CIO,* 294 F.3d 1114 (2002), interpreting section 3(j) of the LMRDA. In that case, the court of appeals ruled that an intermediate labor organization that has no dealings itself with private employers and no members who are employed in the private sector may nevertheless be a labor organization engaged in an industry affecting commerce within the meaning of

section 3(j) of the LMRDA if the intermediate body is ''subordinate to a national or international labor organization which includes a labor organization engaged in commerce.'' The Department proposed to follow this holding by adding language to the instructions for Forms LM–2, LM–3, and LM–4 clarifying that any ''conference, general committee, joint or system board, or joint council'' that is subordinate to a national or international labor organization will be required to file an annual financial report if the national or international labor organization is a labor organization engaged in an industry affecting commerce within the meaning of section 3(j) of the LMRDA.

The three union commenters objected to the application of the LMRDA to wholly public sector intermediate bodies pursuant to *Bremerton* as contrary to the statutory language, established case law, and Department of Labor regulations at 29 CFR 451.3(a)(4). Additionally, the NEA and AFT opposed the extension of the LMRDA to wholly public sector bodies through the regulatory process and commented that such an extension should require Congressional action. They further commented that the decision in *Bremerton* does not bring wholly public sector intermediate bodies within LMRDA coverage, and any reference to *Bremerton* should, therefore, be taken out of the new rules where such reference is used to attempt coverage of wholly public sector organizations.

The expanded language in the instructions merely incorporates and restates the language of section 3(j) of the statute. The reference to the *Bremerton* decision clarifies that the Department intends to interpret this language in a manner consistent with that decision. *Bremerton* is the most recent court decision interpreting section 3(j). The Department recognizes that the interpretation of section 3(j) set forth in *Bremerton* represents a departure from previous court decisions and the Department's prior administration of the Act. However, the Department has concluded that the *Bremerton* court's interpretation is the correct reading of the statutory language. Further, neither the Department nor the court has added statutory language or otherwise encroached on Congressional prerogatives here. The court, pursuant to its constitutional authority, interpreted terms contained in the statute, and the Department, operating within its authority to administer the statute, has stated its intention to adopt that interpretation. The stated intent of Congress was to exempt ''wholly public sector'' labor organizations from the coverage of the Act. The *Bremerton* court found that an intermediate labor organization is not ''wholly public sector'' and exempt from the Act where it is subordinate to a parent organization that meets the definition of a labor organization engaged in an industry affecting commerce. The Department's regulation at 29 CFR 451.3(a)(4) is not contrary to the *Bremerton* decision when the regulation is read as giving effect to the court's interpretation of the term ''wholly public sector labor organization.'' The Department concludes that none of the commenters provides a persuasive argument for disagreeing with the *Bremerton* court's reading of the statute and therefore will maintain the expanded language in the instructions for the Form LM–2. The expanded language adopting the *Bremerton* court's construction of the statute will also be added to the instructions for Forms LM–3 and LM–4, but since no other changes will be made to those forms, neither the forms nor the instructions for those forms will be reprinted in the appendix.

In its comments, the NEA incorporated by reference the arguments presented by its state affiliates in *Alabama Education Association, et al.* v. *Chao,* No. 1:03CV00253 (D.D.C. filed Feb. 14, 2003). There, the NEA's state affiliates argue that they represent only public employees and are self governing, autonomous organizations affiliated with the NEA, not subordinate bodies within the meaning of section 3(j)(5) of the LMRDA and, therefore, not subject to the LMRDA, even if the NEA is subject. The AFL–CIO, in a comment related to the NEA state affiliates' argument in *Alabama Education Association, et al.* v. *Chao,* cautioned that neither the Department of Labor nor the Ninth Circuit can do away with the statutory limitation of the section 3(j) proviso to entities that are ''subordinate'' to a national or international union covered by the LMRDA. The AFL–CIO further commented that the proposal to amend coverage language should not be used to preempt pending litigation, and the NPRM preamble should not be used to create an argument in litigation that the Department of Labor's adoption of this statutory instruction is entitled to deference.

The question whether a particular labor organization falls within the *Bremerton* test is not decided by the proposed language of the instructions or the references to *Bremerton* in the NPRM. That coverage issue involves a factual determination that will turn on the application of the statutory terms to the circumstances of each case. While this rulemaking provides a vehicle for making clear the Department's interpretation of the statutory term, after notice and comment, the factual question whether a particular labor organization meets the statutory test applying that interpretation cannot and should not be resolved in this context. The NEA's state affiliates and other entities are free to challenge the application of the *Bremerton* interpretation to their organizations and to pursue any avenues relative to the issue of their coverage under the LMRDA. The proposed language in the instructions and accompanying references are not intended to forestall any such action, but rather to make clear the Department's views regarding the general meaning of the statutory terms.

One commenter mistakenly read the instructions and the preamble language to include state or local central bodies among those organizations that must file. The LMRDA and the Department's regulations at 29 CFR 451.5 make clear that a ''state or local central body'' is excepted from the definition of labor organization in section 3(i) and the definition of a labor organization deemed to be engaged in an industry affecting commerce in section 3(j). The Department's adoption of the reasoning of the *Bremerton* court does not bring these organizations within the ambit of the LMRDA, either explicitly or implicitly.

An additional comment urged the Department to continue to seek full disclosure from the Washington State Education Association, as state law provided no comparable protection for public sector employees. The Department will seek compliance from all organizations required by the LMRDA to file labor organization reports.

B. Itemization of Major Receipts and Disbursements

1. General Comments Concerning Itemization

The Department received numerous comments concerning proposed Schedules 14 through 19. These Schedules call for individual identification of certain receipts and disbursements for various categories that reflect the services provided to union members. Receipts and disbursements are allocated to Schedules 14 through 19 and are either listed as individual entries or as

aggregated entries. Individual (or ''major'') receipts and disbursements, as well as payments to or from a single entity or individual that aggregate to meet the disclosure threshold, must be reported.

The Department received several comments supporting itemization. Most of these comments expressed general approval for requiring disclosure of financial information in greater detail. A common theme of these comments was a belief that the Department's proposal would increase the accountability of union officials to union members, serve to discourage union corruption, and improve overall union democracy. One comment cited a specific instance in which union officials concealed improper transactions within aggregated disbursements, which could have been prevented (or at least identified) by itemized reporting. Similarly, commenters related well-publicized situations involving union officers who allegedly misappropriated funds as examples of instances where itemization, by allowing members to detect questionable transactions, would have limited the damage to the union and its finances and, perhaps, deterred the individuals involved from breaching the obligations entrusted to them. Other commenters stated that without itemization ''and the transparency it brings to union finances ''union members have little defense against the potential mismanagement and misappropriation of union funds. Unusual spending patterns or shifts in expenses, as revealed in a Form LM–2, a commenter stated, may tip union members off to fraud and abuse, allowing them the option of disciplining or removing wasteful or corrupt union leaders.

Other comments supported itemization because it replaces broad categories with more useable, informative, and detailed data. These commenters emphasized the members' right and need to know how a union is spending their money to ensure that it is being managed well and spent wisely. Members expressed particular concerns about the lack of information about various categories of expenses, among them political activities, joint labor-management programs, and the transfer of funds to other entities. The Regulatory Studies Program of the Mercatus Center at George Mason University commented, ''By increasing the number of classification categories, lowering the dollar level of disclosures, and by potentially increasing the number of people who must participate in a potential fraud, the revised reports * * * should make committing fraud more costly than it is under current disclosure rules.''

Many commenters turned to recent corporate finance scandals in describing their general support for greater transparency among institutions, whether governmental, business, or labor organizations. They stated that greed can infect any organization and that disclosure is its best remedy. As noted by some commenters, the fiscal integrity of labor organizations has a profound impact on the financial stability and security of employees. The mismanagement, or failure, of labor organizations can cause major disruptions in work relationships, retirement plans, and overall employee well being.

The Department received voluminous comments opposing itemization and raising a number of concerns about the necessity of reporting this information; potential problems involving adequate accounting systems; possible adverse consequences from disclosing the required information; and a variety of other issues.

Several comments opposed itemization in general as too costly or burdensome because current union accounting systems or practices do not capture all of the information required by the criteria, and that electronic record keeping systems will have to be reconfigured to comport with the revised form. The Department believes the comments overstate the technological difficulties involved in transforming existing accounting systems to accommodate itemization procedures. Preliminarily, union officers and employees will need to study the instructions and forms, and thereby gain an understanding of the new requirements. The Department will launch a compliance assistance initiative that includes an overview of the requirements, a comparison to the old requirements, a tentative schedule of seminars for international, national, intermediate and local unions hosted throughout the country, an email list-serve to provide periodic updates to interested parties, web-based materials that include frequently asked questions, a description of the Form T–1 registration process, and other topics of interest to filers.

Once union officials understand the new reporting requirements, it may be necessary to make some adjustments to their recordkeeping systems. The most important change that should be made immediately involves the tracking of disbursements and ''other'' receipts to ensure that each disbursement and ''other'' receipt is allocated to the proper disbursement category with a descriptive purpose. Although some commenters asserted that this is a dramatic policy shift tantamount to imposing a new accounting system, unions have always been required to allocate each disbursement to one or more disbursement categories on the Form LM–2. The revised form alters the categories but not the underlying method of allocating these disbursements. Indeed, there are fewer disbursement categories on the new form. After allocating the disbursement, the union officer or bookkeeper makes a brief entry on the ''purpose'' for each transaction in a memo field. These sorts of operations are routine within accounting systems; organizations change the way disbursements are classified in the normal course of business.

The AFL–CIO's survey data also suggests that many unions already maintain their records and accounting systems in ways that are readily compatible with the requirements of the final rule. For example, the AFL–CIO's survey data suggest: 59% of national and international unions record expenses by type of activity or functional category; 62% of unions can generate the required itemization detail; 86% of unions do not have trouble downloading information from their account systems into a spreadsheet; 40% of national and international unions have a system of accounts receivable that is immediately compatible with the final rule, and 66% of national and international unions have a system of accounts payable that is immediately compatible with the final rule. Labor organizations that do not currently maintain electronic books, or that use accounting software that cannot be modified to track the data required by the revised form, will experience an increased burden, but as the analysis under the Paperwork Reduction Act indicates in Section V, the burden is, on average, a modest one.

The burden of reporting the individual items required by Schedules 14–19 is minimized by the electronic reporting system, which creates efficiency gains by performing the administrative functions of the reporting system. To this end, the Department has provided technical specifications to assist labor organizations in converting financial data into a form supported by the Department's electronic filing software. The technical specifications contained in the appended Data Specifications Document (DSD) inform affected unions of the various data formats that can be exported into the electronic form. Filers will have the option of exporting itemized data from

standard accounting reports in one of several common file formats. There will be a non-recurring burden as the filers create the proper reports, which can then be used in future years. It is important to note that smaller filers that would only report a handful of itemized transactions for the year may choose to complete the form manually through copy-and-paste techniques rather than using the DSD to set up the necessary accounting reports to export the itemized data. As the analysis of the burden associated with making the changes required by the revised form, set forth in Section V, demonstrates, the burdens anticipated by many commenters are overstated.

As explained in Section V, the Department agrees with some of the comments that, even though the Department has received no comments over the years regarding its published assessments of the burden of filing the current Form LM–2, the burden of filing the current form may have been underestimated. The Department has revised its assessment of the burden associated with the current form upward in response to the comments it received in order to improve the estimate of the additional time and cost involved in filing the revised form. Even using these higher estimates and acknowledging that there will be increased costs for reporting labor organizations as a result of these reforms, the Department has concluded that the advantages derived from the more detailed reporting outweigh the extra burden imposed on unions. As noted above, the FASB acknowledges the utility of itemized (or ''disaggregated'') financial data. FAS No. 117, ¶ 118. By contrast, reporting in general ''bottom-line'' amounts does not provide the level of detailed information that will effectively answer an interested member's inquiry. Moreover, generalized reporting places the burden on the member to obtain the information from the union, including resort to litigation if the union fails or refuses to disclose the requested information voluntarily. OLMS experience over years of auditing and investigating union financial activities indicates that increased access to information concerning a union's financial picture will enable its members to protect their own interests through more effective vigilance over union funds, and will aid OLMS in future enforcement efforts. Disclosure of basic information about major transactions is the most effective means of providing information to union members who are interested in their organization's financial affairs. Together with reporting receipts and disbursements by functional categories, the proposed rule will provide information that will help ensure that union leadership is acting in the interests of its membership.

The Department disagrees with those comments that suggest itemization will overwhelm interested parties with information. These comments rest on the erroneous premise that an individual seeking information must rely on hard-copy documents to review the Form LM–2. Labor organizations (with few exceptions), however, must file the form electronically. The new procedures provide more detailed, and more accessible, information than the existing system by utilizing the advantages of computer technology. Electronic filing permits the reviewer to focus his or her review using a search engine to guide the inquiry; on-screen (or paper) review of each entry is unnecessary. Further, the current Form LM–2 informs the member only of the aggregate disbursements (or receipts); the member must go through the trouble of obtaining more detailed information from the union concerning the individual transactions in order to find any meaningful information regarding specific receipts and disbursements. Itemized reporting provides the detailed information in a searchable format as an initial matter. Finally, Statement B of the revised Form LM–2 provides aggregate figures for each disbursement Schedule. A member reviewing the revised Form LM–2, therefore, has access to *both* the aggregate and the individual disbursements for each category. Resort to the more detailed information remains at the member's discretion.

In a related vein, one comment contended that the level of detail required by itemization will inevitably result in unintentional reporting errors, ''costly criminal investigations'' for misreporting, and ''prosecutorial abuse.'' Two comments expressed an additional concern that the errors could be used to prosecute union officers under the LMRDA because the officers must certify the correctness of the reported information. The commenters' suggestion that increased reporting errors may prompt unwarranted investigations and prosecutions is speculative and unsupported by any evidence in the rulemaking record. Moreover, only willful violations, not inadvertent errors, can result in criminal liability. *See* 29 U.S.C. 439.

Several comments argued that itemization imposes a unique reporting standard on unions that no other oversight agency requires and no other entity or organization must meet. The argument is neither accurate nor persuasive. First, as explained in detail in Section II(C), this argument is based upon incorrect assumptions. Second, other agencies do, in fact, require itemized reporting of financial transactions by certain kinds of organizations (for example, the Internal Revenue Service requires itemized reporting of disbursements by Section 527 organizations and the Federal Election Commission requires itemized reporting of receipts and disbursements by federal political committees. Third, reporting practices for a regulated community may vary depending on the particular requirements imposed by various laws. The appropriate standards for financial disclosure by labor organizations must be determined in light of the LMRDA, and not the practices, policies or criteria of other laws. In that vein, the LMRDA sought to address the particular problems posed by labor organization reporting by requiring reports containing ''such detail as may be necessary to disclose its financial conditions and operations.'' *See* 29 U.S.C. 431(b). The fact that other agencies, administering other laws, utilize different reporting criteria and practices is not a valid objection to requiring itemization for purposes of the LMRDA.

2. Itemization of Confidential Information

One of the most significant concerns expressed by many comments concerned the potential harm to union interests in disclosing confidential financial and personal information required by Schedules 14–19. Commenters contended that such detailed disclosure could adversely affect union interests and activities that should be kept confidential as a matter of law or public policy. The comments focused principally on disclosure of the information to individuals or organizations outside the union that might use the information to impede legitimate union activities or otherwise harm union interests. The comments cited a variety of examples in which such itemization could be detrimental to the union itself or other organizations and individuals involved with the union and its activities: (i) Identifying individuals paid by the union to seek employment with a non-union employer in order to assist the union in organizing its workforce; (ii) revealing ''job-targeting'' or ''market recovery'' programs; (iii) discouraging the union from seeking legal advice if fee disclosure reveals the attorney-client relationship; (iv) violating legal rules

that limit discovery about experts in litigation (*e.g.*, FRCP 26(b)(4)(B)); (v) violating confidentiality agreements in settlements; (vi) revealing information about union organizing campaigns, political activities and legal strategies; (vii) affording tactical advantages to service vendors and opposing parties in contract negotiations; and (viii) endangering the lives of foreign labor activists supported by the union. In some cases, the comments viewed disclosure as the direct cause of a potential harm; in other cases, the comments contended that disclosure may provide clues from which an adverse party could educate itself about union activities, relationships, and strategic goals. Some commenters made similar arguments with respect to the proposal to require itemization of receipts.

The Department agrees that there may be some situations in which the potential harm to union interests occasioned by disclosing certain types of confidential information warrants an exception from the requirement to provide itemized information regarding major receipts that are not reported elsewhere on the form and major disbursements. These situations are likely to be far more limited, however, than suggested by some comments. Unions are not required to provide non-financial information regarding organizing strategy, notes of meetings, or names of volunteers on a Form LM–2. Rather, they are required only to provide certain information regarding financial transactions. Generally speaking, the information disclosed will indicate simply that a disbursement was made to, or money received from, a particular individual for a purpose described by the union. Although there may be certain consequences as a result of such disclosure—as where, for example, a union indicates that a payment has been made for ''job targeting'' that some might consider inappropriate—such consequences must be both serious and beyond the scope of consequences intended by the LMRDA to warrant consideration of overriding the interest in disclosure embodied in that statute.

The Department has decided, however, that commenters have made a persuasive argument that certain information need not be made available to the general public and that disclosure could be sufficiently adverse to union interests that the modification described below is warranted to permit labor organizations to protect certain confidential information on certain schedules. Specifically, the Department has concluded that this special procedure should be made available for the following types of information:

- Information that might identify individuals paid by the union to work in a non-union facility in order to assist the union in organizing employees, provided that such individuals are not employees of the union who receive more than $10,000 in the aggregate in the reporting year from the union (in which case the statute requires that it be reported, *see* 29 U.S.C. 431(b)(3));
- Information that might provide insight into the reporting union's organizing strategy; and
- Information that might provide a tactical advantage to parties with whom the reporting union or an affiliated union is engaged or will be engaged in contract negotiations.

With respect to these specific types of information, if the reporting union believes that itemized disclosure of a specific major disbursement or aggregated disbursement would be adverse to the union's legitimate interests, it may report the disbursement in the ''All Other Disbursements'' portion of either Schedule 15 (Representational Activities) or Schedule 19 (Union Administration) on the Detailed Summary Page. The union must also enter a notation in Item 69 (''Additional Information'') identifying the Schedule(s) from which the union excluded any itemized receipts or disbursements because of an asserted legitimate interest in confidentiality.

A union member, however, has the statutory right ''to examine any books, records, and accounts necessary to verify'' the union's financial report if the member can establish ''just cause'' for access to the information. 29 U.S.C. 431(c); 29 CFR 403.8 (2002). In the Department's view, any exclusion of itemized disbursements from Schedules 15–19 would constitute a *per se* demonstration of ''just cause'' for purposes of the Act. Consequently, any union member (and the Department, which need not establish ''just cause''), but not a member of the public, upon request, has the right to review the undisclosed information that otherwise would have appeared in the applicable Schedule if the union withholds the information in order to protect confidentiality interests. The Department has added to the final rule a provision that clarifies the Department's interpretation of the statute in light of the specific modification of the proposed itemization requirement in response to the numerous comments received in this regard.

Some courts have held that a finding of just cause ''requires balancing the [union's] financial interest in nondisclosure against the injury to the interest of [a requesting union member] and other union members in determining how funds held in trust for them are being spent.'' *Mallick* v. *Int'l Bhd. of Elec. Workers, supra*, 749 F.2d at 785. In the Department's view, this result is not required by the statute and is, in fact, inconsistent with the statutory mandate that any member be permitted to examine records to verify the union's financial report merely upon a showing of just cause, without regard to any competing interest of the union. Accordingly, language has been added to § 403.8 to make clear the Department's view that the fact that a union has chosen not to disclose the identity of an entity that has received a disbursement of $5,000 or more, on the ground that disclosure to third parties might be adverse to the union's interests, is just cause for union members to inquire as to the identity of the recipient or donor and the reason for the transfer of funds. The statute requires no additional showing to require the union to permit a member to examine the underlying records.

Further, a reporting union will also be permitted to report amounts received or disbursed pursuant to a settlement that is subject to a confidentiality agreement, or that the union is otherwise prohibited by law from disclosing, in the ''All Other Receipts'' or ''All Other Disbursements'' portion of the applicable Schedule on the Detailed Summary Page. Similarly, the Department agrees that in the extremely rare situation where disclosure would endanger the health or safety of an individual, the information need only be reported in the ''All Other Receipts/Disbursements'' portion of the applicable Schedule. In these circumstances, non-itemized reporting of the information, by itself, will not constitute just cause for additional disclosure.

Finally, some commenters asserted that disclosure of itemized information regarding benefits provided to individuals, such as, for example, burial expense benefits, would invade the privacy of those individuals. This argument, while persuasive, affects only disbursements that may properly be reported in Schedule 20 (Benefits). Accordingly, as discussed below, the Department has decided to retain the previous Schedule for Benefits, rather than the one proposed in the NPRM, and to continue to permit labor organizations to report these disbursements only in the aggregate.

The Department believes that the modified disclosure procedures for

confidential financial information satisfactorily address the privacy concerns raised by the comments. The comments focus primarily on the potential harm in disclosing a union's confidential information about a particular disbursement to the general public, especially individuals and entities whose interests may conflict with the union's interests. The union must report the disbursement in some form. The modified procedures enable the union to withhold the confidential information from general public disclosure while complying with the Act's reporting requirements. The union, however, may not withhold the information from its members because they have a statutory right to examine the information underlying the reported data if ''just cause'' exists.

Unless disclosure is prohibited by law or would endanger an individual, the concerns justifying the decision to permit nondisclosure of specific information derive from an interest in preventing members of the public, other than union members and the Department, from gaining access to that information. In the Department's view, withholding on these grounds information that should otherwise be disclosed in the Form LM–2 is a sufficient basis for ''just cause.'' The union's concerns regarding disclosure to third parties arise outside the context of the members' right to information. In order to protect both the union's and its members' competing interests, recognizing that the failure to report specific information for a major receipt or disbursement constitutes ''just cause'' for examining withheld information in these circumstances, together with the aggregate reporting of disbursements for benefits, strikes an appropriate balance.

Unions will have ample opportunity to argue that the Department's interpretation of the ''just cause'' provision of the statute (29 U.S.C. 431(c)) is in error before it discloses information that it has reported only in the non-itemized total. Unless a union voluntarily discloses information when it is requested by a member, the member will still be forced to seek enforcement of the right to this information in federal district court and the union will be able to argue to the court that the Department's interpretation of the statutory requirement is incorrect. Even if the court agrees that use of this reporting procedure is sufficient to support a finding of just cause, the union may argue that it has a legitimate concern that a union member may further disclose the underlying records, or information about the underlying records, in a manner detrimental to the union. In these circumstances, there is nothing in the revised regulation or forms that would prevent the union from seeking a protective order or some other means of protecting its interests.

The Department disagrees with the comment that a union's compelled disclosure of information relating to legal fees associated with an organizing campaign would improperly intrude upon the union's attorney-client privilege. This privilege does not generally extend to the fact of consultation or employment, including the payment and amount of fees. *See McCormick on Evidence,* § 90, (5th ed. 1999, updated 2003). Further, while the privilege might protect the identity of a client when sought from an attorney, a client can be required to divulge the name of its attorney, which would be relevant here. *Id.* Similarly, the Department has concluded that the rule that limits discovery about experts in litigation to ''exceptional circumstances'' is not relevant, in that the language of the rule protects the ''facts known or opinions held'' of the expert, which would not be revealed in a Form LM–2. *See* FRCP 26(b)(4)(B). Nor is the mere fact that a disbursement has been made likely to reveal a union's legal strategies. Further, to the extent that a payment to an attorney or expert can meet the standards for non-itemized disclosure—that is, for example, because disclosure of a payment to an attorney would somehow provide a tactical advantage to a party with whom the reporting union is engaged in contract negotiations—a union may utilize those procedures. The Department does not agree that it is necessary to permit unions to avoid the itemized reporting obligation simply because disclosure might reveal the union's political activities. Indeed, as demonstrated by the comments discussed in Section C (4), such disbursements are likely to be of particular interest to union members and no convincing argument has been advanced regarding any legitimate need to keep such information confidential.

Other comments objected to reporting a recipient's address because the information was unnecessary or impinged on the recipient's privacy through its publication. The Department disagrees. The schedules only require the disclosure of business addresses, if available, but at least the recipient's city and state. This information is necessary for verifying the recipient's existence and identity. The privacy concern is questionable given the public availability of most addresses for individuals and business entities on the Internet and in telephone books. Finally, labor organizations may resolve any serious privacy concerns with respect to the types of information specified above by exercising their option to report the disbursement in question in the ''All Other Disbursements'' entry for the schedule on the Detailed Summary Page. While concealing the identity of individuals or entities receiving disbursements may raise questions concerning the disbursement's legitimacy, such questions are precisely the reason that labor organizations will be required to indicate in Item 69 (''Additional Information'') that they have used this procedure and that use of this procedure will constitute ''just cause'' for union members who request access to the underlying information.

3. Itemization of Major Receipts

The Department proposed changes to Schedule 14 to require additional information for reporting ''other receipts'' in the reporting period. ''Other receipts'' consist of all receipts that the labor organization does not report elsewhere in Statement B of Form LM–2. Specifically, the Department proposed requiring a labor organization to identify all the other receipts that are ''major'' receipts. A ''major'' receipt is either an individual receipt of $5,000 or more, or the aggregate receipts from an individual source over the reporting period totaling $5,000 or more. Each such receipt must be listed by payee with the following information: the name and address of the entity providing the receipt; the type of business or job classification of the entity; the purpose of the receipt; the date of the receipt; and the amount of the receipt.

A variety of comments addressed the proposed $5,000 threshold for ''major'' receipts. Some comments considered the threshold too high because $5,000 allows a margin within which union officials may still commit financial improprieties, and prevents union members from reviewing the smaller amounts for potential improprieties, *i.e.*, complete transparency for union finances. The comments recommended thresholds ranging from zero to $2,000 as a means of obtaining greater (or complete) information about a union's receipts. Other comments considered the threshold too low. The majority of these comments recommended $25,000 as an appropriate figure; others suggested basing the threshold on a percentage of the union's receipts (the higher of either 4% or $15,000, or a level related to the GAAP concept of materiality). A related recommendation applied a graduated threshold that

increases with the increase in a union's income. In general, the proponents of higher thresholds contended that the $5,000 figure results in burdensome reporting requirements and excessive detail.

The Department believes that $5,000 is an appropriate threshold for reporting ''other'' receipts. The comments underscore the competing interests in setting a reasonable figure. Setting the threshold lower (or eliminating it entirely) increases the number of receipts that must be reported, which correspondingly increases the information available for inspection. A lower threshold, however, also would increase the burden, particularly for aggregated receipts from individual sources. Raising the threshold would reduce the reporting burden, but it also would reduce the financial information captured for review and thereby undermine the goal of transparency. While a strong argument could be made that all disbursements are significant and should be itemized, the Department concludes that some threshold must be used that accommodates both the purpose behind the disclosure of such information and the concerns about the burden of tracking and reporting the information. The $5,000 threshold strikes a balance between the opposing viewpoints. Full-time workers who were union members had median usual weekly earnings of $740 in 2002. *See Union Members in 2002,* Bureau of Labor Statistics News Release (USDL–03–88) (*http://www.bls.gov/news.release/union2.nr0.htm*). Thus, it is reasonable to assume that to union members, $5,000 represents a significant amount of money. A receipt (or aggregated receipts from an individual source) in this amount may reasonably attract interest in the payment's source. The Department will continue to be mindful of the need for any future adjustment in the threshold for itemization in order to ensure that the information reported is meaningful.

The Department rejects the suggested use of percentage-based thresholds rather than defined dollar amounts. A percentage-based threshold will vary annually depending on the figure (*e.g.*, annual receipts) from which it is derived. This figure cannot be determined until the close of the fiscal year. In any given year, moreover, the base figure itself may be controversial if the Department and the union disagree as to the monies that should be included in that figure. A percentage-based threshold is therefore unstable and more difficult to enforce. A defined dollar threshold provides an unequivocal and predictable standard by which each union may determine whether a receipt must be reported as a major receipt, as well as one that members may use with ease and certainty in reviewing the Form LM–2. Some commenters recommended that the Department index the threshold annually for inflation. The Department disagrees for the same reason it rejects the use of a percentage-based threshold: adopting a figure that is subject to annual fluctuation creates an unpredictable standard. The Department believes all parties will benefit from a defined standard that applies to all unions. The Department also rejects the use of a graduated threshold linked to union income. This approach suffers from the same defects as percentage-based thresholds and thresholds indexed to inflation, discussed above. Furthermore, a single standard unrelated to union income promotes the purposes of the LMRDA. Although the economic significance to the union of $5,000 may vary with the size of a union's income, the interest of the membership in having access to a broad array of information concerning the sources and uses of union finances, and in the detection and deterrence of fraud, remains constant.

The proposed Schedule 14 requires a union to report aggregated receipts from each individual source if the total amount received from the individual source is $5,000 or more. Some comments opposed aggregation because tracking each receipt throughout the fiscal year to determine whether all receipts from a specific source ultimately reach the threshold is burdensome. The Department believes that aggregation of receipts is appropriate. In terms of its interest to a union member, there is no difference between a single $5,000 (or more) receipt from one source and several receipts from one source totaling $5,000 or more. Consequently, reporting aggregated receipts is equally important in terms of achieving transparency for a union's financial picture.

Despite the concerns expressed by numerous commenters, tracking multiple receipts from a specific source throughout the fiscal year will not impose unreasonable additional burden on a reporting union. The revised form alters the categories but not the underlying method of allocating these disbursements, and, indeed, reduces the number of disbursement categories. After allocating the disbursement to the proper category, the union officer need only make a brief entry on the ''purpose'' for each transaction in a memo field. These sorts of operations are routine within accounting systems. As demonstrated in the Paperwork Reduction Act Analysis, in Section V, the cost of maintaining sufficient information to permit the aggregation of major receipts not reported elsewhere from, and disbursements to, a single entity over the course of the year, combined with all of the other changes as a result of this rule, were estimated in order to arrive at a realistic assessment of the overall cost of these reforms. Balancing this cost for reporting unions against the benefits for union members, and for unions themselves, resulting from increased transparency—including the enhancement of the ability of members to fully participate in the democratic governance of their unions and the deterrent value of disclosure in preventing mismanagement and misappropriation of union funds—the Department has concluded that itemization, to which only a portion of this cost is attributable, is not only a worthwhile, but an essential, element of this reform.

4. Itemization of Major Disbursements

The Department also proposed to require labor organizations to report ''major'' disbursements in specified categories. A ''major'' disbursement is either an individual disbursement meeting the threshold-reporting amount or a series of payments to an individual that, in the aggregate, reach the threshold, in a single category. The Department requested comments on the appropriate threshold for a ''major'' disbursement, proposing a $2,000–$5,000 range. The Department also requested comments on whether individual disbursements among different categories should be aggregated to reach the threshold.

The Department received numerous comments concerning the appropriate threshold for itemizing disbursements on the various Schedules. Several comments recommended setting the threshold in the $200–$500 range to increase the amount of information about disbursements that the unions must disclose; one comment suggested setting the threshold at zero for the same reason. Conversely, many comments criticized the proposed threshold as too low. Several comments expressed general opposition but did not provide a specific alternative. Commenters that did propose an alternative threshold typically recommended using a $25,000 figure. A few comments suggested indexing the threshold to some other figure (*e.g.*, total assets, disbursements or annual revenues) to establish a floating threshold linking it to the union's size or financial activity. As with itemization of ''other'' receipts, the

proponents of higher thresholds contended that a lower baseline would result in burdensome and excessive detail.

The Department has decided to adopt $5,000, the highest proposed amount, as the threshold for itemizing disbursements. As with the ''other'' receipts threshold, the fundamental issue involves a balancing of competing interests. Advocates of a low (or no) threshold emphasized the need for transparency of union finances; by lowering or eliminating the threshold, the union must divulge a greater amount of financial information. Ultimately, greater transparency enhances the deterrence of union financial misconduct and provides union members with more knowledge about the union's activities, regardless of any potential financial mismanagement. Greater transparency, however, also involves a greater burden on the unions in terms of reporting. Proponents of a higher threshold focused on this aspect, and urged the Department to set a high standard, *e.g.*, $25,000. After consideration of both viewpoints, the Department believes that a $5,000 threshold strikes the proper balance between the benefits and costs of itemization. First, it is plain that virtually any disbursement is significant in that it provides information on how the union is being run, and provides a potential avenue for fraud. Second, the Department has concluded that the threshold should be set at an amount that will, in effect, establish a uniform standard for determining that a particular transaction, or set of transactions, is reportable. Third, the threshold must accommodate the concerns about the burden of tracking and reporting the information. The Department will continue to be mindful of the need for any future adjustment in the threshold for itemization in order to ensure that the information reported is meaningful. Several comments recommended using indexed thresholds rather than defined dollar amounts. The comments contended that indexed thresholds provide a more accurate basis for determining whether a disbursement is significant in light of the union's overall level of outlay. Two comments merely suggested adopting an indexed threshold as a general proposition. Other comments identified specific alternative formulae: 5% of total union assets; 5% of total disbursements; or a percentage based on the GAAP concept of materiality.

The Department rejects the indexed threshold approach because it does not provide a desirable level of certainty for the reporting community. An indexed threshold will vary annually depending on the base figure from which the threshold is derived. This figure cannot be determined until the close of the fiscal year. In any given year, moreover, the base figure itself may be controversial if the Department and the union disagree as to the monies that should be included in the base figure, complicating a union's ability to comply with, and the Department's ability to enforce, the reporting requirements. Any disagreement over the base figure will necessarily affect the indexed threshold and disrupt the reporting of disbursements. Thus, a figure that is subject to annual fluctuation creates an unpredictable standard. A defined dollar threshold provides an unequivocal and predictable standard by which each union may determine whether a disbursement must be reported. Although the economic significance to the union of $5,000 may vary with the size of a union's income, the interest of the membership in having access to a broad array of information concerning the sources and uses of union finances, and in the detection and deterrence of fraud, remains constant.

The proponents of an indexed threshold or a materiality standard premised their arguments on the belief that a bright line threshold will require reporting of immaterial disbursements. As explained above, the Department's adoption of a $5,000 threshold is based in large part upon the view that receipts and disbursements of that amount are significant to union members. Further, the Department does not believe that the GAAP's test for materiality is persuasive in this context. As a commenter noted, unlike commercial entities, which are accountable based on their profit or loss, labor unions are accountable in terms of the stewardship responsibilities of their officers. Consequently, the use of a sum that would have little effect on an entity's viability may be safely ignored by an investor who cares only for return on investment, but may be of considerable interest to a union member when spent by his or her union, as the union member's interest extends well beyond a concern with the union's bottom line, to the furtherance of its overall mission. A materiality standard would not give sufficient weight to these non-economic concerns, for a union member is interested not solely in the funds themselves, but the activities of the union. See Statement of Financial Accounting Concepts No. 2 (SFAC No. 2), ¶¶123–132. Further, adoption of the vague materiality standard as the threshold for itemization would require unions to obtain substantial professional assistance, thus increasing the burden on the labor organization. *See id.*

A few comments opposed reporting aggregated disbursements to a single entity or individual if the total amount meets the threshold because the union would have to track each disbursement through the fiscal year to determine whether the aggregated amount meets the threshold at the end of the year. Other comments treated aggregation as part of itemization and opposed both requirements because they perceived the entire reporting process as imposing burdensome and costly compliance requirements; providing too much information to be useful; imposing a unique and more rigorous standard on labor unions than applies to any other organization; and requiring significant and costly changes to the union's current accounting system.

With respect to tracking minor (less than $5,000) disbursements through the fiscal year, the Department does not believe the comments identify a substantial basis for abandoning the aggregation principle. Once the union installs or modifies its accounting software to appropriately chart each disbursement, tracking every disbursement regardless of amount will not be burdensome. Indeed, unions already must track every disbursement, and must know the type and amount of each disbursement, in order to report them in the appropriate aggregate amounts for each category on the existing Form LM–2. Furthermore, the advantages of aggregation offset any additional burden from tracking all disbursements. Aggregation denies the incentive to break up a ''major'' disbursement to a single entity or individual in order to avoid the threshold for itemizing the payment to circumvent the reporting requirements of the statute. Aggregation therefore provides a more accurate picture of a union's disbursements because it focuses on the total amount of money the union pays a particular entity or individual, rather than only the ''major'' disbursements. Given the benefits of aggregation and the fact that unions are already required to track each disbursement, the Department rejects the position that aggregation will be overly burdensome by requiring the union to track all disbursements, including those that ultimately will not be reported as itemized payments.

The Department invited comments on whether to require itemization of disbursements to an individual or entity that, in the aggregate, total less than the threshold amount in a particular Schedule once the threshold has been reached either in another Schedule or in

a combination of Schedules. The comments reflected little or no support for aggregation among the Schedules. Although virtually all disbursements are significant, cross-Schedule aggregation would perceptibly increase the burden on unions, as it would require an additional modification to the union's accounting programs or procedures, and would require internal accounting reports to be generated for all payees under all Schedules, rather than permitting more focused inquiries on a Schedule-by-Schedule basis. As noted elsewhere, the Department believes that the $5,000 threshold strikes a balance between the benefits of transparent financial disclosure and the burdens caused by detailed reporting. The most effective means of preserving this compromise in the context of categorical reporting is to apply the threshold to each individual Schedule. Further, each Schedule reflects the distinctiveness of the disbursements in that particular category. If disbursements to an entity or individual in a particular category are minor as measured by the threshold for reporting, then the union should not have to itemize those disbursements (and all other categories of disbursements) simply because dissimilar disbursements in another category are comparatively more substantial and do meet the threshold. Disbursements to an entity or individual must therefore reach the threshold for each Schedule before a union must itemize the disbursements attributable to that specific category. Meeting the threshold for any one Schedule will have no effect on the obligation to itemize disbursements for any other Schedule. This approach not only reduces the overall reporting burden, but also preserves the distinction among the various categories of disbursements established by the Schedules.

The Form LM–2 requires the union to provide the following information for each itemized disbursement in Schedules 15–19: The recipient's name and address; the recipient's business or job classification; the purpose or reason for making the disbursement; the date on which the union made the disbursement; and the disbursement's amount. The Department received numerous comments objecting to reporting this information. A few comments expressed specific concerns about the difficulty in tracking and recording all of the required information for credit cards, *e.g.*, the date of payment (rather than charge), and the full name and address of the recipient. In this context, one union stated that the proposed treatment of credit cards, which requires that each vendor paid with a credit card be treated as a separate disbursement, is an example of a new burden that the Department's analysis simply ignored. The union also noted that this recordkeeping requirement was far from a standard business practice. Although another union noted that the proposed changes in reporting expenses paid by credit card would vastly increase the number of individual transactions that must be entered, processed and reported, this union stated that it currently follows standard business practices and divides the charges that are paid with a credit card into separate accounting entries for each underlying type of expense and responsible department. The union also noted that any credit card charge that is required to be reported as a disbursement to an individual officer or employee (per the instructions for current Schedules 9 and 10) is coded so that information is available for the current Form LM–2 report. As noted by the preceding comment, unions are now required to break out credit card disbursements by category on the current form, rather than simply treating the payment as a transaction solely involving the creditor bank. To the extent any union may have misapprehended this requirement, the revised Form LM–2 makes this point explicitly.

Another union commented that many credit card transactions involve plane tickets or hotel bills and frequently have charges issued when a trip is booked and a credit issued if the trip is cancelled or changed and that the charges and credits may appear in different monthly statements—sometimes in amounts that are not exactly the same. The union stated that it is not clear from the proposed instructions if the Department intends that such charges and refunds be matched or reported separately. Such amounts must be tracked in the current and revised Form LM–2, as they constitute receipts and disbursements. The method by which these amounts should be tracked is set forth in the instructions. Otherwise, as the union itself noted, if the transactions are reported without any attempt to match them, anyone trying to read and understand the report will find it virtually impossible to calculate the amount of true expenses.

The Department recognizes that filers will not always have the same access to information regarding credit card payments as with other transactions. Filers should report all of the information required in the itemization schedules that is available to the union. For instance, in the case of credit card transactions for which the union's receipts and monthly statements do not provide the full legal name of a payee and the union does not have possession of any other documents that would contain the information, the union should report the name as it appears on its receipts and statements. Similarly, if the union's credit card receipts and statements do not include a full street address, the union should report as much information as is available, but no less than the city and state. A labor organization may choose to report either the date of the charge or the date of the payment for a credit card transaction as long as the method of reporting is consistent throughout the form.

The Department has considered the comments that assert that an unreasonable burden will be incurred by the filers in recording each transaction in their recordkeeping systems, but is not persuaded by them. The burden is similar to the burden already imposed by the current Form LM–2 reporting requirements. The current Form LM–2 requires unions to track all credit card transactions to determine whether each transaction must be reported on one of the disbursement schedules or elsewhere in the report. The current form does not treat a payment to a credit card company as a single disbursement. For instance, a single payment to a credit card company may include amounts that must be reported in ''Disbursements for Official Business'' in column (F) of Schedule 9, ''Other Disbursements'' in column (G) of Schedule 9, and ''Office and Administrative Expenses'' on Schedule 13. This has always been a requirement. Many credit card companies have made it easier to track information regarding vendors for specific charges by allowing their customers to download the contents of monthly statements or individual transactions electronically via the Internet. Once these transactions have been incorporated into the union's record keeping system they can be treated like any other transaction for purposes of assigning a description and purpose.

C. Disbursement Schedules 14–19

1. Reporting by Functional Category

The Department received a large number of comments on its proposal to require unions to report their disbursements by defined categories based, in part, on a grouping of functional activities performed by a union, its officers, and employees. The Department proposed to include eight

reporting categories on the Form LM–2: (1) Contract negotiation and administration, (2) organizing, (3) political activities, (4) lobbying, (5) contributions/gifts/grants, (6) general overhead, (7) benefits, and (8) other disbursements. Almost all the national and international unions that submitted comments addressed this issue, as did most of the trade associations and public interest organizations. A number of local union officials and members submitted comments, as did many ''agency fee payers'' (and other individuals who did not indicate whether they worked in units represented by unions).

The Department received several comments from trade associations, public interest organizations, union members and others in support of the proposal. They asserted that the proposed changes in reporting requirements are necessary to allow members and potential members to better understand the operation of particular unions and to make informed choices about whether to join, or retain their membership in, these unions. They stated that the proposed Form LM–2 would permit a member to determine the union's priorities and whether they accord with the member's own priorities and those of the general membership. The same information would inform individuals who may be considering voting for or joining a particular union. Several commenters also expressed the view that functional reporting would better enable members, the Department, and the public to uncover any improper use of union funds and deter union officials or employees from embezzling or otherwise making improper use of such funds.

Although some commenters stated that the proposed changes would impose some burdens on unions, these costs, in their opinion, are outweighed by the gain in transparency. Today's electronic recordkeeping systems, in one commenter's opinion, make it possible for labor unions to provide a wealth of financial information with minimal burden. The commenter also stated that the burden would decrease once unions learn of the need to code transactions in ways that fit the reporting categories.

A number of labor organizations stated that the proposed system, if adopted, would entail very substantial burdens and costs to the union without significant gain, if any, in informing union members about the operation of their union. A few commenters indicated that there would be severe practical problems posed by the need to ''code,'' by function, virtually all the union's financial transactions, which they characterized as a burdensome and time-consuming undertaking. Union commenters asserted that they lack the present capability to maintain their records in a way that would allow them to meet the proposal's requirements. The Department finds these contentions unpersuasive. Unions have always been required to allocate each disbursement to a category on the Form LM–2. The revised form alters and reduces the number of categories, but not the allocation process. Accounting software will need to be adjusted to reflect the revised categories, but these sorts of operations are routine within accounting systems and do not present an unreasonable burden. One union commenter noted that long distance charges and utility payments, under the revised rule, must be allocated across multiple functional schedules and that such a process would pose a significant burden. This commenter has failed to note, however, that these telephone and utility payments would have to be coded to a category under the existing form, and further classified by general groupings or bookkeeping categories.

Several labor organizations acknowledged that they already categorize their activities, including disbursements, by functional category. Some explained that they do so in order to comply with Beck, but others explained that functional reporting is a useful financial management tool. Still others said that they categorize for the functions reported on the current form. At the same time, however, some commenters explained that even with sophisticated functional accounting systems in place, it would be difficult for unions to program their systems to meet the Department's proposed requirements. As demonstrated in the Section V, in the Paperwork Reduction Act analysis, the Department has considered these burdens and determined that the burden is reasonable.

The AFL–CIO stated that the Department's proposal would force each union to conform its operations to the manner in which the Department assumes all unions operate or should operate. In this connection, some of the unions state that the Department's proposal misapprehends the way in which unions conduct their affairs. Many unions argued that the Department's proposal represents the first time that unions have been required to collect and report information by functional categories.

Several commenters expressed concern that the proposal, in spite of the burden and expense it would impose on unions, would fail to achieve its goal of better informing members about union finances and operations. As put by one commenter, the proposal creates artificial and misleading categories of disbursements that will overwhelm a member with a deluge of detail, not enlighten him. These comments rest on the erroneous premise that an individual seeking information must sort through a paper submission to review the Form LM–2. Electronic reporting permits a union member to focus his or her review using a search engine to guide the inquiry; on-screen (or paper) review of each entry is unnecessary. Further, the current Form LM–2 informs the member only of the aggregate disbursements (or receipts); the member must go through the trouble of obtaining more detailed information from the union concerning the individual transactions in order to find any meaningful information regarding specific receipts and disbursements. Itemized reporting provides the detailed information in a searchable format as an initial matter. Finally, Statement B of the Form LM–2 provides aggregate figures for each disbursement Schedule. A member reviewing the revised Form LM–2, therefore, has access to both the aggregate and the individual disbursements for each category. Resort to the more detailed information remains at the member's discretion.

Instead of putting unions to the burden and expense of creating the detail required by the Department's proposal, one union expressed the view that the Department should rely on a union member's ability to vote out officials who are pursuing an unpopular agenda, not by imposing additional paperwork requirements. Another commenter suggested that the Department could achieve its goal by permitting unions to allocate their expenditures, based on the estimates of its officers and staff, and thus dispensing with the need to exhaustively ''account for every sheet of paper, every pen and pencil, etc.'' The Department has considered these proposals and has determined that they would not effectively provide an adequate amount of reliable information to union members concerning the union's financial operations and conditions. The revised reporting requirements will enhance union democracy, by providing members with information needed to cast an informed vote. In addition, the suggestion that unions should be allowed to allocate disbursements by estimate would necessarily produce reports of questionable accuracy.

One union stated that the Department could achieve its goal without such drastic changes in the requirements by using the methodology in the current Form LM–2. In its view, the Department could have taken the ''natural categories'' on the present Form LM–2 and divided them into natural ''subcategories,'' or it could have developed schedules similar to those presently required for ''Office and Administrative Expenses'' or ''Benefits.'' While such revisions would still involve reporting disbursements in the aggregate, members would have the right under Section 201(c) of the LMRDA, 29 U.S.C. 431(c), to obtain more detailed data directly from their union. The Department rejects the suggestion that unions should be allowed to design their own functional reporting categories or add categories to those prescribed by the Department. As explained by the FASB in the Qualitative Characteristics of Accounting Information, at ¶ 16, not even the FASB expects ''all its policy decisions to accord exactly with the preferences of every one of its constituents.''

> Indeed, they clearly cannot do so, for the preferences of its constituents do not accord with each other. Left to themselves, business enterprises, even in the same industry, would probably choose to adopt different reporting methods for similar circumstances. But in return for the sacrifice of some of that freedom, there is a gain from the greater comparability and consistency that adherence to externally imposed standards brings with it. There also is a gain in credibility. The public is naturally skeptical about the reliability of financial reporting if two enterprises account differently for the same economic phenomena.

Statement of Financial Accounting Concepts No. 2 (SFAC No. 2), ¶ 16. On this point, the FASB also explained:

> Information about an enterprise gains greatly in usefulness if it can be compared with similar information about other enterprises and with similar information about the same enterprise for some other period or some other point in time. The significance of information, especially quantitative information, depends to a great extent on the user's ability to relate it to some benchmark.

Id., ¶ 111. Further, a union member's statutory right, under Section 201(c) of the LMRDA, to examine records underlying the report is a complement to, but does not supplant, a union's statutory duty to report. In light of the comments from union members concerning the difficulties members have faced in obtaining review of these records, the Department has determined that altering the categories, rather than merely relying on Section 201(c), would more effectively further the transparency goals of the LMRDA. See 29 U.S.C. 431(c).

The Department does not agree with the assertion that the better course is to simply disaggregate the categories in the existing Form LM–2 to effect more detailed reporting. In response to specific comments, the Department has combined two proposed categories (''Contract Negotiation and Administration'' and ''Organizing'') into a single schedule entitled ''Representational Activities,'' added a category entitled ''Union Administration,'' combined the proposed categories for ''Political Activities'' and ''Lobbying'' into a single schedule, and eliminated the category entitled ''Other Disbursements.'' The categories that remain are tailored to reflect the activities performed by unions, and will allow union members to readily gauge whether the union is committing its resources in the sums and proportions they consider appropriate. Requiring itemization of major disbursements within the current categories would not serve this purpose.

Union commenters faulted the proposal for failing to address the Department's prior position, articulated in 1993, that functional reporting imposed a very substantial burden on unions without significantly advancing a member's understanding of his or her union's operations and finances. There is no merit to the assertion that the Department's proposal failed to address the Department's earlier position. The NPRM described the Department's rulemaking efforts in 1992 and 1993; its discussion addressed the same basic points that were the focus of the 1992 and 1993 rulemaking and outlined the reasons why the Department's current proposals are appropriate. The NPRM also identified aspects of the proposal that differ from the 1992 final rules, thereby providing the public with a full exposition of the Department's position and its views on the various points addressed in 1992 and 1993.

The commenters correctly noted that the Department's current proposals resemble the views expressed in support of the Department's 1992 final rule more closely than the later concerns that led to the Department's reconsideration of functional reporting and the rescission of the final rule. Although the 1993 rulemaking identified some perceived problems with the 1992 final rule, which the Department addresses in the instant rulemaking, the tension between the positions was based largely on policy assessments as to the relative utility and burden associated with the change in reporting requirements. While the Department does not hold the same views on this issue as it did in 1993, the statute provides—now, as in 1993—the Department latitude in determining the form and amount of detail that should be reported by unions. Most significantly, there have been advances in technology (including its availability and application) in the last 10 years, as computers and financial management programs have become much more widely used. Internet access is more commonly available and the benefit of making information available over the Internet has been generally, and congressionally, recognized. These changes make it possible to provide substantially more information to union members and the public with less burden on unions than the changes considered in 1992 and 1993 would have imposed at that time.

Union commenters challenged assumptions that underlie the Department's functional category proposal on two related grounds. First, they contended that unions are not required to collect and report their expenses in the categories prescribed by the proposed rule by either ''standard business practices'' as reflected in GAAP or by ''existing [federal] forms'' such as the IRS Form 990. Second, the unions asserted that the categories proposed by the Department do not ''describe the most common important purposes for which unions spend money.'' GAAP and the IRS Form 990, they assert, leave it to the reporting organization to identify what the organization believes to be its most important functions. The union commenters contended, in effect, that the Department seeks to impose one artificial, static functional reporting system on all unions without any regard as to how they presently account for their expenditures. In support of these arguments, the comments provided few, if any, examples of the most common purposes for which unions spend money, or appropriate reporting categories. The AFL–CIO argued that the relevant accounting standards provide for two basic types of expense classification. The first type is ''natural expense classification,'' which ''group[s] expenses according to the kinds of economic benefits received in incurring th[e] expenses,'' for example, ''salaries and wages, employee benefits, supplies, rent, and utilities'' (citing, AICPA Not-For Profits Guide 514). The AFL–CIO asserted that the other basic type is ''functional classification,'' which ''group[s] expenses according to the purpose for which the costs are incurred.'' Id. at 513. ''The primary

functional classifications are program services and supporting activities.'' Id. The AFL–CIO then proceeded to argue that the categories proposed by the Department have no inherent rationality since some, like organizing and contract administration, relate to functions or programs, and others, like benefits, have no functional or programmatic relevance.

As discussed, in Section II(D), the GAAP standards do not govern the content of LM Forms, and are not entirely consistent with the congressionally imposed disclosure requirements of the LMRDA, 29 U.S.C. 431(b). Further, the Department disagrees with the assertion that the use of functional categories is either unauthorized or inappropriate in any respect. In the Department's view, the increased use of functional reporting categories in the Form LM–2 will promote transparency and accountability in the reporting of a union's financial condition and operations. The revised Form LM–2, utilizing both functional and ''natural'' categories, will provide detailed information about financial transactions of labor organizations in an easily understood format. The new reports will be usefully organized according to the services and functions provided to union members. By using the new Form LM–2, members will be able to identify major receipts and disbursements for a variety of activities. The new Form LM–2 strengthens enforcement of the LMRDA by giving members and the public a more complete account of the financial operations of a union than provided by the current Form LM–2. Moreover, achieving this improvement has been made easier and less costly by technological advances that enable electronic recordkeeping and filing.

Functional accounting is not a new concept to labor organizations. The current Form LM–2, through its use of categories, requires labor organizations to report certain disbursements by function. Although the types of functional categories are being updated to make them more useful to union members, it is unlikely that this would require Form LM–2 filers to make wholesale changes in their accounting systems. The Department has, however, included time in its burden hour estimates to account for acquiring any new or updated accounting software and modifying existing accounting, recordkeeping, and reporting systems. Moreover, functional accounting is required of not-for-profit organizations under the standards established by the FASB. Many of the labor organizations that submitted comments acknowledged that they use functional reporting as a management tool and none of the larger unions has claimed an inability to categorize receipts and disbursements. Labor unions are not-for-profit organizations and, as such, should utilize functional reporting in preparing financial statements. FAS 117, ¶ 26. As stated by the FASB, ''[S]pecialized accounting and reporting principles and practices that require certain organizations to provide information about their expenses by both functional and natural classifications are not inconsistent with the requirements of this Statement.'' It also noted that not-for-profit organizations often provide that information in regulatory filings to the IRS and certain state agencies, which are available to the public. FAS 117, ¶ 3. The IRS requires not-for-profit organizations, including unions, to report their expenditures by certain categories and the IRS uses several functional categories that parallel, in many respects, the categories in the proposed Form LM–2. For example, both the Form 990 and the new Form LM–2 require political and lobbying disbursements to be reported.

There is no merit to the contention that the proposed rule would unlawfully intrude upon the ability of unions to follow their own accounting procedures for their own internal purposes. The report calls for the submission of data in certain categories, but does not preclude the use of other, internal manipulations of the data. Unions may track expenses in any way they believe appropriate and, for their own purposes or the purposes of third parties (for example, as required by a financial institution for a loan or a state agency), they may report financial matters in the manner appropriate to that purpose. Further, contrary to some commenters' contentions, the Department's proposals effectuate the broad purposes of the LMRDA, while, at the same time, serving the law's purpose to ensure that members be fully apprised of their union's financial condition and operations. As noted above, these commenters have given insufficient weight to the Department's responsibility to determine the detail necessary to accurately disclose the unions' financial conditions and operations and to establish categories that will identify the purpose of disbursements, 29 U.S.C. 431(b), and to ''[prescribe] the form of publications and reports'' required by Title II of the LMRDA, 29 U.S.C. 438.

The argument that, because neither the IRS nor the Beck line of authority require labor organizations to collect or report information in the categories proposed by the Department, the Department cannot reasonably impose such a requirement is unpersuasive. These comments appear to overlook the Department's responsibility to require reports that best fit the disclosure purposes of the LMRDA, not a revenue statute or a methodology developed under a statute administered by the National Labor Relations Board (NLRB). Each agency has the responsibility to require information relevant to the role established by its enabling statute.

The union commenters have provided no support for the proposition that the interests served by the LMRDA are obviated by other reporting obligations, internal or external. Similar reporting requirements apply in the regulation of securities, public utilities, and health care. In those settings, it would be inaccurate to suggest that a corporation could meet its responsibility under a particular securities, tax, employment or other statute simply by submitting a copy of a report filed with a particular agency without regard to whether it conformed to the purposes of the actual statute involved. The argument is also unpersuasive in the context of the LMRDA.

2. Beck Requirements

A number of commenters expressed views regarding the effect of the Department's proposals on the obligation, imposed on some labor organizations by the National Labor Relations Act (NLRA), to allocate expenditures in a way that distinguishes between activities that are germane to the union's representational function and those that are not. *See Communication Workers of America* v. *Beck,* 487 U.S. 735 (1988). Labor organizations that receive dues from non-member ''agency fee payers'' in states permitting union security agreements requiring such payments as a condition of employment must make such an allocation to ensure that agency fee payers who object to paying the equivalent of full dues are not charged more than their fair per capita share of the union's costs involved in providing representational services to them. These reporting and allocation requirements are often referred to as *Beck* requirements, a shorthand reference to a leading Supreme Court case addressing the obligation of unions to individuals who pay agency fees to unions in lieu of membership dues.

Comments generally supportive of the Department's various reporting proposals were received from trade associations, public interest groups, union members, agency fee payers, and individuals apparently unrepresented

by unions. Several commented that the proposed rule would make it easier for agency fee payers to enforce the unions' obligation to allocate between their representational and non-representational functions upon the request of agency fee payers represented by a particular union as required by *Beck.* In the current system, a union member states, union officials have a powerful incentive to classify non-representational activities as representational, and the existing reporting forms permit this to be done without detection. This problem, in the member's view, will be remedied by the Department's proposals, because they will enable an agency fee payer to identify the percentage of receipts used for non-representational activities. This member also asserted that the enhanced reporting would permit access to information without having to use a potentially adversarial process. Another commenter stated that while it generally approved of the Department's proposals, the Department should require unions to keep contemporaneous records in order to meet *Beck* standards.

Other comments challenged the Department's proposals on the following grounds: first, that they represent an attempt to impose *Beck* requirements generally on unions, even though the NLRB, not the Labor Department, is responsible for *Beck* enforcement and the *Beck* requirements only apply to unions with agency fee payers; second, they will cause an unnecessary burden on unions that already prepare *Beck* reports; and third, the Department's proposal to establish categories that do not replicate *Beck* requirements will create confusion and promote unnecessary and harassing litigation.

Beck requires affected unions, upon objection by an agency fee payer (a request by a member of the union does not trigger the obligation), to subtract from the amount of the dues required of members a sum that reflects the per capita share of the union's non-representational activities. In general terms, the ''chargeable'' representational activities have been held to include such activities as collective bargaining, contract administration, grievance arbitration, business meetings and social events open to members and non-member employees, union publications (to the extent they reflect the union's representational activities), administration of benefits available to members and non-members alike, national conventions, and expenses of litigation related to negotiating and administering the agreement, handling grievances within the bargaining unit, fulfilling its duty of fair representation, handling jurisdictional disputes with other unions, and litigation before administrative agencies and the courts involving members of the unit. Also in general terms, the non-chargeable activities have been held to include activities such as advocating political support or opposition in elections of government officials, lobbying, including promoting or opposing legislation, advertising relating to non-chargeable matters, administration of union benefits unavailable to non-members, union building fund activities, the publication of newspapers or similar activities (to the extent they report on non-representational matters), and litigation services that do not directly concern the unit. *See generally The Developing Labor Law* (4th ed. 2001) 1970–75, 2046–54; *The Developing Labor Law* (2002 Supplement) 330–32; NLRB General Counsel Memorandum (Aug. 17, 1998), available at 1998 WL 1806351; NLRB General Counsel Memorandum (Nov. 15, 1988), available at 1988 WL 236187.

It is not and has not been the intent of the Department to collect information specific to the *Beck* requirements. The NLRB, not the Department of Labor, is responsible for enforcing compliance with *Beck.* At the same time, the partial overlap of categories under the proposed rule and those established by *Beck* is unremarkable. The Form LM–2 functional categories for reporting a union's disbursements and estimating the time expended by union officers and employees in performing various union activities were designed to capture the various kinds of disbursements and activities associated with conducting union business. *Beck* seeks to identify union activities that are not germane to the representation provided to agency fee payers and therefore not properly assessed to agency fee payers if they object to subsidizing the union's non-representational activities. The information reported in the new Form LM–2 may be helpful to an agency fee payer to roughly evaluate his or her union's *Beck* compliance, but it is not designed as a substitute for the *Beck*-specific reporting requirements, which are established by the NLRB, as guided by judicial precedent. The Department takes no position on whether disclosure of the information required by the Form LM–2 satisfies *Beck* requirements. Similarly, *Beck* reports, principally because they lack the individual and transaction-specific information required by the revised Form LM–2, do not provide a useful alternative to the Form LM–2. The Department is not persuaded that the partial overlap between the Form LM–2 and *Beck* reports will lead to confusion among members or that such overlap will lead to an increase in litigation by agency fee payers.

3. Schedule 15 (Representational Activities)

The NPRM proposed a Schedule 15 (Contract Negotiation and Administration) and a separate Schedule 16 (Organizing). The proposed Schedule for contract negotiation and administration called for reporting of disbursements for preparation for, and participation in, the negotiation of collective bargaining agreements and the administration and enforcement of collective bargaining agreements, including the administration and arbitration of union member grievances. The proposed Schedule for organizing required reporting of disbursements for activities in connection with becoming the exclusive bargaining representative for any unit of employees, or to keep from losing a unit in a decertification election or to another labor organization, or to recruit new members. Based on comments received from labor organizations and others, the Department has decided to eliminate the separate category for reporting organizing disbursements and to require that disbursements for organizing be reported in combination with contract negotiation and administration disbursements in a single Schedule entitled ''Representational Activities.''

Several commenters expressed the view that organizing activities should be reported in the same category as contract negotiation and administration, both to avoid unduly burdening labor organizations that must meet *Beck* requirements and to avoid disclosing sensitive information regarding a labor organization's organizing strategy. Some union commenters asserted that it is inconsistent with NLRB practice and precedent to separate organizing from the category for collective bargaining/contract administration. The NLRB, they stated, recognizes that the two activities are sometimes tightly intertwined.

Several labor organizations, including most notably the Building and Construction Trades Department of the AFL–CIO (BCTD), commented that it simply is not possible in the construction industry to separate disbursements made in connection with organizing efforts from disbursements made for contract negotiations and administration. In this regard, they refer to section 8(f) of the NLRA (29 U.S.C. 158(f)). This section provides, *inter alia,* that it is not an unfair labor practice for a construction industry employer to

enter into pre-hire collective bargaining agreements with a labor organization whose majority status has not previously been established and which agreement requires membership in the union as a condition of employment. In these ''top down'' bargaining situations, the BCTD explains, the terms and conditions of employment are negotiated and agreed upon before any employees express support for or actually become members of the union. The BCTD and others expressed the view that it is not possible in these situations to separate disbursements into contract negotiations differentiated from organizing.

Further complicating the situation for building trades unions, these unions assert, is the fact that often these same unions also engage in traditional ''bottom up'' organizing. For such purposes, these unions would have to separately allocate disbursements for organizing and contract negotiations. Several commenters who supported the proposal to establish the organizing schedule argued that union members needed detailed information on their union's organizing activities to enable them to accurately assess their union's overall success or failure in its organizing efforts. The commenters argued that if, as the Department has concluded, separate allocations cannot be made in the pre-hire situation arising pursuant to section 8(f) of the NLRA, but separate allocations could be made for other traditional organizing efforts by the same union, a member would at best get an incomplete picture and at worst an inaccurate and misleading impression of the union's disbursements and overall effectiveness in organizing.

Labor organizations generally opposed the creation of a separate category for organizing. Comments from officers of labor organizations at both the national/international and local levels expressed strong opposition to the proposal to create a new Form LM–2 schedule on which all major disbursements relating to a union's organizing efforts would be reported and then made publicly available over the DOL website. The common thread to these comments was a significant concern that employers would become privy to sensitive union information not otherwise available, such as organizing strategies or the extent of a union's financial commitment to a given campaign. As one union member who was active in organizing his workplace stated, the new requirements to list major disbursements within eight categories ''would do nothing to help union members achieve better representation but would literally put the union at a disadvantage when organizing or negotiating contracts with companies.'' These regulations, he argued, ''would give the company inside information to whether or not the union would have the ability to sustain a strike or the ability to fight unfair tactics by the company during organizing drives.''

Several labor organizations commented that sensitive information of this type has generally not been available to members, except on a showing of just cause. *See* 29 U.S.C. 431(c). Moreover, they asserted that where just cause has been demonstrated, access to the information is given to union members only, whereas the Department's proposal would provide Internet access to this sensitive information to the world, regardless of the strength of the union's interest in confidentiality or the potential damage that release of this information might cause to the union—and without any showing of ''just cause.'' The AFL–CIO noted that unions would have no opportunity to protect their confidentiality interests by seeking protective orders. It further argued that information that the courts have held is not subject to disclosure, even when the § 201(c) standard of just cause is met, cannot, *a fortiori,* be subject to routine annual disclosure under § 201(b) of the LMRDA.

Numerous labor organizations complained that under the Department's proposal unions would be required to list the names of union ''salts,'' individuals who receive subsidies from a union to assist in its organizational activities while working for an employer that is the subject of the organizing drive. Two specific concerns were raised by the commenters: (1) The listed individuals can be targeted by an employer and subjected to discharge or other retaliatory action; and (2) by identifying these individuals by name on the new schedule, employers would be able to learn of an organizing drive in its early stages and take action to undermine the union's efforts.

In the view of the AFL–CIO, publication of detailed information about what types of investigators and consultants a union is using and for what purposes carried with it the potential to undermine the success of the union organizing efforts. In its view, the Department's concession that unions would not be required to reveal the ''name of the employer'' or the ''specific bargaining unit'' that is the subject of organizing activities is insufficient to protect the union's interest in the confidentiality of these campaigns. The AFL–CIO noted that with regard to smaller local unions (or larger unions attempting to organize a workplace in a new geographic area), employers would be able to easily discern from a labor organization's Form LM–2 what workplaces the union campaign is targeting and what steps the union is taking in pursuit of that campaign.

Several organizations urged the Department to protect from disclosure information that, they asserted, could be used to reveal the target and location of an organizing drive. For example, by requiring that the schedule contain discrete data showing substantial disbursements to a hotel where union organizers are staying (particularly in a small town or remote location, or one with only a single industry or employer) the Department's proposal would enable an employer to learn of the organizing drive and initiate action to undermine the campaign. The unions stated that they attempt to keep such information from an employer whose workforce is being organized. The Steelworkers explained that until they receive a substantial majority of signed authorization cards, they do not disclose to an employer that they have an organizing drive underway.

Another commenter, an employer association, suggested that in lieu of shielding the employer's name or the bargaining unit identity, the reporting unions should be given an opportunity to submit both redacted and unredacted versions of the Schedule and an accompanying ''Confidential Treatment Request.'' Under this procedure, a reporting union could offer grounds to the Department in support of its request for identity exemption, and specify the time period sought for such exemption. The Department would then review the request, and either grant or deny the requested redactions before making the Form LM–2 publicly available.

Based on these comments, the Department has decided to eliminate the separate category for reporting organizing disbursements and to require that disbursements for these activities be reported in combination with Contract Negotiation and Administration disbursements in a single Schedule entitled ''Representational Activities.'' The Department agrees with the comments that organizing strategies deserve some level of protection. In crafting the final rule, the Department has balanced the legitimate need for members to be apprised of how union funds are expended for this important function with the need to minimize the risk of disclosing sensitive information. By combining the categories, the Department also meets the concerns expressed by the building trades unions

that they would be unable to allocate precise amounts to contract negotiations and organizing efforts.

By combining these Schedules, the Department believes that an employer would be far less likely to be able to identify itself as an organizing target merely by examining Schedule entries. Unless one or more disbursements to an individual meet the threshold to constitute a ''major disbursement,'' disbursements would be aggregated with other non-major disbursements for contract negotiations and administration and organizing, thus further shielding such data. Further, the confidentiality procedures, explained in Section III(b)(2), allow a labor organization to withhold any information that would disclose the recipient or target of an organizing expense in reporting the disbursement on the Form LM–2.

The Department decided that this approach is preferable to the suggestion by one commenter that unions submit both a redacted and unredacted schedule for organizing expenses and a request that certain expenses be withheld from public disclosure. The statute requires the Secretary to publicly disclose the information it receives. 29 U.S.C. 435. (''The contents of the reports and documents filed with the Secretary * * * shall be public information.'') Further, the concerns raised by the comments concerning sensitive information, confidentiality, and the burden involved in distinguishing organizing activities from contract negotiation and administration can be addressed without the need to redact a schedule, and thus more effectively serve the transparency objectives of the statute.

Substantial case law under the NLRA recognizes the employee status of individuals paid by a union to seek employment with an employer in order to assist the union in organizing its workforce and the need to protect them from retaliatory conduct by their employer. *See, e.g., NLRB* v. *Town & Country Electric, Inc.,* 516 U.S. 85 (1995); *Willmar Electric Service, Inc.* v. *NLRB,* 968 F.2d 1327 (D.C. Cir. 1992), *cert. denied,* 507 U.S. 909 (1993). At the same time, the individual's status as an employee of the union and the amount of the payments received by him affects the obligation of the union to disclose information that may reveal his identity. On both the existing and the revised LM forms, if a ''salt'' is paid $10,000 or more per year as an employee of the union, the union is obliged by statute to list him by name on the Form LM–2 and to report the amount of his compensation. If a labor organization makes payments to an individual for services as a ''salt'' in organizing an employer that exceed $5,000 but not $10,000, the labor organization may choose to refrain from disclosing specific information regarding such payments on the Form LM–2, but only if it indicates that this reporting procedure has been used and provides the underlying information to any union member who requests it. *See* Section III(b)(2).

The Department disagrees with the view that it has applied the LMRDA more stringently to unions than to employers. Unlike the situation with regard to labor organizations, for over 40 years employers and their consultants have been statutorily required (29 U.S.C. 433(a) and (b)) to include particular ''persuader'' information in their annual reports, while labor organizations have not. Implementation of this statutory scheme by the Department cannot be considered as evidence of either anti-union or anti-employer bias, and the suggestion of a double standard is unwarranted.

The Department also rejects the comment that strike benefits should be reported in the same category as other representational activities. The AFL–CIO argued that because economic pressure devices, such as strikes, work stoppages and lockouts, are ''part and parcel of the system'' of collective bargaining, this exclusion is bound to create a seriously distorted presentation of the reporting union's collective bargaining disbursements. This argument is unconvincing. The amount that a labor organization spends on representational activities, including strike benefits, will be readily apparent by adding the total disbursements in both schedules together. On the other hand, only by maintaining a separate line item for Strike Benefits will union members be able to discern the true cost of the use of this economic weapon.

Finally, we disagree with the comment that a union's compelled disclosure of information relating to legal fees associated with an organizing campaign would improperly intrude upon the union's attorney-client privilege. This concern is misplaced, as this privilege does not generally extend to the fact of attorney consultation, retention, or employment, including the payment and amount of fees. *See McCormick on Evidence,* § 90 (5th ed. 1999, updated 2003). Further, while the privilege might protect the identity of a client when sought from an attorney, a client can be required to divulge the name of its attorney, which would be relevant here. *Id.*

4. Schedules 16 (Political Activities) and 17 (Lobbying)

The Department proposed separate Schedules on the Form LM–2 for reporting disbursements for ''political activities''—intended to influence the selection, nomination, election, or appointment of anyone to a public office, or a particular outcome in a ballot initiative, or for material assessing a political candidate's views on issues—and for ''lobbying''—for the purpose of passing or defeating new legislation, advancing the repeal of existing laws, or the promulgation of rules or regulations (including litigation expenses). The Department received some comments supportive of the proposed category for political activities. Labor organizations did not oppose the Schedules and the AFL–CIO did not challenge (apart from its general opposition to any functional reporting) the Department's premise that such information should be reported. The AFL–CIO, however, contends that the separate ''political activities'' and ''lobbying'' Schedules should be combined into a single category. Based on the concerns expressed by comments from labor organizations and others, and for the reasons described below, the Department agrees that the two Schedules should be combined into a single revised Schedule 16, ''Political Activities and Lobbying.''

One commenter stated its belief that the categories are closely related to each other and that each is likely to draw a relatively insignificant portion of the reporting union's resources. It explained that political activity and lobbying by unions typically involve communications with, and mobilization of, the union's membership concerning issues of interest to the membership. Lobbying, as distinct from membership mobilization, it argued, thus is likely to consume a relatively small amount of union resources. The AFL–CIO added that the Department's proposal to require the separate reporting of ''political activity'' and ''lobbying'' is exacerbated by the requirement that time estimates be recorded in 10% increments. It asserted that many unions have programs that are at least as important to their members, and often consume more resources, than either ''political activity'' or ''lobbying.'' Some labor organizations noted that the Department's current reporting rules do not require that payments by a political action committee be reported if such information already is reported to federal, state, or local government agencies. The proposal, it argued, layers another burden on the local unions,

adding unnecessary administrative time and cost.

Several commenters supported the itemization of political disbursements by unions without distinguishing between electoral politics and lobbying, the distinction crafted by the Department's proposal. No commenters expressed any opposition to combining the categories. A labor policy group supported the Department's expansive definition for political activities, recognizing that under the definition unions ''would be required to report any and all expenditures that are made for any type of political activity, including political activity directed at a union's own membership.'' It asserted that union members deserve to know the nature and extent of political activities, lauding the Department's efforts at transparency. The same commenter also supported the Department's proposal with regard to the reporting of lobbying expenses. In this connection, it asserted that a labor organization, as a practical matter, can avoid reporting its lobbying and political expenses to the IRS. The commenter supported the Department's effort to require unions to follow the same reporting requirements as generally applicable to tax exempt organizations (but not unions) under the IRS rules. It suggested, however, that the Department clarify the meaning of ''lobbying'' so that it includes ''any attempt to influence the general public, or segments thereof, with respect to public policy and legislative matters.'' Another policy group, while supportive overall of the proposal, asserted that the Department's proposed categories need to be modified to expressly include ''grassroots lobbying'' and ''issue advocacy'' by unions.

The comments support the Department's view, embodied in its proposal, that the itemization and aggregation of disbursements undertaken by unions in the political arena will provide information that is useful to union members and allow them to better understand the amount and purpose of their union's activities in this area. This information will supplement the limited information now available to members under other statutory programs. *See, e.g.*, Federal Election Campaign Act (FECA), 2 U.S.C. 431; Lobbying Disclosure Act of 1995, 2 U.S.C. 1601; IRS Form 990. While there are similarities between the information required under these other reporting regimes and the LMRDA, Form LM–2 is designed for the special purpose of providing meaningful information to union members who are not necessarily informed regarding the various exceptions and interpretations applicable to these other regimes. The Department has devised a definition, reflected in the examples set forth in the Instructions to Form LM–2, expressly designed to provide a reasonable amount of usable information to union members.

The revised Form LM–2 is intended to require unions to report many of the disbursements that would not otherwise be reported. Labor unions, unlike most tax exempt organizations under 26 U.S.C. 501(c), are not required to report lobbying expenses to the IRS. *See* Instructions for Form 990 (for line 85); Judith E. Kindall and John Francis Reilly, *Lobbying Issues* 336 (IRS publication available at IRS Web site), *see also* Rev. Proc. 95–35 (Aug. 7, 1995); Rev. Proc. 98–19 (Feb. 2, 1998). In contrast, labor organizations must include in Schedule 16 (Political Activities and Lobbying) ''disbursements for political communications with members (or agency fee paying non-members) and their families, registration, get-out-the-vote and voter education campaigns, and the expenses of establishing, administering and soliciting contributions to union segregated political funds (or PACs) and other political disbursements.'' Under the revised Form LM–2, labor organizations also are required to report disbursements supporting their dealings with the executive and legislative branches of the Federal, State, and local governments and with independent agencies and staffs, including disbursements for advocating or opposing legislation (including litigation challenging such legislation), and advocating or opposing regulations (including litigation challenging such regulations). Thus, the Form LM–2 will gather information not otherwise reported, and further, the activities that must be reported in the Form LM–2 are much broader than those included in the IRS definition and easier to apply than the more nuanced IRS application (as evidenced by the three pages of instructions the IRS devotes to reporting membership dues and lobbying expenses). Labor organizations also will be required to report disbursements on the Form LM–2 that would not be reported to the FEC because they are directed only at the union's employees and members and their families. Viewed from this perspective, the Form LM–2 does not duplicate any reports filed by unions with the IRS or the FEC.

The Department believes that the unions' comments understate the overall amount of disbursements and officer and employee time that will be reported as lobbying or political activity. In part, this may be based on the unions' misapprehension of the proposal. As discussed above, the Department's proposed schedule is more comprehensive than the FEC and IRS requirements that limit the activities that must be reported. For example, under the Department's proposed and final rules, unions are required to report funds that they use in setting up a PAC and raising funds for it, as well as lobbying activities normally associated with ''governmental relations'' and ''member communications.'' Further, the Department's decision to combine the two Schedules will increase the likelihood that the Schedule will be used to report a sufficient amount of information to prove useful to union members.

As discussed, the revised Form LM–2 will provide union members with a better understanding of their union's political activities, providing them a measure of the union's financial and human resources dedicated to these activities. Upon consideration of the comments, however, the Department is persuaded that there is merit to the suggestion that the two schedules should be combined into a single schedule. Distinguishing between ''political activities,'' in the election-specific sense of that term, and ''lobbying'' is not always easy. And, for most union members, the distinction is likely to be much less important than being assured that they can ascertain the purpose and amount of their union's resource disbursements in the political arena. In the Department's view, this new schedule will provide meaningful information to union members without requiring unions to submit separate schedules for this purpose. Thus, the Department has decided to include a single schedule (16) for political activities and lobbying in the revised Form LM–2.

5. Schedule 20 (Benefits)

This category, which tracks a category in the current Form LM–2, captures information relating to all direct and indirect benefit payments made by the union, including, for example, disbursements relating to life insurance, health insurance, and pensions. Direct payments are made from the union's funds directly to its officers, employees, members, and their beneficiaries. Indirect disbursements include, for example, a union's payment of the premium on group life insurance to a separate and independent entity such as a trust or insurance company. The Department proposed that labor organizations would be required to separately identify all ''major''

disbursements during the reporting period in this category.

The Department received only a few comments specific to this category. The AFL–CIO opposed the collection of benefits to employees and members in a single category. In its view, ''employee benefits'' is a ''natural expense classification,'' and the inclusion of ''member benefits'' cannot be justified on the grounds that the schedule has been amended to convey more information about union program activities or supporting services. One labor policy group recommended that ''benefits'' should be removed as a category and, instead, reported as ''other disbursements.'' The same group stated that unions should have to specifically identify other disbursements in order to minimize embezzlement. Several comments related to the issue of itemization, however, noted that a requirement to disclose specific information about benefit payments could result in unwarranted invasions of the privacy of individuals.

In light of the comments received, the Department is persuaded that the privacy of individual benefit recipients, including those receiving payments for medical procedures, insurance or pension claims, or burial benefits, should be protected. Accordingly, the Department has decided to retain the current schedule for reporting these types of disbursements, rather than using an itemized schedule, and all payments to individuals for such purposes should be reported only on this schedule. A reporting labor organization, thus, will be required to report an aggregate amount of any direct benefit disbursements, which are those made to officers, employees, members, and their beneficiaries from the union's funds, and need only identify the recipients of such disbursements by a general description, for example, ''union members.'' Indirect disbursements—those made to a separate and independent entity, such as an insurance company that pays benefits to covered individuals—will also be reported in the aggregate and the entity to which the payment is made will be identified by a general descriptive term. These changes also address the comments made by labor organizations concerning the reporting burden.

The Department is not persuaded, however, that this schedule should be modified in any other respect. As discussed in Section II(D) and Section III(C)(I), accounting principles do not restrict a regulatory agency from combining ''natural expense'' and program functions in a report. Moreover, a union's aggregated disbursement of benefits provides information that may be of interest to members as a measure of the union's ''fixed expenses,'' allowing them to evaluate the cost-benefit of the policies providing for the benefit payments.

6. Schedules 19 (Union Administration) and 18 (General Overhead)

The Department proposed a Schedule for general overhead, which would include disbursements for overhead that do not support a specific function, such as support personnel at the union's headquarters, and that, therefore, cannot be reasonably allocated to the other disbursement schedules. Several labor organizations noted that the categories proposed by the Department would force a large portion of the union's important and recurring activities into overhead or other expenses. The SEIU estimates that this latter category will contain 90% of all its disbursements. Several labor organizations expressed the fear that reporting disbursements in the manner proposed by the Department will provide misleading information that will be used by those antagonistic to unions to suggest that the union is diverting its funds to interests unconnected with the union's core representational function. Several labor organizations sought clarification concerning particular activities. In the AFL–CIO's view, for example, the Department seems to indicate that certain governance expenses, like meetings and conventions, are to be reported as ''general overhead expenses,'' even though accounting principles counsel in favor of including such expenses as ''general management expenses.'' In this regard, the AFL–CIO states that under *Beck* standards union governance activities are treated as entirely chargeable whereas those same standards provide that union overhead costs generally should be allocated between chargeable and non-chargeable categories. Several commenters expressed the view that the categories prescribed by the Department's proposal fail to account for many basic, recurring union activities.

In response to these comments about the large number of disbursements relating to union administration, the Department has added a new Schedule 19 (Union Administration) to capture this information. In this schedule, labor organizations will report disbursements relating to the nomination and election of union officers, the union's regular membership meetings, intermediate, national, and international meetings, union disciplinary proceedings, the administration of trusteeships, and the administration of apprenticeship and member education programs (other than political education, as discussed above). By adding this category, labor organizations will be able to accurately characterize the disbursements made for the many activities they undertake because of the requirements of the LMRDA or other activities associated with union administration.

With the creation of this new category, there no longer is a need for a category designated simply as ''Other Disbursements,'' and the Department will eliminate this category from the Form LM–2. The ''General Overhead'' category will be retained. This schedule includes disbursements that do not support a specific function—for example, disbursements to support personnel, such as maintenance and security staff at the union's headquarters—and that, therefore, cannot be reasonably allocated to the other disbursement schedules. Wherever possible, however, the salary paid to support staff and other disbursements for overhead that the union tracks in relation to specific programs or functions should be allocated to the relevant category. For example, if a union has an organizing department and a political affairs department and currently apportions telephone and utilities payments to both functional schedules, those disbursements should be allocated to the corresponding schedule. Similarly, the salary paid to other support staff should be allocated at the same ratio as the program staff they support. For example, if the union's secretary-treasurer employs a staff of ten employees and the secretary-treasurer reports 60% of his time on activities relating to union administration, 10% on political or lobbying activities, and 20% on representational activities, the staff salaries should be allocated to the corresponding schedules using these percentages rather than reporting the salaries as ''general overhead.'' If the labor organization does not currently apportion disbursements for utilities or similar expenses according to program or function, it will not be required to do so on the Form LM–2, but may choose to do so to provide greater clarity for its members. In any event, the labor organization should accurately describe the purpose of the disbursement, whether it is reported in a specific functional category or as ''General Overhead.''

7. Schedule 17 (Contributions, Gifts and Grants)

The existing Form LM–2 requires reports of all disbursements for contributions, gifts and grants during

the reporting year. The NPRM proposed that labor organizations be required to separately identify any ''major'' receipts during the reporting period. Although the Department proposed no changes to this category, a few comments specific to this category were received. The AFL–CIO asserted that the Department was mistaken in establishing a separate category for ''contributions, gifts and grants.'' It noted that such funds, as recognized by the Department itself in its proposal, should be reported in any specific services category to which they relate (not as part of the residual schedule). The AFL–CIO asserted that this recognition by the Department evinces that the schedule does not constitute a separate major program service. The AFL–CIO also submitted a report prepared by Dr. Ruth Ruttenberg as an attachment to its comments, which argued, based on a survey of 65 national and international AFL–CIO affiliates, that only 60% of all reporting national and international unions capture the required data and of these unions ''less than 18% of reporting unions are currently able to report contributions to an entity aggregating to $2,000 or more and then allocate the disbursements by prescribed functional category.''

These particular comments appear to reflect a misunderstanding about what unions now are required to report under the current Form LM–2. First, unions are currently required to report information about disbursements for ''contributions, gifts and grants,'' thus calling into question the validity of the statement that only approximately 40% of unions capture data related to this category. Second, the reported inability of a few unions to report contributions at the lowest proposed threshold level and then ''allocate the disbursement by prescribed functional category'' suggests that the Ruttenberg report confuses this aspect of the Department's current proposal with the Department's 1992 reporting rule. While that rule contained such a requirement, the Department's current proposal requires only that contributions, gifts and grants be reported in Schedule 17, without any further allocation to any additional ''functional'' categories. Other aspects of the AFL-CIO's Ruttenberg report are discussed below.

Some commenters who supported the proposal suggested some modifications. One policy group recommended that ''contributions, gifts, and grants'' should be removed as a category and, instead, should be reported as ''other disbursements'' and that unions should have to specifically identify other disbursements in order to minimize embezzlement.

In the Department's view, it is appropriate to keep this schedule. As noted in the Department's proposal, such funds should be reported in the other functional categories as appropriate (and, where in excess of the $5,000 threshold, itemized as a contribution, gift, or grant). Nonetheless, there will be some disbursements that cannot be easily allocated to another functional category. By keeping this category, union members will be able to more easily identify such disbursements. If the reported aggregated amount warrants further inquiry, members may request further information from the union to determine whether such voluntary payments conform to the union's internal rules and to evaluate whether they were made for legitimate and worthy purposes.

8. Job Targeting

The Department received a few comments requesting that the Department establish an explicit requirement that unions report particular details for certain ''job-targeting funds'' (and funds serving the same purpose, but labeled as ''industry advancement,'' or ''market recovery'' funds). One commenter asserted that these funds have become widespread in the construction industry and that express reporting requirements are essential to correct widespread violations of the Davis-Bacon Act. The commenter asserted that the Labor Department, the NLRB, and two courts of appeal (D.C. and Ninth Circuits) recognize that job targeting programs are antithetical to the purposes of the Davis-Bacon Act because they represent an unlawful payment from the workers' wages to the contractors performing Davis-Bacon jobs and tend to distort local prevailing wages. The commenter argued that the Department has allowed this practice to continue unchecked. As a result, according to the commenter, millions of dollars are being misappropriated by unions from their members' Davis-Bacon wages, through the device of compulsory dues (as well as payroll deductions), and returned to the benefit of employers via job targeting funds.

The commenter recommended that the Department require unions to report: the employers receiving the job targeting funds; the amounts paid to each employer; the project(s) for which the employer received the funds; and the source of the funds. As an alternative, the commenter suggested that such accounting could be avoided if a union certifies under penalty of perjury that no funds used in a job targeting program have been derived from wages paid to employees on Davis-Bacon covered projects. The commenter also asserted that similar modifications should be made to the Department's T–1 proposals.

The Department has determined that it would be inappropriate in this rulemaking to require reporting requirements specific to job targeting funds. In the Department's view, receipts and disbursement of job targeting funds that exceed the itemization threshold will be disclosed as a result of the general reforms implemented by this rule. Additionally, the Department notes that the NPRM made no reference to the possibility of creating reporting requirements specific to job targeting funds. The unions and the organizations that engage in job targeting initiatives have an obvious interest in whether specific reporting requirements should apply. They should be provided a full opportunity to address this issue before the Department promulgates a rule specific to the concern identified by the commenter. If, however, a labor organization has an interest in, and contributes $10,000 or more to, an entity that meets the definition of a trust and that entity makes targeted disbursements for the purpose of increasing employment opportunities for its members, the labor organization must file a Form T–1 if the entity has $250,000 or more in annual receipts.

D. Schedules 1 and 8—Accounts Receivable and Payable Aging Schedules

The Department proposed the creation of new aging schedules for accounts receivable and accounts payable that would require labor organizations to report: (1) Individual accounts that are valued at $1,000 or more and that are more than 90 days past due at the end of the reporting period or were liquidated, reduced or written off during the reporting period; and (2) the total aggregated value of all other accounts (that is, those that are less than $1,000) that are more than 90 days past due at the end of the reporting period or were liquidated, reduced or written off during the reporting period.

A number of comments criticized as too low the $1,000 threshold for itemizing individual accounts payable and receivable that are more than 90 days past due at the end of the reporting period. Some unions with substantial receipts asserted that the Department was mistaken in stating that ''[t]he threshold of $1,000 eliminates the

burden of individually reporting routine collections of dues and other fees,'' 67 FR 79285. The unions stated that union dues would routinely be reported on the accounts receivable aging schedule under the $1,000 threshold. Some unions stated that for unions with substantial dues it is not that unusual for union members to fall more than $1,000 behind in dues payments. Unions stated that the itemization of $1,000 accounts would be unduly burdensome (resulting in thousands of small entries), would invade the privacy rights of union members, and would be of little informational value. One organization commented that in the context of Schedule 5 (individual marketable securities), the notice of proposed rulemaking stated, ''$1,000 can now be considered a de minimis amount.'' 67 FR 79285. This organization suggested that the Department set the thresholds for Accounts Receivable Aging Schedule (Schedule 1), Accounts Payable Aging Schedule (Schedule 8), and Investments Other Than U.S. Treasury Securities (Schedule 5) at $5,000 in order to be consistent. Several other unions advocated raising the accounts payable and receivable threshold to at least $5,000. One commenter proposed a new threshold of $10,000. On the other side, one organization asserted that the $1,000 threshold was too high and should be lowered to require disclosure of smaller accounts. One organization stated $1,000 was the correct level, and one union stated that the requested information would not be a burden at the $1,000 level. Finally, a few unions recommended eliminating the dollar amount altogether and replacing it with an alternative threshold, such as, for example, 10% of the union's aggregate receipts. These commenters noted that such an approach is consistent with the Department's regulation of employee benefit plans investments.

In response to these comments, the Department has decided to raise the threshold for itemization in Form LM–2 Schedules 1 and 8 to $5,000. This dollar threshold is consistent with the weight of the comments and corresponds with the itemization threshold developed for other disclosure requirements under Form LM–2 including: (1) Investments Other Than U.S. Treasury Securities (Schedule 5); and (2) Itemization of Receipts and Disbursements (Schedules 14–21). In the Department's view, the higher threshold will significantly reduce the burden identified by some unions of having to itemize accounts, such as individual union dues receivable, which in their view are relatively insignificant in light of the very substantial finances of some unions. By setting the threshold at $5,000, the interests of union members will still be adequately served by ensuring the disclosure of significant union accounts that have not been paid or collected in a timely manner.

Several unions also broadly criticized the itemization requirement, disputing that itemization would benefit anyone. These commenters stated that reporting aggregate numbers for accounts payable and receivable would be far less burdensome to unions without diluting the value of the information to members. The commenters explained that accounts more than 90 days past due are relevant, if at all, only as they relate to an individual union's overall cash flow. Several organizations stated that there is no analogous requirement of itemization placed on public companies, as the SEC requires only aggregate reporting. Itemized accounting is also inconsistent with GAAP, these commenters argued. Finally, a number of unions proposed an alternative that unions disclose only those accounts payable or receivable that are liquidated or written off at the end of the reporting period.

In the Department's view, itemized disclosure is important because it provides a vital early warning signal of financial distress. In setting the reporting threshold at 90 days, the Department took into account the typical payment cycle of 30 days for most accounts and determined that an account unpaid after three payment intervals warrants ''flagging'' as a matter of good business practice. Union members similarly will benefit from this information as a gauge of their union's overall fiscal management and provide them with the ability to identify particular transactions or a series of transactions that may merit further review. Although there is no general accounting principle that holds that 90 days is a significant time period, it is a benchmark often used, inasmuch as the normal pay cycle for accounts is closer to 30 days. As one commenter pointed out, the Washington Teachers' Union had failed to timely pay many of its bills in the years leading up to the discovery of embezzlement and misappropriation of funds by union officials.

As the commenter noted, early reporting of delinquent accounts payable might have prevented the fraud against the teachers' union before millions of dollars were diverted. The Department's own investigations in other cases reveal situations where a union's failure to pay its per capita taxes is part of a pattern of delinquency on accounts that may be symptomatic of embezzlement by union officers or employees. Under the new schedules, such delinquencies would have been reported and such disclosure might have deterred the fraud, in the first instance.

Itemization of delinquent accounts is also preferable to either aggregate reporting or sole itemization of liquidated accounts in that it provides union members with a more detailed picture of the union's finances, including with whom the union conducts business and the manner in which that business is conducted. The itemization requirement is tailored to a union member's legitimate interest in knowing, for example, whether the union continues to do business with an entity that fails to pay its debts or whether the union continually falls behind in payments to a certain vendor.

Some unions complained that the ordinary interaction between national and international unions and their locals regarding per capita tax payments routinely results in delayed payment of locals' per capita taxes until more than 90 days after the tax is technically due. Reporting these payments on the accounts receivable schedule, they argued, would be burdensome and uninformative. The Department believes that a national or international union may set the specific date (and manner of collection) of these per capita tax payments, but once the date is chosen, that date controls when the per capita payment is due. If, at the end of the reporting period, a local union has failed to pay $5,000 or more for 90 days or more past the specified date—irrespective of the customary interaction between union and local—that delinquent account must be disclosed on the Form LM–2. The union is free to provide any explanatory information concerning the delayed payment along with these per capita aged accounts.

Several unions also criticized the accounts payable and receivable schedules on the basis that these schedules require accrual-based accounting and many unions only keep accounting records on a cash basis. Many union accounting systems, other commenters argued, track only income and expenses, not receipts and disbursements. Moreover, one accounting firm commented that unions that operate on a cash basis system will have to review their books and records to tabulate each individual account irrespective of the precise threshold for itemized reporting. As noted above, the LMRDA itself requires some accrual basis accounting information, such as assets and liabilities. *See* 29 U.S.C.

431(b)(1)–(3). Because the current Form LM–2 requires this information, the new Form LM–2 imposes no qualitative change in the nature of union financial disclosure, even if the specific schedules for accounts payable and receivable are new. Moreover, no unions will be forced to manually review previous books and records to identify delinquent accounts because the new rule only applies to fiscal years beginning January 1, 2004, or thereafter. Every union will thus have approximately three months (at least, and as many as 14 months depending on the union's fiscal calendar) from publication of the rule to make any necessary adjustments to their record keeping practices before the first fiscal year for which such information must be reported even begins.

One union asserted that the Secretary lacks authority to require itemization of accounts payable and accounts receivable and that the Secretary is only authorized under section 201(b) of the LMRDA to require disclosure of categories of financial information—not itemized information. A number of unions similarly commented that the underlying individual financial data composing the aggregate categories is already available to union members upon a showing of just cause under 29 U.S.C. 431(c). The Department's response to these arguments is set forth above.

Several commenters raised concerns about individual privacy if unions were forced to itemize accounts payable and receivable over $1,000, including concern that, for example, union members owing dues would be identified by name on the Department website. Commenters requested therefore that the Department clarify that all union dues—both individual and per capita—are exempt from the accounts receivable aging schedule as suggested by the notice of proposed rulemaking. The Department notes the increased threshold of $5,000 should eliminate nearly all concerns about individual union dues appearing on the accounts receivable schedule. It would be unusual—and likely take years—for a union member to become more than $5,000 delinquent on union dues. If a union member is more than 90 days delinquent on dues in excess of $5,000, that fact should be disclosed. Per capita tax payments do not implicate privacy concerns and, as discussed above, must be disclosed when an account is over 90 days past due and exceeds $5,000.

Several unions contended the accounts payable aging schedule will falter on its stated purposes of deterring financial fraud because, irrespective of what the schedule looks like, union insiders who wish to embezzle money or to defraud the union will willfully evade Department reporting requirements. Commenters stated that corrupt officials are not likely to record their activities on disclosure forms. The Department acknowledges this problem—one that is a recurring concern in any reporting or disclosure system. While it is true that even the most thorough disclosure form will not be entirely effective in eradicating fraud, the new requirements significantly advance the cause by making financial fraud more difficult to hide. The new financial disclosure forms require greater specificity and accountability for union funds across the board, including delinquent accounts payable and receivable. In the Department's view, the more detailed reporting required by the revised Form LM–2 will allow the Department and union members to more closely scrutinize a union's finances and more easily identify ''gaps'' or apparent inconsistencies in reports. The greater the risk to the actual or would be perpetrator that improper conduct will be discovered, the less likely such conduct will occur or go undetected. The revised disclosure forms are thus a critical part of the oversight by the Department and union members over the financial operations of unions. Both this Department and the Department of Justice, in prosecuting criminal fraud, rely heavily on union members to review and evaluate the financial disclosures of their unions and report any suspected activity for investigation, as may be appropriate.

E. Schedule 5—Investments Other Than U.S. Treasury Securities

The Department's proposed Schedule 5 required a labor organization to list: each marketable security that has a book value of more than $5,000 and constitutes more than 5% of the total book value of all the union's marketable securities; and each other investment (*e.g.*, mortgages purchased on a block basis or investments in a trust) that has a book value of more than $5,000 and constitutes more than 5% of the total book value of all the union's other investments. The current Schedule 2 of the Form LM–2 requires labor organizations to list such securities and investments if they have a book value of $1,000 and exceed 20% of the total book value of the respective securities and investments of the union. The Department invited comments regarding whether the two thresholds of the proposal are appropriate.

None of the comments indicated that the Department's proposal would constitute a significant burden on reporting labor organizations. Rather, the comments expressed various views of the usefulness of the information that would be disclosed under the Department's proposal as compared to information that would be disclosed under alternative thresholds suggested by the comments.

Two local labor organizations stated that the itemization of marketable securities under the Department's proposal would pose no difficulty for reporting labor organizations, but asserted that the schedule would provide no information that would assist union members. In the view of these locals, the existing schedule on the current Form LM–2 was adequate. One commenter stated that the information required to be reported under the Department's proposal would be intrusive without providing any useful information.

The AFL–CIO expressed the view that the $1,000 threshold of the current Form LM–2, given contemporary financial reality, could be considered *de minimis*, and that only more substantial investments should be required to be itemized under the Department's proposal. The AFL–CIO also suggested that any lower threshold might exceed the Department's authority because, in the AFL–CIO's view, the Department is constrained to require unions to report only information material to the financial condition and operations of unions. In its view, most transactions lower than $1,000 would not be material to even a union with meager revenues.

A trade association supported the Department's proposal to raise the threshold for reporting individual securities and other investments to $5,000. In the association's view, investments worth only $1,000 should be considered *de minimis*. The association further suggested that the Department should also set a $5,000 threshold for individual accounts to be reported in Schedule 1—Accounts Receivable Aging Schedule and proposed Schedule 8—Accounts Payable Aging Schedule, two new schedules proposed by the Department. A labor relations foundation, contrary to the Department's proposal to raise the threshold dollar amount to $5,000, argued that $1,000 was not *de minimis* and that a higher threshold would invite corruption.

Two intermediate labor organizations agreed that $5,000 was appropriate as a dollar threshold, but they urged the Department to raise the percentage threshold from 5% to 15% of the total book value of the reporting labor organization's marketable securities and

other investments. Two other comments from local labor organizations recommended that the threshold for requiring itemization of individual investments be based solely on a percentage of the total book value of all of the union's marketable securities or other investments. Finally, the comment of a firm of certified public accountants also recommended a single threshold but suggested that the threshold be based solely on the book value of the individual security or other investment. The commenter recommended that such a threshold be set at a book value of between $25,000 and $100,000.

Upon careful consideration of the varying views on reporting investments, the Department has concluded that the proposed dual thresholds of $5,000 and 5% are appropriate to provide union members with useful information about the union's investments without unnecessarily burdening unions. The Department has not been persuaded that it should require unions to report individual union investments with less than a book value of $5,000. The Department believes that the current threshold of $1,000 (on Schedule 2 of the current Form LM–2), especially considered in light of the asset price increases that have occurred since 1962, when the reporting threshold was set at that level, would require a union to report holdings too small to provide significant, useful information to union members. This would be true whether such holdings represented at least 20% of the union's total investments (in each of the covered investment categories: ''marketable securities'' and ''other investments''), the requirement prescribed by the current From LM–2, or as little as 5% of the union's total investments, as proposed by the Department.

Under the Department's proposal, a union is required to report for each of the two investment categories its nineteen largest investments, if any, over $5,000, as measured by the book value of the investments. For example, unions with total marketable securities valued at less than $20,000 would only have to report a maximum of four holdings in each category.

The Department does not find persuasive the comments that argued that the Department's proposals were intrusive, not useful, or not material. As noted above, because only investments that exceed 5% of the union's holdings are reported and no union can have more than 19 such investments (5% × 20 = 100%), the proposed Schedule 5 will never require any labor organization to disclose to members of the labor organization more than 19 of the largest marketable securities and 19 of its largest other investments. By providing this information to union members, they will be able to make their own judgments regarding the value and appropriateness of the union's holdings and thereby the soundness of that important aspect of their union's financial operations and condition.

The Department also has concluded that neither of the proposed thresholds should be either raised or deleted. Raising the threshold percentage for proposed Schedule 5, for example, from 5% to 15% of the total book value of a labor organization's marketable securities and other investments would require a labor organization to list at most six marketable securities and a maximum of six other investments (because 15% × 7 = 105%), rather than a maximum of nineteen of each type. Reporting these few investments would portray a limited picture of a union's numerous and very diverse investments. The 5% threshold will disclose to union members a fuller, more accurate picture of the soundness of the union's selection of investments and of that important aspect of the overall financial condition and operations of the union without imposing a significant reporting burden on the organization.

Similarly, raising the book value threshold of individual marketable securities and individual other investments to amounts from $25,000 to $100,000 would foreclose disclosure of all but the very largest union holdings. Especially among labor organizations that file the Form LM–2 or other Form LM–2 filers without extensive investment holdings, thresholds set at book values of $25,000 to $100,000 might except any investment from being disclosed. In the Department's view, members of such unions would have a substantial interest in examining, and reaching conclusions regarding, the value and appropriateness of the union's limited holdings and the implications with respect to the general condition and operations of the organization.

As indicated above, two commenters recommended that the Department adopt a single threshold based on a percentage of the total book value of the union's investments as the basis for determining when a union must report individual investments for both marketable securities and other investments. The Department recognizes that in some circumstances the use of a single threshold percentage, such as the Department's proposed threshold of 5% of the total book value of investments, would not change the number or mix of marketable securities and other investments that would be itemized under the Department's dual thresholds of 5% and $5,000. The Department believes that ordinarily the disclosure of an investment equal to 5% of a labor organization's total holdings would provide useful information to members regarding the soundness and appropriateness of a union's management of that aspect of its financial affairs.

F. Schedules 11 and 12—Disbursements to Officers and Employees

The Department received more than 150 comments on its proposal to revise the information to be reported by unions about disbursements to their officers and employees and to require unions to report, by estimation and category, how these individuals expend their working time on behalf of the union. The Department proposed that unions would report for each officer and certain employees (all those paid a yearly salary of more than $10,000) their net salaries and the amounts of withholdings for each individual, along with the amount of taxes paid by the union in connection with the individual's compensation. Under the current report, only gross salaries are required to be reported for each officer and employee. Withholdings and taxes are reported, but only on an aggregated basis.

The Department also proposed to require unions to provide an estimate of the time expended by their officers and employees in each of eight functional categories prescribed generally for union receipts and disbursements. The Department proposed that unions report each individual's work time, per category, rounded to the nearest 10%. The proposed categories are discussed in greater detail at Section III(C)(1). In 1992, the Department issued a final rule, later rescinded, that also would have required unions to identify, on an individual-by-individual basis, how their officers and employees expended their work time. The 1992 rule also required unions to report disbursements, including officer and employee salaries, in various categories. That rule, however, required unions to report the actual percentages of time expended by the officers and employees in each of the categories.

The Department's current proposal also invited comments on whether unions should be required to more exactly calculate, by category, how the officers and employees expended their time. The Department inquired whether a precise accounting of their time would be more useful to union members than the proposal to allow estimates that are rounded to 10%.

Several commenters supported the Department's proposal. One commenter stated that an estimate of the amount of time spent by union employees and officers in performing their various duties will provide significant new evidence to union members about the priorities of their union leadership. Together with the proposed requirement that unions report receipts and disbursements by functional category, a commenter wrote, these requirements will provide information that will be very helpful to employees in making decisions about whether to support or join a union. Another commenter asserted that the estimates would enable union members to understand how their leaders are spending their time and help ensure that union leadership is acting in the interests of its membership.

A trade association stated that it strongly supports the Department's proposal, adding, however, that unions should be required to identify more specifically any time allegedly spent in the category of ''other disbursements.'' One local union stated that the estimation requirement strikes the right balance between the need for information and the burden imposed on labor organizations. The same union, however, stated that it would object to any requirement for more detailed time keeping than proposed by the Department.

Another commenter asserted that the time reports would enable agency fee payers to quickly identify the percentage of time used for non-representational matters and, therefore, determine whether their agency fees have been properly calculated. In this commenter's view, the proposed changes would reduce the burden on unions to defend suits from agency fee payers attempting to determine the proper amount of their agency fees.

One labor consultant expressed the view that implementation of the proposed functional time reporting proposal would not result in significant and costly changes to most unions' accounting systems. He stated that many unions already have their officers and employees completing activity report forms or time sheets that categorize their time into major program areas and that the automated accounting systems used by these unions can be modified easily, if necessary, to conform to the Department's proposed categories. He added that unions that do not utilize time reporting systems could adopt the policies and procedures followed by unions with systems already in place. The same commenter asserted that officers should be required to report actual time, not estimated time.

A labor policy group expressed the view that the timekeeping requirement would be burdensome, especially for larger unions. It nonetheless supported the Department's proposal because the salaries and duties of a union's officers and employees are an important part of union expenditures and reflect the priorities established by union leadership.

Unions generally opposed the proposal, typically for the same reasons they objected to the Department's proposed requirement that they categorize their receipts and disbursements by functional category. See discussion at Section III(C)(1). One international union predicted that if the contemplated changes are adopted: (1) Union officers would be prevented from fulfilling their responsibilities; (2) unions would be forced to hire employees to track disbursements and allocate expenditures; (3) local unions would have to reconfigure their accounting systems; (4) union officers and employees would have to be trained on how to translate their daily activities to fit the categories; (5) unions would become the target of inappropriate government intervention; and (6) union officers would be subjected to criminal penalties for inadvertent discrepancies in completing the form.

The AFL–CIO stated that there is no way to ''exactly calculate'' how officers and employees spend their time. The AFL–CIO submitted a survey that, it contended, demonstrates that any attempt to require something more exact than good faith estimations would impose significant new costs on unions. According to its survey, only 4% of the unions that responded now have the capability to allocate officer and staff time by the functions proposed by the Department. The AFL–CIO stated that only 10%-20% of responding unions stated that they have any type of electronic systems to keep track of officer or employee time by category.

The AFL–CIO noted that any requirement that unions maintain contemporaneous timekeeping records would greatly increase the burden on the union without any corresponding gain in the value of the information obtained. The AFL–CIO also contended that the Department's authority does not extend to prescribing particular types of recordkeeping. Another union complained that the recordkeeping requirement would limit the services provided by the union. It estimated that even if recordkeeping requires only 20 minutes per day to perform, this translates into the loss of many hours that could be devoted to delivering services to the union's members.

One commenter expressed the view that the provision for reporting in 10% increments does not relieve any of the administrative burden imposed by the Department's timekeeping proposal. In its view, detailed records must be kept just to approximate the time expended by each officer or employee. The commenter stated that it is unfair to require union officers and staff to keep time records, when, in its view, this obligation is not required of top business executives or government officials.

One commenter stated that the Department's proposed schedules fail to reflect the wide variety of tasks performed by the union officers in order to serve their members' interests, *e.g.*, attending union meetings, preparing newsletters, providing union-sponsored health/safety services, and operating job training and enhancement programs. According to this commenter, the proposed categories are misleading in that they suggest that besides collective bargaining, union officers and employees only participate in political and lobbying activities. This commenter suggested that all of the other activities would be considered as ''other'' suggesting that the individuals spend the majority of their time on matters less significant to members.

The AFL–CIO contended that two of the categories proposed by this Department (''benefits'' and ''contributions, gifts, and grants'') have no employee activity associated with them. These are pure expense categories, and the only employee activity associated with them will be the relatively minor activity connected to disbursement. Thus, in the AFL–CIO's opinion, it is highly misleading to include these as two of the eight categories in which officer and staff time is allocated. In its view, two other categories (''general overhead'' and ''other'') are largely residual and do not relate directly to any major union programs. By narrowing the choice of program categories to only four categories—contract negotiation and administration, organizing, political and lobbying—it asserts that the form will inflate the amount of staff time reported as ''other.''

One individual commenter asked the Department to clarify whether an individual should record all the time he or she expends on union business (typically 60 hours or more per week in his estimate). This commenter questioned the proper reporting of attendance at a Labor Day parade on a legal holiday or a political rally that takes place during regular working hours. Another commenter questioned

the proper reporting of time spent by an officer attending a funeral for an employer representative on a joint union-employer committee.

A union sought clarification whether a union can report all the hours worked by its support staff (*e.g.*, receptionists, stenographers, secretaries, and mail room personnel) under a single category, or is required to provide an estimate for each individual by each of the functional categories.

The AFL–CIO contended that the proposed rule has the potential for reporting misleading information. In this regard, it states that the NPRM, but not the proposed instructions, indicates ''[t]he time allocated among the categories for each officer [or employee] should total 100% of that [individual's] time.'' This possible requirement, coupled with the 10% increment for estimates, creates the risk of distorting how the individual spends his or her time. The AFL–CIO posed the question of how a union should report an employee's time if she spends 85% to 90% of her time on ''contract negotiation and administration,'' 5% to 7% of her time on ''political activities,'' and the same amount of her time on ''lobbying.'' A union expressed concern about the liability of union officials who will be required to sign the union's report. In its view, it is unfair to impose this obligation upon the reporting officials, given what it considers the subjective nature of the reporting and the official's inability to verify any estimates provided by other individuals.

The Department believes that requiring unions to report the estimated amount of time expended by their officers and employees will provide useful information to their members. It will enable members to determine better how the union utilizes its human resources. A union's own labor costs represent a substantial portion of its yearly disbursements, and the allocation of the time expended by the officers and employees serves the same purpose as the allocation of a union's other disbursements. Moreover, by reporting how its officers and employee spend their time, by functional category, union members are better able to gauge the union's total investment of resources—labor and capital—to a group of activities. Based on its review of the entire record, the Department concludes that such reporting will not impose undue burden on the union or the individuals on its payroll. While union officials will be required to exercise judgment in making the necessary estimates, it should be remembered that only a good faith estimate, not precise reporting, is required. Union officials should be guided by the purpose of the reporting requirement—providing accurate information to union members—in deciding how best to characterize their activities for reporting estimated time. Finally, no official who makes a good faith, reasonable effort to accurately report estimated time need fear criminal liability, even if the estimate proves arguably inaccurate. *See* 29 U.S.C. 439.

The Department has determined, as a general rule, that it is unnecessary to impose on unions a requirement that they report their time on a more precise basis than a 10% estimation. The Department is not requiring unions to keep detailed time records. The labor organization need only estimate the time spent on each activity. It is up to the labor organization to determine the least burdensome way to provide the information. However, the Department believes the 10% estimation will be sufficient to enable members to evaluate how the time of the union's officers and employees is directed and whether it reflects an appropriate use of the union's financial resources. To avoid the misperception that a union's officers and employees spend no time in a category (or categories)—a possibility if time in a category is less than 5%—we have revised the instructions to provide that where the time reported by an individual in an activity is less than 5% of his total work time, he should use his or her best estimate to the nearest percentage and report this amount. Similarly, in reporting aggregate totals of time, the union, instead of rounding down to zero, must report its best estimate to the nearest percentage and report this amount. This change should enable unions to ensure that reported time estimates add up to 100% for each employee and this requirement has been made clear in the instructions.

The Department does not believe that allowing unions to customize categories or establish subcategories of existing categories, as some commenters proposed, would promote the purposes of the statute. As discussed in further detail above with respect to the use of functional categories for reporting disbursements, a ''customizing'' approach would result in vast differences in reporting formats from union to union. This divergence would eliminate a baseline of comparison, result in confusion, and decrease the value of information reported to members and the public. Similarly, the concerns about the difficulty of attesting to the time estimates appear to be overstated. The union should be able to determine without difficulty the manner in which time estimates are to be made. So long as the union has a reasonable operating procedure in place and takes reasonable steps to ensure that officers and employees are following that procedure, the individual responsible for submitting the report generally has no reason for concern. Only ''willful'' violations—actions that are intentional or taken in reckless disregard of legal requirements—will give rise to liability. *See* 29 U.S.C. 439. While the responsible official's reporting duties have increased, the standard by which this duty is measured has remained unchanged.

The final Form LM–2 instructions have been revised to clarify how particular activities should be reported and how some common multi-task activities may be allocated. See Section III(C). As discussed in the final instructions, union officers and employees should provide estimates based on the total number of hours they work on union business, not merely the first 40 hours or other measure of an individual's paid workweek. Despite the Department's efforts to provide clear instructions, the quality of the estimates reported will ultimately depend upon the care taken by the reporting unions in making them. Nevertheless, the Department believes that permitting unions to estimate the time spent in specific activities provides a appropriate balance between the dual objectives of providing as much useful and relevant information to union members while reducing, to the extent practicable and appropriate, any burden on reporting unions. Reporting unions will be encouraged to provide information that is objective, accurate, and reliable because they will want their members to be aware of the time spent by their union's officers and employees in activities on their behalf. Moreover, because the information will be presented in a clear and complete manner, union members will be in a position to determine whether the time reported appears to be appropriate and accurate, thus encouraging unbiased reporting. Because union members elect their officers and are responsible for the governance of their union, even estimated reporting of the manner in which officers and employees spend their time will be far more useful than the total lack of any such information in Form LM–2 prior to these revisions. Accordingly, even though allocating time by estimated percentages is not as precise as exact measurements of time, the fact that the estimates will be reviewed with interest by union members is itself an incentive that is

likely to ensure the quality of the information reported.

Several commenters opposed the $10,000 salary threshold. The law's purpose, as stated by one commenter, was to require unions to report the salaries of only their highest paid officers and staff. Under the Department's rules, however, unions are required to report the salaries of virtually all their employees. The $10,000 threshold is established by statute, 29 U.S.C. 431(b), and therefore the Department is without authority to change the threshold amount.

No commenters specifically supported the proposal to require unions to report the net pay, withholdings, and tax payments for each officer and employee, but a number of comments opposing the proposal were submitted. An international union argued that the proposed reporting of net salaries is contrary to standard business practices and governmental regulations involving an organization's payroll. It asserted (as did one individual) that no other profit or nonprofit organization reports net wages. Moreover, it observed that a publicly traded corporation is required only to disclose the gross compensations of its chief executive officer (CEO) and four senior executive officers if, and only if, that compensation exceeds $100,000.

The AFL–CIO stated that the Department's current requirement that unions report the gross salaries of their officers and employees provides members with sufficient information to meet any legitimate purpose under the LMRDA. It contended further that the LMRDA provides no statutory authorization for the Department to collect this type of personal financial information about union officers and employees. In this regard, it asserted that the statute does not authorize the Department to inquire, even indirectly, into such matters as whether an individual officer elects to purchase supplemental insurance or allocates substantial portions of his or her paycheck to the United Way.

Based on the concern that the Department's proposal could interfere with the legitimate privacy interests of union officers and employees, the Department has determined that the better course is to maintain the current practice of requiring unions to report the gross salary (before taxes and other deductions) for each officer and employee, on an individual basis. Accordingly, in keeping with the current Form LM–2, Schedules 11 and 12 have been adjusted to reflect this change and a line item added to Statement B on which the reporting labor organization will report the aggregate amount of withholding taxes and other payroll deductions from all salaries, the total disbursed, and the total withheld but not disbursed. This change will protect individual privacy and also reduce the union's reporting burden for these schedules. The reporting union must then allocate each officer's and employee's gross salary, based on a good faith estimate, rounded to the nearest 10%, among five specified schedules (Representational Activities, Political Activities and Lobbying, Contributions, General Overhead, and Administration).

G. Schedule 13—Membership Categories

Several commenters indicated their support for the Department's proposal to require unions to report the total number of members according to various types of membership categories. These commenters agreed that the newly required information would be useful to union members. A number of commenters, including several International unions, disagreed with the proposed changes to the unions' annual reporting requirements. Some commenters expressed doubt about the authority of the Department to require unions to submit detailed demographic information in their annual reports. Others expressed doubt that union members were interested in the more detailed membership information. Some commenters, while supporting the basic approach of the NPRM, suggested that the Department require unions to report information in additional categories. These suggested categories included information on:

- Members working on projects covered by the Davis-Bacon Act
- All employers with whom the union has collective bargaining agreements (CBA)
- The length and duration of each CBA
- The number of employees in each covered bargaining unit
- Male and female members
- Members in each state for unions that cover more than one state.

The purpose of the Department's proposed Schedule 13 is to give members a clearer sense of the current health and future viability of their union and to give members a sense of what changes should be made to the union in order to improve the organization. Over time, this information will enable members to judge how effectively their dues are being spent on organizing and if any additional resources should be devoted to that activity. None of the proposed additional categories appears to advance these goals. Consequently, the Department has decided not to require labor organizations to report membership in these categories.

Most comments indicated that, contrary to statements in the NPRM, unions do not currently keep membership information in the categories required by the new Schedule 13. Commenters provided several examples of different methods of categorizing members, including:

- The International Union of Operating Engineers (IUOE) does not maintain information on members by category.
- The American Federation of Teachers (AFT) tracks members, for accounting purposes, by ''full membership equivalents.''
- The International Brotherhood of Electrical Workers (IBEW) tracks members by industry.
- The building trades unions do not track apprentice, retired or inactive members.
- One union indicated that they classify members as ''active'' and ''retired.''
- Retired members in the United Association of Plumbers (UA) maintain active status (and pay dues) to maintain certain benefits.

It thus appears that while each union maintains membership information in some manner, it may not maintain that information in the precise categories contemplated by the proposed new Schedule 13. Union commenters also indicated that, because they do not maintain membership information in the categories contained in the new Schedule 13, it would be similarly difficult for unions to report the total amount of dues paid by each of the various categories of members and the amount that the union paid or received in per capita dues for each category.

While the Department continues to believe that information regarding the number and type of members of a reporting labor organization is information that is important to the members of that organization, the Department also agrees that each labor organization should be able to maintain such information in the manner that the union believes will be most useful to it as an institution. Accordingly, the Department has concluded that each reporting labor organization should be permitted to name and report on its own categories of members so long as the union provides a definition of each category in Item 69 (Additional Information). For example, if a union feels that it is best for it to maintain membership statistics on ''active,'' ''retired'' and ''apprentice'' members,

then it should report that information in the appropriate place on the schedule and provide a definition of each category in Item 69. The union will not be required to manufacture or report information for membership categories it does not keep.

This change will address the most prominent areas of concern highlighted by the comments. First, unions, and their members, presumably have some interest in the statistics if the union is already keeping them. Second, it should be no great burden for unions to report membership statistics that they are already keeping in the normal course of business. The Department recognizes that the requirements for reporting membership in the final rule may not disclose as much information to the members as the original proposal. The Department believes, however, that the final rule will disclose more needed information to the members concerning their unions without undue burden.

At least one organization, a provider of information regarding labor organizations to companies, labor attorneys, union democracy groups and academics, cited the tendency of labor organizations that have national, intermediate and local bodies to double-count members and to report the same persons as members of more than one of the related organizations. This practice, according to this commenter, can give members an inaccurate picture of a labor organization's overall strength and is due, at least in part, to the differences in the definition of ''member'' used by different labor organizations. In this regard, the Department notes that the statute defines the term ''member'' to include

> any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization.

29 U.S.C. 402(o). Every labor organization should use this definition to determine whether an individual is a member of the labor organization for purposes of Schedule 13. Applying this definition, however, may well result in two or more labor organizations reporting certain individuals as members because those individuals pay dues to, and fulfill all other requirements for membership in, a local labor organization and in an affiliated intermediate and/or national or international labor organization. In fact, membership in an affiliated local labor organization may well be a requirement for membership in an intermediate or international union. In some respects—as where, for example, an international union derives substantial support and funding from the members of affiliated subordinate unions—such ''double reporting'' may not necessarily be an inaccurate reflection of the financial health of the labor organization.

H. Mandatory Electronic Filing

For several years, and with substantial Congressional urging, assistance and leadership, the Department has pursued the development and implementation of electronic filing of annual reports required by the LMRDA, along with an indexed and easily searchable computer database of the information submitted, accessible by the public over the Internet. *See* H.R. Conf. Rep. 105–390, 1997 U.S.C.C.A.N. 2061; H.R. Conf. Rep. 105–825; H.R. Conf. Rep. 106–419; H.R. Conf. Rep. 106–479; H.R. Conf. Rep. 106–1033; H.R. Conf. Rep. 107–342, 2002 U.S.C.C.A.N. 1690; H.R. Conf. Rep. 108–10, 2003 U.S.C.C.A.N. 4. In furtherance of that goal, the Department proposed that all Form LM–2 annual reports be filed electronically and proposed to develop software to enable that process.

The Department received several comments, including comments from members of Congress, accountants, and other organizations, that supported mandatory electronic filing. The commenters indicated that electronic filing is consistent with the recordkeeping requirements for human resource professionals working under other federal statutes and would bring the financial disclosure requirements of unions under the LMRDA into the modern era. The commenters pointed out that millions of people of all economic groups now conduct their financial business, including managing their 401(k) and IRA accounts, on the Internet. The commenters explained that mandatory electronic filing would also be consistent with the Congressional directives to ESA every year since 1997 to establish an electronic filing system to provide greater public access to the materials filed under the LMRDA.

A few commenters did not think the Department's proposal went far enough. These commenters suggested that all unions, even those with receipts of less than $200,000, be required to file their LM forms electronically. In addition, at least one commenter suggested that labor organizations be required to provide a link on their own website to the union's electronically posted LM form, whether located at the Department's LM website or elsewhere on the union's website. Many labor organizations, however, expressed their disagreement with the proposal that unions begin to file Form LM–2 and Form T–1 electronically after the issuance of the final rule. These commenters indicated that mandatory electronic filing would be a considerable burden to unions, particularly those unions with volunteer or part-time officers and staff. The union commenters noted that the Department's claim that electronic filing will be more efficient is untested, particularly because the software that will allow unions to transfer their electronic data to the reports is not yet available. One commenter also noted that the Department had indicated in a Government Accounting Office (GAO) report that any electronic filing of reports should be voluntary. The Department notes that its earlier views were shaped by the less mature technology that then existed and without the benefit of continued and repeated Congressional urging to make all such reports available on line. The Department's present view is shaped by today's technology, its impact on the ability to obtain, process, disclose, and utilize information, as well as the increased awareness of the importance of transparency to the governance of institutions.

In addition, several unions commented that the Department has overestimated unions' capability to file reports electronically. For example, the International Union of Operating Engineers (IUOE) stated that despite a concerted effort on their part to have locals file their per capita reports electronically, only 21 of the 147 IUOE locals do so. In addition, the International Longshoremen's Association (ILA) reports that none of its over 100 locals that file LM–2 reports currently files electronically. A survey conducted by the AFL–CIO indicates that only 14% of the national and international unions and only 9% of the local unions file their Form LM–2 reports electronically. The Department notes, however, that, in fact, a much smaller percentage of unions have actually filed their Form LM–2 reports electronically, a circumstance that is hardly surprising inasmuch as this filing option did not exist until December of 2002, when the Department's system became able to utilize digital signatures. The Department's experience further reflects that far more of the reports filed in paper are actually prepared electronically, even though they are submitted by mail to the Department. The fact that the AFL–CIO reports many more reports filed electronically than

actually have been filed suggests confusion on the part of those asking the survey questions, or those answering them, or both.

The unions that commented stated that it would be expensive and perhaps not feasible for them to develop the new accounting systems, purchase the new computers, and train their staff to make the changeover to electronic filing within the timeframe required by the proposed effective date. For example, the United Food and Commercial Workers (UFCW) estimates that it will cost two million dollars and take two years to make the necessary changes. Similarly, a study conducted for the AFL–CIO estimates that it will take two to four years for unions to make the conversion to electronic filing. Therefore, the commenters suggested that the Department conduct a pilot program during which some, but not all, unions are required to file electronically. In the alternative, the commenters suggested that the Department devise a phase-in period during which the requirement for electronic filing is postponed, giving unions time to adapt their systems and train their people to meet the new requirements.

These comments suggest that the relevant issue with respect to electronic filing is not whether it should be required, but rather how and when it should be accomplished. Indeed, in light of the Congressional direction that these reports should be filed and made available electronically, and the delay and expense attendant to scanning paper forms in order to make them available on the Internet, electronic filing is clearly necessary and beneficial. In response to numerous comments arguing that more lead-time is required, the Department has modified the proposed effective date for electronic filing, but remains firmly convinced that the technological concerns associated with electronic filing are overstated.

First, the electronic filing requirement applies only to the largest labor organizations, those that have over $250,000 in annual receipts. Thus, 4,732 unions (about 19% of the total) will be required to file their reports electronically. Unions with annual receipts less than this threshold (62,668 or about 81% of the total) will not be subject to this requirement. See discussion in the Paperwork Reduction Act analysis (Section V(F), from which these numbers are derived. These unions, which are less likely than the larger unions to have full-time staff familiar with electronic bookkeeping and reporting, can still file the simpler Form LM–3 or Form LM–4 reports manually, if they wish. The technical feasibility study performed by SRA for the Department indicated that the proposal could be implemented with relative ease, and this understanding is consistent with the Department's own familiarity with recordkeeping software and union recordkeeping practices. While the AFL–CIO disputes the number of current electronic filers of Form LM–2, it argues that there are actually nearly twice as many electronic accounting programs in use by labor organizations than the Department assumed. In fact, many of the larger labor organizations that commented on the proposal argued not that they were unfamiliar with electronic accounting programs but that their own sophisticated programs capture different data than that required by the Department's proposal.

The NPRM noted a substantial number of filers using the Department's software to complete the existing LM reports; in fact, more recent data indicate that 76% of the Form LM–2 reports filed in 2002 were completed using the Department's software. The AFL–CIO figures cited above, indicating that far fewer labor organizations use the software, cannot refute the Department's actual usage data. First, the Department's data is based on review of all reports filed during the year, whereas the AFL–CIO survey is based upon questions answered by a relatively small number of filers. Second, the AFL–CIO provided only survey results, not the actual survey instrument, and there is little information provided by which to assess its validity. Finally, as noted above, if the AFL–CIO's assertions regarding its numbers are read literally, they are higher, in some respects, than the Department's own numbers, indicating, at best, some confusion on the part either of those asking the AFL–CIO survey questions, or those answering them, or both.

The most comprehensive response to the SRA technical feasibility report, a study performed by Beaconfire Consulting, Inc., was submitted along with the AFL–CIO's comment. This study does not claim that labor organizations cannot file their annual Form LM–2 reports electronically, but that the Department has underestimated the cost and time involved in converting to an electronic filing system. Most of the issues raised by the Beaconfire study relate not to the cost of compliance for labor organizations, but rather to the cost to the Department to develop the software that will allow labor organizations to submit their reports electronically. The Department is committed, however, to taking the steps necessary to effectuate the new system with minimal problems.

Although the Beaconfire study also suggests that costs to labor organizations may be higher than the Department assumed, Beaconfire acknowledges that their figures, like those developed by SRA, are merely estimates. Beaconfire assumed, without explanation, that the average data file to be transmitted by unions to the Department will be substantially larger than the size assumed by SRA. SRA, by contrast, stated that it extrapolated file size requirements based on the data types and volume currently being reported on Form LM–2, taking into account the fact that data volume varies significantly from union to union. For data that is not currently being reported, SRA made ''worst case'' assumptions that it viewed as conservative. See Technical Feasibility Study for an On-Line Financial Downloading System, SRA, Sec. 3.4.1. Without an explanation of Beaconfire's contrary assumptions, it is difficult to assess their validity, particularly in light of the recognized incentive on the part of regulatees ''to inflate cost estimates in the hope of securing a less stringent regulation.'' McGarity and Ruttenberg, Counting the Cost of Health, Safety, and Environmental Regulation, 80 Texas Law Review 1997, 2044–45 (2002).

In addition, the Beaconfire study fails to recognize that the information required by the new Form LM–2 is not structurally complex or fundamentally different from the information that has been reported on the current form. The study, which notes problems encountered in the initial development of the Department's e.LORS program, also fails to take into account the Department's plans to leverage existing hardware and software components and to integrate the enhanced reporting system into the Department's existing infrastructure.

In revising its estimates of the likely cost of compliance with this rule, and in particular of compliance with the requirement that labor organizations file the Form LM–2 electronically, the Department carefully considered the information in the record regarding the existing capabilities of labor organizations. The AFL–CIO submitted survey data from its affiliates that suggests: 12.5% of local unions do not use computer accounting software; 21% of national and international unions and 33% of local unions would need new hardware; 62% of national and international unions and 75% of local unions would need new or upgraded software; and 14% of all unions said it

would be impossible to expand the recordkeeping capacity of their current accounting systems to accommodate the additional data required by the proposed rule. The AFL–CIO survey also found that all national and international unions maintain their accounting data on in-house computer systems—but many of those systems are incapable of interfacing with the Department's software. Information submitted by the AFL–CIO also suggests, however, that: 79% of national and international unions and 67% of local unions will not need any new computer hardware; 38% of national and international unions and 25% of local unions will not need any new or upgraded computer software; and 86% can expand their current accounting systems to include the additional fields to accommodate functional reporting. Moreover, raising the Form LM–2 filing threshold to $250,000 will enable 501 of the smallest filers, and those most likely to have software and hardware issues, to file the less burdensome Form LM–3. Further, as identified in the technical feasibility study performed by SRA, the Department is committed to developing reporting software for LM–2 filers that is compatible with the major export formats available in commercial, off-the-shelf accounting software. Finally, in the event that a labor organization encounters severe difficulties, the hardship exemption will be available for its use.

One union noted that it is going to be very difficult and maybe impossible for unions using a commercial off-the-shelf bookkeeping system (Quickbooks, Peachtree, etc.) to find a way to incorporate these details into their accounting databases. Almost all unions, it observed, will have to do special programming to find a way to do this. For the integrity of all the other accounting functions, the system must show the payee of the check (*e.g.*, American Express), but for the revised Form LM–2 the system will have to ignore that vendor and instead insert the names of the hotels, airlines, restaurants, etc. Finally, one union asserted that the Department's burden estimates are completely mistaken, and are based on alleged efficiencies to be gained from using software that the Department purports will seamlessly export financial data. In its view, it is impossible to determine which, if any, financial software packages will be compatible with the Department's software. There is no way, in its opinion, to comment meaningfully on the burden associated with the proposed rule without knowing how the software will work.

In light of all of these concerns, the Department reassessed its estimate of the burden and cost of complying with this revision of Form LM–2 and revised its estimate significantly upward. The Department has never contended that the changes would be without cost; the real question is whether the increase in cost, once it is accurately measured, is justified by the increased benefits to union members. The Department has concluded, on balance, that technological advances have made it possible to provide the level of detail necessary for union members to have a more accurate picture of their union's financial condition and operations without imposing an unwarranted burden on reporting unions.

OLMS staff who review the reports filed and provide compliance assistance to unions have found that a majority of unions required to file Form LM–2 use computerized recordkeeping systems and have embraced the technology necessary to provide reports in electronic form. Several OLMS field offices report that even smaller unions that file Form LM–3 reports keep electronic books. The development of electronic software that will permit unions that keep their records electronically to import data from their programs to the Form LM–2 software should reduce the burden of reporting financial information with the specificity required by the final rule. While labor organizations have not previously been required to report all of this information, they have been required to make judgments regarding the appropriate characterization of disbursements in order to report those disbursements by category in the current form. Once the necessary adjustments have been made to electronic recordkeeping systems, no additional burden will be entailed by the need to make similar judgments with respect to fewer categories. Labor organizations that do not currently maintain electronic books, or that use accounting software that proves incompatible with the software developed by the Department, will experience an increased burden.

The Department has given serious consideration to the comments suggesting that the Department employ a pilot program before implementing a final rule or allow a delayed phase-in of the electronic reporting requirement. As explained (and further elaborated below), the Department's final rule builds upon the existing technology used by large and small businesses, labor unions, and other organizations to manage their finances. This technology has been available for several years and is used by many individuals to manage their family finances. As discussed elsewhere, the changes that need to be made by unions in their bookkeeping and accounting practices are incremental ones. The Department believes that most unions' existing financial software will accommodate the minimal changes required to comply with the rule. For data entry purposes, the only changes required will be the modification of the categories and fields to chart the union's accounts in a way that tracks the reporting categories. While the Department acknowledges that it will take the individuals responsible for tracking each union's financial matters some time to familiarize themselves with the instructions in order to modify categories, the actual time required to add the modified accounts to the tracking software will be nominal (from a few days to a week or more). Similarly, as discussed below, there is no apparent obstacle for unions to comply with the actual electronic submission of the information to the Department, an obligation that no union will have to meet until about 18 months after the publication of the final rule.

After considering the comments regarding implementation, the Department has chosen to delay the effective date of the rule to provide additional time for all labor organizations to make the adjustments necessary to record the information required. The Department believes that a pilot program is unnecessary. If the technology was not mature or the rule was introducing a concept or requirement unfamiliar to unions, a pilot program might have served a useful purpose. The rule, however, relies on mature technology that is in common use among unions, businesses, and other organizations. The Department's investigative and audit experience reflects that unions are well experienced in tracking receipts and disbursements and reporting this information to members. Unions also have demonstrated considerable proficiency in using software to obtain these results.

For similar reasons, the Department believes it unnecessary to phase-in the new rule. As discussed, the Department does not believe that unions will encounter significant problems in revising their current bookkeeping and accounting procedures to meet the reporting requirements. And, to the extent unions are concerned about the actual submission of the data to the Labor Department, that will not occur

until about 18 months after this rule issues (and then only for unions that have fiscal years beginning on January 1, 2004). Moreover, the rule has a built-in ''phase-in'' component that will allow for adjustments to be made, if and when problems arise. Because each labor organization's filing date is dependent on its chosen fiscal year, the filing of annual financial reports is staggered throughout the year.

In the event that any labor organization encounters serious difficulties with electronic filing, the hardship exemption will be available. The Department proposed a hardship exemption modeled after the procedures used by the SEC (17 CFR 232.201–202) and invited comments regarding whether the hardship exemption procedures are appropriate and whether there are any alternative procedures that might better address legitimate problems. International unions commented that the hardship exemption should be broadened to permit a reasonable phase-in period and that smaller Form LM–2 filers be given permanent exemptions because of the burden and cost of electronic filing. Trade associations, on the other hand, argue that hardship exemptions should be narrowly limited and that labor organizations should be required to affirmatively prove hardship. Some commenters asked for clarification of the standards to be used when evaluating hardship claims. An attorney for a local union expressed concerns over the possible criminalization of innocent errors given the present lack of clear guidance on the proposed rule. One association commenter suggested that individual union members be permitted to appeal the grant of an exemption to their union.

The Department has decided to retain the hardship exemption and not to attempt to define with more particularity the circumstances in which it might be available. The exemption was left deliberately broad in order to permit accommodation of a wide range of variable situations. Moreover, the Department is unaware of any problem experienced by the SEC in using a similar formulation. If, however, unions have serious difficulty with electronic filing, the hardship exemption presents a fail-safe option for any reporting labor organization that needs it. With respect to the suggestion that a union member be allowed to challenge his or her union's exercise of the hardship exemption, the Department does not believe that such an appeal would be practical. Exemptions will be granted only upon a proper showing of need by the union and the exemption will be only temporary. As noted above, the concerns expressed about ''criminalization'' of innocent mistakes are misplaced because sanctions are available only for willful violations and thus depend upon intentional or reckless actions by responsible officers.

Finally, the Department continues to be fully committed to providing extensive compliance assistance at all stages of implementation. OLMS is developing compliance assistance materials outlining and explaining the changes to Form LM–2 and new Form T–1 and will present seminars and workshops advising union officers of the new reporting requirements. Contemporaneously with the publication of this rule, the Department is making available a Data Specifications Document that will enable the unions' staffs to prepare their bookkeeping systems in order to submit their reports electronically to the Department. If unions do not complete this interface, they will still be able to use the Form LM–2 software by the ''cut and paste'' method or by keying information directly into the electronic form. The Form LM–2 software will be available to download from the OLMS website at *www.olms.dol.gov* well before any labor organization will have to use it to file their reports, which will give the Department plenty of time to conduct compliance assistance and answer questions posed by the filing community.

The Department's extensive compliance assistance will include some or all of the following actions:

- Mass mailings to all reporting unions explaining the final rule and the effective date.
- Briefings for national/international unions, including meetings with national/international secretary-treasurers and their staffs and follow-up training sessions.
- Training OLMS staff on the new forms software and how to respond to inquiries from users.
- Establishing and publicizing a toll-free telephone number for software trouble-shooting.
- Maintaining a help desk with a toll-free telephone number and a dedicated email address for handling reporting inquiries.
- Development of users' guides for the new forms software.
- Development of Powerpoint briefings on the new forms software.
- Presentation of Powerpoint briefings by OLMS field offices in compliance assistance sessions with filers.
- Establishing a section on the OLMS website devoted to the revised Form LM–2 and making regular updates to it.
- Developing a ''list serve'' system to send email messages to unions, accountants, union members, and other interested individuals to provide up-to-the-minute information to assist in meeting the reporting requirements for the revised Form LM–2.
- Developing guidance to assist unions to configure off-the-shelf software to best capture the information needed to provide the data required for submitting the LM–2 and T–1 reports.

I. Effective Date

The Department proposed to make the use of the revised Form LM–2 and the new Form T–1 mandatory for reports for fiscal years commencing after the publication of the final rule. The Department specifically invited comments concerning whether one year is an appropriate time period before labor organizations are required to use the new forms and whether labor organizations should be required to use the revised form to report information for a fiscal year that begins within 30 days of the date that a final rule is issued. One commenter said the effective date was appropriate observing that ''[t]he proposed electronic filing procedures and effective dates strike a reasonable balance between limiting reporting burdens and increasing members' access to important information.'' Two other comments from organizations proposed that the effective date should be even earlier. These commenters indicated that while the new rule would require additional reporting burdens, the essential information to be reported remained unchanged. These commenters also expressed concern that unions would file the new forms late as many unions do with the current forms.

The majority of the comments specifically dealing with the rule's effective date opposed the proposed effective date saying that it was too soon. The commenters, most of whom were labor organizations, argued that the final rule should not be imposed until the software that will be provided by the Department is tested, implemented and fully operational. Several unions suggested that the effective date be delayed six months to two years. Some commenters said that given the Department's experience with e.LORS and the SEC's experience with its reporting system, a delay of two to four years before full implementation was more realistic. Other commenters suggested that the Department's

software be subject to a separate review and comment process after it is issued.

The Department continues to believe that an earlier or immediate effective date would not be appropriate for a proposed rule of this magnitude. Some interim period will be needed for unions to adapt their recordkeeping practices to the new requirements. Similarly, there will be a later need for the Department and labor organizations to test and implement the reporting software that will be provided by the Department. The aim of the Department is to balance some reasonable amount of time that unions will need to adapt to the new reporting requirements and the members' immediate interest in knowing how their dues money is spent. This member interest is reflected in the numerous comments from members indicating general support for the proposed changes and emphasizing the members' right to have information concerning their union.

In addressing unions' concerns, it is appropriate to sketch the tasks to be undertaken by unions to meet the requirements of the new reporting regime. The tasks involve two phases of preparation. First, filers will need to study and understand the new requirements, make adjustments to the union's recordkeeping system, and train staff. Second, filers that choose to take advantage of the electronic importation features of the Department's reporting software will need to create reports within their accounting systems that will be used to export their data to populate the reporting forms. As discussed in greater detail below, the first phase likely can be completed within a few weeks of the rule's publication and certainly by the effective date of the rule, whereas the second phase need not be completed until the form is filed, at the earliest, nearly 18 months after publication of this rule (and then only for unions that have fiscal years beginning on January 1, 2004).

The grace period of about three months is relevant to the first phase discussed above, which begins immediately upon publication of the final rule. The preamble, instructions and forms will be the authoritative source of information regarding the new reporting requirements. Union officials will use these documents to understand what is required of them. Additionally, the Department will provide substantial compliance assistance that will include an overview of the requirements, a comparison to the old requirements, guidance to assist unions to configure off-the-shelf software to best capture the information needed to provide the data required for submitting the LM–2 and T–1 reports, a tentative schedule of seminars for international, national, intermediate and local unions hosted throughout the country, an email list-serve to provide periodic updates to interested parties, web-based materials that include frequently asked questions, a description of the Form T–1 registration process, and other topics of interest to filers.

Once union officials understand the new reporting requirements it will be necessary to make some adjustments to their recordkeeping systems. Most changes will be very minor. The most crucial change involves the tracking of disbursements to ensure that each disbursement is allocated to the proper disbursement category with a descriptive purpose. Each union will track new disbursements according to the account classifications created by that union and classify them according to the disbursement categories of the revised Form LM–2. Some commenters asserted that this is a dramatic policy shift tantamount to imposing a new recordkeeping system, which would cause a significant burden, but this ignores the fact that unions have always been required to allocate each disbursement to one or more disbursement categories on the Form LM–2. For example, unions have always been required to allocate credit card payments to multiple categories of the Form LM–2 based upon the purposes of each charge. A single credit card charge to a travel agent may include expenses that must be allocated to three or more different places on the Form LM–2. The Department has changed the categories but not the underlying method of allocating these disbursements. In fact, there actually fewer disbursement categories on the new form and the five new categories are thoroughly defined in the instructions to the form. After allocating the disbursement, they will enter a brief purpose for each transaction in a memo field. These sorts of operations should be easy to perform since such changes to the classification of transactions and the creation or modification of accounts are made on a week-to-week or day-to-day basis in the normal course of business. It may require some retraining to understand the new categories and the use of the memo field, but this is guidance that bookkeepers are accustomed to receiving. Nothing during this phase is particularly time consuming, difficult, or outside the common routine of individuals engaged in bookkeeping and accounting. In sum, the Department believes that Form LM–2 filers will be able to make any needed adjustments to their bookkeeping and data processing practices to capture and allocate transactions in the categories prescribed by the Form LM–2 and to later transmit such data without incurring an undue burden.

Addressing unions' additional concerns, it is the Department's position that neither the time spent by the SEC in the development of its Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system nor the time required for the Department to implement its e.LORS system provide appropriate paradigms for determining the time necessary to implement mandatory electronic filing of the Form LM–2. First, the phase-in of the mandatory electronic filing on the SEC's EDGAR system was completed on May 6, 1996, over seven years ago. See 61 FR 13544; *http://www.sec.gov/info/edgar/regoverview.htm.* Since then, technology has continued to develop, building, in part, on experience gained from using systems like EDGAR, and computerized recordkeeping and communication have become more accessible and better understood. As the SEC itself commented, in implementing recent improvements:

> Recent technological advances, most notably the rapidly expanding use of the Internet, have led to unprecedented changes in the means available to corporations, government agencies, and the investing public to obtain and disseminate information. Today many companies, regardless of size, make information available to the public through Internet web sites. On those sites and through links from one web site to others, individuals may obtain a vast amount of information in a matter of seconds. Advanced data presentation methods using audio, video, and graphic and image material are now available through even the most inexpensive personal computers or laptops.

65 FR 24788–89.

Moreover, the EDGAR system is far more complex and multi-faceted than the filing of the one or two forms contemplated by this rule. In fact, EDGAR accommodates the filing of over 75 separate forms by a variety of different types of entities. *See http://www.sec.gov/info/edgar/forms.htm#common.* The fact that such a massive system could be implemented with a three-year phase-in period over seven years ago lends support to the Department's assertion that the far simpler architecture required to permit similar organizations to file two forms, at most, can be implemented in much less time. In addition, the Department will be able to utilize both the architecture developed for e.LORS, as well as experience gained in developing

and implementing that system, to facilitate the establishment of a system of mandatory electronic filing for the current Form LM–2. Although some commenters also pointed to delays in publication of recordkeeping rules by the Occupational Safety and Health Administration, those delays are irrelevant inasmuch as they were related to policy changes, not technical difficulties. See 68 FR 38601.

The Department continues to believe that labor organizations will have adequate time to conform to the revised forms and comply with the more detailed reporting requirements. As indicated above, unions will have a minimum of approximately 18 months before their first report on the new forms is due. During this time, they already will have made changes to their bookkeeping practices needed to capture the information that will be reported. Thus, the unions will be able to focus their efforts on training their staff in the new requirements of the actual reporting software. As the Department has acknowledged, there were some complications with the implementation of the previous e.LORS system. The Department has learned from this process. Building upon the existing infrastructure, the Department is employing more advanced technology in developing the reporting software than was the case in the initial e.LORS project. Similar software has proven efficient with other government agencies.

As discussed above, the Department has decided to delay the effective date of the final rule by postponing its application until unions begin their next fiscal year *after* December 31, 2003, *i.e.,* about three months after publication of this rule. Approximately two thirds (⅔) of the reporting unions begin their fiscal year on January 1. The first report containing the information required under the new rule for these unions would be due on March 31, 2005. Labor organizations that use a fiscal year beginning on a date other than January 1 will have even more time to comply.

IV. Summary of Changes to the Proposal to Require Form T–1 Reporting for Trusts

The Department proposed to require all unions to report the assets, liabilities, receipts, and disbursements of all funds or organizations that are not wholly owned by the union, but that meet the statutory definition of a ''trust in which a labor organization is interested,'' that have annual receipts of $200,000 or more and to which the labor organization contributes at least $10,000 during the reporting year on a new Form T–1 (Trust Annual Report) in order to fulfill the purpose of the statutory reporting requirements.

A ''trust in which a labor organization is interested'' is defined in Section 3(l) of the LMRDA (29 U.S.C. 402(l)) as follows:

> * * * a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

The Department sought comments on a number of issues relating to this new form, which are discussed below.

A. Who Should Be Required To File a Form T–1

1. Labor Organizations That File Forms LM–3 and LM–4

The Department proposed that all labor organizations, including smaller labor organizations eligible to file their labor organization annual financial report on Forms LM–3 and LM–4, as well as larger labor organizations required to file Form LM–2, would be required to file Form T–1 for any trust in which a labor organization is interested if the total annual receipts of the trust were at least $200,000 and to which the labor organization contributed at least $10,000, or to which $10,000 was contributed on behalf of the labor organization, during the reported year. The proposed Form T–1 is designed to require unions to report financial information about union funds that have been invested in such trusts, information that has not been disclosed under the current reporting regimen for unions. The proposed reporting scheme was established to discourage circumvention or evasion of the reporting requirements for such trusts, while imposing minimal burdens on labor organizations. The Department invited comments on whether this aspect of the Department's proposal strikes an appropriate balance between the need for transparency and any burden on labor organizations.

Numerous commenters expressed their views on the reporting burden that the proposal would entail. Some commenters discussed the likely impact on unions without substantial resources invested in covered trusts. A business/trade association asserted that the reporting burden on such unions would be significantly less than on unions with more substantial assets, given that the burden likely would be proportional to the size of a union's overall finances. The association also suggested that it might be appropriate to require smaller labor organizations, otherwise eligible to file their labor organization annual financial report on Forms LM–3 or LM–4, to file their annual reports on the more detailed Form LM–2 for any year in which such organizations meet the requirement for filing the Form T–1.

Many unions submitted comments that would except some unions from the Department's proposal. These commenters stated that unions, regardless of the size of their membership or their financial resources would have virtually the same responsibility and tasks, even though only a small number of the unions would have the staff or other resources to obtain, prepare, and file timely and accurate information on Form T–1.

Many commenters stressed the limited human resources available to some unions. These commenters observed that many unions have no clerical employees and must rely either on part-time officers or, in very many cases, unpaid members who volunteer their services after work hours. In the view of these commenters, very few of those officials and employees have the computer or accounting experience or training sufficient to readily process and submit the necessary financial information for the Form T–1 in electronic format.

Commenters stated that many labor organizations conduct and record their financial and other union affairs by hand and seldom have ready access to current-generation computers, software, and other electronic equipment. These commenters expressed concern that these organizations, which already often find it necessary to hire professional assistance to meet current reporting requirements, in many cases would be constrained further to hire and rely on computer, accounting, legal, and other consulting assistance to comply with the Department's Form T–1 proposal. Additionally, these commenters stated that such unions would find it necessary to expend significant amounts of their resources for training on how to meet their reporting obligations. The commenters further stated that, because there is a significant turnover of the organization's part-time and unpaid officials and employees, those costs may not only be a significant but also a recurring expense for small organizations. Commenters stated that many organizations would be faced with the dilemma of raising the dues of, or cutting services to, their members.

The Department has been persuaded that the relative size of a union, as measured by its overall finances, will

affect its ability to comply with the proposed requirements relating to trusts in which the union has an interest. For this reason, the Department has decided to limit the requirement for filing Form T–1 to labor unions that have receipts of at least $250,000 per year, the same filing threshold that applies to organizations that must file their annual financial reports on Form LM–2. Accordingly, the Department's final rule excepts from the trust reporting requirement labor unions that are eligible to file Forms LM–3 and LM–4.

Because the proposed requirement that Form LM–3 and –4 filers file a Form T–1 for trusts in which they are interested was the only significant change proposed with respect to Forms LM–3 and LM–4, neither these forms nor the Instructions for them will be included in the appendix to this rule. In addition, a change will be made to the Instructions for Form LM–2 to make them consistent with the unchanged Instructions for Forms LM–3 and –4, which provide that the term ''total annual receipts'' includes receipts of any subsidiary organization, defined as

* * * any separate organization of which the ownership is wholly vested in the reporting labor organization or its officers or its membership, which is governed or controlled by the officers, employees, or members of the reporting labor organization, and which is wholly financed by the reporting labor organization.

While an entity that meets the definition of a subsidiary will also be a trust in which the union is interested, the assets of which would not normally be included in ''total annual receipts'' of the reporting union, an exception to the normal rule will be added to the Instructions to make clear that the assets of a trust should not be included unless the trust is also a subsidiary, as defined above. The NPRM pointed out that one alternative to the proposed criteria for filing a Form T–1 would be to require a report for any entity that is dominated or controlled to such a degree that assets, liabilities, receipts and disbursements of the entity effectively are those of the union itself. Commenters were specifically invited to comment on the fact that assets and receipts of such an entity ''would be reportable as assets and receipts of the union itself (rather than assets of an organization in which the union has an interest)'' and that the addition of such amounts might require a union to file a Form LM–2 rather than a Form LM–3 or LM–4. See 67 FR 79285. Although, as explained in Section IV. A. 3, the Department has rejected reporting based on ''single entity'' status in favor of the statutory definition of a trust in which a labor organization is interested, it is appropriate to retain the existing inclusion of the receipts of a subsidiary (which is more clearly and more narrowly defined than a single entity) in the receipts of a reporting union for the sole purpose of deciding whether the union must file a Form LM–2. Otherwise, removing the requirement for unions with annual receipts of $250,000 or less to file a report regarding trusts in which they are interested would permit unions to allocate assets to a wholly owned, controlled and financed entity and avoid even the reporting requirements imposed with respect to such entities before these reforms.

2. Other Exemptions

The Department originally proposed four express exemptions to the Form T–1 Trust Annual Report: (1) Where an organization makes freely available, and specifies the location of, an audit of the trust pursuant to 29 U.S.C. 186(c)(5)(B); (2) where an organization files publicly available reports about the trust as a Political Action Committee (PAC) with a state or federal agency; (3) where a report about the trust as a political organization is filed with the Internal Revenue Service pursuant to 26 U.S.C. 527; or (4) where the trust is required to file an annual report pursuant to ERISA (29 U.S.C. 1023). The Department invited comments concerning whether the proposed Form T–1 procedures—including the enumerated exemptions to Form T–1 filing—were appropriate given the facts and circumstances of current union reporting.

Many labor organizations supported the proposed Form T–1 exemptions as a reasonable approach that provides valuable financial disclosure, while avoiding needless duplication of effort. Other unions, apparently either mistaken about, or unaware of, the parameters of the exemptions, criticized the Form T–1 on the ground that many trusts are heavily regulated by ERISA (and other federal laws) and are already required to file similar financial reports with government agencies. In the Department's view, these comments are best read to provide implicit support for the proposed exemptions. Several commenters suggested that the Department extend the Form T–1 exemption to any entity willing to be audited by an independent certified public accountant and willing to make that audit publicly available, irrespective of whether the trust currently files an audit or report with a government agency. Finally, several trade associations suggested that the Form T–1 permit no exemptions at all. These organizations stated that, at a minimum, unions be required to append to their Form LM–2 filings the pertinent audit or annual report filed with the other government agency.

In response to these comments, the Department has continued to provide four exceptions to the Form T–1 requirements: (1) A PAC fund, if publicly available reports on the PAC's funds are filed with federal or state agencies; (2) any political organization for which reports are filed with the IRS under 26 U.S.C. 527; (3) employee benefit plans filing a complete and timely report under ERISA; and (4) any covered trust or fund for which an independent audit has been conducted in accordance with standards prescribed in the final rule. For the first three categories, the exception is complete. No Form T–1 is required. For the fourth category, a union must file the Form T–1, but can file the independent audit in lieu of providing the financial information otherwise required by Form T–1. The audit will be required to meet either the requirements of 29 CFR 2520.103–1 *et seq.* (relating to annual reports and financial statements required to be filed under ERISA) or the standards described in detail in the Instructions to Form T–1.

The standards prescribed in the Form T–1 Instructions, generally, require that the audit be performed by an independent qualified public accountant who, after examining the financial statements and other books and records of the trust, as the accountant deems necessary, certifies that the trust's financial statements are presented fairly in conformity with accepted accounting principles. Notes to the financial statements included in the audit must disclose, for the preceding twelve month period: Losses, shortages, or other discrepancies in the trust's finances; the acquisition or disposition of assets, other than by purchase or sale; liabilities and loans liquidated, reduced, or written off without the disbursement of cash; and loans made to union officers or employees. The audit must be accompanied by schedules that disclose, for the preceding twelve month period: A statement of the assets and liabilities of the trust, valued at current value, and the same data displayed in comparative form for the end of the previous fiscal year of the trust; a statement of trust receipts and disbursements; and a list of all entities, including the name and description of the entity, with which the trust conducted $10,000 or more of commerce during the reporting period, as well as the aggregated total of all receipts/disbursements with each such entity during the reporting period.

These standards overlap partially with the standards required by the ERISA rule, with changes necessary to serve the particular needs of the Department in administering the ''interested trust'' provisions of the LMRDA, as discussed throughout this section of the preamble. See generally AICPA, Professional Standards, Special Reports, AU §§ 600 and 623; FASB, FAS 117, Final Statements for Not-for-Profit Organizations, ¶¶ 45, 47, 63.

The new audit alternative is aimed at promoting disclosure while avoiding duplication for trusts that are already subject to an independent audit. The audit option enables unions to avoid reporting the detailed financial information on a Form T–1 if they are already receiving an audit that meets the specifications set forth above, by simply filing a copy of such an audit along with the first page of a Form T–1, which provides identifying information. The criteria set forth above are in line with standard business practices (*id.*) and provide the kind of information in which union members who submitted comments on this issue demonstrated an interest. The information required in such an audit, however, is somewhat more general than that otherwise required on a Form T–1. For example, an audit need not specify the purpose for disbursements of $10,000 or more by the trust, but need only list the identities of those with whom the trust engaged in $10,000 transactions.

As discussed earlier, no union is required to file an audit for a covered trust. Instead, the union may choose to meet the reporting requirement by submitting either: (1) A statement that a qualifying report (as identified above in the categories listed) has been filed with a separate government agency; (2) a copy of an independent audit meeting the standards prescribed above; or (3) a completed T–1 Form. These requirements should not be read as diminishing or affecting in any way a trust's disclosure obligations under other applicable law including, but not limited to, ERISA, state and federal reporting laws governing PAC funds, IRS regulations governing political organizations, and Section 302(c) of the Labor Management Relations Act (LMRA), 29 U.S.C. 186(c).

The audit process provides a valuable qualitative check on the entity's finances by an independent examiner. Among other regulatory schemes, the SEC, as noted above, recognizes the important, rigorous role independent audits serve in its regulation of public companies. The Department recognizes that the audit option may not provide the same detail as the Form T–1, but in this context the need for itemization is less significant than it is in reporting the union's non-trust assets because the Form T–1 does not apply to disbursements by labor organizations directly. The Form LM–2 already captures specific union disbursements and accounts payable to trusts. The Form T–1 is designed to provide information about an entity created by the labor organization, or trustees or members of the governing body of which are selected or appointed by the labor organization, a primary purpose of which is to provide benefits for the labor organization's members or their beneficiaries.

Many union members recommended generally greater scrutiny of joint employer-union funds authorized under the LMRA. Moreover, while many union members were critical of the current state of joint funds disclosure and sought greater Department oversight of these funds, these comments can be read equally as supporting the requirements that unions specify where the audit is available. At least one union member stated that the critical problem was that requests for information about these funds were ignored—not that the substance of the information provided was insufficient. Similar reasoning supports extending the opportunity to reporting labor organizations to file a qualifying audit in place of a Form T–1 for any trust. The Department believes, however, that such audits should be filed with the Department, rather than maintained separately from the labor organization's other financial information. Their filing with the Department will promote transparency and accountability by allowing union members to access all trust information quickly and easily in one location.

3. Form T–1 Reporting Threshold

The Department proposed a reporting threshold based on the trust's annual receipts and a union's annual contributions to the trust (or the contribution made on the labor organization's behalf, or as a result of a negotiated agreement to which the labor organization is a party). The Department proposed $200,000 in annual receipts as the trust threshold and $10,000 as the threshold for a union's contributions to the trust. Although most of the comments received focused on the size of a labor organization's contribution, rather than the size of a reportable trust, the Department has decided to raise the reporting threshold to require unions to report only trusts with annual receipts of $250,000 or more, consistent with the increase in the reporting threshold for the Form LM–2.

One comment suggested that in some circumstances the $10,000 threshold for labor organization contributions to a trust was too high. That comment urged the Department to modify the proposal so that a union that contributes either $10,000 or 10% of its total annual receipts, whichever is less, would be required to file Form T–1. The comment reasoned that amounts of less than $10,000 may be significant, relative to the organizations overall finances, for some unions, and that members of such unions should have the benefit of knowing how their money is being spent. As noted above, the Department invited comments about the impact that the proposed trust reporting requirement would have on unions with relatively small assets. The commenters have persuaded the Department that some smaller unions could encounter significant and recurring difficulties in complying with the Department's proposal. The Department's decision to limit the requirement for filing Form T–1 to those unions with annual receipts of at least $250,000 has rendered moot the suggestion to adopt an alternative Form T–1 filing threshold for union contributions of the lesser of $10,000 or 10% of the union's total annual receipts.

The Department recognizes that amounts less than $10,000 may be comparatively more significant to some unions. However, the Department believes that the value of such information to union members is outweighed by the burden such reporting could have on unions without a professional or even full-time staff. Such unions also may have comparatively more difficulty in obtaining the detailed information and preparing the detailed trust report on Form T–1, especially in electronic format.

A number of commenters expressed the view that the $10,000 union contribution threshold for filing Form T–1 was too low and recommended various alternatives:

- Two comments suggested that the $10,000 threshold served a limited purpose because a benefit program would readily meet that threshold; the comments cited as an example the fact that a union with as few as 49 members who work full-time and contribute $.10 per hour to a benefit program would meet the threshold. A third comment suggested that the union annual contribution threshold be raised to $25,000.

- Two comments stated that the Department's proposal would require a union to file detailed reports on Form

T–1 regarding trusts in which a union may have only a 5% ownership interest. Those comments urged the Department to revise the proposal so that the threshold was based on ownership or control of at least 50% of the trust.

• For similar reasons, three comments suggested that a threshold of 20% or 25% or some other percentage of the receipts of the trust would be a better measure of the union's relationship with the trust that would permit the union to obtain details of the trust's financial operations to be reported on the Form T–1.

The Department has not been persuaded that these comments provide a sufficiently balanced and workable alternative to the Department's proposal. The $10,000 threshold for union contributions proposed by the Department represents, in the Department's view, the most appropriate compromise between an amount that is sufficiently high so that an undue reporting burden is not imposed on unions with limited finances and an amount that is sufficiently low so that trusts will be reported if they receive contributions equal to a significant proportion of the reporting union's other financial affairs. Thus, a threshold contribution of $25,000 seems excessively high, especially in relation to the other financial affairs of labor organizations. Setting the threshold at this level would deny members information about financial transactions involving a significant amount of money relative to the union's overall finances and other reportable financial transactions.

Basing a union's obligation to file a trust report on the percentage of the union's ownership or control of the trust also does not appear to be a workable or appropriate approach. Union ownership and control in the context of a union's participation in a trust that provides benefits to the union membership are very difficult concepts to quantify. Even if percentages of ownership or control were susceptible to reasonably precise calculations, in view of the many variables present in these situations, there is no readily apparent figure that would ensure the cooperation of the various trusts.

In any event, it seems unlikely that significant ownership or control need be vested in a single reporting labor organization in order to ensure trust cooperation so that the labor organization may obtain trust information sufficient for filing a Form T–1. A trust in which a labor organization is interested is defined in section 3(l) of the LMRDA to mean an organization that was created or established by a labor organization or one or more of the members of the governing body of which is selected or appointed by a labor organization. Thus, by definition one or more labor organizations probably will have significant involvement in the affairs of the trust. As a result, the Department anticipates that in most instances the reporting union, either by itself or in combination with other reporting unions, in practice will exercise sufficient influence to require or persuade the trust to provide the information necessary to file a Form T–1. It seems likely that in the great preponderance of circumstances it would not be necessary for a reporting union to have anything approaching 50% ownership or control of the trust in order to obtain the necessary information from the trust to prepare and file Form T–1.

The Department disagrees with the suggestion that a union's reporting threshold be based on the union's share of a particular trust's annual receipts. Under this approach, for example, a union would have to file a Form T–1 only if the union's per annum contribution reflects 20% or 25% of the total contributions received by the trust during this period. This approach would operate to except from reporting information relating to substantial contributions by a union, even though such contributions could represent the primary investment of the union. Moreover, this approach would deny members information, given the purpose of the trust, that is uniquely important to them as union members, even though the contributions of their particular union represents only a relatively small fraction of the contributions received by the trust. A formula setting the threshold at 20% or 25% of the annual receipts of the trust might exclude from the reporting requirement those large trusts that have numerous participating unions. Thus, even though the trust's entire contributions come from unions, no information would be disclosed by this trust unless a contributing union exceeds the suggested percentage of total contributions. For example, if a union need only file a Form T–1 for a trust if it contributes 20% of the trust's annual receipts, no disclosure will be required for even the smallest reportable trust, *i.e.*, a trust with annual receipts of $250,000, unless a single union contributes at least $50,000 annually to the trust, even though the trust receives all or most of its funding from a group of six or more unions.

The Department recognizes that where one or more labor organizations participate in a trust and fewer than all such labor organizations meet the annual contribution threshold that would trigger the obligations to file Form T–1 under the Department's proposal, all labor organizations that are required to file Form T–1 will submit virtually the same report. Members of the other participating labor organizations that do not meet the annual contribution threshold and that are not required to file Form T–1 would have access to those trust reports because the reports are public information under section 205 of the LMRDA, 29 U.S.C. 435. However, the Department believes that it is impractical to restrict the reporting to a single labor organization. Although it might be possible to impose the reporting obligation only on the labor organization that makes the largest contribution to the trust, this rule might be difficult to apply unless trusts were mandated to maintain an easily accessible and dynamic report of contributions by each participant in the trust, a condition that the Department is unable to impose. Allowing self-selection among unions also would be a possible option, but there is no guarantee that this would be workable. There is no mechanism by which this obligation could be enforced, and a particular union's failure to abide by any voluntary arrangement would deny members of several unions information to which they are entitled. Thus, in the Department's view, this alternative does not ensure that members would receive information about their union's trust holdings on a regular, predictable, and enforceable basis.

The Department also sought comments on an alternative ''single entity'' test to identify those funds or other organizations for which a union should report assets, liabilities, receipts and disbursements. The NPRM defined a ''single entity'' as one that is ''dominated or controlled by the labor organization to such a degree that assets, liabilities, receipts and disbursements of the entity effectively are those of the union itself.'' Id. The test focuses on such factors as commonality of ownership, directors and/or officers, exercise of control, personnel policies, and operations. If a related organization and the union are effectively a ''single entity,'' then the union would be required to include the related organization's financial information as part of the union's own finances on the appropriate LM form. The Department invited comments on the following specific issues: (i) Whether requiring a union to report financial data for any organization qualifying as a ''single

entity'' would provide better information to interested union members than the current requirements for reporting trusts in which the union has an interest; (ii) whether a union could easily identify organizations that satisfy the ''single entity'' test; and (iii) whether the proposed ''single entity'' rule may affect some smaller unions if the combined assets and receipts of the union and the related organization exceed the $200,000 threshold for requiring use of the proposed Form LM–2.

The Department received very few comments addressing the ''single entity'' test, all of which opposed the proposal. One comment criticized the proposed test because it would be more costly to enforce and less effective than the current ''bright-line'' standard (*i.e.*, the $10,000 contribution threshold). The comment suggested that a union could simply deny that a related organization qualifies as a deemed ''single entity'' and not disclose the financial information; interested union members would then have to litigate the issue. According to the commenter, the relationship between the union and the other organization might not be apparent to the union members and, as a consequence, members would have no reason to make inquiries about the relationship between the organizations. With respect to the impact on smaller unions, the comment noted that the proposal might encourage those unions to under-report assets to avoid the Form LM–2 threshold. The comment suggested lowering the Form LM–2 threshold or importing the proposed Form LM–2 changes into the Form LM–3 if the Department is concerned about under-reporting. Another comment rejected the Department's view that the related organization's finances must be combined with the union's finances for all purposes. The comment believed ''single entity'' reporting only requires the union to report the related organization's finances, but not to combine the two organizations' income to determine the applicable LM form. Determining the LM Form filing threshold on the combined receipts of both entities is ''absurd on its face,'' stated the comment, because a ''single entity'' finding recognizes two discrete legal entities and is thus unlike a finding that an organization is a ''subsidiary'' of a labor organization under the current Form LM–2. A third comment broadly rejected the ''single entity'' test because it would create ''misleading'' information about local unions and generate ''useless'' financial data.

After consideration of the comments received, the Department has decided against adopting the proposed ''single entity'' test. The Department agrees that the test is less effective than other criteria for determining whether a union is responsible for reporting financial information from related organizations. The criticisms underscore the difficulties faced by union members in obtaining financial information from a union: A union could conceal its relationship with the related organization, which would deny interested union members the information necessary for initiating inquiries; or a union could refuse to disclose information on the basis that the organization does not meet the standard for a ''single entity'' relationship. In either case, the Department would have to resort to litigation to obtain the withheld financial information. The ''single entity'' test does not reduce these obstacles. Moreover, the Department acknowledges that the test may be difficult to apply in some cases. The test requires close scrutiny of the related organization to determine whether a sufficient commonality of personnel, policies and operations exists to deem the union and the organization a ''single entity.'' Union members may encounter significant difficulties in obtaining the necessary information to make the comparison, which could reduce the incentive to conduct such inquiries. Even a fully informed investigation may not produce a conclusive answer because reasonable minds could differ about the relationship between the organizations. In contrast, a ''bright line'' standard based on a specified dollar threshold is unambiguous and easy to apply. The threshold determines whether the union's ''interest'' in another entity is sufficient to require its disclosure. This approach imposes no significant burden on interested union members.

B. Information Required for a Trust in Which a Labor Organization Is Interested

The Department proposed requiring labor organizations to report, on a Form T–1, itemized receipts and disbursements of a covered trust. The comments on this proposal, in large part, mirrored those with respect to itemization on Form LM–2. Several commenters suggested that itemization was likely to significantly burden affected unions with little corresponding benefit. Labor organizations, they argued, do not currently have accounting systems for this type of itemization and the number of entries alone for large trusts would be overwhelming. Other commenters supported itemization of Form T–1 receipts and disbursements. One organization cited the recent Washington Teachers' Union embezzlement case as an example of financial corruption that might have been prevented by Form T–1 itemization. Commenters noted that the Form T–1 included a schedule to report officer and employee salaries but comments that argued generally that the form was too burdensome did not specifically address that schedule. After carefully considering the comments, the Department continues to believe that unions should provide their members with financial information about its significant financial investments with covered trusts. However, the final rule reduces the burden of reporting information about such trusts.

As is the case with respect to itemization on Form LM–2, the Department believes the benefits of disclosure to union members will outweigh any corresponding burdens upon union officials. Union members have expressed through their comments serious concern over union dues that are deposited into trusts and joint ventures and unaccounted for thereafter. Large trusts will be required to itemize numerous entries. These trusts, however, will have available to them the same bookkeeping and accounting software available to unions. Thus, for the reasons discussed with respect to the Form LM–2, no undue burden is imposed upon covered trusts in compiling the information needed for the union to file the Form T–1. Moreover, there has been no suggestion that covered trusts are ill equipped to comply with the bookkeeping or reporting requirements established by the final rule. Moreover, the trust information will be readily accessible to any union member with access to the Internet. In sum, unions have not asserted that a trust in which a union is interested will encounter any significant burden in connection with the collection of information needed to complete a Form T–1, and none is apparent. The unions also have failed to demonstrate that they will encounter any significant burden in providing the information to the Department, a burden that, in any event, is less significant than the preparation of the Form LM–2. Unlike the Form T–1, the Form LM–2 imposes on the reporting union the direct responsibility to capture the information needed to prepare the required report with this Department.

Many commenters opposed the specific threshold of $10,000 for

itemized receipts or disbursements on the Form T–1. Again, these comments were similar to those on thresholds in Form LM–2. Some commenters suggested a greater dollar figure such as $25,000 (possibly indexed to inflation) or a percentage of the total receipts or disbursements of the trust such as 20% or 25%. Commenters asserted that the use of a percentage threshold would be more consistent with the Department's current regulation of employee benefit plans. One organization recommended a disjunctive threshold for itemization of $10,000 or 10%, the latter to capture those instances where a union contributes less than $10,000 but still controls a significant portion of the trust. Finally, one union member recommended that every disbursement be itemized regardless of size.

As discussed in greater detail above, the Department continues to believe that $10,000 is the appropriate threshold for itemization. This amount, in the Department's view, represents a substantial transaction that would be of interest to union members. For that same reason, a percentage threshold would be inappropriate, as it would deny information to members of unions with considerable assets about substantial transactions, denying them information about transactions that might have a significant impact on the union's finances. Conversely, the Department believes that the other proposals to eliminate any threshold, or to replace it with a lower dollar figure or a percentage of the assets of the union (or the trust) (which could operate to require itemization of transactions of less than $10,000) would impose an unwarranted burden on the unions without corresponding benefit to the members, given the unlikely impact on the overall financial health of most unions of transactions that are between $10,000 and a de minimis amount. In the Department's view, the difference between the reporting threshold for itemized transactions under the Form LM–2 ($5,000) and the threshold under Form T–1 ($10,000) is appropriate because the finances of a trust are less likely to directly impact union members than the expenditures by the union itself.

One commenter questioned the wisdom of setting a $250 reporting threshold under Schedule 4 for loans to officers, employees, or members. The commenter stated that such threshold would require the reporting of routine transactions, including relatively small credit card balances and most loans from a credit union trust. In response, the Department has decided to eliminate this Schedule from the Form T–1, and, in its place, require the union to state whether the trust has loaned money to officers or employees of the union during the reporting period on terms that are substantially more favorable than terms available to others, or has forgiven loans to officers or employees of the union during the reporting period. If the union answers in the affirmative, information about the loan must be provided in Item 25 (Additional Information). This information will be beneficial to union members without burdening every reporting union.

Several labor organizations raised privacy challenges to the Form T–1 itemization requirement, specifically that disclosing the name and address of individuals receiving trust funds (as well as the date, purpose, and amount of the transfer) would be unwise and likely unlawful under federal privacy laws. Some commenters recommended aggregating all disbursement amounts. While aggregating all disbursements would substantially reduce the amount and quality of the information reported on a Form T–1, the Department is sympathetic to the concerns that the disclosure of information in a Form T–1, which will be available on the Internet, should not result in the disclosure of private information regarding individuals. Accordingly, the Department has concluded that labor organizations will be permitted to use a procedure similar to that used with respect to sensitive information reported on the Form LM–2 itself. If the labor organization concludes that disclosure of specific information about a trust's disbursements to, or receipts from, individuals will result in the inappropriate disclosure of private information regarding such individuals, the disbursement or receipt may be aggregated with, and reported only as a part of, the total amount of disbursements and receipts below the itemized reporting threshold. The labor organization that elects to use this procedure, however, must indicate on the Form T–1 that it has done so and the use of this procedure will constitute ''just cause'' for union members to examine more specific information regarding these transactions, unless disclosure is prohibited by law or would endanger the health or safety of an individual.

C. Deadline for Filing a Form T–1

Comments from two unions stated that requiring the Form T–1 to be filed within ninety days after a trust's fiscal year would not provide sufficient time for labor organizations to take all necessary steps for filing Form T–1, including: determining whether the filing threshold is met; communicating with the trust; communicating with other participating labor organizations; obtaining the necessary information; and preparing and filing the Form T–1. A comment from a third union stated that the governing rules of its national union require its books and LM report to be audited and filed with the national union before the deadline for filing the local union's LM form and that requiring Form T–1 to be filed at the same time would make it even more difficult for locals of that national to meet their reporting deadline for their annual reports.

The Department's intention in permitting a union to file its Form T–1 within ninety days after the trust's fiscal year was to ease the burden for both the trust and the union. The Department anticipates that a trust more readily will be able to provide necessary information to the reporting labor organization at the conclusion of the trust's fiscal year and that a labor organization will have correspondingly less difficulty in obtaining information at that time.

The Department recognizes that reporting labor organizations must obtain this information from their trusts, but most of the steps outlined by the commenters above should take little time. A labor organization should readily be able to determine from its own records whether the labor organization's own contributions to the trust equaled or exceeded $10,000 annually. A labor organization is likely to know from past audits or other information provided by the trust whether the trust's annual receipts approximate $250,000 or more, and, whether or not the labor organization has that information, the labor organization's request to the trust for information necessary for filing Form T–1 could simply be conditioned on the trust having that level of annual receipts. It should not be necessary to seek any information or assistance from other unions that participate in the trust. Even the assembly of information by the trust and the subsequent preparation of Form T–1 by union officials should not require substantial expenditures of time, inasmuch as the Form T–1 requires only relatively basic information regarding receipts, disbursements and payments to officers and employees of the trust. The time and difficulty a labor organization may experience in obtaining and filing information on Form T–1 is thus minimized.

Two commenters, a union and an accountant, observed that reporting unions may not control a trust for which

information must be filed on Form T–1 and that it may be difficult for some unions to obtain the necessary information from trusts. Though the trusts may have legal identities separate from reporting unions, the Department anticipates that in many and probably most instances the reporting union either by itself or in combination with other reporting unions will in practice exercise sufficient influence to require or persuade the trust to provide the necessary information. In this connection, if the union's members request further information about a particular trust or further details about a reported transaction, the union must disclose to the member any relevant information within its possession at the time of the inquiry and make a good faith effort to obtain additional information from the trust.

The Department recognizes that there may be some instances in which a trust will not fully cooperate in providing timely information to the reporting union. However, the Department expects that, in those infrequent instances, the reporting union officials will be able to demonstrate that they made a good-faith effort to obtain timely information from the trust. In such situations, the Department is prepared to exercise any available investigative and other authority to assist the reporting union to obtain the necessary information. One commenter, an accountant, suggested that some of the information required to be reported on Form T–1 may be reported by the trusts under other federal reporting requirements with later reporting deadlines and that unions that file reports regarding those trusts should be permitted to use those later deadlines. The Department concludes that a rule with such uncertain deadlines would be difficult to administer and would not be easily ascertained and applied by all parties, including labor organizations, their members, the trusts, the Department, and the public.

One commenter, a union business representative, urged the Department to include a procedure for granting extensions of time to labor organizations for filing their financial reports. The commenter argued that some labor organizations already find it difficult to file current LM forms in a timely manner. Section 207 of the LMRDA expressly states that each labor organization annual financial report must be filed within ninety days after the organization's fiscal year. This requirement is consistent with the evident intention of Congress that union members and others have access to regular and timely annual reports as a means to effectuate union self-government. The statute provides no authority to waive this deadline, even when a union has made a good faith effort to comply with the deadline. The Department has concluded that neither the current nor the revised reporting forms for labor organizations are likely to pose unreasonable difficulties for union officials who are reasonably diligent in their efforts to timely file the union's Form LM–2 and any Form T–1.

Another commenter, also an accountant, suggested that a reporting labor organization be permitted to file information from the ''latest available'' report by the trust and that it would be simpler to require Form T–1 to be filed at the same time that the labor organization must file its annual report, namely within ninety days after the end of the labor organization's fiscal year, rather than ninety days after the end of the trust's fiscal year. As discussed above, only certain reports will be acceptable as substitutes for the Form T–1. Nonetheless, this comment suggests a reasonable approach that will ensure that union members are able to obtain relevant information about a trust in which his or her union has an interest, while reducing any burden for the reporting union. Thus, the Department has decided to require a reporting labor organization to file its Form T–1(s), or qualifying audits in substitution for Form T–1(s), at the same time as it files its own Form LM–2. The Form T–1, or qualifying audit, however, need not cover the same reporting year as the Form LM–2. Rather, the reporting labor organization must provide, at the time it files its Form LM–2, a Form T–1 or qualifying audit for the trust's most recent fiscal year that ended during the labor organization's reporting year—essentially the ''latest available'' report. If the trust's fiscal year coincides with the reporting labor organization, the labor organization will have 90 days in which to obtain the necessary information to complete a Form T–1, or the audit. If a trust's fiscal year ends on a different date than the labor organization's, the reporting union will have, in addition, any time between the end of the trust's most recent fiscal year and the end of the union's own fiscal year to obtain the information. Moreover, this requirement, like all other changes made by this rule, will be effective for fiscal years beginning on or after January 1, 2004. Accordingly, a union will be required to file a Form T–1 only for fiscal years beginning on or after January 1, 2004, of trusts in which it has an interest. Because a union need only file the ''latest available'' report for its trusts, it is unlikely that many Form T–1 reports, if any, will be required in the first year. For example, if a union's fiscal year begins on January 1, 2004, its Form LM–2 will be due at the end of March of 2005. If that union has an interest in a trust that begins its fiscal year on October 1, the first fiscal year for which a Form T–1 will be required for such a trust is the fiscal year that ends on September 30, 2005. Obviously, no Form T–1 will be available to file with the union's first revised Form LM–2 filed in March. If, however, a union that begins its fiscal year on January 1, 2004, has an interest in a trust that also begins its fiscal year on January 1, 2004, the union should file a Form T–1 covering the trust's 2004 fiscal year when the union files its Form LM–2 in March of 2005.

V. Regulatory Procedures

A. Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is not an ''economically significant'' regulatory action under section 3(f)(1) of Executive Order 12866. Based on an analysis of the data the rule is not likely to: (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; or (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. The Department estimates the total cost of the final rule to be $79.9 million in the first year, $44.1 million in the second year, and $43.2 million in the third year (see the following Paperwork Reduction Act section for a description of how these costs were estimated). The three-year average cost of the rule is $55.7 million per year. The Department also estimates a benefit of $2.6 million per year in savings for 501 smaller unions because they can file the less burdensome Form LM–3 as a result of increasing the new Form LM–2 reporting threshold to $250,000. Further, there are substantial unquantifiable benefits that result from the greater transparency of labor organizations' financial information to its members and other benefits of deterring fraud or discovering it earlier. As a result, the Department has

concluded that a full economic impact and cost/benefit analysis is not required for the rule under section 6(a)(3) of the Order. However, because of its importance to the public, the rule was treated as an otherwise significant regulatory action and was reviewed by the Office of Management and Budget (OMB).

One commenter stated that the Department failed to meet certain requirements of Executive Order 12866. Specifically, the comment asserted that the Department failed in several respects to adhere to the ''Principles of Regulation'' set forth in Section 1(b) of the Order:

a. The Notice of Proposed Rulemaking did not demonstrate that the Department engaged in any investigation and assessment of the problems addressed by the proposed rule.

b. The Notice of Proposed Rulemaking did not demonstrate that the Department considered any non-regulatory alternatives for accomplishing the objectives of the proposed rule.

c. The Notice of Proposed Rulemaking provided no evidence that the proposed rule would reduce financial mismanagement of labor organizations or was the most cost effective means to address the objectives of the rule.

d. There is no documentation that the Department's proposed rule is based on the best reasonably obtainable information.

e. The proposed rule ignores the preference expressed in Section 1(b)(8) of Executive Order 12866 for performance objectives rather than design standards.

The comment also asserted that the requirements for significant regulatory action set forth in Executive Order 12866 were not properly observed in that:

a. The Department did not engage in any cost-benefit analysis of the proposed rule.

b. The Department did not seek the involvement of those intended to benefit from and expected to be burdened by the proposed rule.

c. The Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) did not take sufficient time to review the Department's proposed rule for purposes of Executive Order 12866.

As an initial matter, the Department firmly believes it has complied fully with E.O. 12866 in all relevant respects. The comment appears to have a fundamental misapprehension of the purpose and function of Executive Order 12866 and of the Department's efforts to comply with the requirements of the Order. As explained below, the purpose of Executive Order 12866 is to facilitate the effective internal management of the Federal Government with respect to the development of regulatory actions. Indeed, Sections 6(a)(3)(E) and 6(b)(4)(D) in fact provide that an agency and OIRA will make available to the public various information and documents regarding the development of agency rules only ''[a]fter the regulatory action has been published in the **Federal Register** or otherwise issued to the public.''

Inasmuch as Executive Order 12866 is intended solely for the internal management of federal regulatory actions, the Order does not provide for judicial review or other public review of the procedures and substantive requirements of the Order during the developmental stages of a rule. That is underscored in several provisions of the Order. For example, Section 10 of the Order states: ''This Executive Order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.''

The nature of Executive Order 12866 as a tool for the development and internal review of federal rules also is evident throughout the text of the Order. For example, ''The Principles of Regulation,'' which the comment appears to have treated as setting forth substantive legal requirements, is introduced by the statement that agencies ''should'' adhere to those principles ''where applicable.'' Section 1(b)(8), as the comment suggests, expresses a preference for rules that establish performance objectives rather than rules that mandate specific behavior or the specific manner of compliance, but states that this should be sought ''to the extent feasible.'' Section 1(b)(6), as suggested by the comment, provides for an assessment of the costs and benefits of a proposed rule but adds, ''recognizing that some costs and benefits are difficult to quantify.'' In the instant rulemaking, the Department has assessed fully the costs and benefits associated with the final rule.

The commenter's demand that the efforts of the Department and OIRA to comply with the procedural and substantive principles, objectives, and requirements of Executive Order 12866 be documented in detail, be described exhaustively for the review of the public at this time, and be evidenced in the Notice of Proposed Rulemaking is misplaced, as is the objection that its view of the most cost effective alternative was not proposed. The principles, objectives, and requirements of Executive Order 12866 are designed to guide and assist the agency and OIRA during the development of the agency rule and are not addressed to the public. The remedy for any agency failure to comply with some requirement of the Executive Order, as the excerpt from Section 10 referred to above makes clear, is not judicial review at the behest of the regulated or benefited community under the proposed rule; rather, the remedy is the President's directive in Section 8 of the Order that the agency's rule may not be published in the **Federal Register** or otherwise issued to the public until OIRA either waives or completes its review.

Some of the procedural and substantive requirements of Executive Order 12866, as expressly indicated in Section 1(b)(6) (''recognizing that some costs and benefits are difficult to quantify''), are not susceptible to precise definition and measurement. The insistence of the comment that the Department did not choose ''the most cost effective means to address the alleged problem'' is itself not a statement that can be assessed with objective precision. Any calculus of the costs and benefits of the proposed rule is based in significant part on the value of transparency and accountability in union financial affairs as well as on very difficult projections regarding the impact of the accessibility of financial information on sound union financial management and union democracy generally. That increased transparency in union financial affairs will deter some mismanagement and malfeasance, promote democratic values in unions, and prevent the loss of trust by members and the loss of confidence by the public generally in unions and their officials cannot be seriously doubted. But the Department recognizes that it is very difficult to quantify and balance the associated costs and benefits of those matters with any precision.

The Department has concluded, therefore, that to the extent feasible, appropriate, and necessary, the Department has disclosed in the Notice of Proposed Rulemaking and, more extensively, in this preamble to the final rule the pertinent aspects of the Department's assessment of the problem, the information relied on, the costs and benefits involved, the alternatives considered, and the most appropriate remedy. For the various reasons outlined above and contrary to the apparent assumption of the comment, Executive Order 12866 did

not require the Department to set forth in the Notice of Proposed Rulemaking or in this preamble other evidence of the Department's efforts to comply with the Order in developing and submitting this proposal to OIRA for review.

B. Small Business Regulatory Enforcement Fairness Act

The Department has concluded that this rule is not a ''major'' rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). In reaching this conclusion, the Department has determined that the rule will not likely result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

C. Unfunded Mandates Reform

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include a Federal mandate that might result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any one year. The basis for the Department's estimate of the likely cost of compliance with this rule is set forth above.

D. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism and has determined that the rule does not have federalism implications. Because the economic effects under the rule will not be substantial for the reasons noted above and because the rule has no direct effect on States or their relationship to the Federal government, the rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

E. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, requires agencies to prepare regulatory flexibility analyses, and to develop alternatives wherever possible, in drafting regulations that will have a significant impact on a substantial number of small entities. The Small Business Administration (SBA) determined, in a regulation that became effective on October 1, 2000, that the maximum annual receipts allowed for a labor union or similar labor organization and its affiliates to be considered a small organization or entity under section 601(4), (6) of the Regulatory Flexibility Act was $5.0 million. 13 CFR 121.201 [Code Listing 813930]. This amount was adjusted for inflation to $6.0 million by a regulation that became effective on February 22, 2002. Accordingly, the following analysis assesses the impact of these regulations on small entities as defined by the applicable SBA size standards.

1. Statement of the Need for, and Objectives of, the Rule

The following is a summary of the need for, and the objectives of, the final rule. A more complete discussion is contained in the preamble above.

The Department is revising the forms labor organizations use to file the annual financial reports required by the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA or Act). This final rule modifies Form LM–2, which is the report required to be filed by the largest labor organizations and creates a new Form T–1 for these unions to report the assets, liabilities, receipts, and disbursements of trusts in which a labor organization has an interest. To reduce the burden on smaller labor organizations, the final rule also raises the threshold for filing Form LM–3 to annual receipts of between $10,000 and $249,999 to correspond with the higher Form LM–2 threshold ($250,000). These forms are prescribed by the Secretary of Labor to implement the Act and incorporated by reference in the applicable regulations.

Over the past forty years, the functions and operations of unions have evolved while the forms used by unions to file annual financial reports required by the LMRDA have remained substantially unchanged. The forms no longer serve their underlying purpose because they fail to provide union members with sufficient information to reasonably disclose to them ''the financial condition and operation[s]'' of labor organizations as required by the LMRDA. As noted previously, it is impossible for union members to evaluate in any meaningful way the operations or management of their unions when the financial disclosure reports filed with OLMS simply report large expenditures (*e.g.*, $62 million) for broad, general categories like ''Grants to Joint Projects with State and Local Affiliates.'' The large dollar amount and vague description of such entries make it essentially impossible for anyone to determine with any degree of specificity what union operations their dues are spent on, without which the purposes of the LMRDA are not met.

Today's union members need relevant information provided in a usable format in order to make the decisions necessary to exercise their rights as members of democratic institutions. The information provided members on the current forms lags well behind the financial information available to them in other contexts of their lives as consumers, citizens, and investors. The Department is committed to maintaining accountability and promoting transparency with full and fair disclosure by labor organizations. Providing additional detail on Form LM–2 and requiring similar disclosure on the new Form T–1 of information about trusts in which the labor organization has an interest is necessary to give union members an accurate picture of their labor organization's financial condition and operations and to prevent the circumvention or evasion of the statutory reporting requirements.

The revision of Form LM–2 is also necessary to improve its usefulness as a deterrent to financial fraud and mismanagement. OLMS case files repeatedly demonstrate that this goal of the Act is not being met. Over the past five years, OLMS investigations resulted in over 640 criminal convictions. As a remedy, the courts ordered the responsible officials to pay $15,446,896 in restitution, in addition to debarring them from union service for a combined total of almost ten thousand years. In many cases the broad aggregated categories on the existing forms enabled union officers to hide embezzlements and financial mismanagement. More detailed reporting of all financial transactions is likely to discourage and reduce corruption because it would be more difficult to hide financial mismanagement from members and strengthen the effective and efficient enforcement of the Act by the Department.

The objective of this rule is to increase the transparency of union financial reporting by revising the LMRDA disclosure forms and to take advantage of modern technology to reduce the reporting burden. This will enable workers to be responsible, informed, and effective participants in the governance of their unions; discourage embezzlement and financial mismanagement; prevent the circumvention or evasion of the statutory reporting requirements; and strengthen the effective and efficient enforcement of the Act by OLMS.

2. Summary and Assessment of the Significant Issues Raised by Comments and Changes Made to the Proposed Rule as a Result of Such Comments

Many comments, although not directed specifically at the initial regulatory flexibility analysis, raised issues related to the effect of the proposed rule on small entities, and in response, the Department made many significant changes to its proposal. These issues and changes are discussed in detail above. The following addresses comments that are specifically related to the Department's initial regulatory flexibility analysis.

The AFL–CIO argues that the Department did not meet the standards of the Regulatory Flexibility Act and its requirements that agencies consider the impact of rules on small entities. Although the AFL–CIO acknowledges that the Department included a Regulatory Flexibility Analysis describing the impact of the proposed rule on small entities, the AFL–CIO claims that a purported lack of analysis indicates that the Department's inquiry was not conducted in good faith. For example, the AFL–CIO argues that the Department never seriously considered the alternatives listed in the initial Regulatory Flexibility Act analysis. The AFL–CIO contends that these alternatives were just ''straw men'' that the Department considered only briefly, knowing that they would be discarded. Among the alternatives that the Department should have considered and proposed for small unions, according to the AFL–CIO, were: (1) The ''phasing in'' of the effective date for the rule; (2) a permanent waiver of the electronic filing requirement; and (3) an exemption from functional reporting. These alternatives are addressed in the preamble and the discussion below.

The Department noted in the NPRM that the SBA's definition of ''small entity'' may not be appropriate in the context of labor unions and their regulation under the LMRDA. Nonetheless, the Department performed an Initial Regulatory Flexibility Analysis for the NPRM and addressed each of the categories, applying the SBA's definition as required by 5 U.S.C. 603. The Department has also submitted a Final Regulatory Flexibility Analysis with this final rule as required by 5 U.S.C. 604. Thus, the Department has met the procedural requirements of the Act.

The Department specifically considered and discussed in some detail five options in its Initial Regulatory Flexibility Analysis. Despite the AFL–CIO's disagreement with the Department's choice of options discussed or the Department's ultimate decisions concerning these options, the AFL–CIO has not shown and cannot show that the Department did not consider the options or acted in bad faith by not proposing them. In order to reduce the burden on smaller unions, the Department, among other revisions for the same purpose, adopted the alternative, identified in the NPRM, to raise the reporting threshold for the Form LM–2 from $200,000 to $250,000. As discussed in detail in the preamble, other revisions, adopted in response to comments, should make compliance by smaller unions easier than if the Department's proposal was left unchanged.

The AFL–CIO contended that the Department failed to satisfy its obligation under the Regulatory Flexibility Act to actively solicit the participation of small entities as part of its planning for this rulemakings. The Department disagrees with this view and notes that it engaged in a substantial outreach effort, even before publication of the NPRM, in order to solicit ideas for improving the effectiveness of the annual financial report to achieve the disclosure intended by Congress in establishing the LMRDA's reporting requirements. To this end, Department officials conducted numerous consultations with union representatives, including face-to-face meetings with 39 unions. After publication of the proposal, Department officials continued to meet with unions that requested meetings and added notes of meetings with six unions during the public comment period to the rulemaking record.

An alternative suggested by commenters that directly affects the smallest unions to whom the new rule applies was to adjust upward for inflation the Form LM–2 filing threshold from $200,000, the adjusted amount set in 1994. The Department has adopted this alternative and increased the Form LM–2 threshold to $250,000 in the final rule. As a result, 501 unions that currently file a Form LM–2 will now be able to satisfy the requirements of the LMRDA by filing the simpler Form LM–3. It should also be noted that the final $250,000 threshold is significantly higher than the earlier thresholds for filing the Form LM–2 when they are adjusted for inflation—1959 ($20,000), 1962 ($30,000), and 1981 ($100,000). The Department will continue to monitor this threshold, as well as all other thresholds established by this rule, and may make future adjustments if economic conditions warrant such a change.

Another alternative considered by the Department was to phase-in the effective date for the Form LM–2 changes in order to provide smaller Form LM–2 filers additional lead time to modify their recordkeeping systems to comply with the new reporting requirements. This alternative also was supported by a number of commenters. After reviewing the comments, the Department has changed its proposal, which would have required unions to use the new Form LM–2 to file the report for any fiscal year beginning immediately after the publication of the final rule, and instead is requiring labor organizations to use the revised Form LM–2 to file the report for the fiscal years that begin on or after January 1, 2004, about three months after publication of this rule. This change provides approximately two-thirds of reporting unions with sufficient lead time within which to adjust their procedures to keep track of the information they will need to prepare a Form LM–2 and to submit, 15 months after the start of their next fiscal year (beginning on January 1, 2004), or nearly 18 months after the publication of this rule, the report to the Department, and even more time to the remaining third of reporting unions that use different dates for their fiscal years. Thus, no union will have less than about three months to change its bookkeeping and accounting systems to capture data that later will be needed to submit the Form LM–2.

With this change, unions will have adequate time to conform to the revised forms and comply with the more detailed reporting requirements. The public comments and OLMS auditing and accounting experience confirm that many local (and therefore generally smaller) unions already collect and maintain some (and in some cases most) of the information required by the new form. Moreover, unions must already track and maintain records for all disbursements in order to report total disbursements for the variety of functional categories on the current Form LM–2. The survey data submitted by the AFL-CIO suggests that 16 to 22% of local unions already have the capability to itemize and track receipts and disbursements (including credit card transactions), as required by the final Form LM–2. Further, after the research and review of different types of commercial-off-the-shelf accounting software, the Department believes that updating and modifying accounting systems to track all of the information required by the revised forms should be accomplished easily, given the lead time

built into the final rule. The steps required of unions to adjust their bookkeeping and accounting procedures are discussed in the preamble. OLMS also plans to provide compliance assistance to any labor organization that requests it. In addition, a review of the proposed revisions was undertaken to reduce paperwork burden for all Form LM–2 filers and an effort was made during the review to identify ways to reduce the impact on small entities. The Department believes it has minimized the economic impact of the form revision on small unions to the extent possible while recognizing workers' and the Department's need for information to protect the rights of union members under the LMRDA.

To reduce the burden on small labor organizations, several commenters suggested that unions be required to file annual independent audits as an alternative to filing the Form LM–2. Although some commenters argued that requiring unions to obtain annual audits is within the Department's statutory authority, no provision of the LMRDA vests the Secretary of Labor with any express authority to require unions to obtain audits and the Department has chosen not to attempt to impose such a requirement. Moreover, an annual audit requirement would require a reporting union to incur the expense of obtaining the services of an independent auditor and thus impose an additional burden on small unions, many of which, in the Department's experience, are not currently obtaining private audits. Finally, this alternative was rejected because audits typically do not reveal the detail on the financial operations of unions that is required by the statute (29 U.S.C. 431) and requiring such detail with the appropriate audit standards would be no less burdensome than the final forms.

A union, however, could meet its trust reporting obligation under the final rule by utilizing any exceptions provided for in the rule, including the submission of an independent audit of the trust that meets the minimum standards prescribed by the rule. In permitting this last exception, the Department recognizes that although most audits do not provide an adequate substitute for the full disclosure of information generally required under the LMRDA, this statutory purpose can be achieved in the trust reporting context so long as the information is verified by an independent examiner and meets the standards prescribed by the rule. By permitting a labor organization to submit an audit in place of a Form T–1, smaller labor organizations that file a Form LM–2 are relieved of the burden of compiling a separate form and need only insist that entities with annual receipts of $250,000 or more, to which they contribute $10,000 or more, or to which that amount is contributed on their behalf, provide only very basic information regarding their fiscal operations.

Another commenter suggested that a reporting labor organization be permitted to file information from the ''latest available'' report by the trust. This commenter observed that it would be simpler to require Form T–1 to be filed at the same time that the labor organization must file its annual report, namely within ninety days after the end of the labor organization's fiscal year, rather than ninety days after the end of the trust's fiscal year. Although the ''latest available'' report of the trust may not be a sufficient substitute for a Form T–1 (depending on whether it meets the prescribed audit criteria as discussed in the preamble), this suggestion presents a reasonable alternative that should both alleviate burden for the reporting labor organization and minimize confusion for those interested in this information. Thus, the Department has decided to require a reporting labor organization to file all Form T–1s, or qualifying audits in substitution for Form T–1s, if it so chooses, at the same time that it files its own Form LM–2.

To reduce the burden on smaller labor organizations, a few commenters, including the AFL–CIO, suggested that the Department establish a permanent waiver for electronic filing and/or pilot testing of electronic filing as alternatives to the Department's proposal. As discussed in the preamble, the Department has rejected the permanent waiver alternative because for several years Congress has urged the Department to implement the electronic filing of annual reports required by the LMRDA, along with an indexed and easily searchable computer database of the information submitted, accessible by the public over the Internet. *See* H.R. Conf. Rep. 105–390, 1997 U.S.C.C.A.N. 2061; H.R. Conf. Rep. 105–825; H.R. Conf. Rep. 106–419; H.R. Conf. Rep. 106–479; H.R. Conf. Rep. 106–1033; H.R. Conf. Rep. 107–342, 2002 U.S.C.C.A.N. 1690; H.R. Conf. Rep. 108–10, 2003 U.S.C.C.A.N. 4. Moreover, as the public comments suggest, the relevant inquiry with respect to electronic filing is not whether it should be required, but rather how and when it should be accomplished. After significant research and analysis (as discussed above), the Department has decided that the best method to address any legitimate excessive burden associated with electronic filing is not through a permanent waiver, but through a hardship exemption (a term borrowed from the SEC's electronic filing procedures), and that, for the majority of filers, electronic filing is the least burdensome option.

The Department gave serious consideration to the comments suggesting a pilot program or a delayed phase-in of the reporting requirements, but has concluded that such alternatives are unnecessary. After reviewing the recordkeeping and reporting requirements of the current Form LM–2, the public comments that were received, and the modifications that unions may have to make to their accounting and recordkeeping systems to comply with the final rule, the Department believes that Form LM–2 filers will be able to make the adjustments before the start of their first reporting period under the final rule—a minimum of about three months from the date of the rule's publication—without incurring an undue burden. The most important change involves the tracking of receipts reported in Schedule 14 and disbursements to ensure that each disbursement is allocated to the proper disbursement category on the revised Form LM–2 with a descriptive purpose and that all of the required information (name, address, purpose, date, and amount) is captured for each ''other'' receipt and disbursement.

Some commenters stated that this is a dramatic change in the Form LM–2 and would impose a significant burden on unions in order to change their recordkeeping systems before the effective date of the final rule. However, this position fails to recognize that unions have always been required to allocate each disbursement to one or more disbursement categories on the current Form LM–2 (and to maintain those records). For example, unions have always been required to allocate credit card payments to multiple categories of the LM–2 based upon the purposes of each charge. A single credit card charge to a travel agent may include expenses that must be allocated to three or more different places on the current LM–2. Although the Department has changed the functional categories on the final form, the underlying method of allocating these disbursements and maintaining the records remains the same.

Changing accounting and recordkeeping systems to capture all of the required information (name, address, purpose, date, and amount) for each other receipt and disbursement can be accomplished before January 1, 2004.

Filers will need to study and understand the new requirements and may have to work with their staff or vendors to make adjustments to the union's accounting and recordkeeping systems, and then train the staff. However, these sorts of operations—changing the way disbursements are classified and the types of information recorded—are routine in the normal course of business and relatively easy to perform within accounting systems. Moreover, as discussed in the preamble, the public comments suggest that 60% of the national and international unions already maintain written records for the information required by the new ''other receipts'' schedule and that many unions already maintain records as part of their normal business practice that reflect the required detail for disbursements for the revised form (even though between 10 and 40% of unions could not provide all of the required detail). Finally, because each labor organization's filing date is dependent on its chosen fiscal year, many unions will have more than three months to complete any changes they may have to make to their accounting and recordkeeping systems.

Additionally, the Department will provide substantial compliance assistance to unions to assist them in understanding the new requirements and making adjustments to their recordkeeping and reporting practices. This initiative will include guidance that provides an overview of the requirements, a comparison of the old and new requirements, the types of account changes unions may have to make, guidance to assist unions to configure off-the-shelf software to best capture the information needed to provide the data required for submitting the LM–2 and T–1 reports, a schedule of seminars for unions hosted throughout the country, an email list-serve to provide periodic updates to interested parties, web-based materials that include frequently asked questions, a description of the Form T–1 registration process, and other topics of interest to filers.

Filers that choose to take advantage of the electronic importation features of the Department's reporting software will need to create reports within their accounting systems that will be used to complete the revised Form LM–2 and new Form T–1. However, this work need not be completed until the form is ready to be filed, no earlier than 15 months after the effective date of the final rule and nearly 18 months after publication. Further, in the event that any labor organization encounters severe difficulties concerning electronic filing, a hardship exemption will be available.

A few commenters suggested that unions only be required to report the debts they have written off as a less burdensome alternative to reporting all debts above the proposed $1,000 threshold that are 90 days or more past due. This alternative was rejected because: (1) The Department believes that raising the itemization threshold to $5,000 for reporting debts will alleviate much of the burden suggested by commenters as a multitude of relatively small accounts will no longer have to be listed, particularly for smaller unions; (2) as discussed above, itemized disclosure is important because it provides a vital early warning signal of financial distress and possible fraud as in the Washington Teachers' Union case; and (3) the itemization requirement is tailored to a union member's legitimate interest in knowing, for example, whether the union continues to do business with an entity that fails to pay its debts or whether the union continually falls behind in payments to a certain vendor. Moreover, the public comments suggest that the majority of unions already collect most, if not all, of the information required by the accounts receivable and accounts payable schedules on the final form, which is not surprising considering the current Form LM–2 requires aggregate reporting of accounts receivable and accounts payable.

Finally, a few commenters, together with the AFL–CIO, suggested an exemption from functional reporting to reduce the burden on smaller labor organizations. The Department has rejected this alternative because it would: (1) Eliminate the availability of meaningful information to over 12.3 million union members in unions with less than $6.0 million in annual receipts (the current SBA small entity standard for unions) and significantly reduce the transparency and accountability in the reporting of union financial condition and operations, which may have far greater impact on, and relevance to, union members, particularly since such lower levels of union organizations generally set and collect dues and provide representational and other services for their members; and (2) not provide any additional deterrence to fraud and embezzlement by officials in smaller labor organizations.

Moreover, functional accounting is not a new concept to labor organizations, large or small. The current Form LM–2, through its use of categories, requires labor organizations to report certain expenditures by function. Moreover, functional accounting is required of not-for-profit organizations under the standards established by the FASB and some of the labor organizations that submitted comments acknowledged that they use functional reporting as a management tool. Furthermore, many commenters overlooked the fact that the IRS requires not-for-profit organizations, including unions, to report their expenditures by certain categories and that the IRS uses several functional categories that parallel, in many respects, the categories in the proposed Form LM–2. For example, both the IRS Form 990 and the new Form LM–2 require disclosure of disbursements related to political activity and lobbying (even though, unions typically report no information under these categories to the IRS). Finally, as explained above, the Department has made significant changes to the functional categories and associated schedules in the new Form LM–2 to minimize the burden, particularly on small unions.

3. Number of Small Entities Covered Under the Rule

The primary impact of this final rule will be on the largest labor organizations, defined as those that have $250,000 or more in annual receipts. There are approximately 4,778 labor organizations of this size that are required to file Form LM–2 reports under the LMRDA (just 19.0% of all labor organizations covered by the LMRDA). The Department estimates that 4,463 of these unions, or 93.4%, are considered small under the current SBA standard (annual receipts less than $6.0 million). These unions have average annual receipts of approximately $1.1 million and an average of 14 officers and 4 employees. The rule will also reduce the burden on 501 small unions that will be able to file Form LM–3 instead of Form LM–2 because of raising the LM–2 threshold to $250,000. These estimates are based on 2001 and 2002 data from the Office of Labor-Management Standards e.LORS system. This system contains annual receipt data on all Form LM–2, LM–3, and LM–4 filers. Although these estimates may not be predictive of the exact number of small unions that will be impacted by this final rule in the future, the Department believes these estimates to be sound and are derived from the best available information.

4. Reporting, Recordkeeping and Other Compliance Requirements of the Rule

This final rule is not expected to have a significant economic impact on a substantial number of small entities.

The LMRDA is primarily a reporting and disclosure statute. It establishes various reporting requirements for labor organizations, labor organization officers and employees, employers, surety companies, and employer consultants pursuant to Title II of the Act. Accordingly, the primary economic impact of the final rule will be the cost to reporting unions of compiling, recording, and reporting required information. The final rule establishes a new set of reporting requirements for those labor organizations with receipts of $250,000 or more. See the following Paperwork Reduction Act section (Overview of Changes to Form LM–2, and Overview of the New Form T–1) for greater detail on the reporting, recordkeeping, and other compliance requirements of the rule. In order to comply with these requirements, reporting unions may need to make adjustments in their recordkeeping and bookkeeping procedures and, in some instances, to make changes in computing hardware or software to file the reports electronically. None of these expenses is expected to have a substantial impact on the 4,463 unions considered to be small by SBA standards (because they amount to only 1.7% of these unions' average annual receipts over three years), in large part because the public comments and OLMS's auditing experience confirm that labor organizations, like most small entities following standard business practices, already maintain at least some of the receipt and disbursement records required by the final rule.

The average annual reporting and recordkeeping burden for the current Form LM–2 is $8,381 or 0.3% of average annual receipts for all Form LM–2 filers. The average additional first year cost (including first year non-recurring implementation costs) of the final rule for the 4,463 unions considered to be small by SBA standards for filing both the revised Form LM–2 and new Form T–1 is less than $17,876, or 1.6% of average annual receipts (see Table 1). The average total first year cost of the revised Form LM–2 and new Form T–1 on small unions is $26,257, or 2.3% of total annual receipts. Further, the average total cost for small unions falls to $18,322 or 1.6% of total annual receipts in the second year.

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Table 1 - Summary of Regulatory Flexibility Analysis

For Unions that Meet the SBA Small Entity Standard	Total Burden Hours per Respondent	Total Cost per Respondent
Average Cost of Current Form LM-2	292.0	$8,381
Average First Year Cost of Revised Form LM-2 & New Form T-1	781.7	$26,257
Percent of Average Annual Receipts	n.a.	2.3%
Average Second Year Cost	573.3	$18,322
Percent of Average Annual Receipts	n.a.	1.6%
Average Increase or Cost of Final Rule, First Year	489.7	$17,876
Percent of Average Annual Receipts	n.a.	1.6%
Average Increase or Cost of Final Rule, Second Year	281.3	$9,941
Percent of Average Annual Receipts	n.a.	0.9%
Maximum First Year Cost of Revised Form LM-2 and New Form T-1 for Unions with $250,000 to $499,999 in Annual Receipts (1)	812.9	$28,977
Maximum Second Year Cost (1)	585.2	$19,587
Maximum Increase or Cost of Final Rule, First Year (2)	520.9	$20,596
Percent of Annual Receipts for $250,000 Union	n.a.	8.2%
Percent of Annual Receipts for $500,000 Union	n.a.	4.1%
Maximum Increase or Cost of Final Rule, Second Year (2)	293.2	$11,206
Percent of Annual Receipts for $250,000 Union	n.a.	4.5%
Percent of Annual Receipts for $500,000 Union	n.a.	2.2%
Impact on Small Unions From Raising the Form LM-2 Reporting Threshold to $250,000		
Burden Hour Savings for 501 Small Unions for Being Able to Use Current Form LM-3 Instead of Current Form LM-2	176.0	$5,104
Burden Hour Savings for 501 Small Unions for Not Being Required to File Revised Form LM-2	595.2	$19,640
Burden Hour Savings for 501 Small Unions for Not Being Required to File New Form T-1	45.3	$1,253

Note: (1) Assumed to be the average burden hours for unions with annual receipts of $500,000 to $49.9 million. It is highly unlikely that the smallest Form LM-2 filers with annual receipts of $250,000 to $499,999 would incur these costs.

(2) For comparison the AFL-CIO submitted data that estimates unions with annual receipts of less than $500,000 would incur an average cost of just $3,750 for the more burdensome proposed Form LM-2. It is highly unlikely that the smallest Form LM-2 filers with annual receipts of $250,000 to $499,999 would incur these costs for the less burdensome final rule.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor Management Standards.

The Department believes that it is very unlikely that small unions with about $250,000 in annual receipts would incur many of the costs incurred by the typical Form LM–2 filer. (For example, unions near this amount of receipts are likely to have far less complicated accounts covering far fewer transactions than the typical Form LM–

2 filer (with receipts between $500,000 and $49.9 million).) However, to assess the ''maximum'' or ''worst-case'' impact on small unions, the Department considered the unlikely event that a small union with $250,000 in annual receipts could incur the average compliance burden for unions with annual receipts of $500,000 to $49.9 million for the revised Form LM–2 and the new Form T–1. Under this unlikely scenario, the total additional cost of the final rule would be $20,596 in the first year, or 8.2% of annual receipts, and $11,206 in the second year, or 4.5% of annual receipts (see Table 1). For a small union with $500,000 in annual receipts, the maximum additional cost of the final rule would be 4.1% of receipts in the first year and 2.2% in the second year.

As noted in section 3 above, the final rule will apply to 4,463 unions that meet the SBA standard for small entities, or just 18.0% of all unions with annual receipts of less than $6 million that must file an annual financial report under the LMRDA (the other, even smaller, unions can file the less burdensome Form LM–3 or Form LM–4). Further, just 1,574 unions with annual receipts from $250,000 to $499,999, or 6.3% of all unions covered by the LMRDA, would be affected by the final rule. Even less (than 6.3% of the total) would incur the maximum additional costs of the final rule described above. Therefore, the Department has decided that the final rule does not have a significant impact on a substantial number of small entities. Moreover, raising the Form LM–2 filing threshold from $200,000 to $250,000 will enable 501 of the smallest LM–2 filers to use the less burdensome Form LM–3 and save them an average of $5,104 per year compared to filing the current Form LM–2. Smaller unions that file Form LM–3 or LM–4 also will not have to file any Form T–1.

5. Steps Taken To Minimize the Impact on Small Entities

The Department has raised the reporting threshold for the final Form LM–2 and new Form T–1 to $250,000 from the $200,000 threshold in the proposed rule. The Department has also determined that the itemization threshold for disbursements should be set at the high end of the range proposed ($2,000 to $5,000) and that specific information be required only if the amount of an ''other receipt'' or disbursement is $5,000 or more or, if such receipts from or disbursements to a single entity, aggregate to $5,000 or more during the reporting year. This change will reduce the number of disbursements that will have to be individually itemized and reported by smaller labor organizations. (OLMS experience in reviewing union records over the years in the course of audits and investigations suggests that smaller unions typically have fewer large disbursements). As noted above, the Department will continue to monitor all of the reporting thresholds in the Form LM–2 to attempt to ensure that both the level of reporting and the information reported remain relevant and meaningful in light of changes in the economy.

Raising the threshold for filing a Form LM–2 from $200,00 to $250,000 will enable 501 of the smallest unions that previously were required to file a Form LM–2 to now use the Form LM–3. The latter form requires significantly less recordkeeping and reporting requirements than Form LM–2, thus reducing the burden on unions with annual receipts between $200,000 and $249,999. The 501 unions affected will save an average of $5,104 from the cost of filing the current Form LM–2, because they can file the less burdensome Form LM–3 rather than the current Form LM–2. In addition, each of these unions also will avoid an average $19,640 per year in costs that they would incur if they had to file the new Form LM–2 and an average $1,253 per year because they will not have to file a Form T–1. Thus, each of the 501 unions affected by raising the Form LM–2 threshold from $200,000 to $250,000 will avoid $17,616 in potential costs increases (*i.e.*, $19,640 + $1,253—$3,277) by virtue of this change.

Burden hour differences between the smaller labor organizations that are large enough to be required to file Form LM–2 and the largest labor organizations are more likely to result from differences in the financial operations of the unions themselves. Only the largest filers, those that have annual receipts in the millions, are likely to have extensive financial transactions. Unions with receipts of between $250,000 and $1.0 million, which account for over 2,833 of the 4,778, or 59.3% of Form LM–2 filers, are likely to have less difficulty using the revised form. A survey of affiliated unions submitted by the AFL–CIO during the public comment process suggests that the median cost of the final rule will be just $5,724 per year for unions with less than $1.0 million in receipts compared to more than $820,000 for unions with $100.0 million to $250.0 million in annual receipts. As explained more fully below, the predictive value of the AFL–CIO survey is open to question in some respects. The Department's own experience, based on years of reviewing union records in audits and investigations, suggests that the AFL–CIO estimates of costs are more likely to be too high than too low.

Unions with total annual receipts of less than $250,000 (81.0% of all LMRDA covered unions) can still elect to file a simplified report. Over 47.3% of all labor organizations may file a Form LM–3 that entails a lesser burden than the Form LM–2. The final rule makes no change to the Form LM–3 and the only changes to its instructions clarify the reporting obligation of intermediate bodies that have no private employee members, but are subordinate to national or international labor organizations that are covered by the LMRDA. The instructions state that such intermediate bodies must file an annual financial report. The very smallest unions, with total annual receipts of less than $10,000 (33.7% of all LMRDA covered unions), can elect to file an abbreviated report, Form LM–4, which further reduces their recordkeeping and reporting burden.

The Department also has made several other changes to the proposed rule that will reduce the burden on small unions. Raising the reporting threshold for itemizing accounts receivable and accounts payable to $5,000 will reduce the number of items that must be reported, particularly for small unions that have few accounts receivable and accounts payable. Removing the itemization requirement for the benefits schedule will reduce the reporting burden for all unions and protect the privacy of individual benefit recipients, including those receiving payments for medical procedures, insurance or pension claims, or burial benefits. Changing the reporting requirements on the membership schedule will enable union members to easily obtain useful information without requiring unions to manufacture or report information for membership categories it does not keep. Finally, the new audit alternative for Form T–1 is aimed at promoting disclosure while reducing the recordkeeping and reporting burdens for unions with trusts that are already subject to an independent audit.

Small entities will also benefit from OLMS's electronic labor organization reporting system (e.LORS), which utilizes technology to collect, maintain, and disclose the information it collects. The objectives of e.LORS are: (1) The electronic filing of Forms LM–2, LM–3, and LM–4 via the Internet; (2) LMRDA program enhancements to improve accuracy, completeness, and timeliness of Forms LM–2, LM–3, and LM–4; and (3) the public disclosure of reports with

a searchable database via the Internet. Labor organizations are directed to use an electronic reporting format and OLMS will make software available for downloading over the Internet that enables labor organizations to report financial information that can be electronically compiled in the proper format for electronic filing.

The use of electronic forms makes it possible to download information from previously filed reports directly into the form; enables officer and employee information to be imported onto the form; makes it easier to enter information by manually typing in the data, by electronically importing data by schedule, or by electronically importing data for the entire form; automatically performs calculations and checks for typographical and mathematical errors and other discrepancies, which reduces the likelihood of having to file an amended report; and allows the submission of the form electronically via the Internet. The error summaries provided by the software, combined with the speed and ease of electronic filing, will also make it easier for both the reporting labor organization and OLMS to identify errors in both current and previously filed reports and to file amended reports to correct them.

OLMS also has revised the instructions for the final Form LM–2 and Form T–1 to provide examples and guidance on how to complete the report and maintain records, and will provide compliance assistance for any questions or difficulties that may arise from using the software. A help desk is staffed during normal business hours and can be reached by calling a toll-free telephone number: 1–866–4–USA–DOL (1–800–487–2365).

F. Paperwork Reduction Act

This statement is prepared in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 (PRA). See 5 CFR 1320.9. As discussed in the preamble to this final rule and the analysis that follows, the rule implements an information collection that meets the requirement of the Act in that: (1) The information collection has practical utility to labor organizations, their members, other members of the public, and the Department; (2) the rule does not require the collection of information that is duplicative of other reasonably accessible information; (3) the provisions reduce to the extent practicable and appropriate the burden on unions that must provide the information, including small unions; (4) the forms, instructions, and explanatory information in the preamble are written in plain language that will be understandable by reporting unions; (5) the disclosure requirements are implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of unions that must comply with them; (6) this preamble informs unions of the reasons that the information will be collected, the way in which it will be used, the Department's estimate of the average burden of compliance, which is mandatory, the fact that all information collected will be made public, and the fact that they need not respond unless the form displays a currently valid OMB control number; (7) the Department has explained its plans for the efficient and effective management and use of the information to be collected, to enhance its utility to the Department and the public; (8) the Department has explained why the method of collecting information is ''appropriate to the purpose for which the information is to be collected''; and (9) the changes implemented by this rule make extensive, appropriate use of information technology ''to reduce burden and improve data quality, agency efficiency and responsiveness to the public.'' See 5 CFR 1320.9; 44 U.S.C. 3506(c). The Department's PRA analysis contains a summary, background on the current Form LM–2, an overview of changes to each form, and the burden associated with the current forms and final rule. The Department also discusses various comments, specific to the PRA, that are not fully addressed elsewhere in the preamble. As discussed, the Department has revised its burden estimates for the final rule, based upon its review of the comments and adjustments to its baseline estimate of the costs associated with the requirements of the Department's current rule relating to the submission of annual financial reports by labor organizations.

In this rulemaking, the Department has sought to improve the usefulness and accessibility of information to members of labor organizations subject to the LMRDA. The LMRDA reporting provisions were devised to protect the basic rights of union members and to guarantee the democratic procedures and financial integrity of labor organizations. The 1959 Senate report on the version of the bill later enacted as the LMRDA stated clearly, ''the members who are the real owners of the money and property of the organization are entitled to a full accounting of all transactions involving their property.'' A full accounting was described as ''full reporting and public disclosure of union internal processes and financial operations.''

As labor organizations have become more multifaceted and have created hybrid structures for their various activities, the form used to report financial information with respect to these activities has remained relatively unchanged and has become a barrier to the complete and transparent reporting of labor organization's financial information intended by the LMRDA. Moreover, just as in the corporate sector, there have been a number of financial failures and irregularities involving pension funds and other member accounts maintained by labor organizations. These failures and irregularities result in direct financial harm to union members. If union members had more complete, understandable information about their unions' financial transactions, investments, and solvency, they would be in a much better position than they are today to protect their personal financial interests and to exercise their rights of self-governance. The purpose of the final rule is to provide them with such information. The information collection achieved by this rule is integral to this purpose. The paperwork requirements associated with the rule are necessary to enable workers to be responsible, informed, and effective participants in the governance of their unions; discourage embezzlement and financial mismanagement; prevent the circumvention or evasion of the statutory reporting requirements; and strengthen the effective and efficient enforcement of the Act by the Department.

Pursuant to the PRA, the information collection requirements contained in this final rule have been submitted to OMB for approval. Within 30 days from the date of publication of this final rule, you may direct comments by fax (202–395–6974) to: Desk Officer for the Department of Labor/ESA, Office of Management and Budget.

1. Summary

This final rule modifies the annual reports required to be filed by the largest labor organizations, prescribed by the Secretary of Labor to implement the Act and incorporated by reference in the applicable regulations. As discussed above and throughout the preamble to the final rule, the revised paperwork requirements are necessary to effectuate the purposes of the LMRDA by providing union members with information about their unions that will enable them to be responsible, informed, and effective participants in the governance of their unions;

discourage embezzlement and financial mismanagement; prevent the circumvention or evasion of the statutory reporting requirements; and strengthen the effective and efficient enforcement of the Act by the Department. The manner in which the collected information will serve these purposes is discussed throughout the preamble to the final rule.

Two forms that will implement the new reporting requirements and their instructions are published in the appendix to this final rule: the revised Form LM–2, a form now filed by the largest unions to report their annual financial information, and the new Form T–1, a form also to be filed by the largest unions to report the assets, liabilities, receipts, and disbursements of trusts in which they have an interest. The forms are designed to take advantage of technology that makes it possible to increase the detail of information that is required to be reported, while at the same time making it easier to file and publish the contents of the reports. Union members thus will be able to obtain a more accurate and complete picture of their union's financial condition and operations without imposing an unwarranted burden on reporting unions. The rule also includes a clarification of the Department's interpretation of Section 3(j)(5) (29 U.S.C. 402(j)(5)) of the LMRDA, in agreement with the recent decision of the U.S. Court of Appeals for the Ninth Circuit in *Chao* v. *Bremerton Metal Trades Council, AFL–CIO,* 294 F. 3d 1114 (2002). The Department adopts that court's view that any ''conference, general committee, joint, or system board, or joint council'' that is subordinate to a national or international labor organization is itself a labor organization under the LMRDA and will be required to file an annual financial report if the national or international labor organization is a labor organization engaged in an industry affecting commerce within the meaning of section 3(j) of the LMRDA. This clarification applies to all financial reports required to be filed under the LMRDA. The final rule also increases the filing threshold for the Form LM–3, a form filed by unions with less annual receipts than Form LM–2 filers and requiring a less detailed accounting than Form LM–2, a change that will reduce the recordkeeping and reporting burden for smaller unions. The final rule did not raise the filing threshold for Form LM–4 and did not otherwise revise the Form LM–4, although the instructions for Form LM–4 have been altered to reflect the Department's decision to adopt the holding of Bremerton Metal Trades Council, AFL–CIO. Supporting documentation need not be submitted with the forms, but labor organizations are required, pursuant to the LMRDA, to maintain, assemble, and produce such documentation in the event of an inquiry from a union member or an audit by an OLMS investigator.

The Department's NPRM in this rulemaking contained an initial PRA analysis, which was also submitted to, and approved by, OMB. Based upon careful consideration of the comments and the changes made to the Department's proposal in this final rule, the Department has made significant adjustments to its burdens estimates. The costs to the Department for administering the annual financial report requirements of the LMRDA also were adjusted. These federal annualized costs, undifferentiated by form, are separately discussed after the burdens on the reporting unions are considered.

Based upon the analysis presented below, the Department estimates that the total first year burden to comply with the revised Forms LM–2 and LM–3 and the new Form T–1 to be 3.4 million hours, 1.4 million hours and 0.2 million hours, respectively. The total first year compliance costs associated with this burden, including the cost for computer hardware and software, are estimated to be $116.0 million for the Form LM–2, $39.0 million for the Form LM–3 and $5.5 million for the new Form T–1. The actual cost of the final rule, however, is not $160.5 million in the first year. It is the difference between cost of the current forms and the revised Form LM–2 and new Form T–1, or $79.9 million the first year ($160.5 million—$80.6 million). The average three-year cost of the final rule is $55.7 million. Therefore, this final rule is not a major economic rule.

Both the burden hours and the compliance costs associated with the revised Form LM–2 and the new Form T–1 decline in subsequent years. The Department estimates that the total burden averaged over the first three years to comply with the revised Form LM–2 and the new Form T–1 to be 2.8 million hours and 0.1 million hours, respectively. The total compliance costs associated with this burden averaged over the first three years are estimated to be $93.8 million for the Form LM–2 and $3.5 million for the new Form T–1.

2. Background on Current Form LM–2

Every labor organization whose total annual receipts are $200,000 or more and those organizations that are in trusteeship must currently file an annual financial report on the current Form LM–2, Labor Organization Annual Report, within 90 days after the end of the union's fiscal year, to disclose its financial condition and operations for the preceding fiscal year. The current Form LM–2 is also used by covered labor organizations with total annual receipts of $200,000 or more to file a terminal report upon losing their identity by merger, consolidation or other reason.

The current Form LM–2 consists of 24 questions that identify the labor organization and provide basic information (in primarily a yes/no format); a statement of 11 financial items on different assets and liabilities; a statement of receipts and disbursements; and 15 supporting schedules. The information that is reported includes: whether the union has any subsidiary organizations and trusts; whether the union has a political action committee; whether the union discovered any loss or shortage of funds; the number of members; rates of dues and fees; the dollar amount for seven asset categories, such as accounts receivable, cash, and investments; the dollar amount for four liability categories, such as accounts payable and mortgages payable; the dollar amount for 16 categories of receipts such as dues and interest; and the dollar amount for 18 categories of disbursements such as payments to officers and repayment of loans obtained. Five of the supporting schedules include a detailed itemization of loans receivable and payable, the sale and purchase of investments and fixed assets, and payments to officers. There are also 10 supporting schedules for receipts and disbursements that provide union members with more detailed information by general groupings or bookkeeping categories to identify their purpose. Unions are required to track their receipts and disbursements in order to correctly group them into the categories on the current form.

The Department also has developed an electronic reporting system for labor organizations, e.LORS, which uses information technology to perform some of the administrative functions for the current forms. The objectives of the e.LORS system include the electronic filing of current Forms LM–2, LM–3, and LM–4, as well as other LMRDA disclosure documents; disclosure of reports via a searchable Internet database; improving the accuracy, completeness and timeliness of reports; and creating efficiency gains in the reporting system. Effective use of the system reduces the burden on reporting organizations, provides increased information to union members, and

enhances LMRDA enforcement by OLMS. The OLMS Internet Disclosure site is available for public use. The site contains a copy of each labor organization's annual financial report for reporting year 2000 and thereafter as well as an indexed computer database on the information for each report that is searchable through the Internet. The Department is developing an enhanced e.LORS system for the revised Form LM–2 and new Form T–1.

To ease the transition to electronic disclosure, OLMS includes e.LORS information in its outreach program, including compliance assistance information on the OLMS website, individual guidance provided through responses to e-mail, written, or telephone inquiries, and formal group sessions conducted for union officials regarding compliance. The current forms are provided on CD–ROM discs at no cost to labor organizations, can be downloaded from the OLMS website, and are available from OLMS field offices and from the OLMS National Office. OLMS has also implemented a system to permit union officers to submit forms electronically with digital signatures. Unions are currently required, however, to pay a minimal fee to obtain electronic signature capability for the two officers who sign the form. Information about this system can be obtained on the OLMS Web site at *www.olms.dol.gov*. Digital signatures ensure the authenticity of Form LM–2 reports without compromising efficiency. As discussed in the Regulatory Flexibility Analysis and the preamble, additional compliance assistance will be provided in connection with the new reporting and filing requirements.

Filing labor organizations have several advantages with the current electronic filing system. With e.LORS, information from previously filed reports and officer or employee information can be directly imported to Form LM–2. Not only is entry of the information eased, the software also makes mathematical calculations and checks for errors or discrepancies. Ready acceptance of the benefits of electronic reporting is predictable based on experience with software that OLMS has developed and distributed to labor organizations for completing the current Forms LM–2, LM–3, and LM–4. Approximately 76% of unions that currently file Form LM–2, LM–3, and LM–4 take advantage of the ability to enter data electronically on a computerized form.

3. Overview of Changes to Form LM–2

The Department, among other revisions for the purpose of reducing the burden on small unions, adopted the alternative, identified in the NPRM, to raise the reporting threshold for the Form LM–2 from $200,000 to $250,000. The new rule adjusts upward the Form LM–2 filing threshold of $200,000 set in 1994 to account for inflation. As a result of raising the Form LM–2 threshold to $250,000 in the final rule, 501 unions that currently file a Form LM–2 will now be able to satisfy the requirements of the LMRDA by filing the simpler Form LM–3. It should also be noted that the final $250,000 threshold is significantly higher than the earlier thresholds for filing the Form LM–2—1959 ($20,000), 1962 ($30,000), and 1981 ($100,000).

In comparison to the current Form LM–2, the revised Form LM–2 includes: three fewer questions (21 instead of 24) that identify the labor organization and provide basic information (in the same general yes/no format); the same 11 financial items on assets and liabilities in Statement A; an updated Statement B that asks for information on fewer categories of receipts (13 instead of 16) and disbursements (17 instead of 19); and five additional supporting schedules (20 instead of 15). The updated Statement B (Receipts and Disbursements) also drops six old categories of disbursements and adds five new categories that will provide more useful information to union members on the amount of union funds spent on representational activities, strike benefits, union administration, general overhead, and political activities and lobbying.

Over half (8) of the 15 current supporting schedules are not changing. These include loans receivable, loans payable, other assets, other liabilities, fixed assets, sale of investments and fixed assets, purchase of investments and fixed assets, and benefits. The schedule for itemizing investments has only a minor modification involving information that is maintained in the normal course of business—the reporting threshold has changed from over $1,000 and 20% of the total book value of the union's investments to over $5,000 and 5% of the total. Two other supporting schedules (Office and Administrative Expense, and Other Disbursements) on the current form have been dropped from the revised form and the disbursements that were reported on those schedules will now be reported elsewhere on the revised Form LM–2 (such as the schedules for union administration or general overhead).

One change to Form LM–2 is the requirement that unions provide an estimate of the time expended by their officers and employees on each of the several categories prescribed generally for union receipts and disbursements including: representational activities; union administration; general overhead; political activities and lobbying; and contributions, gifts, and grants. However, the Department is not requiring unions to keep detailed time records, and it is left up to the labor organization to determine the least burdensome way to provide the information.

Another change to the Form LM–2 is the addition of two new schedules for accounts receivable and accounts payable. The new schedules require the reporting of (1) The name of any entity or individual with which the labor organization had an account payable valued at $5,000 or more that was more than 90 days past due at the end of the reporting period or that was liquidated, reduced or written off during the reporting period, and (2) the name of any entity or individual with which the labor organization had an account receivable valued at $5,000 or more that was more than 90 days past due at the end of the reporting period or that was liquidated, reduced or written off during the reporting period. However, as noted above, the Department is not requiring Form LM–2 filers to use accrual accounting. Although the LMRDA and the current Form LM–2 already require some accrual basis accounting information, under the final rule unions may choose the method by which to track their finances ''on a cash basis, accrual basis, a hybrid of the two, or some other method of accounting ''so long as they can accurately report the information required by the Form LM–2.

The revised Form LM–2 also includes a new schedule for reporting their number of members by membership category. Each labor organization, however, is permitted to name and report on its own membership categories (in the same manner as it keeps its membership records). It appears from the public comments received on the Department's proposal that each union maintains membership information in some manner; however, a union will not be required to manufacture or report information for membership categories it does not keep.

The Form LM–2 also has been revised to require unions to individually identify receipts and disbursements for two of the current supporting schedules (Other Receipts and Contributions, Gifts, and Grants) and four of the new

supporting schedules (Representational Activities, Union Administration, General Overhead, and Political and Lobbying Activities). Currently, two of these schedules provide some detail about various receipts and disbursements by general groupings or bookkeeping categories to identify their purpose. However, the revised Form LM–2 will require labor organizations to individually identify receipts or disbursements, reported in six supporting schedules, of $5,000 or more, or total receipts or total disbursements, reported in each of those schedules, from an entity or individual that aggregate to $5,000 or more during the reporting period. For individually identified receipts and disbursements, unions will have to report the name, address, purpose, date, and amount associated with the transaction.

Under the final rule, labor organizations that file the Form LM–2 are required to report the major receipts and disbursements of trusts in which the labor organization has an interest. Currently, a union only has to report information about subsidiary organizations, defined as ''wholly owned, wholly controlled, and wholly financed by the reporting union.'' Under the final rule, if a union's financial contribution to a trust, or a contribution made on the union's behalf, is less than $10,000 or the union has an interest in a trust that has annual receipts of less than $250,000, the union only has to report on Form LM–2 the existence of the trust and the amount of the union's contribution or the contribution made on the union's behalf. If the contribution is $10,000 or more and the annual receipts of the trust are $250,000 or more, the labor organization will be required to report the receipts and disbursements of the trust on the new Form T–1. Unions will be required to separately identify each entity or individual from which the trust received $10,000 or more during the reporting period. Unions will also be required to separately identify any entity or individual to which the trust made disbursements of $10,000 or more, or that aggregated to $10,000 or more, during the reporting period. For individually identified receipts and disbursements, unions will have to report the name, address, purpose, date, and amount associated with the transaction.

Unions will not have to file a Form T–1 for organizations that meet the statutory definition of a trust if the trust files a report pursuant to 26 U.S.C. 527, or pursuant to the requirements of ERISA, or if the organization is a Political Action Committee (PAC) and files publicly available reports with a Federal or state agency. For such trusts, the union is required only to state on the Form LM–2 that such a report has been filed and where union members can obtain the report. In addition, a labor organization may substitute an independent audit for most of the information that otherwise would be required on a Form T–1, provided the audit meets certain criteria described in the preamble above.

As discussed above, the instructions to Form LM–2 also adopt the recent holding in Chao v. Bremerton Metal Trades Council, AFL–CIO, clarifying that any ''conference, general committee, joint, or system board, or joint council,'' which is subordinate to a national or international labor organization is itself a labor organization under the LMRDA and will be required to file an annual financial report if the national or international labor organization is a labor organization engaged in an industry affecting commerce within the meaning of section 3(j) of the LMRDA. See 29 U.S.C. 402(j)(5). The Department estimates that this will add 100 new Form LM–2 filers.

Finally, under the rule, each labor organization that has annual receipts of $250,000 or more is required to file a Form LM–2 electronically with the Department. Based on reports filed with OLMS and the experience of its investigators, the Department recognizes that a majority of current Form LM–2 filers currently use computerized recordkeeping systems and now possess, or can easily acquire, the technology necessary to submit reports in electronic form. Several OLMS field offices report that even smaller unions that file Form LM–3 reports now maintain their accounts electronically. The availability of electronic software that will permit unions that keep their records electronically to export data from their programs to the Form LM–2 software should reduce the burden of reporting financial information with the specificity required by the final rule. Under the final rule, unions have the choice to complete the reports for submission by either utilizing the Department's software to automatically transmit the information or by ''cutting and pasting'' the information into the Department's on-line form. If, however, a labor organization is unable to file electronically without undue burden or expense, it can request a hardship exemption from the Department. If the Department determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of union members, the union will be excused from filing electronically for the period of the exemption.

4. Overview of Changes to Form LM–3

The only revision in the final rule to Form LM–3 is the change that increases the size of labor organizations that are permitted to file the form from $199,999.99 to $249,999.99 in total annual receipts. This is required because the Form LM–2 reporting threshold is increasing to $250,000.

The instructions to Form LM–3 also adopt the holding in Chao v. Bremerton Metal Trades Council, AFL–CIO, as the Department's interpretation of section 3(j)(5) of the LMRDA. The Department estimates that this will add 50 new Form LM–3 filers.

5. Overview of the Form LM–4

After carefully reviewing the comments, the Department has decided not to change the Form–LM–4 in the final rule.

6. Overview of the New Form T–1

A labor organization will be required to file Form T–1 if it has an interest in a trust, as defined in the LMRDA; if the union and the trust each have annual receipts of $250,000 or more; and the union makes a financial contribution to the trust, or a contribution is made on the labor organization's behalf, of $10,000 or more. If a union's financial contribution to a trust, or a contribution made on the union's behalf, is less than $10,000 or the union has an interest in a trust that has annual receipts of less than $250,000, the union only has to report the existence of the trust and the amount of the union's contribution or the contribution made on the union's behalf.

Also to minimize the burden, unions will not have to file a Form T–1 for organizations that meet the statutory definition of a trust if the trust files a report pursuant to 26 U.S.C. 527, or pursuant to the requirements of ERISA, or if the organization is a Political Action Committee (PAC) and files publicly available reports with a Federal or state agency. For such trusts, the union need only state on the Form LM–2 that such a report has been filed and where union members can obtain the report. In addition, a labor organization may choose to substitute an independent audit for most of the information that otherwise would be required on a Form T–1, provided the audit meets the criteria prescribed by the final rule. In such instances, the union is not required to provide the financial details for the trust otherwise required of filers.

The new Form T–1 follows the format of the revised Form LM–2. The Form T–1, however, is similar to Form LM–4 in that it is much shorter and requires less information than the Form LM–2. The Form T–1 includes: 20 questions that identify the trust, provide basic information (in a yes/no format), and the total amount of assets, liabilities, receipts and disbursements of the trust; a schedule that separately identifies any individual or entity from which the trust receives $10,000 or more during the reporting period; a schedule that separately identifies any entity or individual that received disbursements that aggregate to $10,000 or more from the trust during the reporting period and the purpose of disbursement; and a schedule of disbursements to officers and employees of the trust.

7. Recordkeeping and Reporting Burden Hour Estimates for the Current, Revised, and New Forms

The Department received several comments on the recordkeeping and reporting burdens associated with the current Form LM–2, and the proposed Form LM–2 and Form T–1, and the Department's initial PRA analysis. Many union members and a number of nonprofit organizations commented on the usefulness of the information provided on the proposed forms and expressed the view that the benefits of the additional information outweighed the marginal increase in recordkeeping and reporting costs. Other commenters expressed strong contrary views. Many of these comments already have been addressed in the preamble.

Although the Department received only a few comments that were specific to the Department's compliance with the requirements of the PRA, it did receive many comments on the NPRM PRA analysis and burden hour estimates. The AFL–CIO and the Mercatus Center, the latter an economic policy group based at George Mason University in Virginia, submitted detailed comments and data. A third commenter, the Center for Progressive Regulation (CPR), self-described in its comments as a newly formed, Washington, D.C.-based, organization of academics specializing in legal, economic and scientific issues surrounding federal regulation, expressed views critical of the Department's initial burden analysis. The latter organization, however, did not include in its submission any alternative data for the Department to consider. Some unions also submitted comments critical of the Department's analysis and provided some alternatives for the Department to consider.

The Department has carefully considered these various comments as well as the rest of the record and has relied on many of the commenters' observations in refining its burden analysis. In many instances, as identified below, the Department has used the data supplied by the commenters to better estimate how much time filers take to complete the current Form LM–2 and could take to complete the revised Form LM–2. By taking this information into account, the Department has increased the baseline burden assumptions for the current Form LM–2 that underlie most of the Department's estimates. At the same time, the Department could not use all of the data submitted by the commenters in refining burden estimates. Some of the data, for example, was no longer relevant to the analysis because a proposed requirement was revised or eliminated altogether in the final rule necessitating the revision or elimination of the burden associated with the proposed requirement. In other instances, the information, while illustrative of problems that had been identified by a particular union or unions, could not be used to arrive at an average burden hour estimate for unions generally or within one of the defined tiers. For example, ALPA explained that it uses a particularly sophisticated accounting program in maintaining its financial information and would incur significant burden in converting their program to comply with the proposed rule, but this information could not be used to accurately estimate how many other unions have similarly sophisticated accounting programs and could incur similar burdens. Other information was not used because it was based on a misunderstanding of the NPRM. For example, some commenters stated that local unions would incur significant costs associated with converting to an accrual accounting method when the NPRM proposed no such requirement.

In most cases, the Department has reported data regarding its burden hour estimates to the nearest hundredth, as it did in the NPRM. Contrary to the perception of a few commenters, the Department's practice is not intended to suggest greater precision than the underlying data would reflect. Instead, the figures used by the Department are derived from the Department's computations based on assumptions, rounded to the nearest hundredth by an Excel spreadsheet.

a. General Comments

The AFL–CIO argued that the proposed information gathering is not necessary for the proper functioning of the Department. The AFL–CIO contends that the Department's paperwork analysis in the NPRM was fundamentally flawed and dramatically underestimated the paperwork burdens and costs to unions in complying with the proposed reporting requirements. The AFL–CIO also argued that the proposed rule is not the least burdensome approach that the Department could have taken to achieve the goal of the LMRDA and the rulemaking to make union financial reports and underlying data more useful and accessible to their members. And, as a final observation, the AFL–CIO stated that the proposed rule might shift the cost of developing and implementing electronic filing upon the reporting unions.

The AFL–CIO's contention that the changes in the reporting requirements are not necessary for the proper functioning of the Department lacks merit. The Secretary is charged under section 208 of the LMRDA, 29 U.S.C. 438, with the authority and responsibility for determining ''the form and publication of reports required to be filed under this title.'' Unions, in turn, are required to file annual reports containing certain listed minimum information ''in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year.'' 29 U.S.C. 431(b). These reports are statutorily required, not primarily for the proper functioning of the Department, but for disclosing to the members of the organization how their dues money has been used in the past year. As stated in its proposal and supported by many of the public comments received on the proposal, the Department believes that the minimal information reported on the current Form LM–2 forms is inadequate to ensure that unions are reporting and using funds in ways their members would approve. As discussed in the preamble, comments by union members explained their difficulties in obtaining information about their union's finances and expressed frustration in their inability to find out where their dues money was going. The more detailed reporting requirements in the final rule will increase members' awareness of how their dues money is being spent by their unions. This is consistent with the intent of the LMRDA and highlights the purpose served by the rule's information collection provisions.

The suggestion that the Department's initial burden analysis was fundamentally flawed is unpersuasive. The AFL–CIO has failed to identify any analytical shortcomings in the

Department's approach. Instead, the AFL–CIO's contention rests, in large part, on its view that the Department has underestimated the baseline burden hour data used by the Department for the current Form LM–2 and that, therefore, the Department has underestimated the burden for the revised form. As discussed below, this baseline was based on what the Department believed was the accepted burden associated with the current Form LM–2, as reflected in the Department's numerous, unchallenged submissions to OMB in obtaining OMB's approval to continue using the form. Based on the information submitted by the AFL–CIO and other commenters in response to the Department's proposal, and the Departments own analysis, however, the Department has adjusted its burden hour estimates upward for the current form. These adjustments are discussed in detail below.

Contrary to the AFL–CIO's view, the Department's paperwork analysis in the NPRM was well reasoned, especially in the absence of any earlier challenge to the Department's prior assessment of the time required to prepare the current Form LM–2. As discussed below, the Department has revised its estimates in preparing the PRA analysis for the final rule and presents a more refined assessment by the Department of any burden imposed on reporting unions under the new Form LM–2.

The Department used the AFL–CIO and other commenters' estimates when they provided information that the Department did not have and that increased the accuracy of its estimates by adding to the Department's own data and auditing experience. The Department used the following AFL–CIO data estimating the average burden for completing the current Form LM–2: 1,500 hours each for 141 national and international unions and 200 hours each for 5,038 local unions. The latter number reflects the number of unions in the 2002 OLMS e.LORS data. These figures yield a weighted average of 239 hours, which the Department rounded up to 240 hours for use in making additional burden assessments. The Department had to make some assumptions about the local unions due to the scarcity of data. The AFL–CIO only surveyed 23 local unions on their actual experience with the current form. Since the AFL–CIO did not include estimates for consulting, accounting, legal, or similar costs, the Department had to assume additional hours for these activities in order to arrive at a weighted average for computing a total burden estimate for filers for completing the current Form LM–2.

The AFL–CIO provided some information that appears to contradict the burden hour estimates discussed above. The AFL–CIO's report included an estimate of burden for the current Form LM–2, based on an average of 52 hours for each individual employed by a union (but without specifying the average number of individuals it used as a divisor). This figure is not consistent with its 1,500 and 200 burden hour estimate, when applied to the Department's 2001 or 2002 e.LORS data that contains the reported number of employees and officers for all Form LM–2 filers. Thus, in the Department's view, the AFL–CIO's per employee estimate may not accurately reflect a true average. For this reason, the Department chose, instead, to rely on the AFL–CIO's alternative, per union, estimate of the number of hours required to complete the current Form LM–2.

Some of the AFL–CIO data involved broad subjective or qualitative categories that could not be used to estimate burden hours. For example, the estimate that 45% of local unions said that it would be quite difficult to extremely difficult to compile the name, address, date, amount, and purpose for all charges by functional category, is illustrative of the effort associated with the itemization requirement in the final rule but can not be used to develop actual burden hour estimates. Moreover, this estimate also demonstrates that 55%, or a majority, of local unions find the change less difficult. Of course, the Department did not use the AFL–CIO's data in computing the burden of complying with the revised Form LM–2 to the extent that the data pertained to requirements that were addressed in the Department's proposal, but not embodied in the final rule.

The Department also used the AFL–CIO data on the number of unions using functional reporting to refine its recordkeeping burden estimates. Specifically, the AFL–CIO data relating to the unions' ability to itemize disbursements were used to corroborate the Department's data and auditing experience. The Department notes, however, that the data either understate the unions' capacity to report information by functional categories or by implication shows that a substantial number of unions are not in compliance with the current reporting requirements (the current report requires the tracking of all receipts and disbursements in order to place them in the appropriate schedule and category on the current form). However, the Department did not use the AFL–CIO data relating to problems that unions might encounter in classifying information by the categories included in the Department's proposals in developing burden hour estimates because of the subjective/qualitative nature of the information. The Department used almost all of the AFL–CIO information concerning the computer software and hardware capabilities of unions. This information added accuracy to the Department's own data and estimates.

The argument that the Department's proposal shifted the cost of developing and implementing electronic filing to unions by making unions responsible, in part, for some of the software development ignores the fact that the Department will provide, at no cost to unions, the software that allows unions to file electronically with the Department. Reporting unions, however, may be required to make changes to the way that they record the information in order to prepare the revised Form LM–2 and submit it electronically, and the Department has included the costs of such changes in the estimates discussed below. The AFL–CIO's disagreement with the Department's burden estimate in the NPRM was based, in part, on its view that unions currently experience considerable difficulty in timely reporting annual financial information, and that the Department's proposals, by adding new requirements, are overly burdensome. In support of this position, the AFL–CIO included information about the unions' current record on timeliness. While, as discussed above, the Department has used the burden hour estimates provided by the AFL–CIO to reassess the Department's estimate of the time required for completing the current forms, qualitative assessments of difficulty or timely-submission data could not be used to develop burden hour estimates. The Department also did not utilize the information used by the AFL–CIO to support its assertion that the Department had failed to consider whether, and the extent to which, unions might need additional resources to comply with the proposal. Although this information illustrates the need to use external support staff or the need to hire additional in-house staff to address the higher burden hours associated with the revised Form LM–2, the information is not helpful for estimating average or total burden hours, but simply illustrates the choices unions have to comply with the current and final rule.

The AFL–CIO's contention that the Department could have chosen less burdensome alternatives to achieve the same objectives is unpersuasive. As demonstrated by the final rule, the

Department has made numerous changes to its proposal that reduce the paperwork burden associated with the rule. Throughout the preamble, the Department has explained its position on adopting, or not, alternative proposals suggested by the commenters. The Department, in crafting the final rule, has sought to reduce the paperwork burden on unions, without compromising the Department's statutory obligation to ensure that union members are provided annual reports on their unions' finances. Both the NPRM and the final rule, in the Department's view, fully comply with its responsibilities under the LMRDA and the PRA. The final rule establishes the least burdensome approach practicable to provide union members and the Department with the information required by the LMRDA.

The comments submitted by the Mercatus Center were largely supportive of the Department's proposal, including the Department's effort to specifically estimate the burden hours associated with the unions' compliance with the proposal. The organization, however, suggested that the burden estimates could be improved if the Department capitalized its estimates of costs and provided additional documentation of the Department's own costs associated with the rule. Although capitalization would be a reasonable alternative to the direct cost approach used in this rulemaking, the Department believes that averaging the costs over the first three years, as the Department has done here, yields approximately the same result in estimating burden. Moreover, in this rulemaking, there was relatively little to be capitalized. Only the computer equipment and software and the one-time labor costs could be considered for capitalization. In its analysis, the Department has assumed that most of the computer equipment and software would be purchased for normal business operations. The minimal additional costs associated with the final rule have been allocated in the first year. This same procedure was used for the one-time labor costs. While the procedure used by DOL does not include any ''opportunity costs'' for capital (*e.g.*, interest charges), DOL believes that its estimates, by using, in effect, a three year life cycle for all such costs has reasonably estimated the burden.

Mercatus estimated that the average burden associated with the Department's proposal, per union, at about 180 hours. It broke down its estimates as follows: install new software, 4 hours; design/adjust report forms and format structures, 72 hours; modify existing accounting systems, 32 hours; incorporate electric signatures, 16 hours, systems testing, 24 hours, and employee training, 32 hours (8 hours x 4 employees). To compute the compensation costs associated with these tasks, it used $27.80 as ''fully loaded wage rate of union employees.''

Mercatus also noted that the Department's analysis did not appropriately recognize that the Department's proposal would have an impact beyond the union's bookkeeping and accounting staff. Mercatus noted that the rule likely would affect the manner by which union staff document or record their activities, and that such costs, though minimal on a transaction basis, will have a measurable cost in the aggregate. The Department has considered such costs in its analysis of the final rule.

b. Methodology for the Burden Estimates

In reaching its estimates, the Department considered both the one-time and recurring costs associated with the final rule. Separate estimates are included for the initial year of implementation as well as the second and third years. For filers, the Department included separate estimates, based on the relative size of unions as measured by the amount of their annual receipts. The size of a union, as measured by the amount of its annual receipts, will affect the burden on reporting unions. For example, larger unions have more receipts and disbursements to itemize and more employees who have to estimate their time allocation.

The primary impact of this final rule will be on the largest labor organizations, defined as those that have $250,000 or more in annual receipts. There are approximately 4,778 labor organizations of this size that are required to file Form LM–2 reports under the LMRDA (just 19.0 percent of all labor organizations covered by the LMRDA). The rule will also reduce the burden on 501 small unions that will be able to file Form LM–3 instead of Form LM–2 because of raising the LM–2 threshold to $250,000. These estimates are based on 2001 and 2002 data from the OLMS e.LORS system. This system contains annual receipt data on all Form LM–2, LM–3, and LM–4 filers. Although these estimates may not be predictive of the exact number of small unions that will be impacted by this final rule in the future, the Department believes these estimates to be sound and are derived from the best available information.

The Department's estimates include costs for both labor and equipment that will be incurred by filers. The labor costs reflect the Department's assumption that the unions will rely upon the services of some or all of the following positions (either internal or external staff, including union president, union secretary-treasurer, accountant, bookkeeper, computer programmer, lawyer, consultant) and the compensation costs for these positions, as measured by wage rates and employer costs published by the Bureau of Labor Statistics or derived from data reported in e.LORS. The Department also made assumptions relating to the time that particular tasks or activities would take. The activities generally involve only one of the three distinct ''operational'' phases of the rule: first, tasks associated with modifying bookkeeping and accounting practices, including the modification or purchase of software, to capture data needed to prepare the required reports; and second, tasks associated with recordkeeping; and third, tasks associated with sending or exporting the data in an electronic format that can be processed by the Department's import software. Since the analysis is designed to provide estimates for a ''representative'' union the Department's estimates largely reflect weighted averages. Where an estimate depends upon the number of unions subject to the LMRDA or included in one of the tier groups, the Department has relied upon data in the e.LORS system (for the years stated for each example in the text or tables).

The following methodology and assumptions underlie the Department's burden estimates:

- The size of a union, as measured by the amount of its annual receipts, will affect the burden on reporting unions. Larger unions have more receipts and disbursements to itemize and more employees who have to estimate their time allocation. Three tiers, based on annual receipts, have been constructed to differentiate the burdens among Form LM–2 filers.
- A union's use of computer technology, or not, to maintain its financial accounts and prepare annual financial reports under the current rule, will affect the burden on reporting unions. Although few LM–2 filers do not have computers, the larger the union the greater likelihood that it will be using a specialized accounting program instead of commercial-off-the-shelf accounting software.
- Relative burden associated with the final rule will correspond to the following predictable stages: review of the rule, instructions, and forms; adjustments to or acquisition of

accounting software and computer hardware; installation, testing, and review of the Department's reporting software; changing accounting structures and developing, testing, reviewing, and documenting accounting software queries as well as designing query reports; training union officers and employees involved in bookkeeping and accounting functions; training union officers and employees to maintain information relating to transactions and estimating the amount of time they expend in prescribed categories; the actual recordkeeping of data under the revised procedures associated with itemizing receipts and disbursements and allocating them by functional categories; aging accounts receivable and accounts payable; allocating time for officers and employees by functional categories; preparing a download methodology to either submit electronic reports using ''cut and paste'' methods or the import/export technology allowing for a more automated transfer of data to the Department; the development, testing, and review of any translator software that may be required between a union's accounting software and Department's reporting software; obtaining digital signatures for the union officers; additional review by the president and secretary-treasurer; and completing a continuing hardship exemption request if necessary.

- Burden can be categorized as recurring or non-recurring, with the latter primarily associated with the initial implementation stages. Recordkeeping burden, as distinct from reporting burden, will predominate during the first months of implementation.
- Burden can be reasonably estimated to vary over time with the greatest burden in the initial year, decreasing in later years as users gain experience. Estimates for each of the first three years and a three-year average will provide useful information to assess the burden. A weighted average provides a ''snapshot'' of the burden associated with the form for an individual reporting union.
- Burden can be usefully reported as an overall total for all filers in terms of hours and cost. This burden, for most purposes, can be differentiated for each individual form. The Federal burden cannot be reasonably estimated by form.
- The estimated burden associated with the current LM-forms is the appropriate baseline for estimating the burden and cost associated with the final rule.

c. Baseline Adjustments: Current Forms

After reviewing the public comments, the Department assumes that 5,038 local unions now take 200 hours and 141 national and international unions take 1,500 hours to collect and report their information on the current Form LM–2 for a weighted average of approximately 240.0 hours for each of the 5,179 respondents. In addition, the Department assumes that Form LM–2 filers take an average 24.0 hours for accounting, 16.0 hours for programming, 8.0 hours for legal review, and 4.0 hours for consulting assistance to complete the current form for an average total burden of 292.0 hours per respondent (see Table 2). Further, the Department estimates that 160.0 hours of the total is for recordkeeping burden and 132.0 hours is for reporting burden. The difference in the number of responses in Table 2 reflects that fewer unions filed LM–2's and LM–3's in 2002 than in 2001 according to OLMS e.LORS data.

The Department also estimates that 11,356 local unions will take an average 104.0 hours to collect and report their information on the current Form LM–3. In addition, the Department assumes that all Form LM–3 filers will take an average 8.0 hours for accounting and 4.0 hours for legal review to complete the current form for an average total burden of 116.0 hours per respondent (see Table 2). Further, the Department estimates that 64.0 hours of the total is for recordkeeping burden and 52.0 hours is for reporting burden. These estimates and assumptions are based on the similarity of the Form LM–3 and Form LM–2 recordkeeping and reporting requirements, as well as the relative differences in the size of the unions that complete the two forms.

The Department has also updated the average annual cost of complying with the current Form LM–2 and LM–3 recordkeeping and reporting requirements as follows: The average total cost per respondent is $8,381 for the current Form LM–2 and $3,277 for Form LM–3. These figures include estimates for consulting, accounting, legal, and programming costs and are weighted averages across all respondents and are based on total compensation rates not hourly wage rates. The total annual cost for all respondents is estimated to be $43.4 million for Form LM–2 and $37.2 million for Form LM–3 (see Table 2). It should be noted that although it may appear that the Department has applied inconsistent dollar costs per hour to the burden hour estimates, the dollar costs per hour naturally differ between forms because of the varying amounts of accountant time, bookkeeping time, and the time of the union secretary-treasurer and president associated with each form, which yield different weighted average costs per hour.

Table 2 - Adjustments to the Annual Recordkeeping and Reporting Burden for the Current Form LM-2 and Form LM-3

Form	Number of Responses (2)	Reporting Hours per Respondent	Total Reporting Hours	Recordkeeping Hours Per Respondent	Total Recordkeeping Hours	Total Burden Hours Per Respondent	Total Burden Hours	Average Cost Per Respondent	Total Cost
Current Form LM-2									
Current Estimate	5,932	14.75	87,497	0.50	2,966	15.25	90,463	$330	$1,955,429
Adjusted Estimate (1)	5,179	132.00	683,628	160.00	828,640	292.00	1,512,268	$8,381	$43,405,199
Difference	-753	117.25	596,131	159.50	825,674	276.75	1,421,805	$8,051	$41,449,770
Current Form LM-3									
Current Estimate	12,722	6.50	82,693	0.25	3,181	6.75	85,874	$137	$1,748,686
Adjusted Estimate (1)	11,356	52.00	590,512	64.00	726,784	116.00	1,317,296	$3,277	$37,213,612
Difference	-1,366	45.50	507,819	63.75	723,604	109.25	1,231,423	$3,140	$35,464,926

Notes: (1) Adjusted burden hour estimates for the current forms are based on public comments received from Notice of Proposed Rulemaking published in the Federal Register on December 27, 2002 and 2002 OLMS e.LORS data.

(2) The difference in the number of responses results from fewer unions filing LM-2's and LM-3's in 2002 compared to 2001. Some numbers may not add due to rounding.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor Management Standards.

d. New Form LM–2

To estimate the burden hours and costs for the revised Form LM–2 and the new Form T–1 the Department divided Form LM–2 filers into three groups or tiers, based on the amount of unions' annual receipts. In Tier 1, there are 1,574 unions with annual receipts from $250,000 to $499,999.99. The Department assumes that unions within this tier probably use some type of commercial off-the-shelf accounting software program and will most likely use the ''cut and paste'' feature of the new reporting software (see Table 3). In Tier 2, there are 3,158 unions with annual receipts from $500,000 to $49.9 million. The Department assumes that unions within this tier most likely use some type of commercial off-the-shelf accounting software program and will use all of the electronic filing features of the new reporting software. Finally, in Tier 3, there are the 46 unions with annual receipts of $50.0 million or more. The Department assumes that unions within this tier most likely use some type of specialized accounting software program and also will use all of the electronic filing features of the new reporting software. Table 3 summarizes the Characteristics of Form LM–2 filers by annual receipts.

Table 3 - The Characteristics of Form LM-2 Filers by Annual Receipts

	Average Annual Receipts			
Characteristic	$250,000 to $499,999	$500,000 to $49.999 million	$50.0 million or more	Total
Number of LM-2 Filers	1,574	3,158	46	4,778
Total Receipts	$565,711,158	$8,719,227,392	$7,599,663,402	$16,884,601,951
Average	$359,410	$2,760,997	$165,210,074	$3,533,822
Other Receipts	$47,101,405	$768,857,540	$665,172,551	$1,481,131,496
Percent of Total	8.3%	8.8%	8.8%	8.8%
Average	$29,925	$243,463	$14,460,273	$309,990
Disbursements	$152,412,897	$2,072,856,566	$1,706,799,568	$3,932,069,031
Percent of Total	26.9%	23.8%	22.5%	23.3%
Average	$96,832	$656,383	$37,104,338	$822,953
Accounts Receivable	$3,868,013	$176,381,709	$332,880,993	$513,130,715
Average	$2,457	$55,852	$7,236,543	$107,394
Accounts Payable	$7,293,258	$144,695,215	$188,315,873	$340,304,346
Average	$4,634	$45,819	$4,093,823	$71,223
Average Number of Officers	8	19	44	
Average Number of Employees	1	7	297	

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor Management Standards, 2002 e.LORS data.

For each of the three tiers, the Department estimated burden hours for the additional nonrecurring (first year) recordkeeping and reporting requirements, the additional recurring recordkeeping and reporting burden hours, and a three-year annual average for the additional nonrecurring and recurring burden hours.

The Department estimates that LM–2 filers will spend an average of nearly $1,000 for computer hardware, hardware upgrades, accounting software, and software upgrades, and 14.6 hours to install and set up, or reconfigure the computer hardware and accounting software (these are weighted averages of $1,500 for computer hardware and $250 for accounting software across all LM–2 filers). Although many unions currently have the hardware and software that is necessary for the recordkeeping and reporting requirements of the final rule, data submitted by the AFL–CIO suggests that 21% of national and international unions and 33% of local unions would need to purchase and install new computer hardware; 11% of national and international unions and 40% of local unions would need new software; and 51% of national and international unions and 35% of local unions would need to upgrade their software. An additional 12.5% of local unions do not use computers; however, the Department assumes that 86.4% (501) of these unions will no longer have to file the Form LM–2 because of the higher reporting threshold ($250,000) for the form. For those unions without computers, the Department also

estimated that it would take an average of 14.6 (nonrecurring) hours to install and/or upgrade the computer hardware and software. In addition, for all unions the Department estimated that it would take an average of 8.9 (nonrecurring) hours to install, test, and review the OLMS reporting software.

The Department estimates that it will take unions an average of 76.8 (nonrecurring) hours to change their accounting structures; develop, test, review, and document accounting software queries; design query reports; and train accounting personnel. Unions that use a fiscal year beginning on January 1 will need to spend less than half of these hours (32.5) making changes before January 1, 2004, in order to be ready to begin the recordkeeping necessary to be able to file the revised Form LM–2. Unions will have until 90 days following the end of their fiscal year to spend the remainder of these hours (44.3) making changes that will be necessary to actually populate the Form LM–2, which will be due, at the earliest, at the end of March 2005. These estimates are based on the Department's review of a variety of accounting software packages, its evaluation of the recordkeeping requirements of the current Form LM–2, and its review of the public comments. The Department relied upon the expertise of investigators with first-hand knowledge of union financial reporting, including the use of software, to determine which four commercial off-the-shelf software packages were most commonly used by unions to maintain their finances and prepare financial reports. Using these four common off-the-shelf software packages, Department investigators determined that it was possible to set up categories or accounts tailored to capture the information necessary to comply with the requirements of the rule. The software packages tested utilize a common processing format.

Many unions with commercial-off-the-shelf accounting software will take less time and other, typically larger, unions with specialized accounting systems may take more time. Further, the public comments suggest that many unions already have accounting systems that maintain at least some, if not all, of the required information for disbursements and other receipts. Therefore, as discussed above, the Department continues to believe that unions will have adequate time to conform their accounting systems to the revised forms before the start of the first reporting period for which they will be required to report on the new Form LM–2 (no earlier than January 1, 2004).

The Department estimates an average 30-minute reduction in burden for the changes to pages one and two and Statement B of the Form LM–2 (for all three tiers) for reporting three fewer yes/no questions and 5 fewer minutes for reporting three fewer receipt categories and two less disbursement category on Statement B. The burden reduction is less for Statement B because the information that is currently reported on four lines must be still be gathered for the revised form, but are added together and reported on just one line of the revised form.

The Department estimates no reduction or increase in burden for Tier 1 filers associated with the eight unchanged schedules on the revised Form LM–2. It is assumed that Tier 1 respondents will use the same features in the new software that are in the existing OLMS software to complete these schedules. However, for Tier 2 and Tier 3 filers the Department estimates a 50% decrease (12.5 hours or 1.6 hours per unchanged schedule) in reporting burden that results from moving from the current manual or ''cut and paste'' method on the existing form to an electronic data export capability for the unchanged schedules on the revised form.

The Department estimated the burden associated with the three Form LM–2 schedules that are being revised: investments, all officers and disbursements to officers, and disbursements to employees. Each has a nonrecurring burden for respondents to adapt to the revisions (*e.g.*, new schedule reporting thresholds and additional detail) of 4.7, 15.6 and 7.8 hours, respectively. For the revised officer and employee schedules, the Department estimates an average of 60 minutes of training for each officer and employee and from 30 to 60 minutes per month and an additional 60 minutes per year for each officer and employee to estimate the amount of time spent on each of the functional categories on the schedule each month and then sum them for the entire year (as described in the preamble, the Department is only requiring officers and employees, as a general rule, to estimate their time to the nearest 10%). In calculating the average time union officers and employees will spend estimating their time, the Department assumed that the task will be more time consuming for officers and employees of larger unions. For example, while the Department assumed that officers and employees of the smallest Form LM–2 filers (Tier 1, with annual receipts of less than $500,000) would spend 30 minutes a month during the year (approximately seven minutes a week) and an hour at the end of the year, the Department assumed that officers of the largest Form LM–2 files (Tier 3, with annual receipts of $50 million or more) will spend 60 minutes a month during the year (approximately 14 minutes a week) and an hour at the end of the year.

It is also assumed that Tier 1 respondents will use the same features in the new software that are in the existing OLMS software to complete the officer and employee schedules, and that it will take them an average of 2.0 additional hours to complete each schedule in addition to the average of 6.0 hours to complete the officer schedule and 10.0 hours to complete the existing schedules. However, for Tier 2 and Tier 3 filers, the Department estimates an additional 6 hours to export and transmit data for the officer and employee schedules (3 hours for each schedule) and a 25% decrease in reporting burden that results from moving from the current manual or ''cut and paste'' method on the existing form to an electronic data export capability on the revised form. No additional recordkeeping burden is estimated for the officer and employee disbursement schedules because the Department is not requiring unions to maintain detailed time records.

For the two new schedules for accounts receivable and accounts payable, the Department estimates that on average unions will take 4.9 additional hours (of nonrecurring burden) to develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel.

The Department also estimates that on average unions will take an additional (recurring) 0.8 hours of recordkeeping burden to age their accounts receivable and accounts payable, and an additional 1.4 (recurring) hours to prepare the new schedules. OLMS e.LORS data and the public comments suggest that many Form LM–2 filers with receipts of less than $50 million (99% of all filers) have few or no accounts receivable or accounts payable that meet the threshold for the relevant schedule and that 50% of the national and international unions already maintain accounts receivable and accounts payable in the format required by the final rule. Therefore, the Department has included a relatively small amount of additional recordkeeping and reporting burden hours associated with these schedules.

For the new ''other receipts'' schedule, the Department estimates that on average unions will take 10.3

additional hours (of nonrecurring recordkeeping and reporting burden) to change accounting structures; develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel. Further, the Department also estimates that on average unions will take an additional (recurring) 0.6 hours to prepare the new schedule. The additional reporting burden is a net estimate that includes a 50% decrease in reporting burden that results from moving from the current manual or ''cut and paste'' method for the existing schedule to an electronic data export capability on the revised form for the Tier 2 and Tier 3 filers. Moreover, OLMS e.LORS data indicates that ''other receipts'' represent only 8.8% of total receipts and that the average amount that would have to be itemized on the schedule is $309,999. Therefore, Form LM–2 filers would have to electronically report at most an average of just 62 other receipts per year (and probably far less since some receipts will be more than $5,000). The Department also estimates that on average unions will take an additional (recurring) 2.7 hours of recordkeeping burden. Currently, this supporting schedule requires some detail (description and amount) for other receipts but does not require the date or name and address. The public comments also suggest that 60% of the national and international unions already maintain written records for the information required by the new ''other receipts'' schedule.

For the five new disbursement schedules (representational activities; union administration; general overhead; contributions, gifts and grants; and political activities and lobbying), the Department estimates that on average unions will take 10.3 additional hours (of nonrecurring recordkeeping and reporting burden) to change accounting structures; develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel. Further, the Department also estimates that on average unions will take an additional (recurring) 6.0 hours time to prepare the new schedules. This additional reporting burden is a net estimate that includes a 50% decrease in reporting burden that results from moving from the current manual or ''cut and paste'' method for the existing ''other disbursements,'' ''office and administrative expense,'' and ''contributions, gifts, and grants'' schedules to an electronic data export capability on the revised form for the Tier 2 and Tier 3 filers. Moreover, OLMS e.LORS data indicates that disbursements on these five schedules account for just 23.2% of total disbursements and that the average amount that would have to be itemized on the schedules is $822,953, or $164,591 per schedule. Therefore, Form LM–2 filers would have to electronically report at most an average of just 33 disbursements per schedule per year (and probably less since some disbursements will be more than $5,000).

The Department also estimates that on average unions will take an additional (recurring) 22.0 hours of recordkeeping burden to record the name, address, and date of disbursements. Currently, three disbursement supporting schedules require some detail (description and amount) but do not require the date or name and address. The public comments also suggest that many unions maintain records as part of their normal business practice that reflect the required detail for disbursements, but that 10 to 40% of unions could not provide all of the detail required by the Department's proposal.

For the new membership schedule, the Department estimates that on average unions will take 4.9 additional hours (of nonrecurring burden) to develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel.

The Department also estimates that on average unions will take an additional 2.1 (recurring) hours to prepare the new schedules. Since the final rule does not require unions to manufacture or report information for membership categories they do not keep, the Department has not estimated any additional recordkeeping burden for this schedule.

For the revised Form LM–2, the Department estimates that unions will take an average of two hours to obtain each electronic signature (two signatures are needed). There is also a charge of $45 to obtain each electronic signature and a $5 processing fee. The Department also estimates that the union president and secretary-treasurer will take an average of 4 additional hours (two hours each) to review and sign the form on top of the 2.4 hours they already spend reviewing the current form. The additional time for the president and secretary-treasurer to review and sign the form declines to two hours the second year and one hour the third year as they become more familiar with the revised form.

Finally, the Department estimates that 5% of Form LM–2 filers will submit a Continuing Hardship Exemption Request in the first year and that it will take 1.0 hour to prepare this request. The Department further estimates that 3% of Form LM–2 filers will submit a hardship request in the second year and that 1% will submit a request in the third year. The Department assumes that most, if not all, of the hardship exemptions that will be requested will come from the smaller tier 1 Form LM–2 filers. Therefore, the Department estimates that there will not be a reduction or increase in reporting burden hours aside from the additional 1.0 hour to make the request since the amount of time to ''cut and paste'' and print the reports is not much different on average than the time to ''cut and paste'' and electronically submit.

Table 4 - Summary of Average Additional First Year Burden for the Revised Form LM-2

Reporting or Recordkeeping Requirement	Nonrecurring Recordkeeping Burden Hours	Nonrecurring Reporting Burden Hours	Recurring Recordkeeping Burden Hours	Recurring Reporting Burden Hours
Review Revised Form LM-2 and Instructions	0.0	0.0	0.0	4.0
Computer Hardware and Software Installation	14.6	0.0	0.0	0.0
Install, Test, and Review OLMS Software	0.0	8.0	0.0	0.0
Page 1: No Changes	0.0	0.0	0.0	0.0
Page 2: Three Fewer Yes/No Questions	0.0	0.0	0.0	-0.5
Statement A: No Changes	0.0	0.0	0.0	0.0
Statement B: Three Fewer Summary Numbers	0.0	0.0	0.0	-0.1
Unchanged Schedules:				
Loans Receivable (1)	0.0	0.0	0.0	-1.6
Sale of Investments and Fixed Assets (1)	0.0	0.0	0.0	-1.6
Purchase of Investments and Fixed Assets (1)	0.0	0.0	0.0	-1.6
Fixed Assets (1)	0.0	0.0	0.0	-1.6
Other Assets (1)	0.0	0.0	0.0	-1.6
Loans Payable (1)	0.0	0.0	0.0	-1.6
Other Liabilities (1)	0.0	0.0	0.0	-1.6
Benefits (1)	0.0	0.0	0.0	-1.6
Revised Schedules:				
Investments (1)	0.0	4.7	0.0	-1.6
All Officers and Disbursements to Officers (1)	15.6	0.0	133.9	17.5
Disbursements to Employees (1)	7.8	0.0	69.3	8.9
New Schedules:				
Accounts Receivable	0.0	4.9	0.8	1.4
Accounts Payable	0.0	4.9	0.8	1.4
Membership Information	0.0	4.9	0.0	2.1
Other Receipts (1)	5.4	4.9	2.7	0.6
Representational Activities	5.4	4.9	4.4	2.1
Political and Lobbying Activities	5.4	4.9	4.4	2.1
Contributions, Gifts, and Grants (1)	5.4	4.9	4.4	0.6
General Overhead (1)	5.4	4.9	4.4	0.6
Union Administration (1)	5.4	4.9	4.4	0.6
Subtotal: Hours Required to Adapt Accounting Systems for New and Revised Schedules (2)	32.5	44.3	0.0	0.0
Develop, Test, and Review Translator Software	0.0	27.9	0.0	0.0
Obtain Electronic Signature	0.0	0.0	0.0	2.0
President Review and Sign Off	0.0	0.0	0.0	2.0
Treasurer Review and Sign Off	0.0	0.0	0.0	2.0
Continuing Hardship Exemption Request	0.0	0.0	0.0	0.1
Total Additional First Year Burden	70.5	84.8	229.6	33.2
Burden for Current Form LM-2	0.0	0.0	132.0	160.0
Grand Total First Year Burden for Revised Form LM-2	70.5	84.8	361.6	193.2

Notes: (1) Includes burden hours savings from electronic filing.
(2) For revised investment schedule and new receipt and disbursement schedules.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, Paperwork Reduction Act Analysis.

The Department estimates the average reporting and recordkeeping burden for the revised Form LM–2 to be 710.1 hours per respondent in the first year (including non-recurring implementation costs), 539.4 hours per respondent in the second year, and 536.0 hours per respondent in the third year. The Department estimates the total

annual burden hours for respondents for the revised Form LM–2 to be 3.4 million hours in the first year, 2.6 million hours in the second and third years.

The Department estimates the average annual cost for the revised Form LM–2 to be $24,271 per respondent in the first year (including non-recurring implementation costs), $17,387 per respondent in the second year, and $17,262 per respondent in the third year. The Department also estimates the total annual cost to respondents for the revised Form LM–2 to be $116.0 million in the first year, $83.1 million in the second year, and $82.5 million in the third year (see Table 5). These amounts include the total cost of the revised Form LM–2; the cost of the changes implemented in this final rule, as noted above, is $79.9 million the first year (the difference between the combined costs of the revised Form LM–2 plus the new Form T–1 and the cost of the current Form LM–2). The average three-year cost of the final rule is $55.7 million.

Moreover, as explained above, the Department believes that it is very unlikely that small unions with $250,000 in annual receipts would incur many of the costs incurred by the typical Form LM–2 filer. Even the AFL–CIO, in commenting on the more burdensome proposed Form LM–2 estimated that unions with annual receipts of less than $500,000 would incur an average cost of just $3,750 for the proposed changes.

Table 5 - Reporting and Recordkeeping Burden Hours and Costs for Revised Form LM-2

Form	Number of Responses	Reporting Hours Per Respondent	Total Reporting Hours	Recordkeeping Hours per Respondent	Total Recordkeeping Hours	Total Burden Hours Per Respondent	Total Burden Hours	Average Cost Per Respondent	Total Cost
Current Form LM-2	5,179	132.0	683,628	160.0	828,640	292.0	1,512,268	$8,381	$43,405,199
Revised Form LM-2									
First Year	4,778	165.2	789,279	544.9	2,603,391	710.1	3,392,670	$24,271	$115,968,841
Second Year	4,778	149.8	715,893	389.6	1,861,442	539.4	2,577,335	$17,387	$83,076,269
Third Year	4,778	146.4	699,464	389.6	1,861,442	536.0	2,560,906	$17,262	$82,475,711
Three Year Average	4,778	153.8	734,879	441.3	2,108,758	595.2	2,843,637	$19,640	$93,840,274

Note: The number of responses for revised Form LM-2 reflects a reduction of 501 filers from raising the threshold to $250,000 and an increase of 100 from including filers associated with the Bremerton decision.
Estimates for current forms are the latest adjusted estimates (see Table 2).
Some numbers may not add due to rounding.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor Management Standards.
Adjusted burden hour estimates for the current forms are based on public comments received from Notice of Proposed Rulemaking published in the Federal Register on December 27, 2002 and 2002 OLMS e.LORS data.

e. Form LM–3

The Department also estimates that 11,356 local unions take an average 104.0 hours to collect and report their information on the current Form LM–3. In addition, the Department assumes that all Form LM–3 filers will take an average 8.0 hours for accounting and 4.0 hours for legal review to complete the current form for an average total burden of 116.0 hours per respondent (see Table 2). Further, the Department estimates that 64.0 hours of the total is for recordkeeping burden and 52.0 hours is for reporting burden. These estimates and assumptions are based on the similarity of the Form LM–3 and Form LM–2 recordkeeping and reporting requirements, the fewer number of schedules that need to be reported on the Form LM–3, as well as the relative differences in the size of the unions that complete the two forms.

The Department has also updated the average annual cost of complying with the current Form LM–3 recordkeeping and reporting requirements to $3,277. Again, this figure includes estimates for consulting, accounting, legal, and programming costs and is a weighted average across all respondents. The dollar cost estimate is also based on total compensation costs and not hourly wage rates. The total annual cost for all respondents is estimated to be $39.0 million for Form LM–3 (see Table 6). It should be noted that although it may appear that the Department has applied inconsistent dollar costs per hour to the burden hour estimates, the dollar costs per hour naturally differ between forms because of the varying amounts of accountant time, bookkeeping time, and the time of the union secretary-treasurer and president associated with each form, that yield different weighted average costs per hour.

Table 6 - Reporting and Recordkeeping Burden Hours and Costs for Revised Form LM-3

Form	Number of Responses	Reporting Hours Per Respondent	Total Reporting Hours	Recordkeeping Hours per Respondent	Total Recordkeeping Hours	Total Burden Hours Per Respondent	Total Burden Hours	Average Cost Per Respondent	Total Cost
Current Form LM-3	11,356	52.0	590,512	64.0	726,784	116.0	1,317,296	$3,277	$37,213,612
Revised Form LM-3									
First Year	11,907	52.0	619,164	64.0	762,048	116.0	1,381,212	$3,277	$39,019,239
Second Year	11,907	52.0	619,164	64.0	762,048	116.0	1,381,212	$3,277	$39,019,239
Third Year	11,907	52.0	619,164	64.0	762,048	116.0	1,381,212	$3,277	$39,019,239
Three Year Average	11,907	52.0	619,164	64.0	762,048	116.0	1,381,212	$3,277	$39,019,239

Note: The number of responses for revised Form LM-3 reflects an increase of 501 filers from raising the threshold to $250,000 and an increase of 50 from including filers associated with the Bremerton decision.
Estimates for current forms are the latest adjusted estimates (see Table 2).
Some numbers may not add due to rounding.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor Management Standards.
Adjusted burden hour estimates for the current forms are based on public comments received from Notice of Proposed Rulemaking published in the Federal Register on December 27, 2002 and 2002 OLMS e.LORS data.

It should also be noted that by increasing the filing threshold for Form LM–2, 501 small unions who currently file Form LM–2 would only have to file the less burdensome Form LM–3. Each of these unions will save an average of 176 hours per year (116 hours for Form LM–3 compared to the 292 hours that they are expending to file the current

Form LM–2) and altogether save 88,176 hours. In monetary savings, the increased threshold amounts to an average savings of $5,104 per year, or a total $2.6 million per year. These savings accrue because unions with annual receipts above $200,000 but less than $250,000 will be able to file the less burdensome and less costly Form LM–3. Additionally, these unions will not be required to file Form T–1 if they have a trust nor will they incur the increased costs related to the revised Form LM–2.

f. New Form T–1

To estimate the burden hours and costs for the new Form T–1 three important assumptions were made to estimate the number of responses. First, it was assumed that 15% of the 1,574 tier 1 LM–2 filers with annual revenues of from $250,000 to $499,999.99 would file one Form T–1. Second, it was assumed that 35% of the 3,158 tier 2 Form LM–2 filers with annual revenues of from $500,000 to $49.9 million would file an average of 2.6 Form T–1s. Third, it was assumed that 100% of the 46 tier 3 Form LM–2 filers with annual revenues of $50 million or more would file an average of five T–1 reports each. Although 939 Form LM–2 filers report having a subsidiary, it is difficult to estimate how many more entities fall within the broader definition of trusts or funds to be reported under the final rule.

For each of the three tiers, the Department estimated burden hours for the additional nonrecurring (first year) recordkeeping and reporting requirements, the recurring recordkeeping and reporting burden hours, and a three year annual average for the nonrecurring and recurring burden hours similar to the way it estimated the burden hours for Form LM–2 filers (see previous discussion).

The Department estimates the burden required for preparing to complete the Form T–1 for all three tiers to be 2.4 non-recurring hours to provide the new Form T–1 requirements to the trust, 4.3 hours for reviewing the new form and instructions, and 8.0 non-recurring (first year) hours for installing, testing, and reviewing the OLMS provided software. The time to read and review the form and instructions is estimated to decline to 2.0 hours the second year and 1.0 hour the third year as unions and trusts become more familiar with the revised form. (see Table 7)

The Department estimates the average reporting burden required to complete pages one and two of the Form T–1 for each of the three tiers to be 6.1 hours and the average recordkeeping burden associated with the items on pages one and two to be 1.6 hours. These estimates are proportionally based on the recordkeeping and reporting burden estimate for the first two pages of the current Form LM–4, which are very similar to the first two pages of the new Form T–1. The first two pages of Form LM–4 have 21 items (8 questions that identify the union, four yes/no questions, seven summary numbers for: Maximum amount of bonding, number of members, total assets, liabilities, receipts, and disbursements, total disbursements to officers, and a space for additional information). The first two pages of Form T–1 have 25 items (14 questions that identify the union and trust, six yes/no questions, just four summary numbers for total assets, liabilities, receipts, and disbursements, and a space for additional information). For comparison, the first part of Form LM–3 (before the schedules) has 56 items with two statements on assets, liabilities, receipts, and disbursements.

For the new receipt and disbursement schedules the Department estimates that on average T–1 respondents will take 9.8 hours (of nonrecurring burden) to develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel for each of the schedules. Further, the Department also estimates that on average Form T–1 respondents will take 1.2 (recurring) hours to prepare, transmit/report, and report the new receipts schedule and 1.4 hours to report the new disbursements schedule. The Department also estimates that on average Form T–1 respondents will take 8.3 hours (recurring) of recordkeeping burden for each schedule to maintain the additional information required by the final rule.

For the new Form T–1 disbursements to officers and employees of the trust schedule the Department estimates that it will take respondents an average 2.8 hours (of nonrecurring burden) to develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel. Further, the Department estimates it will take on average 0.8 hours to prepare, export and transmit or report the new schedule. No additional recordkeeping burden is estimated for the officer and employee disbursement schedule because the Department is not requiring trusts to maintain detailed time records over what is kept as normal business practice.

The Department also estimates that it will take 2.0 hours for the Trust to review the Form T–1 and 1.0 hours for this information to be sent to Form LM–2 filer. In addition, the Department estimates that the union president and secretary-treasurer will take 4.0 hours to review and sign the form. The time for the president and secretary-treasurer to review and sign the form declines to 2.0 hours the second year and 1.0 hour the third year as they become more familiar with the revised form.

Table 7 - Summary of Average Additional First Year Burden for the New Form T-1

Reporting or Recordkeeping Requirement	Nonrecurring Burden Hours	Reporting Burden Hours	Recordkeeping Burden Hours
Information on New Form T-1 Provided to Trust	0.0	2.4	0.0
Review New Form T-1 and Instructions	0.0	4.3	0.0
Install, Test, and Review OLMS Software	8.0	0.0	0.0
Pages 1 and 2	0.0	6.1	1.6
New Schedules:			
Individually Identified Receipts	9.8	1.2	8.3
Individually Identified Disbursements	9.8	1.4	8.3
Disbursements to Officers and Employees	2.8	0.8	0.0
Review by Trust	0.0	2.0	0.0
Form/Information sent to Union	0.0	1.0	0.0
President Review and Sign Off	0.0	2.0	0.0
Treasurer Review and Sign Off	0.0	2.0	0.0
Total First Year Burden for New Form T-1	30.4	23.2	18.1

Note: Some numbers may not add due to rounding.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, Paperwork Reduction Act Analysis.

The Department estimates the average reporting and recordkeeping burden for the new Form T–1 to be 71.7 hours per respondent in the first year (including non-recurring implementation costs), 33.9 hours per respondent in the second year, and 30.4 hours per respondent in the third year (see Table 8). The Department estimates the total annual burden hours for respondents for the new Form T–1 to be 199,000 hours in the first year, 94,000 hours in the second year, and 84,000 hours in the third year. The Department estimates the average annual cost for the new Form T–1 to be $1,986 per respondent in the first year (including non-recurring implementation costs), $934 per respondent in the second year, and $838 per respondent in the third year.

The Department also estimates the total annual cost to respondents for the new Form T–1 to be $5.5 million in the first year, $2.6 million in the second year, and $2.3 million in the third year.

The cost estimates are based on wage-rate data obtained from the Department's Bureau of Labor Statistics (BLS) for personnel employed in service industries (*i.e.*, accountant, bookkeeper, etc.) and adjusted to be total compensation estimates based on the BLS Employer Cost data. The estimates used for salaries of labor organization officers and employees are obtained from the annual financial reports filed with OLMS and are also adjusted to be total compensation estimates.

Table 8 - Reporting and Recordkeeping Burden Hours and Costs for New Form T-1

Form	Number of Responses	Reporting Hours Per Respondent	Total Reporting Hours	Recordkeeping Hours per Respondent	Total Recordkeeping Hours	Total Burden Hours Per Respondent	Total Burden Hours	Average Cost Per Respondent	Total Cost
New Form T-1									
First Year	2,769	23.2	64,241	48.5	134,297	71.7	198,537	$1,986	$5,499,067
Second Year	2,769	15.8	43,750	18.1	50,119	33.9	93,869	$934	$2,587,368
Third Year	2,769	12.3	34,059	18.1	50,119	30.4	84,178	$838	$2,319,873
Three Year Average	2,769	17.1	47,350	28.2	78,178	45.3	125,528	$1,253	$3,468,769

Note: Some numbers may not add due to rounding.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor Management Standards. Adjusted burden hour estimates for the current forms are based on public comments received from Notice of Proposed Rulemaking published in the Federal Register on December 27, 2002 and 2002 OLMS e.LORS data.

h. Federal Costs Associated With Final Rule

The annualized federal cost associated with revised Form LM–2 and the new Form T–1 is estimated to be $7.9 million. This includes operational expenses such as equipment, overhead, and printing as well as salaries and benefits for the OLMS staff in the National Office and field offices that are involved with reporting and disclosure activities. The estimate also includes the annualized cost for redesigning the forms, developing and implementing the electronic software, and implementing digital signature capability.

G. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)

In accordance with Executive Order 13045, the Department has evaluated the environmental safety and health effects of the final rule on children. The Department has determined that the final rule will have no effect on children.

H. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

The Department has reviewed this final rule in accordance with Executive Order 13175, and has determined that it does not have ''tribal implications.'' The final rule does not ''have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

I. Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)

This final rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

J. Executive Order 12988 (Civil Justice Reform)

This final rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The final rule has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

K. Environmental Impact Assessment

The Department has reviewed the final rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 U.S.C. part 1500), and the Department's NEPA procedures (29 CFR part 11). The final rule will not have a significant impact on the quality of the human environment, and, thus, the Department has not conducted an environmental assessment or an environmental impact statement.

L. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

This final rule is not subject to Executive Order 13211, because it will not have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 29 CFR Parts 403 and 408

Labor unions, Reporting and recordkeeping requirements.

Text of Final Rule

■ In consideration of the foregoing, the Department of Labor, Office of Labor-Management Standards, hereby amends parts 403 and 408 of title 29 of the Code of Federal Regulations as set forth below.

PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

■ 1. The authority citation for part 403 is revised to read as follows:

Authority: Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 4–2001, 66 FR 29656, May 31, 2001.

§ 403.2 [Amended]

■ 2. Section 403.2 is amended by:

a. Removing the words ''together with a true copy thereof'' at the end of paragraph (a) and removing the comma preceding those words.

■ b. Adding paragraph (d) to read as follows:

§ 403.2 Annual financial report.

* * * * *

(d) Every labor organization with annual receipts of $250,000 or more shall, except as otherwise provided, file a report on Form T–1 for every trust in which the labor organization is interested, as defined in section 3(l) of the Act, 29 U.S.C. 402(l), that has gross annual receipts of $250,000 or more, and to which $10,000 or more was contributed during the reporting period by the labor organization or on the labor organization's behalf or as a result of a negotiated agreement to which the labor organization is a party. A separate report shall be filed on Form T–1 for each such trust within 90 days after the end of the labor organization's fiscal year in the detail required by the instructions accompanying the form and constituting a part thereof, and shall be signed by the president and treasurer, or corresponding principal officers, of the labor organization. No Form T–1 need be filed for a trust if an annual financial report providing the same information and a similar level of detail is filed with another agency pursuant to federal or state law, as specified in the instructions accompanying Form T–1. In addition, an audit that meets the criteria specified in the Instructions for Form T–1 may be substituted for all but page 1 of the Form T–1. If, on the date for filing the annual financial report of such trust, such labor organization is in trusteeship, the labor organization that has assumed trusteeship over such subordinate labor organization shall file such report as provided in § 408.5 of this chapter.

■ 3. Section 403.5 is amended by:

■ a. In paragraph (a), removing the words ''and one copy'' and removing the commas preceding and following those words.

■ b. In paragraph (b), removing the words ''and one copy'' and removing the commas preceding and following those words.

■ c. Adding a new paragraph (d) to read as follows:

§ 403.5 Terminal financial report.

* * * * *

(d) If a trust in which a labor organization with $250,000 or more in annual receipts is interested loses its identity through merger, consolidation, or otherwise, the labor organization shall, within 30 days after such loss, file a terminal report on Form T–1, with the Office of Labor-Management Standards, signed by the president and treasurer or corresponding principal officers of the labor organization. For purposes of the report required by this paragraph, the period covered thereby shall be the portion of the trust's fiscal year ending on the effective date of the loss of its reporting identity.

■ 4. Section 403.8 is amended to:

■ a. Designate the existing text as paragraph (a).

■ b. Add new paragraphs (b) and (c) to read as follows:

§ 403.8 Dissemination and verification of reports.

* * * * *

(b)(1) If a labor organization is required to file a report under this part using the Form LM–2 and indicates that it has failed or refused to disclose information required by the Form concerning any disbursement, or receipt not otherwise reported on Statement B, to an individual or entity in the amount of $5,000 or more, or any two or more disbursements, or receipts not otherwise reported on Statement B, to an individual or entity that, in the aggregate, amount to $5,000 or more, because disclosure of such information may be adverse to the organization's legitimate interests, then the failure or refusal to disclose the information shall be deemed ''just cause'' for purposes of paragraph (a) of this section.

(2) Disclosure may be adverse to a labor organization's legitimate interests under this paragraph if disclosure would reveal confidential information concerning the organization's organizing or negotiating strategy or individuals paid by the labor organization to work in a non-union facility in order to assist the labor organization in organizing employees, provided that such individuals are not employees of the labor organization who receive more than $10,000 in the aggregate in the reporting year from the union.

(3) This provision does not apply to disclosure that is otherwise prohibited by law or that would endanger the health or safety of an individual.

(c) In all other cases, a union member has the burden of establishing ''just cause'' for purposes of paragraph (a) of this section.

PART 408—LABOR ORGANIZATION TRUSTEESHIP REPORTS

■ 5. The authority citation for part 408 is revised to read as follows:

Authority: Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 4–2001, 66 FR 29656, May 31, 2001.

§ 408.5 [Amended]

■ 6. Section 408.5 is amended by:

■ a. Adding the words ''and any Form T–1 reports'' after the words ''on behalf of the subordinate labor organization the annual financial report'' and before the words ''required by part 403 of this chapter''.

■ b. Removing the words ''together with a true copy thereof'' at the end of the section and removing the comma preceding those words.

Signed in Washington, DC this 2 day of October, 2003.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Appendix

Note: This appendix, which will not appear in the Code of Federal Regulations, contains the revised Form LM–2 and the new Form T–1 and the instructions for these forms.

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
Washington, DC 20210

FORM LM-2 LABOR ORGANIZATION ANNUAL REPORT

MUST BE USED BY LABOR ORGANIZATIONS WITH $250,000 OR MORE IN TOTAL ANNUAL RECEIPTS AND LABOR ORGANIZATIONS IN TRUSTEESHIP

Form Approved
Office of Management and Budget
No. xxxxxxxx
Expires: xx-xx-xxxx

This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.

READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT.

For Official Use Only	1. FILE NUMBER	2. PERIOD COVERED (MO / DAY / YEAR)	3. (a) AMENDED - If this is an amended report correcting a previously filed report, check here: ☐ (b) HARDSHIP - If filing under the Hardship Exemption Procedures, check here: ☐ (c) TERMINAL - If your organization ceased to exist and this is its terminal report, see Section XII of the instructions and check here: ☐
	☐☐☐ – ☐☐☐	From ☐☐ ☐☐ ☐☐☐☐ Through ☐☐ ☐☐ ☐☐☐☐	

8. MAILING ADDRESS (Type or print in capital letters.)

First Name

Last Name

P.O. Box - Building and Room Number *(if any)*

Number and Street

City

State ZIP Code + 4

4. AFFILIATION OR ORGANIZATION NAME

5. DESIGNATION (Local, *Lodge, etc.*)

6. DESIGNATION NUMBER

7. UNIT NAME *(if any)*

9. Are your organization's records kept at its mailing address? (if "No," provide address in Item 69.) Yes ☐ No ☐

69. ADDITIONAL INFORMATION *(if more space is needed, attach Continuation pages properly identified.)*

Item Number	

Each of the undersigned, duly authorized officers of the above labor organization, declares, under penalty of perjury and other applicable law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. *(See Section VI on penalties in the instructions.)*

70. SIGNED: _____ PRESIDENT *(If other title, see instructions.)*
Date: ___/___/___ Telephone Number: (___) ___-___

71. SIGNED: _____ TREASURER *(If other title, see instructions.)*
Date: ___/___/___ Telephone Number: (___) ___-___

FORM LM-2 LABOR ORGANIZATION ANNUAL REPORT

FILE NUMBER: ☐☐☐ – ☐☐☐

10. During the reporting period did the labor organization create or participate in the administration of a trust or other fund or organization, as defined in the instructions, which provides benefits for members or their beneficiaries? ☐ Yes ☐ No

11. During the reporting period did the labor organization have a political action committee (PAC) fund? ☐ Yes ☐ No

12. During the reporting period did the labor organization have an audit or review of its books and records by an outside accountant or by a parent body auditor/representative? ☐ Yes ☐ No

13. During the reporting period did the labor organization discover any loss or shortage of funds or other assets? (Answer "Yes" even if there has been repayment or recovery.) ☐ Yes ☐ No

14. What is the maximum amount recoverable under the labor organization's fidelity bond for a loss caused by any officer, employee or agent of the labor organization who handled union funds? $ ☐

15. During the reporting period did the labor organization acquire or dispose of any assets in any manner other than by purchase or sale? ☐ Yes ☐ No

16. Were any of the labor organization's assets pledged as security or encumbered in any other way at the end of the reporting period? ☐ Yes ☐ No

17. Did the labor organization have any contingent liabilities at the end of the reporting period? ☐ Yes ☐ No

18. During the reporting period did the labor organization have any changes in its constitution and bylaws, other than rates of dues and fees, or in practices/procedures listed in the instructions? ☐ Yes ☐ No

19. What is the date of the labor organization's next regular election of officers? ☐

20. How many members did the labor organization have at the end of the reporting period? (Total from Line 8 Column (B) in Schedule 13) ☐

21. What are the labor organization's rates of dues and fees? (Enter a minimum and maximum if more than one rate applies for any line.)

Rates of Dues and Fees

Dues/Fees	Amount	Unit	Minimum	Maximum
(a) Regular Dues/Fees	$	per		
(b) Working Dues/Fees				
(c) Initiation Fees	$			
(d) Transfer Fees	$			
(e) Work Permits	$	per		

If the answer to any of the above questions is "Yes," provide details in Item 69 (Additional Information) as explained in the instructions for each item.

STATEMENT A — ASSETS AND LIABILITIES

FILE NUMBER: ☐☐☐ – ☐☐☐

Complete Schedules 1 Through 20 Before Completing Statement A

Enter Amounts in Dollars Only - Do Not Enter Cents

Assets

ASSETS (Items)	From Schedule Number	Start of Reporting Period (A)	End of Reporting Period (B)
22. Cash			
23. Accounts Receivable	1		
24. Loans Receivable	2		
25. U.S. Treasury Securities			
26. Investments	5		
27. Fixed Assets	6		
28. Other Assets	7		
29. TOTAL ASSETS			

Liabilities

LIABILITIES (Items)	From Schedule Number	Start of Reporting Period (C)	End of Reporting Period (D)
30. Accounts Payable	8		
31. Loans Payable	9		
32. Mortgages Payable			
33. Other Liabilities	10		
34. TOTAL LIABILITIES			
35. NET ASSETS (Item 29 less Item 34)			

STATEMENT B — RECEIPTS AND DISBURSEMENTS

FILE NUMBER: ☐☐☐ - ☐☐☐

Complete Schedules 1 Through 20 Before Completing Statement B

Enter Amounts in Dollars Only - Do Not Enter Cents

Item	CASH RECEIPTS	SCH #	AMOUNT
36.	Dues and Agency Fees		
37.	Per Capita Tax		
38.	Fees, Fines, Assessments, Work Permits		
39.	Sale of Supplies		
40.	Interest		
41.	Dividends		
42.	Rents		
43.	Sale of Investments and Fixed Assets	3	
44.	Loans Obtained	9	
45.	Repayments of Loans Made	2	
46.	On Behalf of Affiliates for Transmittal to Them		
47.	From Members for Disbursement on Their Behalf		
48.	Other Receipts	14	
49.	TOTAL RECEIPTS		

Item	CASH DISBURSEMENTS	SCH #	AMOUNT
50.	Representational Activities	15	
51.	Political Activities and Lobbying	16	
52.	Contributions, Gifts, and Grants	17	
53.	General Overhead	18	
54.	Union Administration	19	
55.	Benefits	20	
56.	Per Capita Tax		
57.	Strike Benefit		
58.	Fees, Fines, Assessments, etc.		
59.	Supplies for Resale		
60.	Purchase of Investments and Fixed Assets	4	
61.	Loans Made	2	
62.	Repayment of Loans Obtained	9	
63.	To Affiliates of Funds Collected on Their Behalf		
64.	On Behalf of Individual Members		
65.	Direct Taxes		
66.	Subtotal		
67.	Withholding Taxes and Payroll Deductions		
	67a. Total Withheld		
	67b. Less Total Disbursed		
	67c. Total Withheld But Not Disbursed		( )
68.	TOTAL DISBURSEMENTS (Line 66-Line 67c)		

SCHEDULE 1 — ACCOUNTS RECEIVABLE AGING SCHEDULE

FILE NUMBER: ☐☐☐ - ☐☐☐

	(A) ENTITY OR INDIVIDUAL NAME	(B) TOTAL ACCOUNT RECEIVABLE	(C) 90-180 DAYS PAST DUE	(D) 180+ DAYS PAST DUE	(E) LIQUIDATED ACCOUNT RECEIVABLE
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25	**Totals from Continuation pages (if any)**				
26	**Totals of Lines 1 through 25**				
27	**Totals from all other accounts receivable**				
28	**Totals of Lines 26 and 27**				

Enter the Total from Line 28 in ---------- Item 23, Column (B)

SCHEDULE 2 — LOANS RECEIVABLE

FILE NUMBER: [ ][ ][ ] – [ ][ ][ ]

Enter Amounts in Dollars Only - Do Not Enter Cents

List below loans to officers, employees, or members which at any time during the reporting period exceeded $250 and list all loans to business enterprises regardless of amount. (A)	Loans Outstanding at Start of Period (B)	Loans Made During Period (C)	Repayments Received During Period		Loans Outstanding at End of Period (E)
			Cash (D)(1)	Other Than Cash (D)(2)	
1. Name: _____ **Purpose:** _____ **Security:** _____ **Terms of Repayment:** _____					
2. Name: _____ **Purpose:** _____ **Security:** _____ **Terms of Repayment:** _____					
3. Name: _____ **Purpose:** _____ **Security:** _____ **Terms of Repayment:** _____					
4. Totals from Continuation pages (if any)					
5. Totals of loans not listed above					
6. Totals of Lines 1 through 5					

Enter the Totals from Line 6 in ..... Item 24 Column (A) ..... Item 61 ..... Item 45 ..... Item 69 with Explanation ..... Item 24 Column (B)

FILE NUMBER: ☐☐☐ – ☐☐☐

SCHEDULE 3 — SALE OF INVESTMENTS AND FIXED ASSETS

Description *(if land or buildings, give location)* (A)	Cost (B)	Book Value (C)	Gross Sales Price (D)	Amount Received (E)
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12. Totals from Continuation pages *(if any)*				
13. Totals of Lines 1 through 12				
		14. Less Reinvestments		
		15. Net Sales		

Enter the Total from Line 15 in ..... Item 43

SCHEDULE 4 — PURCHASE OF INVESTMENTS AND FIXED ASSETS

FILE NUMBER: [ ][ ][ ] - [ ][ ][ ]

Description *(if land or buildings, give location)* (A)	Cost (B)	Book Value (C)	Cash Paid (D)
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12. Totals from Continuation pages *(if any)*			
13. Totals of Lines 1 through 12			

	14. Less Reinvestments	
	15. Net Purchases	

Enter the Total from Line 15 in ..... Item 60

FILE NUMBER: [ ][ ][ ] – [ ][ ][ ]

SCHEDULE 5 — INVESTMENTS
(OTHER THAN U.S. TREASURY SECURITIES)

Description (A)	Amount (B)
Marketable Securities	
1. Total Cost	
2. Total Book Value	
3. List each marketable security which has a book value over $5,000 and exceeds 5% of Line 2.	
(a)	
(b)	
(c)	
(d) Total from Continuation pages (if any)	
Other Investments	
4. Total Cost	
5. Total Book Value	
6. List each other investment which has a book value over $5,000 and exceeds 5% of Line 5. Also list each Trust which is an investment.	
(a)	
(b)	
(c)	
(d)	
(e) Total from Continuation pages (if any)	
7. Total of Lines 2 and 5	
Enter the Total from Line 7 in	Item 26, Column (B)

FILE NUMBER: [ ][ ][ ] – [ ][ ][ ]

SCHEDULE 6 — FIXED ASSETS

Description (A)	Cost or Other Basis (B)	Total Depreciation or Amount Expensed (C)	Book Value (D)	Value (E)
1. Land (give *location):*				
2. Totals from Continuation pages *(if any)*				
3. Buildings (give *location):*				
4. Totals from Continuation pages *(if any)*				
5. Automobiles and Other Vehicles				
6. Office Furniture and Equipment				
7. Other Fixed Assets				
8. Totals of Lines 1 through 7				

Enter the Total from Line 8, Column (D) in ..... Item 27, Column (B)

FILE NUMBER: [ ][ ][ ] – [ ][ ][ ]

SCHEDULE 7— OTHER ASSETS

Description (A)	Book Value (B)
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14. Total from Continuation pages (if any)	
15. Total of Lines 1 through 14	
Enter the Total from Line 15 in	Item 28, Column (B)

SCHEDULE 8 — ACCOUNTS PAYABLE AGING SCHEDULE

FILE NUMBER: ☐☐☐ – ☐☐☐

	(A) ENTITY OR INDIVIDUAL NAME	(B) TOTAL ACCOUNT PAYABLE	(C) 90-180 DAYS PAST DUE	(D) 180+ DAYS PAST DUE	(E) LIQUIDATED ACCOUNT PAYABLE
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25	**Totals from Continuation pages (if any)**				
26	**Totals of Lines 1 through 25**				
27	**Totals from all other accounts payable**				
28	**Totals of Lines 26 and 27**				

Enter the Total from Line 28 in ---------- Item 30, Column (D)

FILE NUMBER: ☐☐☐ – ☐☐☐

SCHEDULE 9 — LOANS PAYABLE

Source of Loans Payable at Any Time During the Reporting Period (A)	Loans Owed at Start of Period (B)	Loans Obtained During Period (C)	Repayment Made During Period		Loans Owed at End of Period (E)
			Cash (D)(1)	Other Than Cash (D)(2)	
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12. Totals from Continuation pages *(if any)*					
13. Totals of Lines 1 through 12					

Enter the Totals from Line 13 in ..... Item 31 Column (C) ..... Item 44 ..... Item 62 ..... Item 69 with Explanation ..... Item 31 Column (D)

FILE NUMBER: [ ][ ][ ] – [ ][ ][ ]

SCHEDULE 10 — OTHER LIABILITIES

Description (A)	Amount at End of Period (B)
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13. Total from Continuation pages (if any)	
14. Total of Lines 1 through 13	

Enter the Total from Line 14 in ..... Item 33, Column (D)

SCHEDULE 11— ALL OFFICERS AND DISBURSEMENTS TO OFFICERS

FILE NUMBER: [ ][ ][ ] - [ ][ ][ ]

	(A)* Name	(B)* Title	(C)* Status	(D) Gross Salary Disbursements (before any deductions)	(E) Allowances Disbursed	(F) Disbursements for Official Business	(G) Other Disbursements not reported in (D) through (F)	(H) TOTAL
1	A*							
	B*							
	C*							
	I*	Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbying %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %		
2	A*							
	B*							
	C*							
	I*	Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbying %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %		
3	A*							
	B*							
	C*							
	I*	Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbying %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %		
4	A*							
	B*							
	C*							
	I*	Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbying %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %		
5	A*							
	B*							
	C*							
	I*	Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbying %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %		
6. TOTALS FROM CONTINUATION PAGES (if any)								
7. TOTAL OF LINES 1-6								
8. LESS DEDUCTIONS								
9. NET DISBURSEMENTS								

*(A) Enter the full name in the following format: **Last Name, First Name Middle Initial.** List all persons who held office during the reporting period even if they received no salary or other disbursements. *(B) Enter officer title, e.g. PRESIDENT or TREASURER. *(C) Code for Status: **past officer - P; continuing officer - C; new officer during the reporting period - N.** (If any officer was not elected at a regular election in accordance with the labor organization's constitution and bylaws, explain in Item 69.) *(I) Enter the PERCENTAGE (%) of time officer worked on activities covered in the corresponding Schedules 15-19.

SCHEDULE 12— DISBURSEMENTS TO EMPLOYEES

FILE NUMBER: [ ][ ][ ] - [ ][ ][ ]

(A)* Name	(B)* Title	(C)* Other Payer	(D) Gross Salary Disbursements (before any deductions)	(E) Allowances Disbursed	(F) Disbursements for Official Business	(G) Other Disbursements not reported in (D) through (F)	(H) TOTAL
1 A*							
B*							
C*							
I* Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbying %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %			
2 A*							
B*							
C*							
I* Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbying %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %			
3 A*							
B*							
C*							
I* Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbying %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %			
4 A*							
B*							
C*							
I* Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbyings %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %			
5 A*							
B*							
C*							
I* Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbying %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %			
6. TOTAL RECEIVED BY ALL OTHER EMPLOYEES							
I* Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbying %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %			
7. TOTALS FROM CONTINUATION PAGES (if any)							
8. TOTAL OF LINES 1-7							
9. LESS DEDUCTIONS							
10. NET DISBURSEMENTS							

SCHEDULE 13 — MEMBERSHIP STATUS

FILE NUMBER: [ ][ ][ ] – [ ][ ][ ]

CATEGORY OF MEMBERSHIP (A)	NUMBER (B)	VOTING ELIGIBILITY (C)
1.		
2.		
3.		
4.		
5.		
6.		
7. Total from Continuation Page(s)		
8. Members (Total of Lines 1 through 7)		
9. Agency Fee Payers*		
10. Total Members/Fee Payers (Total of Lines 8 and 9)		
	Enter the Total from Line 8 in Item 20.	

*Agency Fee Payers are not considered members of the labor organization.

DETAILED SUMMARY PAGE — SCHEDULES 14 THROUGH 19

FILE NUMBER: ☐☐☐ - ☐☐☐

Complete Itemization Pages for Schedules 14 through 19 Before Completing Summary Schedules

SCHEDULE 14 OTHER RECEIPTS	1. Named Payer Itemized Receipts		
	2. Named Payer Non-itemized Receipts		
	3. All Other Receipts		
	4. **TOTAL RECEIPTS** *(add Lines 1 through 3)*		**Item 48**

SCHEDULE 15 REPRESENTATIONAL ACTIVITIES	1. Named Payee Itemized Disbursements		
	2. Named Payee Non-itemized Disbursements		
	3. To Officers		
	4. To Employees		
	5. All Other Disbursements		
	6. **TOTAL DISBURSEMENTS** *(add Lines 1 through 5)*		**Item 50**

SCHEDULE 16 POLITICAL ACTIVITIES and LOBBYING	1. Named Payee Itemized Disbursements		
	2. Named Payee Non-itemized Disbursements		
	3. To Officers		
	4. To Employees		
	5. All Other Disbursements		
	6.**TOTAL DISBURSEMENTS** *(add Lines 1 through 5)*		**Item 51**

SCHEDULE 17 CONTRIBUTIONS, GIFTS, AND GRANTS	1. Named Payee Itemized Disbursements		
	2. Named Payee Non-itemized Disbursements		
	3. To Officers		
	4. To Employees		
	5. All Other Disbursements		
	6.**TOTAL DISBURSEMENTS** *(add Lines 1 through 5)*		**Item 52**

SCHEDULE 18 GENERAL OVERHEAD	1. Named Payee Itemized Disbursements		
	2. Named Payee Non-itemized Disbursements		
	3. To Officers		
	4. To Employees		
	5. All Other Disbursements		
	6.**TOTAL DISBURSEMENTS** *(add Lines 1 through 5)*		**Item 53**

SCHEDULE 19 UNION ADMINISTRATION	1. Named Payee Itemized Disbursements		
	2. Named Payee Non-itemized Disbursements		
	3. To Officers		
	4. To Employees		
	5. All Other Disbursements		
	6.**TOTAL DISBURSEMENTS** *(add Lines 1 through 5)*		**Item 54**

FILE NUMBER: [ ][ ][ ] – [ ][ ][ ]

INITIAL ITEMIZATION PAGE FOR RECEIPTS/DISBURSEMENTS SCHEDULES 14-19

Schedule	Page Number	Total Number of Continuation Pages

Complete Itemization Pages BEFORE the Detailed Summary Page

Enter Amounts in Dollars Only - Do Not Enter Cents

(A) NAME AND ADDRESS	(C) PURPOSE	(D) DATE	(E) AMOUNT
(B) TYPE OR CLASSIFICATION			
	(F) Total of Transactions Listed Above		
	(G) Total of All Transactions from Continuation Pages with this Payee/Payer		
	(H) Total of All Itemized Transactions with this Payee/Payer *(Sum of (F) and (G))*		
	(I) Total of All Non-Itemized Transactions with this Payee/Payer		
	(J) Total of All Transactions with This Payee/Payer for This Schedule *(Sum of (H) and (I))*		

SCHEDULE 20 — BENEFITS

FILE NUMBER: [ ][ ][ ] – [ ][ ][ ]

(A) Description	(B) To Whom Paid	(C) Amount
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		
22. Total of Continuation pages (if any)		
23. Total of Lines 1 through 22		
	Enter the Total from Line 23 in.....	.....Item 55

FILE NUMBER: [ ][ ][ ] – [ ][ ][ ]

CONTINUATION ITEMIZATION PAGE FOR RECEIPTS/DISBURSEMENTS SCHEDULES 14-19

Schedule	Page Number	Total Number of Continuation Pages

Enter Amounts in Dollars Only - Do Not Enter Cents

(A) NAME AND ADDRESS	(C) PURPOSE	(D) DATE	(E) AMOUNT
(B) TYPE OR CLASSIFICATION			
	(F) Total of All Transactions Listed Above		

Form LM-2 (Revised 2003)

SCHEDULE 11— ALL OFFICERS AND DISBURSEMENTS TO OFFICERS (continued)

FILE NUMBER: ☐☐☐ – ☐☐☐

	(A)* Name / (B)* Title / (C)* Status	(D) Gross Salary Disbursements (before any deductions)	(E) Allowances Disbursed	(F) Disbursements for Official Business	(G) Other Disbursements not reported in (D) through (F)	(H) TOTAL
A*						
B*						
C*						
I*	Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbying %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %	
A*						
B*						
C*						
I*	Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbying %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %	
A*						
B*						
C*						
I*	Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbying %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %	
A*						
B*						
C*						
I*	Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbying %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %	
A*						
B*						
C*						
I*	Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbying %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %	
A*						
B*						
C*						
I*	Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbying %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %	
	Column Totals	$	$	$	$	$

Form LM-2 (Revised 2003)

SCHEDULE 12— DISBURSEMENTS TO EMPLOYEES (continued)

FILE NUMBER: ☐☐☐ - ☐☐☐

	(A)* Name / (B)* Title / (C)* Other Payer	(D) Gross Salary Disbursements (before any deductions)	(E) Allowances Disbursed	(F) Disbursements for Official Business	(G) Other Disbursements not reported in (D) through (F)	(H) TOTAL
A*						
B*						
C*						
I*	Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbyings %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %	
A*						
B*						
C*						
I*	Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbying %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %	
A*						
B*						
C*						
I*	Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbying %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %	
A*						
B*						
C*						
I*	Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbying %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %	
A*						
B*						
C*						
I*	Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbying %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %	
A*						
B*						
C*						
I*	Schedule 15 Representational Activities %	Schedule 16 Political Activities and Lobbying %	Schedule 17 Contributions %	Schedule 18 General Overhead %	Schedule 19 Administration %	
	Column Totals	$	$	$	$	$

Form LM-2 (Revised 2003)

FILE NUMBER: [ ][ ][ ] – [ ][ ][ ]

SCHEDULE 13 — MEMBERSHIP STATUS CONTINUATION PAGE

CATEGORY OF MEMBERSHIP (A)	NUMBER (B)	VOTING ELIGIBILITY (C)
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10. Total Members Reported on This Page		
	Enter the Total from Line 10 in Item 7, Column (B) of the Initial Page for this schedule.	

INSTRUCTIONS FOR FORM LM-2 LABOR ORGANIZATION ANNUAL REPORT

GENERAL INSTRUCTIONS

I. WHO MUST FILE

Every labor organization subject to the Labor-Management Reporting and Disclosure Act, as amended (LMRDA), the Civil Service Reform Act (CSRA), or the Foreign Service Act (FSA) must file a financial report, Form LM-2, LM-3, or LM-4, each year with the Office of Labor-Management Standards (OLMS) of the U.S. Department of Labor's (Department) Employment Standards Administration. These laws cover labor organizations that represent employees who work in private industry, employees of the U.S. Postal Service, and most Federal government employees. Labor organizations that represent only state, county, or municipal government employees are not covered by these laws and, therefore, are not required to file, except that any "conference, general committee, joint or system board, or joint council" that is subordinate to a national or international labor organization is a labor organization under the LMRDA and is required to file a financial report if the national or international labor organization is a labor organization engaged in an industry affecting commerce within the meaning of section 3(j) of the LMRDA. If you have a question about whether the labor organization is required to file, contact the nearest OLMS field office listed at the end of these instructions.

II. WHAT FORM TO FILE

Every labor organization subject to the LMRDA, CSRA, or FSA with total annual receipts of $250,000 or more must file Form LM-2. The term "total annual receipts" means all financial receipts of the labor organization during its fiscal year, regardless of the source, including receipts of any special funds as described in Section VIII (Funds To Be Reported) of these instructions. Receipts of a trust in which the labor organization is interested should not be included in the total annual receipts of the labor organization when determining which form to file unless the trust is wholly owned, wholly controlled, and wholly financed by the labor organization.

Labor organizations with total annual receipts of less than $250,000 may file the simplified annual report Form LM-3, if not in trusteeship as defined in Section IX (Labor Organizations In Trusteeship) of these instructions. Labor organizations with total annual receipts of less than $10,000 may file the abbreviated annual report Form LM-4, if not in trusteeship.

NOTE: *Certain labor organizations are required to file Form 990, Return of Organization Exempt from Income Tax, with the Internal Revenue Service (IRS).*

The IRS has accepted a copy of the labor organization's Form LM-2 in the past to provide some of the information required by Form 990. See the instructions for the current Form 990 for details. Filing Form LM-2 with the IRS does not satisfy the labor organization's reporting requirement with the U.S. Department of Labor.

III. When to File

Form LM-2 must be filed within 90 days after the end of the labor organization's fiscal year (12-month reporting period). The law does not authorize the Department to grant an extension of time for filing reports. The penalties for delinquency are described in Section VI (Officer Responsibilities and Penalties) of these instructions.

If the labor organization went out of existence during its fiscal year, a terminal financial report must be filed within 30 days after the date it ceased to exist. See Section XII (Labor Organizations That Have Ceased to Exist) of these instructions for information on filing a terminal financial report.

IV. How to File

Form LM-2, and Form T-1 Trust Annual Report as described in Section X (Trusts in Which a Labor Organization is Interested) of these instructions, must be prepared using software obtained from the Department and must be submitted electronically to the Department. Information on obtaining the software is available at http://www.olms.dol.gov. A Form LM-2 and T-1 filer will be able to file a report in paper format only if it asserts a temporary hardship exemption or applies for and is granted a continuing hardship exemption. Forms LM-3 and LM-4 may be prepared and submitted electronically but it is not required.

A detailed user guide is included with the electronic filing software.

HARDSHIP EXEMPTIONS

A labor organization that must file Form LM-2 or T-1 may assert a temporary hardship exemption or apply for a continuing hardship exemption to prepare and submit the report in paper format. If a labor organization files both Form LM-2 and Form T-1, the exemption must be separately asserted for each report, although in appropriate circumstances the same reasons may be used to support both exemptions. If it is possible to file Form LM-2, or one or more Form T-1s electronically, no exemption should be claimed for those reports, even though an exemption is warranted for a related report.

TEMPORARY HARDSHIP EXEMPTION:

If a labor organization experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing, the organization may file Form LM-2 or T-1 in paper format by the required due date. An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date. Indicate in Item 3 (Amended, Hardship Exempted, or Terminal Report) that the labor organization is filing under the hardship exemption procedures. Unanticipated technical difficulties that may result in additional delays should be brought to the attention of the nearest OLMS field office listed at the end of these instructions.

Note: *If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.*

CONTINUING HARDSHIP EXEMPTION:

(a) A labor organization may apply in writing for a continuing hardship exemption if Form LM-2 or T-1 cannot be filed electronically without undue burden or expense. Such written application shall be received at least thirty days prior to the required due date of the report(s). The

written application shall contain the information set forth in paragraph (b).

The application must be mailed to the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5605
Washington, DC 20210-0001

Questions regarding the application should be directed to the OLMS Division of Interpretations and Standards, which can be reached at the above address, by e-mail at OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

(b) The request for the continuing hardship exemption shall include, but not be limited to, the following: (1) the justification for the requested time period of the exemption; (2) the burden and expense that the labor organization would incur if it was required to make an electronic submission; and (3) the reasons for not submitting the report(s) electronically. The applicant must specify a time period not to exceed one year.

(c) The continuing hardship exemption shall not be deemed granted until the Department notifies the applicant in writing. If the Department denies the application for an exemption, the labor organization shall file the report(s) in electronic format by the required due date. If the Department determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of union members and so notifies the applicant, the labor organization shall follow the procedures set forth in paragraph (d).

(d) If the request is granted, the labor organization shall submit the report(s) in paper format by the required due date. The filer may be required to submit Form LM-2 or T-1 in electronic format upon the expiration of the period for which the exemption is granted. Indicate in Item 3 (Amended, Hardship Exempted, or Terminal Report) that the labor organization is filing under the hardship exemption procedures.

Note: *If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.*

SPECIAL INSTRUCTIONS FOR SUBMITTING FORMS LM-2 AND T-1 IN PAPER FORMAT:

Those labor organizations that are granted an exemption will be provided with a report package in paper format, which must be completed and filed at the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5616
Washington, DC 20210-0001

Number of Copies

Complete one of the two blank copies included in the report package; do not use a photocopy of the form. The completed report must be filed with OLMS. A copy should also be maintained in the labor organization's records.

Information Entry

Entries on the report should be typed or clearly printed in black ink. Do not use a pencil or any other color ink.

In all Items and Schedules dealing with monetary values report amounts in dollars only. Do not enter cents. Round cents to the nearest dollar. Enter a single "0" in the boxes for reporting dollars if the labor organization has nothing to report.

Entering Dollars:

$1,573,844 – do not enter cents

Entering Zero:

$ _ , _ _ _ , _ _ 0

Entering "Yes" or "No"

For items requiring a "Yes" or "No" answer, enter an "X" in the appropriate box. Do not use check marks or other marks.

Schedules 1 Through 20 Continuation Pages

If the union is completing the report in paper format and there is not enough space to report all the required information and amounts in Schedules 1 through 20, use the preprinted continuation pages included in the report package. More copies of these pages may be ordered from any OLMS office. For Schedules 14 through 19, multiple copies of the Initial Itemization Page and the Continuation Itemization Page are included in the report package. More copies of these pages may also be ordered from any OLMS office.

Enter the requested identifying information at the top of each continuation page. Totals from any continuation pages must be entered on the line provided in the schedules.

Additional Pages for Item 69

Some of the items on the report require that further details be provided in Item 69 (Additional Information). If there is not enough space in Item 69, enter the additional information on a separate letter-size (8 ½ x 11) page(s), giving the number of the item to which the information applies. At the top of each attached page clearly enter the name of the labor organization, its 6-digit file number as reported in Item 1 (File Number), and the ending date of the reporting period as reported on the second line of Item 2 (Period Covered), the page number for each additional page, and the total number of additional pages attached.

V. Public Disclosure

The LMRDA requires that the Department make labor organization financial reports available for inspection by the public. Reports may be viewed and downloaded from the OLMS Web site at http://www.union-reports.dol.gov. Copies of reports and union constitutions and bylaws can also be ordered at the same Web site. Reports may also be examined and copies purchased at the OLMS Public Disclosure Room at the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5608
Washington, DC 20210-0001

VI. Officer Responsibilities and Penalties

The president and treasurer or the corresponding principal officers of the labor organization required to sign Form LM-2 are personally responsible for its filing and accuracy. Under the LMRDA, officers are subject to criminal penalties for willful failure to file a required report and for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly failing to disclose a material fact in a required report or in the information required to be contained in it or in any information required to be submitted with it.

The reporting labor organization and the officers required to sign Form LM-2 are also subject to civil prosecution for violations of the filing requirements. Section 210 of the LMRDA (29 U.S.C. 440) provides that "whenever it shall

appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

Under the CSRA and FSA and implementing regulations, false reporting and failure to report may result in administrative enforcement action and litigation. The officers responsible for signing Form LM-2 are also subject to criminal penalties for false reporting and perjury under Sections 1001 of Title 18 and 1746 of Title 28 of the United States Code.

VII. Recordkeeping

The officers required to file Form LM-2 are responsible for maintaining records that will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. The records must be kept for at least 5 years after the date the report is filed. Any record necessary to verify, explain or clarify the report must be retained, including, but not limited to, vouchers, worksheets, receipts, applicable resolutions, and any electronic documents, including recordkeeping software, used to complete, read, and file the report.

VIII. Funds To Be Reported

The labor organization must report financial information on Form LM-2 for all funds of the labor organization. Include any special purpose funds or accounts, such as strike funds, vacation funds, and scholarship funds even if they are not part of the labor organization's general treasury.

The labor organization is required to report information about any trust in which it is interested on the Form T-1. See Sections X (Trusts In Which A Labor Organization Is Interested).

SPECIAL INSTRUCTIONS FOR CERTAIN ORGANIZATIONS

IX. Labor Organizations in Trusteeship

Any labor organization that has placed a subordinate labor organization in trusteeship is responsible for filing the subordinate's annual financial report. A trusteeship is defined in section 3(h) of the LMRDA (29 U.S.C. 402) as "any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws."

Annual financial reports filed for any labor organization in trusteeship must be filed on Form LM-2. The report must be signed by the president and treasurer or corresponding principal officers of the labor organization that imposed the trusteeship and by the trustees of the subordinate labor organization. Trustees must sign and date Form LM-2 in the space below the officers' signatures and telephone numbers in Items 70 and 71 (Signatures).

X. Trusts In Which A Labor Organization Is Interested

The labor organization must disclose assets, liabilities, receipts, and disbursements of a significant trust in which the labor organization is interested.

A trust in which a labor organization is interested is defined in Section 3(l) of the LMRDA (29 U.S.C. 402(l)) as

> ...a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor

organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

The definition of a trust in which a labor organization is interested may include, but is not limited to, joint funds administered by a union and an employer pursuant to a collective bargaining agreement, educational or training institutions, banks or credit unions created for the benefit of union members, and redevelopment or investment groups established by the union for the benefit of its members. The determination whether a particular entity is a trust in which a labor organization is interested must be based on the facts in each case. A trust will be considered significant, and therefore must be reported on Form T-1, if (1) it had annual receipts of $250,000 or more during its most recent fiscal year, and (2) the labor organization's financial contribution to the trust or the contribution made on the labor organization's behalf, or as a result of a negotiated agreement to which the labor organization is a party, is $10,000 or more annually.

If a trust has annual receipts of less than $250,000 or if the labor organization's financial contribution to a trust that has annual receipts of $250,000 or more, or the contribution made on the labor organization's behalf, or as a result of a negotiated agreement to which the labor organization is a party, is less than $10,000 annually, the labor organization need only report the existence of the trust and the amount of the contribution. This information should be reported in Item 69 as required by the instructions for Item 10 and, if the contribution was made by the labor organization itself, in the appropriate disbursement item in Statement B.

If the labor organization's financial contribution to a trust, or the contribution made on the labor organization's behalf, or as a result of a negotiated agreement to which the labor organization is a party, is $10,000 or more annually, the labor organization must file a Form T-1 to report all of the assets, liabilities, receipts, and disbursements of the trust and other information about the trust.

No Form T-1 should be filed for any labor organization that already files a Form LM-2, LM-3, or LM-4, nor should a report be filed for any entity that is expressly exempted from reporting in the Act. No separate report need be filed for Political Action Committee (PAC) funds if publicly available reports on the PAC funds are filed with a Federal or state agency, or for a political organization for which reports are filed with the Internal Revenue Service pursuant to 26 U.S.C. 527. No separate report is required for an employee benefit plan that filed a complete and timely annual report pursuant to the requirements of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1023, 1024(a), and 1030, and 29 C.F.R. 2520.103-1, for a plan year ending during the reporting period of the union (a notice filed with the Secretary of Labor pursuant to an exemption from reporting and disclosure does not constitute a complete annual financial report).

A labor organization may complete only Items 1 through 15 and Items 26-27 (Signatures) of Form T-1 if annual audits prepared according to standards set forth in the Form T-1 instructions are freely available on demand under § 302(c)(5)(B) of the Labor Management Relations Act, 1947 (LMRA), 29 U.S.C.186(c)(5)(B), and a copy of the audit is filed with the Form T-1.

Form T-1, or a qualifying audit, must be filed within 90 days after the end of the union's fiscal year. If the trust's fiscal year is not the same as the labor organization's fiscal year, state when the trust's fiscal year ends in Item 69 as required by the instructions for Item 10. See Instructions for Form T-1, Trust Annual Report.

Questions regarding these reporting requirements should be directed to the

OLMS Division of Interpretations and Standards, which can be reached at the above address, by email at OLMS-Public@dol.gov, by phone at 202-693-0123 or by fax at 202-693-1340. The Department will publish additional information giving further practical guidance on the reporting requirements for trusts on the OLMS Web site at http://www.olms.dol.gov.

Examples of a trust in which a labor organization is interested may include, but are not limited to, the following entities:

Example A: The Building Corporation – A labor organization creates a corporation which owns the building where the union has its offices. The building corporation must be reported as a trust in which the labor organization is interested.

Example B: The Redevelopment Corporation – A labor organization creates an entity named the Redevelopment Corporation, or appoints one or more of the members of the governing board of the Corporation, which is established primarily to enable members of the labor organization to obtain low cost housing constructed with Federal Housing and Urban Development (HUD) grants. The Redevelopment Corporation must be reported as a trust in which it is interested. A labor organization that neither participated in the creation of the Corporation, nor appointed members of its governing board, but loaned money to the Corporation to use as matching money for HUD grants need not report the Corporation as a trust in which it is interested.

Example C: The Educational Institute – Five reporting labor organizations form the Educational Institute to provide educational services primarily for the benefit of their members. Similar services are also provided to the general public. Each labor organization contributes funds to start the Educational Institute, which will then offer various educational programs that will generate revenue. Each labor organization that participated in forming the Institute, or that appoints a member to its governing body, must report the Educational Institute as a trust in which it is interested.

Example D: The Bank – A reporting labor organization forms a bank that is chartered and licensed under federal and state laws, or selects a member of the board of directors of a bank that is already in existence, for the purpose of ensuring that banking services are available to members at reasonable cost, or as an investment for the purpose of increasing funds available for union activities for the benefit of union members. Any labor organization that participated in forming the bank, or that appoints a member to the bank's board of directors, must report the bank as a trust in which it has an interest.

Example E: Joint Funds – A reporting labor organization that forms a "joint fund" with a large national manufacturer to offer a variety of training and jobs skills programs for members of the labor organization, or appoints a member to the governing body of such a fund, must report the joint fund as a trust in which the labor organization has an interest.

Example F: Job Targeting Fund–A reporting labor organization creates an entity for the purpose of making targeted disbursements to increase employment opportunities for its members. The fund must be reported as a trust in which the labor organization is interested.

Example G: 302(c)(5) through (9) Plans – A reporting labor organization forms a plan permitted under Section 302(c)(5) through (9) of the LMRA (29 U.S.C. 186 (c)(5) through (9)), and files a complete annual financial report as required under ERISA. The labor organization reports only that the plan exists and states where the ERISA annual financial report may be viewed. This information should be reported in Item 69. No Form T-1 need be filed even if the labor organization contributes more than $10,000 to the plan.

XI. COMPLETING FORM LM-2

INFORMATION ITEMS 1–21

Answer Items 1 through 21 as instructed. Enter an "X" in the appropriate box for those questions requiring a "Yes" or "No" answer; do not leave both boxes blank. Enter a single "0" in the boxes for items requiring a number or dollar amount if there is nothing to report.

1. FILE NUMBER — Enter the 6-digit file number that OLMS assigned to the labor organization. If the labor organization does not have the number on file and cannot obtain the number from prior reports filed with the Department, the number can be obtained from the OLMS Web site at http://www.union-reports.dol.gov, or by contacting the nearest OLMS field office listed at the end of these instructions. The labor organization's 6-digit file number must also be entered in the File Number boxes at the top of each page of Form LM-2.

2. PERIOD COVERED — Enter the beginning and ending dates of the period covered by this report. The labor organization's report should never cover more than a 12-month period. For example, if the labor organization's 12-month fiscal year begins on January 1 and ends on December 31, enter these dates as 01/01/20XX and 12/31/20XX. It would be incorrect to enter January 1 of one year through January 1 of the next year.

If the labor organization changed its fiscal year, enter in Item 2 (Period Covered) the ending date for the period of less than 12 months, which is the labor organization's new fiscal year ending date, and report in Item 69 (Additional Information) that the labor organization changed its fiscal year. For example, if the labor organization's fiscal year ending date changes from June 30 to December 31, a report must be filed for the partial year from July 1 to December 31. Thereafter, the labor organization's annual report should cover a full 12-month period from January 1 to December 31.

3. AMENDED, HARDSHIP EXEMPTED, OR TERMINAL REPORT — Do not complete this item unless this report is an amended, hardship exempted, or terminal report. Enter an "X" in the box in Item 3(a) if the labor organization is filing an amended report correcting a previously filed report. Enter an "X" in the box in Item 3(b) if the labor organization is filing under the hardship exemption procedures defined in Section IV. Enter an "X" in the box in Item 3(c) if the labor organization has gone out of business by disbanding, merging into another labor organization, or being merged and consolidated with one or more labor organizations to form a new labor organization, and this is the labor organization's terminal report. Be sure the date the labor organization ceased to exist is entered in Item 2 (Period Covered) after the word "Through." See Section XII (Labor Organizations That Have Ceased to Exist) of these instructions for more information on filing a terminal report.

4. AFFILIATION OR ORGANIZATION NAME — Enter the name of the national or international labor organization that granted the labor organization a charter. "Affiliates," within the meaning of these instructions, are labor organizations chartered by the same parent body, governed by the same constitution and bylaws, or having the relationship of parent and subordinate. For example, a parent body is an affiliate of all of its subordinate bodies, and all subordinate bodies of the same parent body are affiliates of each other.

If the labor organization has no such affiliation, enter the name of the labor organization as currently identified in the labor organization's constitution and bylaws or other organizational documents.

5. DESIGNATION — Enter the specific designation that is used to identify the

labor organization, such as Local, Lodge, Branch, Joint Board, Joint Council, District Council, etc.

6. DESIGNATION NUMBER — Enter the number or other identifier, if any, by which the labor organization is known.

7. UNIT NAME — Enter any additional or alternate name by which the labor organization is known, such as "Chicago Area Local."

8. MAILING ADDRESS — Enter the current address where mail is most likely to reach the labor organization as quickly as possible. Be sure to indicate the first and last name of the person, if any, to whom such mail should be sent and include any building and room number.

9. PLACE WHERE RECORDS ARE KEPT — If the records required to be kept by the labor organization to verify this report are kept at the address reported in Item 8 (Mailing Address), or the address on the address label, answer "Yes." If not, answer "No" and provide in Item 69 (Additional Information) the address where the labor organization's records are kept.

10. TRUSTS OR FUNDS — Answer "Yes" to Item 10, if the labor organization has an interest in a trust as defined in 29 U.S.C. 402(l) (see Section X of these Instructions). Provide in Item 69 (Additional Information) the full name, address, and purpose of each trust. Also include in Item 69 the fiscal year ending date for any trust for which a Form T-1 is filed if the trust's fiscal year is different from that of the labor organization. If no Form T-1 is required to be filed on the trust because (1) the trust had annual receipts of less than $250,000 during the trust's most recent fiscal year or (2) the labor organization's financial contribution to the trust or the contribution made on the labor organization's behalf, or as a result of a negotiated agreement to which the labor organization is a party, is less than $10,000, the labor organization should also report the amount of the contribution in Item 69 and, if the contribution was made by the labor organization itself, in the appropriate disbursement item in Statement B. Additionally, if no Form T-1 is filed because financial information is already available as a result of the disclosure requirements of another Federal statute, list the name of any government agency, such as the Securities and Exchange Commission (SEC) or the Employee Benefits Security Administration (EBSA) of the Department of Labor, with which the trust files a publicly available report, and the relevant file number of the trust, or otherwise indicate where the relevant report may be viewed. See Instructions for Form T-1, Trust Annual Report, for guidance on reporting the assets, liabilities, receipts, disbursements, and other information about these entities.

11. POLITICAL ACTION COMMITTEE FUNDS — If the labor organization answered "Yes" to Item 11, provide in Item 69 (Additional Information) the full name of each separate political action committee (PAC) and list the name of any government agency, such as the Federal Election Commission or a state agency, with which the PAC has filed a publicly available report, and the relevant file number of the PAC. (PAC funds kept separate from the labor organization's treasury need not be included in the labor organization's Form LM-2 if publicly available reports on the PAC funds are filed with a Federal or state agency.)

12. AUDIT OR REVIEW OF BOOKS AND RECORDS — If the labor organization answered "Yes" to Item 12, indicate in Item 69 (Additional Information) whether the audit or review was performed by an outside accountant or a parent body auditor/representative. If an outside accountant performed the audit or review, provide the name of the accountant or accounting firm. Report any audit or review by an outside accountant or a parent body auditor/representative in which the labor organization's books and records were examined to verify their

accuracy and validity. The term "audit or review" does not include providing assistance in developing a bookkeeping system, providing routine bookkeeping services, or merely compiling information from the labor organization's books and records to prepare Form LM-2 or other financial reports. Also, do not answer "Yes" to Item 12 if an audit committee or trustees of the labor organization performed the audit or review.

13. LOSSES OR SHORTAGES — Answer "Yes" to Item 13 if the labor organization experienced a loss, shortage, or other discrepancy in its finances during the period covered. Describe the loss or shortage in detail in Item 69 (Additional Information), including such information as the amount of the loss or shortage of funds or a description of the property that was lost, how it was lost, and to what extent, if any, there has been an agreement to make restitution or any recovery by means of repayment, fidelity bond, insurance, or other means.

14. FIDELITY BOND — Enter the maximum amount recoverable for a loss caused by any officer, employee, or agent of the labor organization who handled the labor organization's funds. Enter "0" if the labor organization was not covered by a fidelity bond during the reporting period.

NOTE: *If a labor organization has property and annual financial receipts that totaled $5,000 or more, each of the labor organization's officers, employees, and agents who handles funds or other property of the labor organization must be bonded. The amount of the bond must be at least 10% of the value of the funds handled by the individual during the last reporting period, up to a maximum bond of $500,000. The bond must be obtained from a surety company approved by the Secretary of the Treasury. If you have any questions or need more information about bonding requirements, contact the nearest OLMS field office listed at the end of these instructions.*

15. ACQUISITION OR DISPOSITION OF ASSETS — If the labor organization answered "Yes" to Item 15, describe in Item 69 (Additional Information) the manner in which the labor organization acquired or disposed of the asset(s), such as donating office furniture or equipment to charitable organizations, trading in assets, writing off a receivable, or giving away other tangible or intangible property of the labor organization. Include the type of asset, its value, and the identity of the recipient or donor, if any. Also report in Item 69 the cost or other basis at which any acquired assets were entered on the labor organization's books or the cost or other basis at which any assets disposed of were carried on the labor organization's books. For example, assets may be entered on the labor organization's books at cost and carried at that value; carried at cost less accumulated depreciation; or carried at scrap value or other nominal value because the assets were fully depreciated or were expensed when purchased (that is, the cost was charged to current expenses rather than entered on the books and periodically depreciated).

For assets that were traded in, enter in Item 69 the cost, book value, and trade-in allowance.

16. PLEDGED OR ENCUMBERED ASSETS — If the labor organization answered "Yes" to Item 16, identify in Item 69 (Additional Information) all of the labor organization's assets pledged or encumbered in any way (such as those pledged as collateral for a loan) at the end of the reporting period. Also report in Item 69 their fair market value, and provide details of transactions related to the encumbrance.

17. CONTINGENT LIABILITIES — If the labor organization answered "Yes" to Item 17, describe in Item 69 (Additional Information) the transactions or events resulting in the contingent liabilities and include the identity of the claimant or creditor. Contingent liabilities are potential

obligations that may or may not develop into actual liabilities in the future. Examples of a contingent liability are a loan co-signed by the labor organization, or a pending lawsuit that could result in the labor organization being ordered to pay damages or make other payments.

A pending administrative or judicial action is considered a contingent liability that must be reported in Item 17 if, in the opinion of legal counsel, it is reasonably possible that the labor organization will be required to make some payment. Such administrative or judicial actions must be reported as contingent liabilities regardless of whether or not the possible losses would have a materially adverse effect on the labor organization's financial condition. List in Item 69 each administrative or judicial action, including the case number, court, and caption.

18. CHANGES IN CONSTITUTION AND BYLAWS OR PRACTICES AND PROCEDURES — If the labor organization answered "Yes" to Item 18 because the labor organization's constitution and bylaws were changed during the reporting period (other than rates of dues and fees), a dated copy of the new constitution and bylaws must be submitted to OLMS with the labor organization's Form LM-2. If the Form LM-2 is submitted electronically, the new constitution and bylaws must be submitted as an electronic attachment to the form.

If the labor organization is governed by a uniform or model constitution and bylaws prescribed by the labor organization's parent national or international body, the labor organization's parent body may file the constitution and bylaws on the labor organization's behalf. If the parent body files a constitution and bylaws on the labor organization's behalf, answer "Yes" to Item 18 and state that fact in Item 69 (Additional Information). If the labor organization has any supplemental governing documents or has modified a model constitution and bylaws, the labor organization must file these documents.

If the labor organization answered "Yes" to Item 18 because the labor organization changed any of the practices/procedures listed below during the reporting period and the practices/procedures are not described in the labor organization's constitution or bylaws, the labor organization must file an amended Form LM-1 (Labor Organization Information Report) to update information on file with the Department:

- qualifications for or restrictions on membership;
- levying assessments;
- participating in insurance or other benefit plans;
- authorizing disbursement of labor organization funds;
- auditing financial transactions of the labor organization;
- calling regular and special meetings;
- authorizing bargaining demands;
- ratifying contract terms;
- authorizing strikes;
- disciplining or removing officers or agents for breaches of their trust;
- imposing fines and suspending or expelling members including the grounds for such action and any provision made for notice, hearing, judgment on the evidence, and appeal procedures;
- selecting officers and stewards and any representatives to other bodies composed of labor organizations' representatives;
- invoking procedures by which a member may protest a defect in the election of officers (including not only all procedures for initiating an election protest but also all procedures for subsequently appealing an adverse decision, e.g., procedures for appeals to superior or parent bodies, if any); and
- issuing work permits.

Information on obtaining Form LM-1 may be obtained from the OLMS Web site at http://www.olms.dol.gov or from any OLMS field office listed at the end of these

instructions.

NOTE: *Federal employee labor organizations subject solely to the Civil Service Reform Act or Foreign Service Act are not required to submit an amended Form LM-1 to describe revised or changed practices/procedures.*

19. NEXT REGULAR ELECTION — Enter the month and year of the labor organization's next regular election of general officers (president, vice president, treasurer, secretary, etc.). Do not report the date of any interim election to fill vacancies.

20. NUMBER OF MEMBERS — Enter the total reported on Line 8, Column (B) of Schedule 13 (Membership Status).

21. DUES AND FEES — Enter the dues and fees established by the labor organization. If more than one rate applies, enter the minimum and maximum rates. Enter "None" where appropriate.

Line (a): Enter the regular dues, fees or other periodic payments that a member must pay to be in good standing in the labor organization, including the calendar basis for the payment (per month, per year, etc.). Include only the dues or fees of regular members and not dues or fees of members with special rates, such as apprentices, retirees, or unemployed members.

Line (b) If individuals covered by your organization's collective bargaining agreement(s) pay "working" dues in addition to their regular dues, enter the amount or percent of "working" dues, including the basis for the payment (per hour, per month, etc.).

Line (c): Enter the initiation fees required from new members.

Line (d): Enter the fees other than dues required from transferred members. Such fees are those charged to persons applying for a transfer of membership to the labor organization from another labor organization with the same affiliation. Do not report fees charged to members transferring from one class of membership to another within the labor organization.

Line (e): If the labor organization issues work permits, enter the fees required and enter the calendar basis for the payment (per month, per year, etc.). Work permit fees are fees charged to nonmembers of the labor organization who work within its jurisdiction. Do not report as work permit fees those fees charged to nonmember applicants for membership pending acceptance of their membership application, or fees charged to persons applying for transfer of membership to the labor organization pending acceptance of their application for transfer.

FINANCIAL DETAILS

REPORT ONLY DOLLAR AMOUNTS

Report all amounts in dollars only. Round cents to the nearest dollar. Amounts ending in $.01 through $.49 should be rounded down. Amounts ending in $.50 through $.99 should be rounded up.

REPORTING CLASSIFICATIONS

Complete all items and lines on the form as given. Do not use different accounting classifications or change the wording of any item or line.

BEGINNING AND ENDING AMOUNTS

Entries in Schedules 2 and 9 and in Statement A must report amounts for both the start and the end of the reporting period. The amounts entered for the start of the reporting period on the labor organization's report should be identical to the amounts entered for the end of the reporting period on last year's report. If the amounts are not the same, fully explain the difference in Item 69 (Additional Information).

COMPLETE SCHEDULES FIRST

Complete Schedules 1 through 20 and transfer the totals as indicated before completing Statements A and B. Be sure to complete all applicable lines in Schedules 1 through 20.

COMPLETE ALL ITEMS 22 THROUGH 68

Complete all items in Statement A and Statement B. Enter "0" where appropriate.

SCHEDULES 1 THROUGH 12

SCHEDULE 1 – ACCOUNTS RECEIVABLE AGING SCHEDULE – The labor organization must report 1) all accounts with an entity or individual that aggregate to a value of $5,000 or more and that are more than 90 days past due at the end of the reporting period or were liquidated, reduced or written off during the reporting period; and 2) the total aggregated value of all other accounts.

Column (A): Enter on Lines 1 through 24 the name of any entity or individual with which the labor organization has an account receivable of $5,000 or more that is 90 days or more past due at the end of the reporting period or that was liquidated, reduced or written off during the reporting period without the receipt of cash sufficient to cover the total value of the account receivable.

Column (B): Enter on Lines 1 through 24 the total amount of money owed to the labor organization by the entity or individual at the end of the reporting period. Enter on Line 25 the total from any continuation pages. Add Lines 1 through 25 and enter the total on Line 26. Enter on Line 27 the total amount of money owed to the labor organization in all other accounts receivable not required to be reported above. Add Lines 26 and 27 and enter the total on Line 28. The total from Line 28, Column (B) will be forwarded to Item 23, Column (B) of Statement A.

Column (C): Enter on Lines 1 through 24 the total amount of money owed to the labor organization by the entity or individual at the end of the reporting period that is 90 to 180 days past due. Enter on Line 25 the total from any continuation pages. Add Lines 1 through 25 and enter the total on Line 26. Enter on Line 27 the total amount of money owed to the labor organization in all other accounts receivable (those of less than $5,000) that are 90 to 180 days past due. Add Lines 26 and 27 and enter the total on Line 28.

Column (D): Enter on Lines 1 through 24 the total amount of money owed to the labor organization by the entity or individual at the end of the reporting period that is more than 180 days past due. Enter on Line 25 the total from any continuation pages. Add Lines 1 through 25 and enter the total on Line 26. Enter on Line 27 the total amount of money owed to the labor organization in all other accounts receivable (those of less than $5,000) that are more than 180 days past due. Add Lines 26 and 27 and enter the total on Line 28.

Column (E): Enter on Lines 1 through 24 the total amount of money owed to the labor organization by the entity or individual that was liquidated, reduced or written off during the reporting period by the reporting labor organization without the receipt of cash sufficient to cover the total value of the account receivable. Enter on Line 25 the total from any continuation pages. Add Lines 1 through 25 and enter the total on Line 26. Enter on Line 27 the total amount of money owed to the labor organization in all other accounts receivable (those of less than $5,000) that was liquidated, reduced or written off during the reporting period by the reporting labor organization without the receipt of cash sufficient to cover the total value of the account receivable. Add Lines 26 and 27 and enter the total on Line 28.

Provide in Item 69 (Additional Information) all details and circumstances in connection with the liquidation, reduction or writing off of any account receivable, in accordance with the instructions for Item 15 (Acquisition or Disposition of Assets).

SCHEDULE 2 – LOANS RECEIVABLE — Report details of all direct and indirect loans (whether or not evidenced by promissory notes or secured by mortgages) owed to the labor organization at any time during the reporting period by individuals, business enterprises, benefit plans, and other entities including labor organizations. An example of an indirect loan is a disbursement by the labor organization to an educational institution for the tuition expense of an officer, employee, or member that must be repaid to the labor organization by that individual. Be sure to report all loans that were made and repaid in full during the reporting period. Do not include investments in corporate bonds or mortgages purchased on a block basis through a bank or similar institution, which must be reported in Schedule 5 (Investments Other Than U.S. Treasury Securities).

NOTE: *Advances, including salary advances, are considered loans and must be reported in Schedule 2 (Loans Receivable). However, advances to officers and employees of the labor organization for travel expenses necessary for conducting official business are not considered loans if the following conditions are met:*

- *The amount of an advance for a specific trip does not exceed the amount of expenses reasonably expected to be incurred for official travel in the near future, and the amount of the advance is fully repaid or fully accounted for by vouchers or paid receipts within 30 days after the completion or cancellation of the travel.*

- *The amount of a standing advance to an officer or employee who must frequently travel on official business does not unreasonably exceed the average monthly travel expenses for which the individual is separately reimbursed after submission of vouchers or paid receipts, and the individual does not exceed 60 days without engaging in official travel.*

See the instructions for Schedules 7 (Other Assets), 11 (All Officers and Disbursements to Officers) and 12 (Disbursements to Employees) for reporting travel advances that meet these criteria.

Column (A): Enter the following information on Lines 1 through 3 (and on continuation pages if necessary):

- The name of each officer, employee, or member whose total loan indebtedness to the labor organization at any time during the reporting period exceeded $250, and the name of each business enterprise which had any loan indebtedness, regardless of amount, at any time during the reporting period;

- The purpose of each loan;

- The security given for each loan; and

- The terms of repayment for each loan.

For each officer or employee listed, indicate after each name either "O" (officer) or "E" (employee).

Column (B): Enter on Lines 1 through 3 the loan amounts outstanding at the start of the reporting period from each listed individual and business enterprise. Enter on Line 4 the total from any continuation pages. Enter on Line 5 the total of loans made to officers, employees, or members whose total individual loan indebtedness to the labor organization at any time during the reporting period did not exceed $250, and all loans, regardless of amount, made to other individuals and entities. Add Lines 1 through 5 and enter the total on Line 6 and in Item 24 (Loans Receivable), Column (A) of Statement A.

Column (C): Enter on Lines 1 through 3 the amount of loans made during the reporting period to each listed individual and business enterprise. Enter on Line 4 the total from any continuation pages. Enter on Line 5 the total of all other loans made during the reporting period. Add Lines 1 through 5 and enter the total on Line 6 and in Item 61 (Loans Made) of Statement B.

Columns (D)(1) and (D)(2): Enter on Lines 1 through 3 the amount of loan repayments during the reporting period from each listed individual and business enterprise. Report in these columns only the portion of the payments applied toward principal; interest received must be reported in Item 40 (Interest). Use Column (D)(1) to report repayments received in cash. Use Column (D)(2) to report repayments made in a manner other than cash, such as repayments made by officers or employees by means of deductions from their salaries. Enter on Line 4 the totals from any additional pages. Enter on Line 5 the amount of loan repayments from all other loans. Add Lines 1 through 5, Columns (D)(1) and (D)(2), and enter the totals on Line 6. Enter the total from Line 6, Column (D)(1) in Item 45 (Repayments of Loans Made) of Statement B. Explain in Item 69 (Additional Information) any non-cash amounts reported in Column (D)(2).

Column (E): Enter on Lines 1 through 3 the loan amounts outstanding at the end of the reporting period for each listed individual and business enterprise. Enter on Line 4 the total from any continuation pages. Enter on Line 5 the total amount outstanding at the end of the reporting period for all other loans. Add Lines 1 through 5 and enter the total on Line 6 and in Item 24 (Loans Receivable), Column (B) of Statement A. If any loans receivable were liquidated, reduced or written off during the reporting period, the reason and the amount must be reported in Item 69 (Additional Information).

NOTE: *Section 503(a) of the LMRDA (29 U.S.C. 503) prohibits labor organizations from making direct or indirect loans to any officer or employee of the labor organization which results in a total indebtedness on the part of such officer or employee to the labor organization in excess of $2,000 at any time.*

SCHEDULE 3 – SALE OF INVESTMENTS AND FIXED ASSETS — Report details of the sale or redemption by the labor organization of U.S. Treasury securities, marketable securities, other investments, and fixed assets, including those fixed assets that were expensed (that is, the cost of the asset was charged to current expenses, rather than entered on the books and periodically depreciated), during the reporting period. Include receipts from sales of mortgages that were purchased on a block basis through a bank or similar institution. Do not include the receipts from repayments by individual mortgagors, which must be reported in Schedule 2 (Loans Receivable) as loan repayments.

Column (A): Enter on Lines 1 through 11 (and on additional pages, if necessary) a general description of the type of investment or fixed asset sold, such as U.S. Treasury securities, stocks, bonds, land, automobiles, etc. If land or buildings were sold, enter the location of the property, including the street address, if appropriate.

Column (B): Enter the total cost of each type of investment (including any transaction costs) or fixed asset described in Column (A).

Column (C): Enter the value at which the investments or fixed assets were shown on the labor organization's books.

Column (D): Enter the gross sales (or contract) price of the investments or fixed assets.

Column (E): Enter the net amount received from the sale of the investments or fixed assets. If the amount received

during the reporting period is less than the amount due (gross sales price less any deductions for selling expenses and repayments of secured loans or mortgages), the additional amount due to the labor organization must be reported in Schedule 7 (Other Assets) with a description sufficient to identify the type of asset. However, if a mortgage or note is taken back, it must be reported as a new loan in Schedule 2 (Loans Receivable).

Enter on Line 12, Columns (B) through (E) the totals from any continuation pages. Add Lines 1 through 12, Columns (B) through (E), and enter the totals on Line 13.

Enter on Line 14 the total amount from the sale or redemption of U.S. Treasury securities, marketable securities, or other investments that was promptly reinvested (i.e., "rolled over") in U.S. Treasury securities, marketable securities, or other investments during the reporting period. Calculate the total amount reinvested by adding, for each investment, the lower of each investment's original cost or the amount received from the sale or redemption that was actually reinvested. If only a portion of the amount received was reinvested, only the reinvested portion may be included on Line 14. Interest and dividends received during the reporting period must be reported in Items 40 (Interest) and 41 (Dividends).

Subtract Line 14 from Line 13, Column (E), and enter the difference on Line 15 and in Item 43 (Sale of Investments and Fixed Assets) of Statement B.

SCHEDULE 4 – PURCHASE OF INVESTMENTS AND FIXED ASSETS — Report details of the purchase by the labor organization of U.S. Treasury securities, marketable securities, other investments, and fixed assets, including those fixed assets that were expensed (that is, the cost of the asset was charged to current expenses, rather than entered on the books and periodically depreciated), during the reporting period. Include disbursements for mortgages that were purchased on a block basis through a bank or similar institution.

Column (A): Enter on Lines 1 through 11 (and on additional pages, if necessary) a general description of the type of investment or fixed asset purchased, such as U.S. Treasury securities, stocks, bonds, land, automobiles, etc. If land or buildings were purchased, enter the location of the property, including the street address, if appropriate.

Column (B): Enter the total cost of each type of investment (including any transaction costs) or fixed asset described in Column (A).

Column (C): Enter the value at which the investments or fixed assets were entered on the labor organization's books. If assets were traded in on assets purchased, answer Item 15 (Acquisition or Disposition of Assets) "Yes," and provide in Item 69 the cost, book value, and trade-in allowance in accordance with the instructions for Item 15.

Column (D): Enter the total amount disbursed for each type of investment or fixed asset purchased during the reporting period. Do not include any unpaid balance that must be reported in Schedule 9 (Loans Payable) or Item 32 (Mortgages Payable) of Statement A.

Enter on Line 12, Columns (B) through (D), the totals from any continuation pages. Add Lines 1 through 12, Columns (B) through (D), and enter the totals on Line 13.

Enter on Line 14 the total amount from the sale or redemption of U.S. Treasury securities, marketable securities, or other investments that was promptly reinvested (i.e., "rolled over") in U.S. Treasury securities, marketable securities, or other investments during the reporting period. Calculate the total amount reinvested by adding, for each investment, the lower of each investment's original cost or the

amount received from the sale or redemption that was actually reinvested. If only a portion of the amount received was reinvested, only the reinvested portion may be included on Line 14. Interest and dividends received during the reporting period must be reported in Items 40 (Interest) and 41 (Dividends). The total on Line 14 must agree with the amount reported on Line 14 of Schedule 3 (Sale of Investments and Fixed Assets).

Subtract Line 14 from Line 13, Column (D), and enter the difference on Line 15 and in Item 60 (Purchase of Investments and Fixed Assets) of Statement B.

SCHEDULE 5 – INVESTMENTS OTHER THAN U.S. TREASURY SECURITIES — Report details of all the labor organization's investments at the end of the reporting period, other than U.S. Treasury securities. Include mortgages purchased on a block basis and any investments in a trust as defined in Section X (Trusts in Which a Labor Organization is Interested) of these instructions. Do not include savings accounts, certificates of deposit, or money market accounts, which must be reported in Item 22 (Cash) of Statement A.

Line 1: Enter in Column (B) the total cost of all the labor organization's marketable securities including transaction costs such as brokerage commissions. Marketable securities are those for which current market values can be obtained from published reports of transactions in listed securities or in securities traded "over the counter," such as corporate stocks and bonds, stock and bond mutual funds, state and municipal bonds, and foreign government securities.

Line 2: Enter in Column (B) the total book value of all the labor organization's marketable securities. Book value is the lower of cost or market value.

Line 3: List in Column (A) each marketable security that has a book value over $5,000 and exceeds 5% of the total book value entered on Line 2 and enter its book value in Column (B).

Line 4: Enter the total cost, including any transaction costs, of all the labor organization's other investments (that is, those that are not U.S. Treasury securities or marketable securities). Include mortgages purchased on a block basis.

Line 5: Enter the total book value of such other investments. Book value is the lower of cost or market value.

Line 6: List in Column (A) each other investment that has a book value over $5,000 and exceeds 5% of the total book value entered on Line 5 and enter its book value in Column (B).

NOTE: *All trusts in which the labor organization is interested which are investments of the labor organization (such as real estate trusts, building corporations, etc.) must be reported in Schedule 5. On Lines 6(a) through (d) enter the name of each trust in Column (A) and the labor organization's share of its book value in Column (B).*

Enter on Line 6(e) the total from any continuation pages.

Line 7: Add Lines 2 and 5 and enter the total on Line 7 and in Item 26 (Investments), Column (B) of Statement A.

SCHEDULE 6 – FIXED ASSETS — Report details of all fixed assets, such as land, buildings, automobiles and other vehicles, and office furniture and equipment owned by the labor organization at the end of the reporting period. Land and buildings must be itemized, whereas automobiles and other vehicles, and office furniture and equipment should be aggregated. Include fixed assets that were expensed (that is, the cost of the asset was charged to current expenses, rather than entered on the books and periodically depreciated), fully depreciated, or carried on the labor organization's books at scrap value or

other nominal value.

Column (A): Enter on Line 1 the location of any land and on Line 3 the location of any buildings owned by the labor organization. Use continuation pages if the labor organization owns multiple parcels or buildings.

Column (B): Enter the cost or other basis of the fixed assets listed in Column (A), including totals from any continuation pages.

Column (C): Enter the accumulated depreciation, if any, of the fixed assets (except land) listed in Column (A) whose cost or other basis is reported in Column (B), including totals from any continuation pages. If the labor organization "expenses" fixed assets, also include in Column (C) the amount that the labor organization charged to expenses when the assets were purchased.

Column (D): Enter the amount at which the fixed assets listed in Column (A) are carried on the labor organization's books, including totals from any additional pages. Include the nominal amount, if any, at which fully depreciated assets are carried on the labor organization's books. The amount reported in Column (D) should be the difference between Columns (B) and (C).

Column (E): Enter the fair market value of land and of all assets listed in Column (A) that were expensed, fully depreciated, or depreciated to scrap value or nominal value, including totals from any additional pages. It is not necessary to secure a formal appraisal of the assets; a good faith estimate is sufficient. The value used for insurance purposes or for tax appraisals, for example, will normally be acceptable as representing the fair market value.

Add Lines 1 through 7 for each of Columns (B) through (E), and enter the totals on Line 8. Enter the total from Line 8, Column (D) in Item 27 (Fixed Assets), Column (B) of Statement A.

SCHEDULE 7 – OTHER ASSETS — Report details of all the labor organization's assets at the end of the reporting period other than Item 22 (Cash), Item 23 (Accounts Receivable), Item 24 (Loans Receivable), Item 25 (U.S. Treasury Securities), Item 26 (Investments), and Item 27 (Fixed Assets).

The labor organization's other assets must be described in Column (A) and may be classified by general groupings or bookkeeping categories, such as utility deposits, inventory of supplies for resale, or travel advances that are not required to be reported as loans as explained in the instructions for Schedule 2 (Loans Receivable), if the description is sufficient to identify the type of assets. Enter in Column (B) the value as shown on the labor organization's books of each asset or group of assets described in Column (A).

NOTE: *If the labor organization has an ownership interest of a non-investment nature in a trust in which it is interested (such as a training fund) the value of the labor organization's ownership interest in the entity as shown on the labor organization's books must be reported in Schedule 7 (Other Assets). Enter in Column (A) the name of any such entity. Enter in Column (B) the value as shown on the labor organization's books of its share of the net assets of any such entity.*

Enter on Line 14 the total from any continuation pages. Add Lines 1 through 14 and enter the total on Line 15 and in Item 28 (Other Assets), Column (B) of Statement A.

SCHEDULE 8 – ACCOUNTS PAYABLE AGING SCHEDULE – The labor organization must report 1) individual accounts that are valued at $5,000 or more and that are more than 90 days past due at the end of the reporting period or were liquidated, reduced or written off during the reporting period; and 2) the total aggregated value of all other

accounts.

Column (A): Enter on Lines 1 through 24 the name of any entity or individual with which the labor organization has an account payable of $5,000 or more that is 90 days or more past due at the end of the reporting period or that was liquidated, reduced or written off during the reporting period without the disbursement of cash sufficient to cover the total value of the account payable.

Column (B): Enter on Lines 1 through 24 the total amount of money owed by the labor organization to the entity or individual at the end of the reporting period. Enter on Line 25 the total from any continuation pages. Add Lines 1 through 25 and enter the total on Line 26. Enter on Line 27 the total amount of money owed by the labor organization in all other accounts payable not required to be reported above. Add Lines 26 and 27 and enter the total on Line 28. The total from Line 28, Column (B) should be entered in Item 30, Column (D) of Statement A.

Column (C): Enter on Lines 1 through 24 the total amount of money owed by the labor organization to the entity or individual at the end of the reporting period that is 90 to 180 days past due. Enter on Line 25 the total from any continuation pages. Add Lines 1 through 25 and enter the total on Line 26. Enter on Line 26 the total amount of money owed by the labor organization in all other accounts payable (those of less than $5,000) that are 90 to 180 days past due. Add Lines 26 and 27 and enter the total on Line 28.

Column (D): Enter on Lines 1 through 24 the total amount of money owed by the labor organization to the entity or individual at the end of the reporting period that is more than 180 days past due. Enter on Line 25 the total from any continuation pages. Add Lines 1 through 25 and enter the total on Line 26. Enter on Line 27 the total amount of money owed by the labor organization in all other accounts payable (those of less than $5,000) that are more than 180 days past due. Add Lines 26 and 27 and enter the total on Line 28.

Column (E): Enter on Lines 1 through 24 the total amount of money owed by the labor organization to the entity or individual that was written off during the reporting period by the reporting labor organization without the disbursement of cash sufficient to cover the total value of the account payable. Enter on Line 25 the total from any continuation pages. Add Lines 1 through 25 and enter the total on Line 26. Enter on Line 27 the total amount of money owed by the labor organization in all other accounts payable (those of less than $5,000) that was written off during the reporting period by the reporting labor organization without the disbursement of cash sufficient to cover the total value of the account payable. Add Lines 26 and 27 and enter the total on Line 28.

Provide in Item 69 (Additional Information) all details and circumstances in connection with the writing off of the account payable, including the reason and amount.

SCHEDULE 9 – LOANS PAYABLE — Report details of all loans payable on which the labor organization owed money at any time during the reporting period except those secured by mortgages or similar liens on real property (land or buildings) that must be reported in Item 32 (Mortgages Payable) of Statement A.

Column (A): Enter on Lines 1 through 11 (and on continuation pages, if necessary) the name of each business enterprise to which a loan was payable. Also list the source of all other loans by general categories, such as labor organizations, individuals, etc.

Column (B): For each loan source listed in Column (A), enter the amount, if any, owed by the labor organization at the start

of the reporting period. Enter on Line 12 the total from any continuation pages. Add Lines 1 through 12 and enter the total on Line 13 and in Item 31 (Loans Payable), Column (C) of Statement A.

Column (C): For each loan source listed in Column (A), enter the amount, if any, obtained by the labor organization during the reporting period. Enter on Line 12 the total from any continuation pages. If, due to discounting by a bank or for any other reason, the amount received from a loan was less than the face value of the note or the amount repayable, enter the amount actually received and explain in Item 69 (Additional Information). Add Lines 1 through 12 and enter the total on Line 13 and in Item 44 (Loans Obtained) of Statement B.

Columns (D)(1) and (D)(2): For each loan source listed in Column (A), enter the amount, if any, that the labor organization repaid to the lender during the reporting period. Report only repayments of principal; interest paid must be reported in Schedule 18 (General Overhead). Use Column (D)(1) to report repayments made in cash. Use Column (D)(2) to report repayments made in a manner other than by cash, such as repayments made to a creditor by offsetting an amount owed by the creditor to the labor organization. Enter on Line 12 the totals from any additional pages. Add Lines 1 through 12, Columns (D)(1) and (D)(2), and enter the totals on Line 13. Enter the total from Line 13, Column (D)(1) in Item 62 (Repayment of Loans Obtained) of Statement B. Explain in Item 69 (Additional Information) any non-cash amounts reported in Column (D)(2).

Column (E): For each loan source listed in Column (A), enter the balance, if any, that the labor organization owed the listed lender at the end of the reporting period. Enter on Line 12 the total from any continuation pages. If any loans payable were written off during the reporting period, the reason and amount must be reported in Item 69 (Additional Information). Add Lines 1 through 12 and enter the total on Line 13 and in Item 31 (Loans Payable), Column (D) of Statement A.

SCHEDULE 10 – OTHER LIABILITIES — Report details of all the labor organization's liabilities at the end of the reporting period other than Item 30 (Accounts Payable), Item 31 (Loans Payable), and Item 32 (Mortgages Payable) of Statement A.

Any portion of withheld taxes or any other payroll or other deductions, which have not been transmitted at the end of the reporting period, are liabilities of the labor organization and must be reported in Schedule 10. Payroll or other deductions that are retained by the labor organization (such as repayments of loans to officers or employees) must be fully explained in Item 69 (Additional Information).

The labor organization's other liabilities must be described in Column (A) and may be classified by general groupings or bookkeeping categories if the description is sufficient to identify the type of liability. List separately any payroll taxes withheld but not yet paid, other unpaid payroll taxes of the labor organization, such as FICA taxes, and any funds collected on behalf of affiliates or members and not disbursed by the end of the reporting period. Do not include reserves for special purposes (for example, "Reserve for Building Fund") that are actually an allocation of certain assets for specific purposes rather than a liability.

Enter in Column (B) the amount of each liability described in Column (A). Enter on Line 13 the total from any additional pages. Add Lines 1 through 13 and enter the total on Line 14 and in Item 33 (Other Liabilities), Column (D) of Statement A.

SCHEDULE 11 – ALL OFFICERS AND DISBURSEMENTS TO OFFICERS — List all the labor organization's officers and report all salaries and other direct and indirect disbursements to officers during

the reporting period. Also report the percentage of time spent by each officer in the categories provided.

NOTE: *A "direct disbursement" to an officer is a payment made by the labor organization to the officer in the form of cash, property, goods, services, or other things of value.*

An "indirect disbursement" to an officer is a payment made by the labor organization to another party for cash, property, goods, services, or other things of value received by or on behalf of the officer. "On behalf of the officer" refers to a payment received by a party other than the officer or the labor organization for the personal interest or benefit of the officer. Such payments include those made through a credit arrangement under which charges are made to the account of the labor organization and are paid by the labor organization. For example, when a union, through its credit arrangements, is billed directly and pays the hotel bills of an officer who, during his workweek, resides at a hotel in the city where the union headquarters is located away from his legal residence in another city, the payments must be reported as disbursements to the officer.

Column (A): Enter in (A) the last name, first name, and middle initial of each person who held office in the labor organization at any time during the reporting period. Include all the labor organization's officers whether or not any salary or other disbursements were made to them or on their behalf by the labor organization. "Officer" is defined in section 3(n) of the LMRDA (29 U.S.C. 402) as "any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body."

Column (B): Enter in (B) the title of the position each officer listed held during the reporting period. If an officer held more than one position during the reporting period, list each position and the dates on which the officer held the position.

Column (C): Enter in (C) the status of each officer: "New" for a new officer who took office during the reporting period; "Past" for a past officer who was not in office at the end of the reporting period; or "Continuing" for a continuing officer who was in office before the reporting period and was still in office at the end of the reporting period. If any officer was not elected at a regular election in accordance with the labor organization's constitution and bylaws or other governing documents on file with OLMS, explain the manner in which the officer was chosen in Item 69 (Additional Information).

Column (D): Enter the gross salary of each officer (before tax withholdings and other payroll deductions). Include disbursements for "lost time" or time devoted to union activities.

Column (E): Enter the total allowances made by direct and indirect disbursements to each officer on a daily, weekly, monthly, or other periodic basis. Do not include allowances paid on the basis of mileage or meals which must be reported in Column (F) or (G), as applicable.

Column (F): Enter all direct and indirect disbursements to each officer that were necessary for conducting official business of the labor organization, except salaries or allowances which must be reported in Columns (D) and (E), respectively.

Examples of disbursements to be reported in Column (F) include: all expenses that were reimbursed directly to an officer, meal allowances and mileage allowances, expenses for officers' meals and entertainment, and various goods and services furnished to officers but charged to the labor organization. Such disbursements should be included in Column (F) only if they were necessary for conducting official business; otherwise,

report them in Column (G). Also include in Column (F) travel advances that are not considered loans as explained in the instructions for Schedule 2 (Loans Receivable).

Do not report the following disbursements in Schedule 11:

- Reimbursements to an officer for the purchase of investments or fixed assets, such as reimbursing an officer for a file cabinet purchased for office use, which must be reported in Schedule 4 (Purchase of Investments and Fixed Assets) and explained in Item 69 (Additional Information);

- Indirect disbursements for temporary lodging (room rent charges only) or transportation by public carrier necessary for conducting official business while the officer is in travel status away from his or her home and principal place of employment with the labor organization if payment is made by the labor organization directly to the provider or through a credit arrangement and these disbursements are reported in disbursement Schedules 15 through 20;

- Disbursements made by the labor organization to someone other than an officer as a result of transactions arranged by an officer in which property, goods, services, or other things of value were received by or on behalf of the labor organization rather than the officer, such as rental of offices and meeting rooms, purchase of office supplies, refreshments and other expenses of membership banquets or meetings, and food and refreshments for the entertainment of groups other than the officers and membership on official business;

- Office supplies, equipment, and facilities furnished to officers by the labor organization for use in conducting official business; and

- Maintenance and operating costs of the labor organization's assets, including buildings, office furniture, and office equipment; however, see "Special Rules for Automobiles" below.

Column (G): Enter all other direct and indirect disbursements to each officer. Include all disbursements for which cash, property, goods, services, or other things of value were received by or on behalf of each officer and were essentially for the personal benefit of the officer and not necessary for conducting official business of the labor organization.

Include in Column (G) all disbursements for transportation by public carrier between the officer's home and place of employment or for other transportation not involving the conduct of official business. Also, include the operating and maintenance costs of all the labor organization's assets (automobiles, etc.) furnished to officers essentially for the officers' personal use rather than for use in conducting official business.

Do not include in Column (G) loans to officers, which must be reported in Schedule 2 (Loans Receivable) or disbursements for benefits to officers, which must be reported in disbursement Schedule 20 (Benefits).

Column (H): Add Columns (D) through (G) of each Line and enter the totals in Column (H). The totals in Column (H) must be allocated to Schedules 15 through 19 according to the instructions for those schedules.

Enter on Line 6 the totals from any continuation pages for Schedule 11.

Enter the totals of lines 1 through 6 for each Column (D) through (H) on Line 7.

Enter on line 8 the total amount of withheld taxes, payroll deductions, and all other deductions. Subtract line 8 from line 7, Column (H), and enter the difference on line 9.

Line (I): Enter the estimated percentage of time spent by the officer on activities that fall within Schedules 15 through 19 in the box next to that schedule. You may round to the nearest 10%. When the time reported by an individual in an activity is less than 5% of his or her total work time, the officer's best estimate to the nearest percentage should be reported rather than rounding to zero. The total must equal 100%. It is understood that these figures may be imprecise. For instance, the president of an intermediate body may spend four months working intensely on a multi-state contract negotiation, two months lobbying against a state referendum, two more months on a contentious organizing drive, and throughout these activities he had to keep up with his other duties as president. The president's good-faith estimate might be to report 50% on Schedule 15 – Representational Activities, 17% on Schedule 16 – Political Activities and Lobbying, 3% on Schedule 17 – Contributions, Gifts, and Grants, and 30% on Schedule 19 – Union Administration. The example is not intended to be a representation of a typical allocation of time but it should be used to help understand the rationale that should be employed when making these determinations.

Using these percentages, aggregate the amount of total disbursements (Column (H)) allocated to each schedule for every officer and report the total on Line 3 of the Detailed Summary Page. It may be helpful to create an intermediate worksheet to sum the salary disbursements for each schedule, but only the totals need to be reported on the Detailed Summary Page.

SPECIAL RULES FOR AUTOMOBILES

Include in Column (G) of Schedule 11 that portion of the operating and maintenance costs of any automobile owned or leased by the labor organization to the extent that the use was for the personal benefit of the officer to whom it was assigned. This portion may be computed on the basis of the mileage driven on official business compared with the mileage for personal use. The portion not included in Column (G) must be reported in Column (F).

Alternatively, rather than allocating these operating and maintenance costs between Columns (F) and (G), if 50% or more of the officer's use of the vehicle was for official business, the labor organization may enter in Column (F) all disbursements relative to that vehicle with an explanation in Item 69 (Additional Information) indicating that the vehicle was also used part of the time for personal business. Likewise, if less than 50% of the officer's use of the vehicle was for official business, the labor organization may report all disbursements relative to the vehicle in Column (G) with an explanation in Item 69 indicating that the vehicle was also used part of the time on official business.

The amount of decrease in the market value of an automobile used over 50% for the personal benefit of an officer must also be reported in Item 69.

SCHEDULE 12 – DISBURSEMENTS TO EMPLOYEES — Report all direct and indirect disbursements to employees of the labor organization during the reporting period. Also report the percentage of time spent by each officer in the categories provided.

Include disbursements to individuals other than officers who receive lost time payments even if the labor organization does not otherwise consider them to be employees or does not make any other direct or indirect disbursements to them. The definitions of "direct disbursements" and "indirect disbursements" are the same as the definitions stated above in Schedule 11.

Column (A): Enter the last name, first name, and middle initial of each employee who during the reporting period received

$10,000 or more in gross salaries, allowances, and other direct and indirect disbursements from the labor organization or from the labor organization and any affiliates and/or trusts of the labor organization. ("Affiliates" means labor organizations chartered by the same parent body, governed by the same constitution and bylaws, or having the relation of parent and subordinate.) The labor organization's report, however, should not include disbursements made by affiliates or trusts but should include only the disbursements made by the labor organization.

Column (B): Enter the position each listed employee held in the labor organization.

Column (C): Enter the name of any affiliate or trust that paid any salaries, allowances, or expenses on behalf of a listed employee.

Columns (D) through (G): To complete Columns (D) through (G), follow the instructions for Columns (D) through (G) of Schedule 11.

Enter on Line 6, Columns (D) through (G) the totals of all gross salaries, allowances, and other disbursements for all employees of the labor organization not required to be listed above.

Enter on Line 7 the totals from any continuation pages for Schedule 12.

Add Columns (D) through (G) for each of Lines 1 through 7 and enter the totals in Column (H). The totals in Column (H) must be allocated to Schedules 15 through 19 in Line (I) by the same process described in Schedule 11. The totals must be reported on Line 4 of the appropriate schedule on the Detailed Summary Page.

Enter the totals of Lines 1 through 7 for each Column (D) through (H) on Line 8.

Enter on Line 9 the total amount of withheld taxes, payroll deductions, and all other deductions. Subtract Line 9 from Line 8, Column (H), and enter the difference on Line 10.

SCHEDULE 13 – MEMBERSHIP STATUS INFORMATION— Enter in Column (A) the categories of membership tracked by the reporting labor organization. Define each category of membership in Item 69 (Additional Information). The definition should include a description of the members covered by the category and indicate whether the members pay full dues.

In Column (B) enter the number of members for each of the membership categories listed in Column (A).

Members (Line 8) – Enter the total of all members of the labor organization (Total of Lines 1 through 7). Do not include Agency Fee Payers. Enter the total from line 8 in Item 20 (Number of Members).

Agency Fee Paying Nonmembers (Line 9) – Agency fee paying nonmembers are those who make payments in lieu of dues to the reporting labor organization as a condition of employment under a union security provision in a collective bargaining agreement.

Total Members/Fee Payers (Line 10) – Enter the total of Lines 8 and 9, which will include all members and agency fee payers. The total in Column (B) is not the total number of members of the labor organization.

Enter "Yes" in Column (C) if the category of membership listed in Column (A) is generally eligible to vote in all union elections held by the labor organization. Enter "No" if the category is generally ineligible to vote in some or all elections. Describe in Item 69 (Additional Information) any voting restrictions that apply to a category in Column (A).

SCHEDULES 14 THROUGH 19

Schedules 14 through 19 provide detailed

information on the financial operations of the labor organization in categories that reflect the services provided to union members. Receipts and disbursements are allocated to Schedules 14 through 19 and are either listed as individual entries or as aggregated entries. **Note that before completing the Detailed Summary Page for Schedules 14 through 19, you must complete the itemization pages as described below.**

These schedules will be populated for the filer by the electronic filing software as long as the labor organization uses a properly configured electronic recordkeeping system that is compatible with the software provided by the Department. The system will allocate receipts and disbursements to the proper categories and determine whether a receipt or disbursement will be individually identified or aggregated within the appropriate schedule. Information about the electronic filing software and the technical specifications can be found on the OLMS website at http://www.olms.dol.gov.

Allocating Receipts

Each receipt of the labor organization must be allocated to one of the receipt items in Statement B. Some of these items have backup schedules that require more detailed information. If a receipt does not conform to one of the defined items in Statement B it must be included in Schedule 14 (Other Receipts) in which any "major" receipts during the reporting period must be separately identified. A "major" receipt includes: 1) any individual receipt of $5,000 or more; or 2) total receipts from any single entity or individual that aggregate to $5,000 or more during the reporting period. All other receipts in this schedule are aggregated. This process is discussed further below.

Allocating Disbursements

Each disbursement of the labor organization must be allocated to one of the disbursement items in Statement B. Some of these items have backup schedules that require more detailed information. Schedules 15 through 19 reflect various services provided to union members by the union in which all "major" disbursements during the reporting period in the various categories must be separately identified. A "major" disbursement includes: 1) any individual disbursement of $5,000 or more; or 2) total disbursements to any single entity or individual that aggregate to $5,000 or more during the reporting period. All other disbursements in these schedules are aggregated.

All disbursements, other than those reported elsewhere in Statement B, must be allocated to Schedules 15 though 19, as appropriate.

Example 1: If the labor organization received a settlement of $4,999 in a small claims lawsuit, the receipt would not be individually identified, as long as the settlement was the only receipt from the entity or individual during the reporting period. The receipt would be aggregated with other small receipts in Line 5 of Schedule 14 (Other Receipts) on the Detailed Summary Page as discussed below.

Example 2: If the labor organization made three payments of $1,800 each to an office supplies vendor for office supplies used by employees engaged in contract negotiations during the reporting period, a single disbursement to the vendor of $5,400 would be listed in Line I on an Initial Itemization Page for that vendor for Schedule 15 (Representational Activities) as discussed below.

Example 3: If a union pays a total of $5,500 to a printing company during the reporting year and determines that $5,050 of that bill should be allocated to organizing costs, that amount must be identified in an Initial Itemization Page for the printing company for Schedule 15 (Representational Activities). If the

remaining $450 paid to the same printer over the course of the year was attributable to charitable expenses, that amount will be reported in Line 5 of Schedule 17 (Contributions, Gifts, and Grants) on the Detailed Summary Page but the printer need not be identified as a recipient of any funds expended for Contributions, Gifts, and Grants, since the total paid to the printer during the reporting year for services related to Contributions, Gifts, and Grants did not exceed $5,000.

Example 4: The labor organization has an ongoing contract with a law firm that provides a wide range of legal services. The labor organization makes a single payment of $10,000 each month to the law firm. In a particular month the law firm spent 50% of its time on contract negotiation litigation and 50% advising the labor organization regarding, and working for the enactment of, a new Federal law. The labor organization must allocate the payment for that month as two distinct disbursements of $5,000 each to Schedule 15 (Representational Activities), and Schedule 16 (Political Activities and Lobbying).

Procedures for Completing Schedules 14 Through 19.

Before completing the Detailed Summary Page for Schedules 14 through 19, complete an Initial Itemization Page and a Continuation Itemization Page(s), as necessary, for each payer/payee for whom there is (1) an individual receipt/disbursement of $5,000 or more or (2) total receipts/disbursements that aggregate to $5,000 or more during the reporting period. Do not complete an Initial Itemization Page for disbursements to officers or employees because these disbursements are reported in Lines 3 and 4 of the Detailed Summary Page. A separate set of continuation pages must be used for each receipt and disbursement schedule.

An Initial Itemization Page must be completed for each such payee/payer (except payees who are officers or employees of the union). If the union is using the reporting software provided by the Department, the Initial Itemization Page will expand to fit the number of receipts/disbursements from the payee/payer. If the union is completing the report in paper format and more than one page is needed for a single payee/payer, the Continuation Itemization Page should be used for all subsequent pages.

Enter in Column (A) the full name and business address of the entity or individual from which the receipt was received or to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably attain the full address, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual, such as printing company, office supplies vendor, lobbyist, think tank, marketing firm, legal counsel, etc.

Enter in Column (C) the purpose of each individual receipt/disbursement for that payee/payer of $5,000 or more, which means a brief statement or description of the reason the receipt/disbursement was made. Examples of adequate descriptions include the following: preparing organizing campaign pamphlets, staffing a help desk, opposition research, litigation regarding representation issues, litigation regarding a refusal to bargain charge, grievance arbitration, get-out-the-vote, voter education, advocating or opposing legislation, job retraining, etc.

Enter in Column (D) the date that the receipt/disbursement was made. The date of receipt/disbursement for reporting purposes is the date the labor organization actually received or disbursed the money.

Enter in Column (E) the amount of the

receipt/disbursement.

Enter in Line (F) the total of all transactions listed in Column (E).

Enter in Line (G) the totals from any Continuation Itemization Pages for this payee/payer.

Enter in Line (H) the total of all itemized transactions with this payee/payer (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized transactions for the payee/payer (that is, all individual transactions of less than $5,000 each).

Enter in Line (J) the total of all transactions with the payee/payer for this schedule (the sum of Lines (H) and (I)).

Special Instructions for Reporting Credit Card Disbursements

Disbursements to credit card companies may not be reported as a single disbursement to the credit card company as the vendor. Instead, charges appearing on credit card bills paid during the reporting period must be allocated to the recipient of the payment by the credit card company according to the same process as described above.

The Department recognizes that filers will not always have the same access to information regarding credit card payments as with other transactions. Filers should report all of the information required in the itemization schedules that is available to the union.

For instance, in the case of a credit card transaction for which the receipt(s) and monthly statement(s) do not provide the full legal name of a payee and the union does not have access to any other documents that would contain the information, the union should report the name as it appears on the receipt(s) and statement(s). Similarly, if the receipt(s) and statement(s) do not include a full street address, the union should report as much information as is available and no less than the city and state. A filer may choose to report either the date of the charge or the date of the payment for a credit card transaction as long as the method of reporting is consistent throughout the form.

Once these transactions have been incorporated into the union's recordkeeping system they can be treated like any other transaction for purposes of assigning a description and purpose.

In instances when a credit card transaction is canceled and the charge is refunded in whole or part by entry of a credit on the credit card statement, the charge should be treated as a disbursement, and the credit should be treated as a receipt. In reporting the credit as a receipt, Column (C) must indicate that the receipt was in refund of a disbursement, and must identify the disbursement by date and amount.

Special Procedures for Reporting Confidential Information

Filers may use the procedure described below to report the following types of information:

- Information that would identify individuals paid by the union to work in a non-union bargaining unit in order to assist the union in organizing employees, provided that such individuals are not employees of the union who receive more than $10,000 in the aggregate in the reporting year from the union. Employees receiving more than $10,000 must be reported on Schedule 12 – Disbursements to Employees;

- Information that would expose the reporting union's prospective organizing strategy. The union must be prepared to demonstrate that disclosure of the information

would harm an organizing drive. Absent unusual circumstances information about past organizing drives should not be treated as confidential;

- Information that would provide a tactical advantage to parties with whom the reporting union or an affiliated union is engaged or will be engaged in contract negotiations. The union must be prepared to demonstrate that disclosure of the information would harm a contract negotiation. Absent unusual circumstances information about past contract negotiations should not be treated as confidential;

- Information pursuant to a settlement that is subject to a confidentiality agreement, or that the union is otherwise prohibited by law from disclosing; and,

- Information in those situations where disclosure would endanger the health or safety of an individual.

With respect to these specific types of information, if the reporting union can demonstrate that itemized disclosure of a specific major receipt or disbursement, or aggregated receipt or disbursement would be adverse to the union's legitimate interests, the union may include the receipt or disbursement in Line 3 of Summary Schedule 14 (Other Receipts) or in Line 5 of Summary Schedules 15 (Representational Activities) or 19 (Union Administration). In Item 69 (Additional Information) the union must identify each schedule from which any itemized receipts or disbursements were excluded because of an asserted legitimate interest in confidentiality. The notation must describe the general types of information that were omitted from the schedule, but the name of the payer/payee, date, and amount of the transaction(s) is not required. This procedure may not be used for Schedules 16 through 18.

A union member, however, has the statutory right "to examine any books, records, and accounts necessary to verify" the union's financial report if the member can establish "just cause" for access to the information. 29 U.S.C. 431(c); 29 U.S.C. CFR 403.8 (2002). Any exclusion of itemized receipts or disbursements from Schedules 14, 15, or 19 would constitute a *per se* demonstration of "just cause" for purposes of this Act. Consequently, any union member (and the Department), upon request, has the right to review the undisclosed information that otherwise would have appeared in the applicable schedule if the union withholds the information in order to protect confidentiality interests.

Procedures for Completing the Detailed Summary Page

The Detailed Summary Page is used to summarize Schedules 14 through 19.

For Summary Schedule 14 (Other Receipts) enter in Line 1 the total of all itemized receipts during the reporting period from named payers. This is the sum of the amounts entered in Line (H) on all Initial Itemization Pages for the schedule.

Enter in Line 2 the total of all non-itemized receipts from named payers. This is the sum of the amounts entered in Line (I) on all Initial Itemization Pages for the schedule.

Enter in Line 3 the total of all other receipts during the reporting period relating to the schedule. This is the total from your organization's books of all receipts during the reporting period relating to this schedule for payers who did not have a single receipt of $5,000 or more or receipts that aggregated $5,000 or more.

Enter in Line 4 the total of Lines 1 through 3. Forward this total to Item 48 of

Statement B.

For Summary Schedules 15 – 19 enter in Line 1 the total of all itemized disbursements during the reporting period to named vendors. This is the sum of the amounts entered in Line (H) on all Initial Itemization Pages for the schedule.

Enter in Line 2 the total of all non-itemized disbursements to named vendors. This is the sum of the amounts entered in Line (I) on all Initial Itemization Pages for the schedule.

Enter in Line 3 the total of all disbursements to officers allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 11.

Enter in Line 4 the total of all disbursements to employees allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 12.

Enter in Line 5 the total of all other disbursements during the reporting period relating to the schedule. This is the total from your organization's books of all disbursements during the reporting period relating to this schedule for payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more.

Enter in Line 6 the total of Lines 1 through 5. Forward this total to the appropriate line item of Statement B.

For example, if in Schedule 15 (Representational Activities) a labor organization has $200,000 in itemized disbursements of $5,000 or more to vendors, $35,000 in non-itemized disbursements of less than $5,000 each to those vendors, $100,000 in salary disbursements to officers, $50,000 in salary disbursements to employees, and $7,000 in disbursements to vendors who did not receive a major disbursement for representational activities, then the labor organization will enter $200,000 in Line 1, $35,000 in Line 2, $100,000 in Line 3, $50,000 in Line 4, and $7,000 in Line 5 of Schedule 15 on the Detailed Summary Page. The total of Lines 1 through 5 is $392,000, which is entered in Line 6 of the summary schedule and Item 50 (Representational Activities) of Statement B.

SCHEDULE 14 – OTHER RECEIPTS — Report the labor organization's receipts from all sources during the reporting period, other than those that must be reported elsewhere in Statement B, such as reimbursements from officers and employees for excess expense payments or travel advances not reported as loans in Schedule 2 (Loans Receivable); receipts from fundraising activities such as raffles, bingo games, and dances; funds received from a parent body, other unions, or the public for strike fund assistance; and receipts from another labor organization which merged into the labor organization.

For all major receipts in this category:

Enter in Column (A) of an Initial Itemization Page the full name and business address of the entity or individual from which the union received $5,000 or more in Other Receipts during the reporting period. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual from which the union received $5,000 or more in Other Receipts during the reporting period.

Enter in Column (C) the purpose of each individual receipt of $5,000 or more from the payer in sufficient detail to determine why the receipt cannot be allocated to another schedule.

Enter in Column (D) the date that the receipt of $5,000 or more was received. The date of receipt for reporting purposes is the date the labor organization actually received the money.

Enter in Column (E) the amount of the receipt of $5,000 or more.

Enter in Line (F) the total of all transactions listed in Column (E).

Enter in Line (G) the totals from any Continuation Itemization Pages for this payer.

Enter in Line (H) the total of all itemized receipts from this payer (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized receipts from this payer (that is, all individual receipts of less than $5,000 each).

Enter in Line (J) the total of all transactions with the payer for this schedule (the sum of Lines (H) and (I)).

An Initial Itemization Page must be completed for each payer. Only one payer should be reported per page. If the Initial Itemization Page does not provide enough space, the Continuation Itemization Page(s) should be used to report additional receipts from the payer.

Add the total amount of itemized receipts from named vendors (the sum of the amounts entered in Line (H) on all Initial Itemization Pages for Schedule 14) and enter the total on Line 1 of Summary Schedule 14 on the Detailed Summary Page. Add the total amount of non-itemized receipts from named vendors (the sum of the amounts entered in Line (I) on all Initial Itemization Pages for Schedule 14) and enter the total on Line 2 of Summary Schedule 14. Enter the total amount of all other receipts relating to this schedule from other payers during the reporting period on Line 3 of Summary Schedule 14. This is the total from your organization's books of all receipts relating to this schedule from payers who did not provide a single receipt of $5,000 or more or receipts that aggregated $5,000 or more. Add Lines 1 through 3 and enter the total on Line 4 of Summary Schedule 14 and in Item 48 (Other Receipts) of Statement B.

SCHEDULE 15 – REPRESENTATIONAL ACTIVITIES – Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with preparation for, and participation in, the negotiation of collective bargaining agreements and the administration and enforcement of the agreements made by the labor organization. Do not include strike benefits that must be reported in Item 57 (Strike Benefits) of Statement B. The union must also report disbursements associated with efforts to become the exclusive bargaining representative for any unit of employees, or to keep from losing a unit in a decertification election or to another labor organization, or to recruit new members.

For all major disbursements in this category:

Enter in Column (A) of an Initial Itemization Page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more in Representational Activities during the reporting period, such as printing company, office supplies vendor, legal counsel, etc.

Enter in Column (C) the purpose of the disbursement of $5,000 or more, which

means a brief statement or description of the reason the disbursement was made. Examples of adequate descriptions include the following: contract negotiation, grievance arbitration, litigation regarding the interpretation of a collective bargaining agreement, preparing organizing campaign pamphlets, staffing a help desk, opposition research, litigation regarding representation issues, litigation regarding a refusal to bargain, etc. Neither the name of the employer nor the specific bargaining unit that is the subject of the organizing activity need be identified.

Enter in Column (D) the date that the disbursement of $5,000 or more was made. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of the disbursement of $5,000 or more.

Enter in Line (F) the total of all disbursements listed in Column (E).

Enter in Line (G) the totals from any Continuation Itemization Pages for this payee.

Enter in Line (H) the total of all itemized disbursements to this payee (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized disbursements to this payee (that is, all individual disbursements of less than $5,000 each).

Enter in Line (J) the total of all transactions with this payee for this schedule (the sum of Lines (H) and (I)).

An Initial Itemization Page must be completed for each payee. Only one payee should be reported per page. If the Initial Itemization Page does not provide enough space, the Continuation Itemization Page(s) should be used to report additional disbursements to the payee.

Add the total amount of itemized disbursements to named vendors (the sum of the amounts entered in Line (H) on all Initial Itemization Pages for Schedule 15) and enter the total on Line 1 of Summary Schedule 15 on the Detailed Summary Page. Add the total amount of non-itemized disbursements to named vendors (the sum of the amounts entered in Line (I) on all Initial Itemization Pages for Schedule 15) and enter the total on Line 2 of Summary Schedule 15. Enter in Line 3 of Summary Schedule 15 the total of all disbursements to officers allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 11. Enter in Line 4 of Summary Schedule 15 the total of all disbursements to employees allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 12. Enter the total amount of all other disbursements relating to this schedule made to other payees during the reporting period on Line 5 of Summary Schedule 15. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more. Add Lines 1 through 5 and enter the total on Line 6 of Summary Schedule 15 and in Item 50 (Representational Activities) of Statement B.

SCHEDULE 16 – POLITICAL ACTIVITIES AND LOBBYING– Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with political disbursements or contributions in money. Also report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with dealing with the executive and legislative branches of the Federal, state, and local governments and with independent agencies and staffs to advance the passage or defeat of existing

or potential laws or the promulgation or any other action with respect to rules or regulations (including litigation expenses). It does not matter whether the lobbying attempt succeeds.

A political disbursement or contribution is one that is intended to influence the selection, nomination, election, or appointment of anyone to a Federal, state, or local executive, legislative or judicial public office, or office in a political organization, or the election of Presidential or Vice Presidential electors, and support for or opposition to ballot referenda. It does not matter whether the attempt succeeds. Include disbursements for communications with members (or agency fee paying nonmembers) and their families for registration, get-out-the-vote and voter education campaigns, the expenses of establishing, administering and soliciting contributions to union segregated political funds (or PACs), disbursements to political organizations as defined by the IRS in 26 U.S.C. 527, and other political disbursements.

For all major disbursements in this category:

Enter in Column (A) of an Initial Itemization Page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the union may report only the city and state.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more for Political Activities and Lobbying during the reporting period, such as campaign advisor, lobbyist, marketing firm, fund raiser, think tank, issue advocacy group, printing company, office supplies vendor, legal counsel, etc.

Enter in Column (C) the purpose of the disbursement of $5,000 or more, which means a brief statement or description of the reason the disbursement was made. Examples of adequate descriptions include the following: a registration drive, get-out-the-vote campaign, voter education campaign, fund raising, advocating or opposing legislation (including litigation challenging such legislation) advocating or opposing regulations (including litigation challenging such regulations), etc. The specific campaign, legislation, regulation, referendum, etc. should be identified whenever possible. Distinguish between activities in the United States and activities in foreign countries.

Enter in Column (D) the date that the disbursement of $5,000 or more was made. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of the disbursement of $5,000 or more.

Enter in Line (F) the total of all disbursements listed in Column (E).

Enter in Line (G) the totals from any Continuation Itemization Pages for this payee.

Enter in Line (H) the total of all itemized disbursements to this payee (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized disbursements to this payee (that is, all individual disbursements of less than $5,000 each).

Enter in Line (J) the total of all transactions with this payee for this schedule (the sum of Lines (H) and (I)).

An Initial Itemization Page must be completed for each payee. Only one payee should be reported per page. If the Initial Itemization Page does not provide enough space, the Continuation Itemization Page(s) should be used to

report additional disbursements to the payee.

Add the total amount of itemized disbursements to named vendors (the sum of the amounts entered in Line (H) on all Initial Itemization Pages for Schedule 16 and enter the total on Line 1 of Summary Schedule 16 on the Detailed Summary Page. Add the total amount of non-itemized disbursements to named vendors (the sum of the amounts entered in Line (I) on all Initial Itemization Pages for Schedule 16) and enter the total on Line 2 of Summary Schedule 16. Enter in Line 3 of Summary Schedule 16 the total of all disbursements to officers allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 11. Enter in Line 4 of Summary Schedule 16 the total of all disbursements to employees allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 12. Enter the total amount of all other disbursements relating to other payees during the reporting period on Line 5 of Summary Schedule 16. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more. Add Lines 1 through 5 and enter the total on Line 6 of Summary Schedule 16 and in Item 51 (Political Activities and Lobbying) of Statement B.

SCHEDULE 17 – CONTRIBUTIONS, GIFTS, AND GRANTS – Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with contributions, gifts, and grants, other than those listed on Schedules 15, 16, and 20. Include, for example, charitable contributions, contributions to scholarship funds, etc.

For all major disbursements in this category:

Enter in Column (A) of an Initial Itemization Page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the union may report only the city and state.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more in Contributions, Gifts, and Grants during the reporting period, such as charity, scholarship fund, state or local affiliate, etc.

Enter in Column (C) the purpose of the disbursement of $5,000 or more, which means a brief statement or description of the reason the disbursement was made. Examples of adequate descriptions include the following: medical research, community development, job retraining, education, disaster and relief assistance, athletic and youth sponsorships, etc.

Enter in Column (D) the date that the disbursement of $5,000 or more was made. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of the disbursement of $5,000 or more.

Enter in Line (F) the total of all disbursements listed in Column (E).

Enter in Line (G) the totals from any Continuation Itemization Pages for this payee.

Enter in Line (H) the total of all itemized disbursements to this payee (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized disbursements to this payee (that

is, all individual disbursements of less than $5,000 each).

Enter in Line (J) the total of all transactions with this payee for this schedule (the sum of Lines (H) and (I)).

An Initial Itemization Page must be completed for each payee. Only one payee should be reported per page. If the Initial Itemization Page does not provide enough space, the Continuation Itemization Page(s) should be used to report additional disbursements to the payee.

Add the total amount of itemized disbursements to named vendors (the sum of the amounts entered in Line (H) on all Initial Itemization Pages for Schedule 17 and enter the total on Line 1 of Summary Schedule 17 on the Detailed Summary Page. Add the total amount of non-itemized disbursements to named vendors (the sum of the amounts entered in Line (I) on all Initial Itemization Pages for Schedule 17) and enter the total on Line 2 of Summary Schedule 17. Enter in Line 3 of Summary Schedule 17 the total of all disbursements to officers allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 11. Enter in Line 4 of Summary Schedule 17 the total of all disbursements to employees allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 12. Enter the total amount of all other disbursements relating to this schedule made to other payees during the reporting period on Line 5 of Summary Schedule 17. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more. Add Lines 1 through 5 and enter the total on Line 6 of Summary Schedule 17 and in Item 52 (Contributions, Gifts and Grants) of Statement B.

SCHEDULE 18 – GENERAL OVERHEAD – Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with general overhead that cannot be allocated to any of the other disbursement categories in Statement B.

Some disbursements for overhead do not support a specific function, so these disbursements should be reported in this schedule. Include support personnel at the labor organization's headquarters, such as building maintenance personnel and security guards, and other overhead costs. Not all support staff should be included in General Overhead. For instance, the salary of an assistant, whenever possible, should be allocated at the same ratio as the person or persons to whom they provide support.

For all major disbursements in this category:

Enter in Column (A) of an Initial Itemization Page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the union may report only the city and state.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more in General Overhead during the reporting period, such as office supplies vendor, landlord, mortgage lender, cleaning firm, security firm, etc.

Enter in Column (C) the purpose of the disbursement of $5,000 or more, in sufficient detail to determine why the disbursement cannot be allocated to another schedule.

Enter in Column (D) the date that the disbursement of $5,000 or more was made. The date of disbursement for reporting purposes is the date the labor

organization actually disbursed the money.

Enter in Column (E) the amount of the disbursement of $5,000 or more.

Enter in Line (F) the total of all disbursements listed in Column (E).

Enter in Line (G) the totals from any Continuation Itemization Pages for this payee.

Enter in Line (H) the total of all itemized disbursements to this payee (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized disbursements to this payee (that is, all individual disbursements of less than $5,000 each).

Enter in Line (J) the total of all transactions with this payee for this schedule (the sum of Lines (H) and (I)).

An Initial Itemization Page must be completed for each payee. Only one payee should be reported per page. If the Initial Itemization Page does not provide enough space, the Continuation Itemization Page(s) should be used to report additional disbursements to the payee.

Add the total amount of itemized disbursements to named vendors (the sum of the amounts entered in Line (H) on all Initial Itemization Pages for Schedule 18 and enter the total on Line 1 of Summary Schedule 18 on the Detailed Summary Page. Add the total amount of non-itemized disbursements to named vendors (the sum of the amounts entered in Line (I) on all Initial Itemization Pages for Schedule 18) and enter the total on Line 2 of Summary Schedule 18. Enter in Line 3 of Summary Schedule 18 the total of all disbursements to officers allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 11. Enter in Line 4 of Summary Schedule 18 the total of all disbursements to employees allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 12. Enter the total amount of all other disbursements relating to this schedule made to other payees during the reporting period on Line 5 of Summary Schedule 18. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more. Add Lines 1 through 5 and enter the total on Line 6 of Summary Schedule 18 and in Item 53 (General Overhead) of Statement B.

SCHEDULE 19 – UNION ADMINISTRATION — Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with union administration. Union administration includes disbursements relating to the nomination and election of union officers, the union's regular membership meetings, intermediate, national and international meetings, union disciplinary proceedings, the administration of trusteeships, and the administration of apprenticeship and member education programs (not including political education which should be reported in Schedule 16).

For all major disbursements in this category:

Enter in Column (A) of an Initial Itemization Page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the union may report only the city and state.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed

$5,000 or more for Union Administration during the reporting period, such as printing company, office supplies vendor, legal counsel, etc.

Enter in Column (C) the purpose of the disbursement of $5,000 or more in sufficient detail to determine why the disbursement cannot be allocated to another schedule. For example, printing of election ballots, rental of meeting facilities for a union convention, printing of transcripts of trusteeship hearing, etc.

Enter in Column (D) the date that the disbursement of $5,000 or more was made. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of the disbursement of $5,000 or more.

Enter in Line (F) the total of all disbursements listed in Column (E).

Enter in Line (G) the totals from any Continuation Itemization Pages for this payee.

Enter in Line (H) the total of all itemized disbursements to this payee (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized disbursements to this payee (that is, all individual disbursements of less than $5,000 each).

Enter in Line (J) the total of all transactions with this payee for this schedule (the sum of Lines (H) and (I)).

An Initial Itemization Page must be completed for each payee. Only one payee should be reported per page. If the Initial Itemization Page does not provide enough space, the Continuation Itemization Page(s) should be used to report additional disbursements to the payee.

Add the total amount of itemized disbursements to named vendors (the sum of the amounts entered in Line (H) on all Initial Itemization Pages for Schedule 19 and enter the total on Line 1 of Summary Schedule 19 on the Detailed Summary Page. Add the total amount of non-itemized disbursements to named vendors (the sum of the amounts entered in Line (I) on all Initial Itemization Pages for Schedule 19) and enter the total on Line 2 of Summary Schedule 19. Enter in Line 3 of Summary Schedule 19 the total of all disbursements to officers allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 11. Enter in Line 4 of Summary Schedule 19 the total of all disbursements to employees allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 12. Enter the total amount of all other disbursements relating to this schedule made to other payees during the reporting period on Line 5 of Summary Schedule 19. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more. Add Lines 1 through 5 and enter the total on Line 6 of Summary Schedule 19 and in Item 54 (Union Administration) of Statement B.

SCHEDULE 20 – BENEFITS – [Note: Do not use the Itemization Pages for Schedule 20. Instead use the separate Schedule 20] Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with direct and indirect benefits for officers, employees, members, and their beneficiaries. Benefit disbursements to be reported in Schedule 20 include, for example, disbursements for life insurance, health insurance, and pensions. Do not include salary bonuses, severance payments, or payments for accrued

vacation, which should be reported in Column (D) of Schedule 11 or 12.

Direct benefit disbursements are those made to officers, employees, members, and their beneficiaries from the labor organization's funds. Indirect benefit disbursements are those made from the labor organization's funds to a separate and independent entity, such as a trust or insurance company, which in turn and under certain conditions will pay benefits to the covered individuals. An example of an indirect benefit disbursement is the premium on group life insurance.

Enter in Column (A) the type of benefit, such as pension, welfare, etc.

Enter in Column (B) to whom payment was made; for example, union members, insurance company, etc. Individual union members and their beneficiaries are not required to be listed by name.

Enter in Column (C) the amount disbursed for each type of benefit.

Enter on Line 22 the total from any additional pages. Add Lines 1 through 22 and enter the total on Line 23 and in Item 55 (Benefits) of Statement B.

STATEMENT A ASSETS AND LIABILITIES

ASSETS

22. CASH — Enter the total of all the labor organization's cash on hand and on deposit at the start and end of the reporting period in Columns (A) and (B), respectively. Include all cash on hand, such as undeposited cash, checks, and money orders; petty cash; and cash in safe deposit boxes. Cash on deposit includes funds in banks, credit unions, and other financial institutions, such as checking accounts, savings accounts, certificates of deposit, and money market accounts. Also, include any interest credited to the labor organization's account during the reporting period.

NOTE: *The checking account balances reported should be obtained from the labor organization's books as reconciled with the balances shown on bank statements.*

23. ACCOUNTS RECEIVABLE — Ordinarily, accounts receivable are moneys due for goods sold or services rendered evidenced by notes, statements, invoices, or other written evidence of a present obligation. Enter in Column (A) the total of all gross accounts receivable at the start of the reporting period. Enter in Column (B) the total of all gross accounts receivable at the end of the reporting period, which is also reported on Line 28, Column B of Schedule 1 (Accounts Receivable Aging Schedule). If accounts receivable are carried on the labor organization's books at net (gross accounts receivable less the allowance for doubtful accounts), the labor organization may report the allowance for doubtful accounts in Item 69 (Additional Information).

24. LOANS RECEIVABLE — Enter in Column (A) the total of all gross loans receivable at the start of the reporting period, which is also reported on Line 6, Column (B) of Schedule 2 (Loans Receivable). Enter in Column (B) the total of all gross loans receivable at the end of the reporting period, which is also reported on Line 6, Column (E) of Schedule 2.

25. U.S. TREASURY SECURITIES — Enter the total value of all U.S. Treasury securities as shown on the labor organization's books at the start and end of the reporting period in Columns (A) and (B), respectively. If the value reported is different from the original cost, the original cost must be reported in Item 69 (Additional Information). Other U.S. Government obligations, state and municipal bonds, and foreign government securities must be reported in Schedule 5 (Investments Other Than U.S. Treasury

Securities) under "Marketable Securities" and in Item 26 (Investments).

26. INVESTMENTS — Enter in Column (A) the total book value at the start of the reporting period of all investments other than U.S. Treasury securities, which are reported in Item 25 (U.S. Treasury Securities). Enter in Column (B) the total reported on Line 7 of Schedule 5 (Investments Other Than U.S. Treasury Securities).

27. FIXED ASSETS — Enter in Column (A) the total value as shown on the labor organization's books at the start of the reporting period of all fixed assets, such as land, buildings, automobiles, and office furniture and equipment. Enter in Column (B) the total reported on Line 8, Column (D) of Schedule 6 (Fixed Assets).

28. OTHER ASSETS — Enter in Column (A) the total value as shown on the labor organization's books at the start of the reporting period of all assets not reported in Items 22 through 27. Enter in Column (B) the total reported on Line 15 of Schedule 7 (Other Assets).

29. TOTAL ASSETS — Add Items 22 through 28, Columns (A) and (B), and enter the respective totals in Item 29.

LIABILITIES

30. ACCOUNTS PAYABLE — Ordinarily, accounts payable are those obligations incurred on an open account for goods and services rendered. Enter in Column (C) the total of all gross accounts payable at the start of the reporting period. Enter in Column (D) the total of all gross accounts payable at the end of the reporting period, which is also reported on Line 28, Column B of Schedule 8 (Accounts Payable Aging Schedule).

31. LOANS PAYABLE — Enter in Column (C) the total of all gross loans payable at the start of the reporting period, which is also reported on Line 13, Column (B) of Schedule 9 (Loans Payable). Enter in Column (D) the total of all gross loans payable at the end of the reporting period, which is also reported on Line 13, Column (E) of Schedule 9.

32. MORTGAGES PAYABLE — Enter the total amount of the labor organization's obligations that were secured by mortgages or similar liens on real property (land or buildings) at the start and end of the reporting period in Columns (C) and (D), respectively.

33. OTHER LIABILITIES — Enter in Column (C) the total amount as shown on the labor organization's books at the start of the reporting period of all liabilities not reported in Items 30 through 32. Enter in Column (D) the total reported on Line 14 of Schedule 10 (Other Liabilities).

34. TOTAL LIABILITIES — Add Items 30 through 33, Columns (C) and (D), and enter the respective totals in Item 34.

35. NET ASSETS — Subtract Item 34 (Total Liabilities), Column (C) from Item 29 (Total Assets), Column (A) and enter the difference in Item 35, Column (C). Subtract Item 34, Column (D) from Item 29, Column (B) and enter the difference in Item 35, Column (D).

STATEMENT B RECEIPTS AND DISBURSEMENTS

Under Statement B, receipts must be recorded when money is actually received by the labor organization and disbursements must be recorded when money is actually paid out by the labor organization.

The purpose of Statement B is to report the flow of cash in and out of the labor organization during the reporting period. Transfers between separate bank accounts or between special funds of the labor organization, such as vacation or strike funds, do not represent the flow of cash in and out of the labor organization.

Therefore, these transfers should not be reported as receipts and disbursements of the labor organization. For example, do not report a transfer of cash from the labor organization's savings account to its checking account. Likewise, the use of funds reported in Item 22 (Cash) of Statement A to purchase certificates of deposit and the redemption of certificates of deposit should not be reported in Statement B.

Since Statement B reports all cash flowing in and out of the labor organization, "netting" is not permitted. "Netting" is the offsetting of receipts against disbursements and reporting only the balance (net) as either a receipt or disbursement. For example, if an officer received $1,000 from the labor organization for convention expenses, used only $800 and returned the remaining $200, the $1,000 disbursement must be reported in Schedule 11 (All Officers and Disbursements to Officers) and the appropriate disbursement Schedule 15 through 21, and the $200 receipt must be reported in Schedule 14 (Other Receipts). It would be incorrect to report only an $800 net disbursement to the officer.

Receipts and disbursements by an agent on behalf of the labor organization are considered receipts and disbursements of the labor organization and must be reported in the same detail as other receipts and disbursements. For example, if the labor organization owns a building managed by a rental agent, the agent's rental receipts and disbursements for expenses must be reported on the labor organization's Form LM-2. Also, if the labor organization's parent body or an intermediate body functions as an agent receiving and disbursing funds of the labor organization to third parties, these receipts and disbursements must be reported on the labor organization's Form LM-2. For example, if a parent body receives the labor organization's dues and makes disbursements from that money to pay the labor organization's bills (such as payments to an attorney for legal services), those receipts and disbursements must be reported on the labor organization's Form LM-2.

CASH RECEIPTS

36. DUES AND AGENCY FEES – Enter the total dues including regular dues, working dues, etc. received by the labor organization. Include dues received directly by the organization from members, dues received from employers through a checkoff arrangement, and dues transmitted to the organization by a parent body or other affiliate. Report the full dues received, including any portion that will later be transmitted to an intermediate or parent body as per capita tax. Also report in Item 36 payments in lieu of dues received from any nonmember employees as a condition of employment under a union security provision in a collective bargaining agreement.

If an intermediate or parent body receives dues checkoff directly from an employer on behalf of the reporting organization, do not report in Item 36 the portion retained by that organization for per capita tax or other purposes, such as a special assessment. Any amounts retained by the intermediate body or parent body other than per capita tax must be explained in Item 69 (Additional Information). For example, if the intermediate body or parent body retained $500 of the reporting organization's dues checkoff as payment for supplies purchased from that body by the reporting organization, this should be explained in Item 69, but the $500 should not be reported as a receipt or disbursement on either organization's Form LM-2. If, however, the intermediate body or parent body disbursed part of the reporting organization's dues checkoff on that organization's behalf, this amount should be included in Item 36 and in the appropriate disbursement item on the reporting organization's Form LM-2. For example, if the intermediate body or parent body disbursed $500 of the

reporting organization's dues checkoff to an attorney who had provided lobbying services to the reporting organization, this amount should be reported in Item 36 and as a disbursement in Schedule 16 (Political Activities and Lobbying) of the reporting organization's Form LM-2.

Do not report in Item 36 dues that the reporting organization collected on behalf of other organizations for transmittal to them. For example, if the reporting organization received dues from a member of an affiliate who worked in the reporting organization's jurisdiction, the dues collected on the affiliate's behalf must be reported in Item 46.

37. PER CAPITA TAX — Enter the total per capita tax received by your organization if your organization is an intermediate or parent body; otherwise, enter "0" in Item 37. Include the per capita tax portion of dues received directly by your organization from members of affiliates, per capita tax received from subordinates, either directly or through intermediaries, and the per capita tax portion of dues received through a checkoff arrangement whereby local dues are remitted directly to an intermediate or parent body by employers. Do not include dues collected on behalf of subordinate organizations for transmittal to them. For example, if a parent body received dues checkoff directly from an employer and returned the local's portion of the dues, the parent body must report the dues received on behalf of the local in Item 46 (On Behalf of Affiliates for Transmittal to Them).

38. FEES, FINES, ASSESSMENTS, WORK PERMITS — Enter the labor organization's receipts from fees, fines, assessments, and work permits. Receipts by the labor organization on behalf of affiliates for transmittal to them must be reported in Item 46 (On Behalf of Affiliates for Transmittal to Them).

39. SALE OF SUPPLIES — Enter the total amount received by the labor organization from the sale of supplies such as union logo clothing, lapel pins, bumper stickers, etc.

40. INTEREST — Enter the total amount of interest received by the labor organization from savings accounts, bonds, mortgages, loans, and all other sources.

41. DIVIDENDS — Enter the total amount of dividends from stocks and other investments received by the labor organization. Do not include "dividends" from credit unions, savings and loan associations, etc., which must be reported in Item 40 (Interest).

42. RENTS — Enter the total amount of rents received by the labor organization.

43. SALE OF INVESTMENTS AND FIXED ASSETS — Enter the total reported on Line 15 of Schedule 3 (Sale of Investments and Fixed Assets).

44. LOANS OBTAINED — Enter the total reported on Line 13, Column (C) of Schedule 9 (Loans Payable).

45. REPAYMENTS OF LOANS MADE — Enter the total reported on Line 6, Column (D)(1) of Schedule 2 (Loans Receivable).

46. ON BEHALF OF AFFILIATES FOR TRANSMITTAL TO THEM — Enter the total amount of dues, fees, fines, assessments, and work permit fees received by the labor organization, through a checkoff arrangement or otherwise, on behalf of affiliates for transmittal to them. Do not include the amount withheld by the labor organization for per capita taxes or other purposes, such as loan repayments, which must be reported elsewhere in Statement B. When the receipts reported in Item 46 are transmitted, the disbursement must be reported in related Item 63 (To Affiliates of Funds Collected on Their Behalf).

47. FROM MEMBERS FOR DISBURSEMENT ON THEIR BEHALF —

Enter the total receipts from members that are specifically designated by them for disbursement on their behalf; for example, contributions from members for transmittal by the labor organization to charities. When receipts that are reported in Item 47 are transmitted, the disbursement must be reported in related Item 64 (On Behalf of Individual Members).

48. OTHER RECEIPTS — Enter the total reported on Summary Schedule 14, Line 3.

49. TOTAL RECEIPTS — Add Items 36 through 48 and enter the total in Item 49.

CASH DISBURSEMENTS

50. REPRESENTATIONAL ACTIVITIES – Enter the total from Summary Schedule 15, Line 6.

51. POLITICAL ACTIVITIES AND LOBBYING – Enter the total from Summary Schedule 16, Line 6.

52. CONTRIBUTIONS, GIFTS, AND GRANTS – Enter the total from Summary Schedule 17, Line 6.

53. GENERAL OVERHEAD – Enter the total from Summary Schedule 18, Line 6.

54. UNION ADMINISTRATION – Enter the total from Summary Schedule 19, Line 6.

55. BENEFITS – Enter the total from Line 23 of Schedule 20.

56. PER CAPITA TAX — Enter your organization's total amount of per capita tax paid as a condition or requirement of affiliation with your parent national or international union, state and local central bodies, a conference, joint or system board, joint council, federation, or other labor organization.

57. STRIKE BENEFITS – Enter the total amount of all disbursements made to, or on behalf of the members (or agency fee paying nonmembers) of the labor organization, and others, associated with strikes (including recognitional strikes), work stoppages and lockouts during the reporting period.

58. FEES, FINES, ASSESSMENTS, ETC. — Enter the total amount of fees, fines, assessments, and similar disbursements made by the labor organization to a parent body or other labor organization.

59. SUPPLIES FOR RESALE — Enter the labor organization's total disbursements for purchases of supplies such as union logo clothing, lapel pins, bumper stickers, etc. for resale.

60. PURCHASE OF INVESTMENTS AND FIXED ASSETS — Enter the total reported on Line 15 of Schedule 4 (Purchase of Investments and Fixed Assets).

61. LOANS MADE — Enter the total reported on Line 6, Column (C) of Schedule 2 (Loans Receivable).

62. REPAYMENT OF LOANS OBTAINED — Enter the total reported on Line 13, Column (D)(1) of Schedule 9 (Loans Payable).

63. TO AFFILIATES OF FUNDS COLLECTED ON THEIR BEHALF — Enter the total disbursements of funds collected on behalf of affiliates by the labor organization. This amount usually is the same as the amount reported in related Item 46 (On Behalf of Affiliate for Transmittal to Them). Any such funds not disbursed by the end of the reporting period are liabilities of the labor organization and must be reported in Schedule 10 (Other Liabilities).

64. ON BEHALF OF INDIVIDUAL MEMBERS — Enter the total disbursements of funds collected from members by the labor organization that were specifically designated by them for disbursement on their behalf. This

amount usually is the same as the amount reported in related Item 47 (From Members for Disbursement on Their Behalf). Any such funds not disbursed by the end of the reporting period are liabilities of the labor organization and must be reported in Schedule 10 (Other Liabilities).

65. DIRECT TAXES – Enter all taxes assessed against and paid by your organization, including your organization's FICA taxes as an employer. Do not include disbursements for the transmittal of taxes withheld from the salaries of officers and employees which must be reported in Item 67 (Withholding Taxes and Other Payroll Deductions). Also, do not include indirect taxes, such as sales and excise taxes, for purchases reported in other disbursement items.

66. SUBTOTAL — Add Items 50 through 65 and enter the result in Item 66.

67. WITHHOLDING TAXES AND OTHER PAYROLL DEDUCTIONS –

a. Total Withheld—Enter the total amount of withholding taxes and all other payroll deductions during the reporting period.

b. Total Disbursed—Enter the total amount of withholding taxes and all other payroll deductions that were disbursed by your organization during the reporting period. This includes your organization's total disbursements to Federal, state, county, and municipal government agencies for the transmittal of taxes withheld from the salaries of officers and employees, including officers' and employees' portion of FICA taxes and all disbursements for the transmittal of other payroll deductions.

c. Total Withheld But Not Disbursed—Subtract Item 67b from Item 67a and enter the result in Item 67c.

68. TOTAL DISBURSEMENTS – Subtract Item 67c from Item 66 and enter the result in Item 68.

NOTE: *The following worktable may be used to determine that the figures for receipts, disbursements, and cash are correctly reported on the labor organization's Form LM-2:*

A. Cash at Start of Reporting Period — Item 22, Column (A)	$
B. Add: Total Receipts — Item 49	$
C. Total of Lines A and B	$
D. Subtract: Total Disbursements — Item 68	$
E. Cash at End of Period	$

If Line E does not equal the amount reported in Item 22, Column (B), there is an error in the labor organization's report, which should be corrected.

ADDITIONAL INFORMATION AND SIGNATURES

69. ADDITIONAL INFORMATION — Use Item 69 to provide additional information as indicated on Form LM-2 and in these instructions. Enter the number of the item to which the information relates in the Item Number column.

70-71. SIGNATURES — The completed Form LM-2 that is filed with OLMS must be signed by both the president and treasurer, or corresponding principal officers, of the labor organization. If an officer other than the president or treasurer performs the duties of the principal executive or principal financial officer, the other officer may sign the report. If an officer other than the president or treasurer signs the report, enter the correct title in Item 70 or 71, and explain in Item 69 (Additional Information) why the president or treasurer did not sign the report. Electronically submitted forms must be signed with digital signatures which will automatically enter the date. Information about this system can be obtained on the OLMS Web site at http://www.olms.dol.gov.

Enter the date the report was signed and the telephone number at which the signatories conduct official business. On a paper Form LM-2 submitted pursuant to an exemption, original signatures are required; stamped or mechanical signatures are not acceptable.

XII. Labor Organizations That Have Ceased to Exist

If a labor organization has gone out of existence as a reporting labor organization, the last president and treasurer or the officials responsible for winding up the affairs of the labor organization must file a terminal financial report for the period from the beginning of the fiscal year to the date of termination. A terminal financial report must be filed if the labor organization has gone out of business by disbanding, merging into another organization, or being merged and consolidated with one or more labor organizations to form a new labor organization. A terminal financial report is not required if the labor organization changed its affiliation but continues to function as a separate reporting labor organization.

The terminal financial report must be filed on Form LM-2 if the labor organization filed its previous annual report on Form LM-2 and must be submitted within 30 days after the date of termination.

To complete a terminal report on Form LM-2, follow the instructions in Section XI and, in addition:

- Enter the date the labor organization ceased to exist in Item 2 after the word "Through."

- Enter an "X" in the box in Item 3(c) indicating that the labor organization ceased to exist during the reporting period and that this is the labor organization's terminal Form LM-2.

- Enter "3(c)" in the Item Number column in Item 69 (Additional Information) and provide a detailed statement of the reason the labor organization ceased to exist. Also report in Item 69 plans for the disposition of the labor organization's cash and other assets, if any (for example, transfer of cash and assets to the parent body). Provide the name and address of the person or organization that will retain the records of the terminated organization. If the labor organization merged with another labor organization, report that organization's name, address, and 6-digit file number.

Contact the nearest OLMS field office listed below if you have questions about filing a terminal report.

If You Need Assistance

The Office of Labor-Management Standards has field offices located in the following cities to assist you if you have any questions concerning LMRDA and CSRA reporting requirements.

Atlanta, GA
Birmingham, AL
Boston, MA
Buffalo, NY
Chicago, IL
Cincinnati, OH
Cleveland, OH
Dallas, TX
Denver, CO
Detroit, MI
Grand Rapids, MI
Guaynabo, PR
Honolulu, HI
Houston, TX
Kansas City, MO
Los Angeles, CA
Miami (Ft. Lauderdale), FL
Milwaukee, WI
Minneapolis, MN
Nashville, TN
New Haven, CT
New Orleans, LA
New York, NY
Newark (Iselin), NJ
Philadelphia, PA

Pittsburgh, PA
St. Louis, MO
San Francisco, CA
Seattle, WA
Tampa, FL
Washington, DC

Consult the OLMS Web site listed below or local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and telephone number of the nearest field office.

Copies of labor organization annual financial reports, employer reports, and labor relations consultant reports filed for the year 2000 and after can be viewed and printed at http://www.union-reports.dol.gov. Copies of reports for the year 1999 and earlier can be ordered through the Web site.

Information about OLMS, including key personnel and telephone numbers, compliance assistance materials, the text of the LMRDA, and related Federal Register and Code of Federal Regulations documents, is also available on the Internet at:

http://www.olms.dol.gov

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
Washington, DC 20210

FORM T-1 TRUST ANNUAL REPORT

Form Approved
Office of Management and Budget
No. xxxxxxxx
Expires: xx-xx-xxxx

This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.

READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT.

For Official Use Only	1. FILE NUMBERS UNION a) ☐☐☐ – ☐☐☐ TRUST b) T☐☐ – ☐☐☐	2. PERIOD COVERED MO DAY YEAR From ☐☐ ☐☐ ☐☐☐☐ Through ☐☐ ☐☐ ☐☐☐☐	3. (a) AMENDED - If this is an amended report, check here: ☐ (b) HARDSHIP - If filing under the hardship procedures, check here: ☐ (c) TERMINAL - If this is a terminal report, check here: ☐

4. NAME OF UNION		10. NAME OF TRUST	
5. DESIGNATION (Local, Lodge, etc.)	6. DESIGNATION NUMBER	11. TAX STATUS OF TRUST	
7. UNIT NAME OF UNION (if any)		12. PURPOSE OF TRUST	
8. MAILING ADDRESS OF UNION (use capital letters)		13. MAILING ADDRESS OF TRUST (use capital letters)	
First Name	Last Name	First Name	Last Name
P.O. Box - Building and Room Number (if any)		P.O. Box - Building and Room Number (if any)	
Number and Street		Number and Street	
City		City	
State	Zip Code + 4	State	Zip Code + 4

9. Are the union's records kept at its mailing address? (If "No," provide address in Item 25.)
Yes ☐ No ☐

14. Are the trust's records kept at its mailing address? (If "No," provide address in Item 25.)
Yes ☐ No ☐

15. Will the labor organization be submitting an independent, certified audit in place of the remainder of Form T-1?
Yes ☐ No ☐

Each of the undersigned, duly authorized officers of the above labor organization, declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. (See Section V on penalties in the instructions.)

26. SIGNED: _____ PRESIDENT
on ___/___/___ ( ) -
Date Telephone Number

27. SIGNED: _____ TREASURER
on ___/___/___ ( ) -
Date Telephone Number

COMPLETE ITEMS 16 THROUGH 25

UNION FILE NUMBER (a): ___ - ___

TRUST FILE NUMBER (b): T__ - ___

16. During the reporting period did the trust discover any loss or shortage of funds or other property? *(Answer "Yes" even if there has been repayment or recovery.)* Yes ☐ No ☐

17. During the reporting period did the trust acquire or dispose of any goods or property in any manner other than by purchase or sale? Yes ☐ No ☐

18. During the reporting period did the trust liquidate, reduce or write-off any liabilities without full payment of principal and interest? Yes ☐ No ☐

19. Has the trust extended any loan or credit during the reporting period to any officer or employee of the reporting labor organization at terms below market rates? Yes ☐ No ☐

20. During the reporting period did the trust liquidate, reduce or write-off any loans receivable due from officers or employees of the reporting labor organization without full receipt of principal and interest? Yes ☐ No ☐

If the answer to any of the above questions is "Yes," provide details in Item 25 (Additional Information) as explained in the instructions for each item.

21. Enter the total assets of the trust at the end of the reporting period. $

22. Enter the total liabilities (debts) of the trust at the end of the reporting period. $

23. Enter the total receipts of the trust during the reporting period. $

24. Enter the total disbursements of the trust during the reporting period. $

Please be sure to:
* Enter your labor organization's 6-digit file number and the trust's 7-digit file number in Item 1.
* Have your labor organization's president and treasurer sign the Form T-1 in Items 26 and 27.
* Complete Schedules 1 through 3

25. ADDITIONAL INFORMATION *(if more space is needed, attach additional pages properly identified.)*

Item Number	

SCHEDULE 1 - INDIVIDUALLY IDENTIFIED RECEIPTS

(List all entities from whom the trust received a total of $10,000 or more during the reporting period.)

UNION FILE NUMBER (a): ___ - ___

TRUST FILE NUMBER (b): T__ - ___

Initial Itemization Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of Receipts Listed Above		
	(G) Total of All Receipts from Continuation Pages with this Payer		
	(H) Total of All Itemized Receipts with this Payer (Sum of (F) and (G))		
	(I) Total of All Non-Itemized Receipts with this Payer		
	(J) **Total of All Receipts with this Payer** (Sum of (H) and (I))		

SCHEDULE 2 - INDIVIDUALLY IDENTIFIED DISBURSEMENTS

(List all entities that received $10,000 or more in total disbursements from the trust during the reporting period.)

UNION FILE NUMBER (a): ___ - ___

TRUST FILE NUMBER (b): T__ - ___

Initial Itemization Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of Disbursements Listed Above		
	(G) Total of All Disbursements from Continuation Pages with this Payee		
	(H) Total of All Itemized Disbursements to this Payee (Sum of (F) and (G))		
	(I) Total of All Non-Itemized Disbursements to this Payee		
	(J) **Total of All Disbursements to this Payee** (Sum of (H) and (I))		

SCHEDULE 3 - DISBURSEMENTS TO OFFICERS AND EMPLOYEES OF THE TRUST

UNION FILE NUMBER (a): ___ – ___

TRUST FILE NUMBER (b): T___ – ___

Page 1 of _____

Full Name / Title	(A) LAST, FIRST, MIDDLE INITIAL / Treasurer, Trustee, Attorney, etc.	Gross Salary Disbursements (before any deductions) (B)	Allowances (C)	Disbursements for Official Business (D)	Other Disbursements (E)	(F) TOTAL
1. Full Name						
Title						
2. Full Name						
Title						
3. Full Name						
Title						
4. Full Name						
Title						
5. Full Name						
Title						
6. Full Name						
Title						
7. Full Name						
Title						
8. Full Name						
Title						
9. Full Name						
Title						
10. Total from Continuation pages (if any)						
11. Total of Lines 1 through 10						

CONTINUATION ITEMIZATION PAGE FOR RECEIPTS/DISBURSEMENTS SCHEDULES 1 and 2

UNION FILE NUMBER (a): ___ – ___

TRUST FILE NUMBER (b): T___ – ___

Schedule	Page Number	Total Number of Continuation Pages

Continuation Itemization Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of All Transactions Listed Above		

Form T-1 (2003)

SCHEDULE 3 - DISBURSEMENTS TO OFFICERS AND EMPLOYEES OF THE TRUST

UNION FILE NUMBER (a): ___ - ___

TRUST FILE NUMBER (b): T___ - ___

Page _____ of _____

Continuation Page

Full Name / Title	(A) LAST, FIRST, MIDDLE INITIAL / Treasurer, Trustee, Attorney, etc.	Gross Salary Disbursements (before any deductions) (B)	Allowances (C)	Disbursements for Official Business (D)	Other Disbursements (E)	TOTAL (F)
1. Full Name						
Title						
2. Full Name						
Title						
3. Full Name						
Title						
4. Full Name						
Title						
5. Full Name						
Title						
6. Full Name						
Title						
7. Full Name						
Title						
8. Full Name						
Title						
9. Full Name						
Title						
10. Total of Lines 1 through 9						

Form T-1 (2003)

INSTRUCTIONS FOR FORM T-1 TRUST ANNUAL REPORT

GENERAL INSTRUCTIONS

I. WHO MUST FILE

Every labor organization subject to the Labor-Management Reporting and Disclosure Act, as amended (LMRDA), the Civil Service Reform Act (CSRA), or the Foreign Service Act (FSA), with total annual receipts of $250,000 or more, must file Form T-1 each year for each trust in which it is interested, as defined in the LMRDA at 29 U.S.C. 402(l), if the union's financial contribution to the trust, or a contribution made on the union's behalf or as a result of a negotiated agreement to which the union is a party, was $10,000 or more during the reporting year and the trust had $250,000 or more in annual receipts. No Form T-1 should be filed for any union that meets the statutory definition of a labor organization and already files a Form LM-2, LM-3, or LM-4, nor should a report be filed for any entity that is expressly exempted from reporting in the LMRDA. No separate report need be filed for Political Action Committee (PAC) funds if publicly available reports on the PAC funds are filed with a Federal or state agency, or for a political organization for which reports are filed with the Internal Revenue Service pursuant to 26 U.S.C. 527. No separate report is required for an employee benefit plan that filed a complete and timely annual report pursuant to the requirements of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1023, 1024(a), and 1030, and 29 C.F.R. 2520.103-1, for a plan year ending during the reporting period of the union (a notice filed with the Secretary of Labor pursuant to an exemption from reporting and disclosure does not constitute a complete annual financial report.

A labor organization may complete only Items 1 through 15 and Items 26-27 (Signatures) of Form T-1 if annual audits are prepared according to the following standards and a copy of the audit is filed with the Form T-1. The audit must be performed by an independent qualified public accountant, who after examining the financial statements and other books and records of the trust, as the accountant deems necessary, certifies that the trust's financial statements are presented fairly in conformity with Generally Accepted Accounting Principles (GAAP) or Other Comprehensive Basis of Accounting (OCBOA). The audit must include notes to the financial statements that disclose, for the preceding twelve-month period: losses, shortages, or other discrepancies in the trust's finances; the acquisition or disposition of assets, other than by purchase or sale; liabilities and loans liquidated, reduced, or written off without the disbursement of cash; loans made to union officers or employees that were

granted at more favorable terms than were available to others; and loans made to officers and employees that were liquidated, reduced, or written off. The audit must be accompanied by schedules that disclose, for the preceding twelve-month period: a statement of the assets and liabilities of the trust, aggregated by categories and valued at current value, and the same data displayed in comparative form for the end of the previous fiscal year of the trust; a statement of trust receipts and disbursements aggregated by general sources and applications, which must include the names of the parties with which the trust engaged in $10,000 or more of commerce and the total of the transactions with each party.

Form T-1 must be filed with the Office of Labor-Management Standards (OLMS) of the U.S. Department of Labor's (Department) Employment Standards Administration. The labor organization must file a separate Form T-1 for each trust that meets the above requirements. The LMRDA, CSRA, and FSA cover labor organizations that represent employees who work in private industry, employees of the U.S. Postal Service, and most Federal government employees. Questions about whether a labor organization is required to file should be referred to the nearest OLMS field office listed at the end of these instructions.

II. When to File

Form T-1 must be filed within 90 days of the end of the labor organization's fiscal year. The penalties for delinquency are described in Section V (Officer Responsibilities And Penalties) of these instructions.

If a trust for which a labor organization was required to file a Form T-1 goes out of existence, a terminal financial report must be filed within 30 days after the date it ceased to exist. Similarly, if a trust for which a labor organization was required to file a Form T-1 continues to exist, but the labor organization's interest in that trust ceases, a terminal financial report must be filed within 30 days after the date that the labor organization's interest in the trust ceased. See Section IX (Trusts That Have Ceased to Exist) of these instructions for information on filing a terminal financial report.

III. How to File

Form T-1 must be prepared using software obtained from the Department and must be submitted electronically to the Department. A Form T-1 filer will be able to file a report in paper format only if it applies for and is granted a continuing hardship exemption of up to one year, but a paper format copy may be submitted initially if the filer asserts a temporary hardship and files electronically thereafter.

Information on obtaining the electronic filing software and a detailed user guide can be found on the OLMS Web site at http://www.olms.dol.gov.

HARDSHIP EXEMPTIONS

A labor organization that must file Form T-1 may assert a temporary hardship exemption or apply for a continuing hardship exemption to prepare and submit the report in paper format. If a labor organization files both Form LM-2 and Form T-1, the exemption must be separately asserted for each report, although in appropriate circumstances the same reasons may be used to support both exemptions. If it is possible to file Form LM-2, or one or more Form T-1s, electronically, no exemption should be claimed for those reports, even though an exemption is warranted for a related report.

TEMPORARY HARDSHIP EXEMPTION:

If a labor organization experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing of Form T-1, it may be filed in paper format by the

required due date. An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date. Indicate in Item 3 (Amended, Hardship Exempted, or Terminal Report) that the labor organization is filing this form under the hardship exemption procedures. Unanticipated technical difficulties that may result in additional delays should be brought to the attention of the OLMS Division of Interpretations and Standards, which can be reached at the above address, by email at OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

Note: *If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.*

CONTINUING HARDSHIP EXEMPTION:

(a) The labor organization may apply in writing for a continuing hardship exemption if Form T-1 cannot be filed electronically without undue burden or expense. Such written application shall be received at least thirty days prior to the required due date of the report(s). The written application shall contain the information set forth in paragraph (b).

The application must be mailed to the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5605
Washington, DC 20210-0001

Questions regarding the application should be directed to the OLMS Division of Interpretations and Standards, which can be reached at the above address, by e-mail at OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

(b) The request for the continuing hardship exemption shall include, but not be limited to, the following: (1) the justification for the requested time period of the exemption; (2) the burden and expense that the union would incur if it was required to make an electronic submission; and (3) the reasons for not submitting the report(s) electronically. The applicant must specify a time period not to exceed one year.

(c) The continuing hardship exemption shall not be deemed granted until the Department notifies the applicant in writing. If the Department denies the application for an exemption, the labor organization shall file the report(s) in electronic format by the required due date. If the Department determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of union members and so notifies the applicant, the labor organization shall follow the procedures set forth in paragraph (d).

(d) If the request is granted, the labor organization shall submit the report(s) in paper format by the required due date. The filer may be required to submit Form T-1 in electronic format upon the expiration of the period for which the exemption is granted. Indicate in Item 3 (Amended, Hardship Exempted, or Terminal Report) that the labor organization is filing under the hardship exemption procedures.

Note: *If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.*

SPECIAL INSTRUCTIONS FOR SUBMITTING FORM T-1 IN PAPER FORMAT:

Those labor organizations that are granted an exemption will be provided with a report package in paper format, which must be completed and filed at the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5616
Washington, DC 20210-0001

Number of Copies

Complete one of the two blank copies included in the report package; do not use a photocopy of the form. The completed report must be filed with OLMS. A copy should also be maintained in the labor organization's records.

Information Entry

Entries on the report should be typed or clearly printed in black ink. Do not use a pencil or any other color ink.

In all Items and Schedules dealing with monetary values, report amounts in dollars only. Do not enter cents. Round cents to the nearest dollar. Enter a single "0" in the boxes for reporting dollars if the labor organization has nothing to report.

Entering Dollars:

$1,573,844 – do not enter cents

Entering Zero:

$ _, _ _ _, _ _ 0

Entering "Yes" or "No"

For items requiring a "Yes" or "No" answer, enter an "X" in the appropriate box. Do not use check marks or other marks.

Schedules 1 Through 3 Continuation Pages

If the union is completing the report in paper format, multiple copies of the Initial Itemization Page and the Continuation Itemization Pages for Schedules 1 and 2 are included in the report package. More copies of these pages may be ordered from any OLMS office.

If there is not enough space to report all the required information in Schedule 3, report additional information on the preprinted continuation pages that are included in the report package. More copies of these continuation pages may be ordered from any OLMS office.

In the space provided at the top of the page, enter the 6-digit (###-###) file number of the labor organization and the 7-digit (T###-###) file number of the trust as reported in Item 1 (File Number), the page number for each continuation page, and the total number of additional pages attached. Totals from any additional pages must be entered on the line provided in each schedule.

Additional Pages

Some of the items on the report require that further details be provided in Item 25 (Additional Information). If there is not enough space in Item 25, enter the additional information on a separate letter-size (8 ½ x 11) page(s), giving the number of the item to which the information applies. At the top of the page, enter the 6-digit (###-###) file number of the labor organization and the 7-digit (T###-###) file number of the trust as reported in Item 1 (File Number), the page number for each additional page, and the total number of additional pages attached.

IV. Public Disclosure

The LMRDA requires that the Department make reports filed by labor organizations available for inspection by the public. Reports may be viewed and downloaded from the OLMS Web site at http://www.union-reports.dol.gov. Reports may also be examined and copies purchased through the OLMS Public Disclosure Room (telephone: 202-693-0125) at the following address:

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5608
Washington, DC 20210-0001

V. Officer Responsibilities and Penalties

The president and treasurer or the corresponding principal officers of the labor organization required to sign Form T-1 are personally responsible for its filing and accuracy. Under the LMRDA, officers are subject to criminal penalties for willful failure to file a required report and for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly failing to disclose a material fact in a required report or in the information required to be contained in the report or in any information required to be submitted with it. Under the CSRA and FSA and implementing regulations, false reporting and failure to report may result in administrative enforcement action and litigation. The officers responsible for signing Form T-1 are also subject to criminal penalties for false reporting and perjury under Sections 1001 of Title 18 and 1746 of Title 28 of the United States Code.

The reporting labor organization and the officers required to sign Form T-1 are also subject to civil prosecution for violations of the filing requirements. Section 210 of the LMRDA (29 U.S.C. 440), provides that "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

VI. Recordkeeping

The officers required to file Form T-1 are responsible for maintaining records that will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. The records must be kept for at least five years after the date the report is filed. Any record necessary to verify, explain, or clarify the report must be retained, including, but not limited to, vouchers, worksheets, receipts, applicable resolutions, and any electronic documents used to complete and file the report.

SPECIAL INSTRUCTIONS FOR CERTAIN ORGANIZATIONS

VII. Labor Organizations in Trusteeship

Any labor organization that has placed a subordinate labor organization in trusteeship is responsible for filing the subordinate's annual financial reports. This obligation includes the requirement to file Form T-1 for any trusts in which the subordinate labor organization is interested. A trusteeship is defined in section 3(h) of the LMRDA (29 U.S.C. 402) as "any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws."

The report must be signed by the president and treasurer or corresponding principal officers of the labor organization that imposed the trusteeship and by the trustees of the subordinate labor organization. Trustees must sign and date Form T-1 in the space below the officers' signatures and telephone numbers in Items 26 and 27 (Signatures).

VIII. Completing Form T-1

ITEMS 1 THROUGH 20

Answer Items 1 through 20 as instructed. Enter an "X" in the appropriate box for those questions requiring a "Yes" or "No"

answer; do not leave both boxes blank.

1. FILE NUMBER — Enter in Item 1(a) the 6-digit (###-###) file number that OLMS assigned to the labor organization. If the labor organization does not have the number on file and cannot obtain the number from prior reports filed with the Department, the number can be obtained from the OLMS Web site at http://www.union-reports.dol.gov or by contacting the nearest OLMS field office listed at the end of these instructions. The labor organization's 6-digit (###-###) file number must also be entered in the File Number boxes at the top of each page of Form T-1.

Enter in Item 1(b) the 7-digit (T###-###) file number that OLMS assigned to the trust. For an initial filing of a Form T-1, this number may be obtained by calling the OLMS Division of Reports, Disclosure & Audits at (202) 693-0124 or by contacting OLMS at the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5616
Washington, DC 20210-0001

For future filings, if the labor organization does not have the number on file and cannot obtain the number from the trust or from prior reports filed with the Department, information on obtaining the number can be found on the OLMS website at http://www.olms.dol.gov. The trust's 7-digit (T###-###) file number must also be entered in the File Number boxes at the top of each page of Form T-1.

2. PERIOD COVERED — Enter the beginning and ending dates of the period covered by this report. The report should never cover more than a 12-month period. For example, if the trust's 12-month fiscal year begins on January 1 and ends on December 31, enter these dates as 01/01/20XX and 12/31/20XX. It would be incorrect to enter January 1 of one year through January 1 of the next year.

If the fiscal year changed, enter in Item 2 (Period Covered) the ending date for the period of less than 12 months, which is the new fiscal year ending date, and report in Item 25 (Additional Information) that the trust changed its fiscal year. For example, if the fiscal year ending date changes from June 30 to December 31, a report must be filed for the partial year from July 1 to December 31. Thereafter, the annual report should cover a full 12-month period from January 1 to December 31.

3. AMENDED, HARDSHIP EXEMPTED, OR TERMINAL REPORT — Do not complete this item unless this report is an amended, hardship exempted, or terminal report. Enter an "X" in the box in Item 3(a) if the labor organization is filing an amended Form T-1 correcting a previously filed Form T-1. Enter an "X" in the box in Item 3(b) if the labor organization is filing under the hardship exemption procedures defined in Section III. Enter an "X" in the box in Item 3(c) if the trust has gone out of business by disbanding, merging into another organization, or being merged and consolidated with one or more trusts to form a new trust, or if the labor organization's interest in the trust has ceased and this is the terminal report for the trust. Be sure the date the trust ceased to exist is entered in Item 2 (Period Covered) after the word "Through." See Section IX (Trusts That Have Ceased to Exist) of these instructions for more information on filing a terminal report.

4. AFFILIATION OR ORGANIZATION NAME — Enter the name of the national or international labor organization that granted the labor organization a charter.

If the labor organization has no such affiliation, enter the name of the labor organization as currently identified in the labor organization's constitution and bylaws or other organizational documents.

5. DESIGNATION — Enter the specific designation, if any, that is used to identify the labor organization, such as Local, Lodge, Branch, Joint Board, Joint Council, District Council, etc.

6. DESIGNATION NUMBER — Enter the number or other identifier, if any, by which the labor organization is known.

7. UNIT NAME — Enter any additional or alternate name by which the labor organization is known, such as "Chicago Area Local."

8. MAILING ADDRESS OF UNION — Enter the current address where mail is most likely to reach the labor organization as quickly as possible. Be sure to indicate the first and last name of the person, if any, to whom such mail should be sent and include any building and room number.

9. PLACE WHERE UNION RECORDS ARE KEPT — If the records required to be kept by the labor organization to verify this report are kept at the address reported in Item 8 (Mailing Address of Union), answer "Yes." If not, answer "No" and provide in Item 25 (Additional Information) the address where the labor organization's records are kept.

10. NAME OF TRUST — Enter the name of the trust.

11. TAX STATUS OF TRUST — Enter the tax status of the trust. For instance, a nonprofit trust may have a 501(C)(3) tax designation.

12. PURPOSE — Enter the purpose of the trust. For example, if the trust is a credit union that provides loans to union members, the purpose may be "credit union."

13. MAILING ADDRESS OF TRUST — Enter the current address where mail is most likely to reach the trust as quickly as possible. Be sure to indicate the first and last name of the person, if any, to whom such mail should be sent and include any building and room number.

14. PLACE WHERE TRUST RECORDS ARE KEPT — If the records required to be kept to verify this report are kept at the address reported in Item 13 (Mailing Address of Trust), answer "Yes." If not, answer "No" and provide in Item 25 (Additional Information) the address where the trust's records are kept. The labor organization need not keep separate copies of these records at its own location, as long as members have the same access to such records from the trust as they would be entitled to have from the labor organization.

Note: The president and treasurer of the labor organization are responsible for maintaining the records used to prepare the report.

15. AUDIT EXEMPTION — Answer "Yes" to Item 15 if the labor organization will be submitting an independent, certified audit in place of the remainder of Form T-1. If an audit report meeting the standards described in Section I (Who Must File) is submitted with a Form T-1 that has been completed for Items 1 through 15 then it is not necessary to complete Items 16 through 25, and Schedules 1 through 3. However, Items 26-27 (Signatures) must be completed.

16. LOSSES OR SHORTAGES — Answer "Yes" to Item 16 if the trust experienced a loss, shortage, or other discrepancy in its finances during the period covered. Describe the loss or shortage in detail in Item 25 (Additional Information), including such information as the amount of the loss or shortage of funds or a description of the property that was lost, how it was lost, and to what extent, if any, there has been an agreement to make restitution or any recovery by means of repayment, fidelity bond, insurance, or other means.

17. ACQUISITION OR DISPOSITION OF

ASSETS — If Item 17 is answered "Yes," describe in Item 25 (Additional Information) the manner in which the trust acquired or disposed of the asset(s), such as donating office furniture or equipment to charitable organizations, trading in assets, writing off a receivable, or giving away other tangible or intangible property of the trust. Include the type of asset, its value, and the identity of the recipient or donor, if any. Also report in Item 25 the cost or other basis at which any acquired assets were entered on the trust's books or the cost or other basis at which any assets disposed of were carried on the trust's books.

For assets that were traded in, enter in Item 25 the cost, book value, and trade-in allowance.

18. LIQUIDATION OF LIABILITIES — If Item 18 is answered "Yes," provide in Item 25 (Additional Information) all details in connection with the liquidation, reduction, or writing off of the trust's liabilities without the disbursement of cash.

19. LOANS AT FAVORABLE TERMS — If Item 19 is answered "Yes," provide in Item 25 (Additional Information) all details in connection with each such loan, including the name of the union officer or employee, the amount of the loan, the amount that was still owed at the end of the reporting period, the purpose of the loan, terms for repayment, any security for the loan, and a description of how the terms of the loan were more favorable than those available to others.

20. WRITING OFF OF LOANS — If Item 20 is answered "Yes," describe in Item 25 (Additional Information) all details in connection with each such loan, including the amount of the loan and the reasons for the writing off, liquidation, or reduction.

FINANCIAL DETAILS

REPORT ONLY DOLLAR AMOUNTS

Report all amounts in dollars only. Round cents to the nearest dollar. Amounts ending in $.01 through $.49 should be rounded down. Amounts ending in $.50 through $.99 should be rounded up.

Enter a single "0" if there is nothing to report.

REPORTING CLASSIFICATIONS

Complete all items and lines on the form as given. Do not use different accounting classifications or change the wording of any item or line.

ITEMS 21 THROUGH 24

21. ASSETS — Enter the total value of all the trust's assets at the end of the reporting period including, for example, cash on hand and in banks, property, loans owed to the trust, investments, office furniture, automobiles, and anything else owned by the trust. Enter "0" if the trust had no assets at the end of the reporting period.

22. LIABILITIES — Enter the total amount of all the trust's liabilities at the end of the reporting period including, for example, unpaid bills, loans owed, the total amount of mortgages owed, payroll withholdings not transmitted by the end of the reporting period, and other debts of the trust. Enter "0" if the trust had no liabilities at the end of the reporting period.

23. RECEIPTS — Enter the total amount of all receipts of the trust during the reporting period including, for example, interest, dividends, rent, money from the sale of assets, and loans received by the trust. Enter "0" if the trust had no receipts during the reporting period.

24. DISBURSEMENTS — Enter the total amount of all disbursements made by the trust during the reporting period including, for example, net payments to officers and employees of the trust, payments for administrative expenses, loans made by the trust, taxes paid, and disbursements for the transmittal of withheld taxes and

other payroll deductions. Enter "0" if the trust made no disbursements during the reporting period.

SCHEDULES 1 THROUGH 3

SCHEDULES 1 AND 2 — RECEIPTS AND DISBURSEMENTS

Schedules 1 and 2 provide detailed information on the financial operations of the trust. These schedules will be populated by the electronic filing software as long as the trust's records are maintaining using a properly configured electronic recordkeeping system that is compatible with the software provided by the Department. Information about the electronic filing software and the technical specifications can be found on the OLMS Web site at http://www.olms.dol.gov. A detailed user guide is included with the electronic filing software.

All "major" receipts during the reporting period must be separately identified in Schedule 1. A "major" receipt includes: 1) any individual receipt of $10,000 or more; or 2) total receipts from any single entity or individual that aggregate to $10,000 or more during the reporting period. This process is discussed further below.

All "major" disbursements during the reporting period must be separately identified in Schedule 2. A "major" disbursement includes: 1) any individual disbursement of $10,000 or more; or 2) total disbursements to any single entity or individual that aggregate to $10,000 or more during the reporting period. This process is discussed further below.

Note: Disbursements to officers and employees of the trust who received more than $10,000 from the trust during the reporting period should be reported in Schedule 3, and need not also be reported in Schedule 2.

Example 1: The trust has an ongoing contract with a law firm that provides a wide range of legal services to which a single payment of $10,000 is made each month. Each payment would be listed in Schedule 2.

Example 2: The trust received a settlement of $14,000 in a small claims lawsuit. The receipt would be individually identified in Schedule 1.

Example 3: The trust made three payments of $4,000 each to an office supplies vendor for office supplies during the reporting period. The $12,000 in disbursements to the vendor would be reported in Schedule 2 in line I of an Initial Itemization Page for that vendor.

Procedures for Completing Schedules 1 and 2

Complete an Initial Itemization Page and a Continuation Itemization Page(s), as necessary, for each payer/payee for whom there is (1) an individual receipt/disbursement of $10,000 or more or (2) total receipts/disbursements that aggregate to $10,000 or more during the reporting period. For each major receipt/disbursement, provide the full name and business address of the entity or individual, type of business or job classification of the entity or individual, purpose of the receipt/disbursement, date, and amount of the receipt/disbursement. Receipts/disbursements must be listed in chronological order.

An Initial Itemization Page must be completed for each payer/payee described above. If the Form T-1 is being prepared using the reporting software provided by the Department, the Initial Itemization Page will expand to fit the number of major receipts/disbursements for the payer/payee. If the report is being completed in paper format and more than one page is needed for a single payer/payee, the Continuation Itemization Page should be used for all subsequent pages.

Enter in Column (A) the full name and business address of the entity or individual

from which the receipt was received or to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not have access to the full address, the city and state is sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual, such as printing company, office supplies vendor, lobbyist, think tank, marketing firm, bookkeeper, receptionist, shop steward, legal counsel, union member, etc.

Enter in Column (C) the purpose of the receipt/disbursement, which means a brief statement or description of the reason the receipt/disbursement was made.

Enter in Column (D) the date that the receipt/disbursement was made. The date of receipt/disbursement for reporting purposes is the date the trust actually received or disbursed the money, rather than the date that the right to receive, or the obligation to disburse, was incurred.

Enter in Column (E) the amount of the receipt/disbursement.

Enter in Line (F) the total of all transactions listed in Column (E).

Enter in Line (G) the totals from any Continuation Itemization Pages for this payer/payee.

Enter in Line (H) the total of all itemized transactions with this payer/payee (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all other transactions with this payer/payee (that is, all individual transactions of less than $10,000 each).

Enter in Line (J) the total of all transactions with this payer/payee (the sum of Lines (H) and (I)).

Special Instructions for Reporting Credit Card Disbursements

Disbursements to credit card companies may not be reported as a single disbursement to the credit card company as the vendor. Instead, charges appearing on credit card bills paid during the reporting period must be allocated to the recipient of the payment by the credit card company according to the same process as described above.

The Department recognizes that filers will not always have the same access to information regarding credit card payments as with other transactions. Filers should report all of the information required in the itemization schedule that is available to the union.

For instance, in the case of a credit card transaction for which the receipt(s) and monthly statement(s) do not provide the full legal name of a payee and the trust does not have access to any other documents that would contain the information, the union should report the name as it appears on the receipt(s) and statement(s). Similarly, if the receipt(s) and statement(s) do not include a full street address, the union should report as much information as is available and no less than the city and state. A filer may choose to report either the date of the charge or the date of the payment for a credit card transaction as long as the method of reporting is consistent throughout the form.

Once these transactions have been incorporated into the recordkeeping system they can be treated like any other transaction for purposes of assigning a description and purpose.

In instances when a credit card transaction is canceled and the charge is refunded in whole or part by entry of a credit on the credit card statement, the charge should be treated as a disbursement, and the credit should be treated as a receipt. In reporting the credit as a receipt, Column (C) of Schedule 1 must indicate that the receipt was in

refund of a disbursement, and must identify the disbursement by date and amount.

Special Procedures for Reporting Confidential Information

Filers may use the procedure described below to report the following types of information:

- Information that would identify individuals paid by the trust to work in a non-union bargaining unit in order to assist the union in organizing employees, provided that such individuals are not employees of the trust who receive more than $10,000 in the aggregate in the reporting year from the trust. Employees receiving more than $10,000 must be reported on Schedule 3;

- Information that would expose the reporting union's prospective organizing strategy. The union must be prepared to demonstrate that disclosure of the information would harm an organizing drive. Absent unusual circumstances information about past organizing drives should not be treated as confidential;

- Information that would provide a tactical advantage to parties with whom the reporting union or an affiliated union is engaged or will be engaged in contract negotiations. The union must be prepared to demonstrate that disclosure of the information would harm a contract negotiation. Absent unusual circumstances information about past contract negotiations should not be treated as confidential;

- Information pursuant to a settlement that is subject to a confidentiality agreement, or that the union or trust is otherwise prohibited by law from disclosing; and,

- Information in those situations where disclosure would endanger the health or safety of an individual.

With respect to these specific types of information, if the reporting union can demonstrate that itemized disclosure of a specific major receipt or disbursement, or aggregated receipt or disbursement would be adverse to the union or trust's legitimate interests, the union may exclude the transaction from Schedules 1 and 2. In Item 25 (Additional Information) the union must identify each schedule from which any itemized receipts or disbursements were excluded because of an asserted legitimate interest in confidentiality. The notation must describe the general types of information that were omitted from the schedule, but the name of the payer/payee, date, and amount of the transaction(s) is not required.

A union member, however, has the statutory right "to examine any books, records, and accounts necessary to verify" the financial report if the member can establish "just cause" for access to the information. 29 U.S.C. 431(c); 29 U.S.C. CFR 403.8 (2002). Any exclusion of itemized receipts or disbursements from Schedules 1 or 2 would constitute a *per se* demonstration of "just cause" for purposes of this Act. Consequently, any union member (and the Department), upon request, has the right to review the undisclosed information in the union's possession at the time of the request that otherwise would have appeared in the applicable schedule if the information is withheld in order to protect confidentiality interests. The union also must make a good faith effort to obtain additional information from the trust.

SCHEDULE 3 — DISBURSEMENTS TO OFFICERS AND EMPLOYEES OF THE

TRUST

List the names and titles of all officers of the trust, whether or not any salary or disbursements were made to them or on their behalf by the trust. Report all direct and indirect disbursements to all officers of the trust and to all employees of the trust who received more than $10,000 in gross salaries, allowances, and other direct and indirect disbursements from the trust during the reporting period. If no direct or indirect disbursements were made to any officer of the trust enter 0 in Columns (B) through (F) opposite the officer's name.

NOTE: *A "direct disbursement" to an officer or employee is a payment made by the trust to the officer or employee in the form of cash, property, goods, services, or other things of value.*

An "indirect disbursement" to an officer or employee is a payment made by the trust to another party for cash, property, goods, services, or other things of value received by or on behalf of the officer or employee. "On behalf of the officer or employee" means received by a party other than the officer or employee of the trust for the personal interest or benefit of the officer or employee. Such payments include payments made by the trust for charges on an account of the trust for credit extended to or purchases by, or on behalf of, the officer or employee.

Column (A): Enter in Column (A) the last name, first name, and middle initial of each person who was either (1) an officer of the trust at any time during the reporting period or (2) an employee of the trust who received $10,000 or more in total disbursements from the trust during the reporting period. Also enter the title or the position held by each officer or employee listed. If an officer or employee held more than one position during the reporting period, in Item 25 (Additional Information) list each position and the dates during which the person held the position.

Column (B): Enter the gross salary of each officer (before tax withholdings and other payroll deductions). Include disbursements for "lost time" or time devoted to trust activities.

Column (C): Enter the total allowances made by direct and indirect disbursements to each officer or employee on a daily, weekly, monthly, or other periodic basis. Do not include allowances paid on the basis of mileage or meals which must be reported in Column (D) or (E), as applicable.

Column (D): Enter all direct and indirect disbursements to each officer or employee that were necessary for conducting official business of the trust, except salaries or allowances which must be reported in Columns (B) and (C), respectively.

Examples of disbursements to be reported in Column (D) include: all expenses that were reimbursed directly to an officer or employee, meal allowances and mileage allowances, expenses for officers' or employees' meals and entertainment, and various goods and services furnished to officers or employees but charged to the trust. Such disbursements should be included in Column (D) only if they were necessary for conducting official business; otherwise, report them in Column (E). Include in Column (D) travel advances that meet the following conditions:

- The amount of an advance for a specific trip does not exceed the amount of expenses reasonably expected to be incurred for official travel in the near future, and the amount of the advance is fully repaid or fully accounted for by vouchers or paid receipts within 30 days after the completion or cancellation of the travel.
- The amount of a standing advance to an officer or employee who must frequently travel on official business does not unreasonably exceed the average monthly travel

expenses for which the individual is separately reimbursed after submission of vouchers or paid receipts, and the individual does not exceed 60 days without engaging in official travel.

Do not report the following disbursements in Schedule 3, but should be reported in Schedule 2 if they meet the definition of a major disbursement:

- Reimbursements to an officer or employee for the purchase of investments or fixed assets, such as reimbursing an officer or employee for a file cabinet purchased for office use;
- Indirect disbursements for temporary lodging (room rent charges only) or transportation by public carrier necessary for conducting official business while the officer or employee is in travel status away from his or her home and principal place of employment with the trust if payment is made by the trust directly to the provider or through a credit arrangement;
- Disbursements made by the trust to someone other than an officer or employee as a result of transactions arranged by an officer or employee in which property, goods, services, or other things of value were received by or on behalf of the trust rather than the officer or employee, such as rental of offices and meeting rooms, purchase of office supplies, refreshments and other expenses of meetings, and food and refreshments for the entertainment of groups other than the officers or employees on official business;
- Office supplies, equipment, and facilities furnished to officers or employees by the trust for use in conducting official business; and
- Maintenance and operating costs of the trust's assets, including buildings, office furniture, and office equipment; however, see "Special Rules for Automobiles" below.

Column (E): Enter all other direct and indirect disbursements to each officer or employee. Include all disbursements for which cash, property, goods, services, or other things of value were received by or on behalf of each officer or employee and were essentially for the personal benefit of the officer or employee and not necessary for conducting official business of the trust.

Include in Column (E) all disbursements for transportation by public carrier between the officer or employee's home and place of employment or for other transportation not involving the conduct of official business. Also, include the operating and maintenance costs of all the trust's assets (automobiles, etc.) furnished to officers or employees essentially for the officers or employees' personal use rather than for use in conducting official business.

Column (F): Add Columns (B) through (E) of each Line and enter the totals in Column (F).

Enter on Line 10 the totals from any continuation pages for Schedule 3.

Enter the totals of Lines 1 through 10 for each Column on Line 11.

SPECIAL RULES FOR AUTOMOBILES

Include in Column (E) of Schedule 3 that portion of the operating and maintenance costs of any automobile owned or leased by the trust to the extent that the use was for the personal benefit of the officer or employee to whom it was assigned. This portion may be computed on the basis of the mileage driven on official business compared with the mileage for personal use. The portion not included in Column (E) must be reported in Column (D).

Alternatively, rather than allocating these operating and maintenance costs between

Columns (D) and (E), if 50% or more of the officer or employee's use of the vehicle was for official business, the trust may enter in Column (D) all disbursements relative to that vehicle with an explanation in Item 25 (Additional Information) indicating that the vehicle was also used part of the time for personal business. Likewise, if less than 50% of the officer or employee's use of the vehicle was for official business, the trust may report all disbursements relative to the vehicle in Column (E) with an explanation in Item 25 indicating that the vehicle was also used part of the time on official business.

The amount of decrease in the market value of an automobile used over 50% of the time for the personal benefit of an officer or employee must also be reported in Item 25.

ADDITIONAL INFORMATION AND SIGNATURES

25. ADDITIONAL INFORMATION — Use Item 25 to provide additional information as indicated on Form T-1 and in these instructions. If you are filing the Form T-1 in a paper format and there is not enough space in Item 25, see the instructions for continuation pages in Section III (How to File).

26-27. SIGNATURES — The completed Form T-1 that is filed with OLMS must be signed by both the president and treasurer, or corresponding principal officers, of the labor organization. If an officer other than the president or treasurer performs the duties of the principal executive or principal financial officer, the other officer may sign the report. If an officer other than the president or treasurer signs the report, enter the correct title in Item 26 or 27, and explain in Item 25 (Additional Information) why the president or treasurer did not sign the report. Electronically submitted forms must be signed with digital signatures which will automatically enter the date. Information about this system can be obtained on the OLMS Web site at http://www.olms.dol.gov.

Enter the date the report was signed and the telephone number at which the signatories conduct official business; a private, unlisted telephone number does not have to be reported. On a paper Form T-1 submitted pursuant to an exemption, original signatures are required; stamped or mechanical signatures are not acceptable.

IX. TRUSTS THAT HAVE CEASED TO EXIST

If a trust has gone out of existence as a trust in which a labor organization is interested, the president and treasurer of the labor organization must file a terminal financial report for the period from the beginning of the trust's fiscal year to the date of termination. A terminal financial report must be filed if the trust has gone out of business by disbanding, merging into another organization, or being merged and consolidated with one or more trusts to form a new trust. Similarly, if a trust in which a labor organization previously was interested continues to exist, but the labor organization's interest terminates, the labor organization must file a terminal financial report for that trust.

The terminal financial report must be filed within 30 days after the date of termination to the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5616
Washington, DC 20210-0001

To complete a terminal report on Form T-1, follow the instructions in Section VIII and, in addition:

- Enter the date the trust, or the labor organization's interest in the trust, ceased to exist in Item 2 after the word

"Through."

- Enter an "X" in the box in Item 3(c) indicating that the trust, or the labor organization's interest in the trust, ceased to exist during the reporting period and that this is the terminal Form T-1 for the trust from the labor organization.

- Enter "3(c)" in the Item Number column in Item 25 (Additional Information) and provide a detailed statement of the reason the trust, or the labor organization's interest in the trust, ceased to exist. If the trust ceased to exist, also report in Item 25 plans for the disposition of the trust's cash and other assets, if any. Provide the name and address of the person or organization that will retain the records of the terminated organization. If the trust merged with another trust, report that organization's name and address.

Contact the nearest OLMS field office listed below if you have questions about filing a terminal report.

If You Need Assistance

The Office of Labor-Management Standards has field offices located in the following cities to assist you if you have any questions concerning LMRDA and CSRA reporting requirements.

Atlanta, GA
Birmingham, AL
Boston, MA
Buffalo, NY
Chicago, IL
Cincinnati, OH
Cleveland, OH
Dallas, TX
Denver, CO
Detroit, MI
Grand Rapids, MI
Guaynabo, PR
Honolulu, HI
Houston, TX
Kansas City, MO
Los Angeles, CA
Miami (Ft. Lauderdale), FL
Milwaukee, WI
Minneapolis, MN
Nashville, TN
New Haven, CT
New Orleans, LA
New York, NY
Newark (Iselin), NJ
Philadelphia, PA
Pittsburgh, PA
St. Louis, MO
San Francisco, CA
Seattle, WA
Tampa, FL
Washington, DC

Consult the OLMS Web site listed below or local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and telephone number of the nearest field office.

Copies of labor organization annual financial reports, employer reports, and labor relations consultant reports filed for the year 2000 and after can be viewed and printed at http://www.union-reports.dol.gov. Copies of reports for the year 1999 and earlier can be ordered through the Web site.

Information about OLMS, including key personnel and telephone numbers, compliance assistance materials, the text of the LMRDA, and related Federal Register and Code of Federal Regulations documents, is also available at:

http://www.olms.dol.gov

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October 9, 2003

Part III

Department of Labor

Employment and Training Administration

20 CFR Part 604

Unemployment Compensation—Trust Fund Integrity Rule; Birth and Adoption Unemployment Compensation; Removal of Regulations; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 604

RIN 1205–AB33

Unemployment Compensation—Trust Fund Integrity Rule; Birth and Adoption Unemployment Compensation; Removal of Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor (Department) is issuing this final rule to remove the Birth and Adoption Unemployment Compensation (BAA–UC) regulations. Those regulations permitted an experimental opportunity for states to provide, in the form of unemployment compensation (UC), partial wage replacement for parents taking approved leave or otherwise leaving employment while caring for their newborns or newly-adopted children.

EFFECTIVE DATE: This final rule is effective November 10, 2003.

FOR FURTHER INFORMATION CONTACT: Gerard Hildebrand, Office of Workforce Security, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4518, Washington, DC 20210. Telephone: (202) 693–3038 (voice) (this is not a toll-free number); 1–800–326–2577 (TDD); facsimile: (202) 693–2874; e-mail: *hildebrand.gerard@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Overview

On June 13, 2000, the Department published the BAA–UC Final Rule in the **Federal Register** at 65 FR 37210. The rule was codified at 20 CFR Part 604. It implemented an experimental opportunity for state agencies responsible for administering the Federal-State UC program to provide partial wage replacement for parents taking approved leave, or otherwise leaving employment, following the birth or placement for adoption of a child. On December 4, 2002, the Department published a Notice of Proposed Rulemaking (NPRM) proposing to remove the BAA–UC regulations in the **Federal Register**. (67 FR 72122 (December 4, 2002).) The NPRM invited the public to comment over a 60-day period, ending February 3, 2003. Comments were accepted by mail and electronic media.

The preamble to the NPRM contained a detailed explanation of the reasons for the removal of the BAA–UC regulations. In order to adequately respond to comments, and to eliminate the need for readers to refer to the NPRM for context, much of the material in the NPRM is repeated in this document.

B. Background on BAA–UC

Under BAA–UC, states were permitted, as part of a voluntary experiment, to amend their state UC laws to provide partial wage replacement for parents taking approved leave, or otherwise leaving employment, following the birth or placement for adoption of a child. In qualifying for UC, the individual would not have to be able and available (A&A) for work in the sense traditionally used by the Department. Instead, parents of newborns and newly-adopted children would be viewed as meeting the federal A&A requirements (as implemented through state law) under the premise that the parents' long-term attachment to the workforce would be strengthened and promoted by the payment of UC, which would provide some financial support to accompany the introduction of a new child into the family.

As the Department noted during the final rulemaking in 2000, the BAA–UC experiment was ''a reversal of our position taken in 1997,'' when the Department advised a state that UC could not be used in this manner. (65 FR 37212 (June 13, 2000).) The BAA–UC experiment was described as ''part of an evolving interpretation of the federal A&A requirements that recognizes practical and economic realities.'' *(Id.)* Simply stated, the Department interpreted the A&A requirements in a new and different way that emphasized the individual's potential long-term attachment to the workforce. BAA–UC was intended to test whether individuals would be more attached to the workforce, even if their current separation from the workforce was a conscious decision on their part due to personal and family reasons relating to the birth or adoption of a child. Significantly, since the Department made the BAA–UC experiment available in 2000, no state has elected to participate.

Following a review of the BAA–UC Final Rule as part of a Department-wide review of all regulations, the Department announced, in the NPRM, that it proposed to remove the BAA–UC regulations because it had determined that ''the BAA–UC experiment is poor policy and a misapplication of federal UC law relating to the A&A requirements.'' (67 FR 72122 (December 4, 2002).) After thoroughly analyzing the A&A requirement, the Department concluded that ''A&A tests involuntary unemployment due to a continuing lack of suitable work'' and that the ''BAA–UC rule not only failed to recognize this, but is in fact contrary to the A&A requirement.'' (*Id.* at 72125.)

C. Effect of Repeal

To date no state has elected to participate in the BAA–UC experiment. Therefore, terminating the experiment will not result in any state withdrawing benefits it previously granted. The only effect of the removal of the regulations is that it arguably reduces state flexibility because a state could no longer elect to use its unemployment fund to pay BAA–UC. The Department's position on federal law requirements will revert to that in existence before publication of the BAA–UC rule. Thus, a state must require that to be eligible for UC an individual must, among other things, demonstrate current labor force attachment by meeting the A&A requirements. Each state remains free to create a paid family leave-type program using state moneys from sources other than the state's unemployment taxes deposited into its unemployment fund.

D. Policy Reasons for Repeal

The UC program is designed to provide temporary wage insurance for individuals who are unemployed due to lack of suitable work. This would generally not be the case for parents who would avail themselves of BAA–UC. Such parents would be out of work because they both initiated their separation from the workforce and are currently unavailable for work; they would have effectively withdrawn from the labor market for a period of time. To the extent that BAA–UC is based on labor force attachment, it is based on an assumption of increased *future* attachment to the labor force. Individuals who take approved leave when an employer is holding a job open for them are not available for that work or other suitable work. As a result, BAA–UC paid to these individuals would be a payment for voluntarily taking time off work rather than payment due to lack of suitable work. As such, it would be paid leave, which was not envisioned in the design of the UC program.

We again note that no state has enacted BAA–UC legislation. The limited flexibility provided under BAA–UC may be one factor. In 2002, California passed legislation (enacted Senate Bill 1661; Chapter No. 901) that contains features of BAA–UC, as well as many features beyond the scope of

BAA–UC. Notably, it authorizes payments beyond the scope of BAA–UC to certain individuals who take time off from work to care for a sick or injured child, spouse, parent or domestic partner as well as for foster care placements of a new child. The California law does not use its unemployment fund as a funding source, but instead uses employee contributions to its Temporary Disability Insurance fund. Similarly, the BAA–UC rule limits the types of eligibility conditions that may be imposed on individuals. For example, the BAA–UC rule at 20 CFR 604.20 lists industry, employer size, or the unemployment status of a family member as unacceptable eligibility factors.

Other flexibility issues have also been identified. For example, the Department expressed concern with a state bill that appeared to be close to enactment because it appeared to be inconsistent with Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA). This bill would have made BAA–UC mandatory for all services performed in the state, except for services performed for certain governmental and nonprofit entities that could elect to participate. Because Section 3304(a)(6)(A), FUTA, requires that, with respect to these governmental and nonprofit services, UC must be paid ''in the same amount, on the same terms, and subject to the same conditions'' as UC payable on other services performed under state law, the Department advised the state that this legislation, if enacted, would be inconsistent with FUTA.

Finally, when the BAA–UC Final Rule was issued in 2000, state unemployment funds were in sounder financial condition than today. Since the publication of the rule, many states have seen a drastic decline in their unemployment fund balances, and most states are below our recommended 1.00 average high-cost multiple. (The average high-cost multiple indicates how many years of benefits a state has available under a recessionary scenario. A rating of 1.00 indicates the state has one year's worth of benefits on hand. The Department recommends a 1.00 high-cost multiple as a reasonable margin of safety to ensure fund solvency in periods of high unemployment.) Indeed, at the time BAA–UC was created, one of the policy arguments made for using a state's unemployment fund for BAA–UC was the claim that states had ''surpluses'' in their unemployment funds, which could be made immediately available to implement a BAA–UC experiment. The sudden and rapid decline in fund balances undercuts this argument and emphasizes the need for states to preserve the integrity of their unemployment funds for providing temporary income support to the involuntarily unemployed.

E. Legal Reasons for Repeal

The Department and its predecessors (the Social Security Board and the Federal Security Agency) have interpreted and enforced federal A&A requirements since the inception of the federal-state UC program. Although no A&A requirements are explicitly stated in federal law, the Department and its predecessors interpreted four provisions of federal UC law, contained in the Social Security Act (SSA) and FUTA, as requiring that states condition the payment of UC upon a claimant being able to and available for work. Two of these provisions, at Section 3304(a)(4), FUTA, and Section 303(a)(5), SSA, limit withdrawals, with specific exceptions, from a state's unemployment fund to the payment of ''compensation.'' Section 3306(h), FUTA, defines ''compensation'' as ''cash benefits payable to individuals with respect to their unemployment.'' The A&A requirements provide a federal test of an individual's continuing ''unemployment.'' (The meaning of ''unemployment'' in this statutory framework is discussed below.) The other two provisions, found in Section 3304(a)(1), FUTA, and Section 303(a)(2), SSA, require that compensation ''be paid through public employment offices.'' The requirement that UC be paid through the public employment system (the purpose of which is to find people jobs) ties the payment of UC to both an individual's ability to work and availability for work. These A&A requirements serve, in effect, to limit UC eligibility.

The basis for the federal A&A requirements was summarized in a March 11, 1939, letter from the Chair of the Social Security Board to the Governor of California, concerning whether the state could make payments with respect to temporary disability from its unemployment fund:

> The entire legislative history [of the UC titles of the original SSA] including the Report to the President of the Committee on Economic Security, the report of the House Committee on Ways and Means, the report of the Senate Committee on Finance, and the Congressional debates all indicate, either expressly or by implication, the compensation contemplated under [these titles] is compensation to individuals who are able to work but are unemployed by reason of lack of work. Several provisions of those titles are meaningful only if applied to State laws for the payment of such compensation. For example, the requirement that compensation be paid through public employment offices, or the requirement that States make [certain information] available to agencies of the United States charged with the administration of public works or assistance through public employment, are obviously without reasonable basis if applied to payments to disabled individuals. Many of the standards contained [in the experience rating provisions] are similarly without reasonable basis if applied to a State law for the payment of disability compensation.
>
> For these reasons, the Board is of the opinion that the [UC titles of the SSA] are applicable solely to State laws for the payment of compensation to individuals who are *able to work and are unemployed by reason of lack of work.* [Emphasis added.]

That involuntary unemployment due to lack of suitable work was the key test is supported by the Congressional Committee Reports:

> The essential idea in unemployment compensation* * * is the accumulation of reserves in time of employment from which partial compensation may be paid to workers who become unemployed and are unable to find work. * * * In normal times it will enable most workers who lose their jobs to tide themselves over, until they get back to their old work or find other employment without having to resort to relief. * * * [H. Rep. 615, 74th Cong. 1st Sess. 1935 Page 5.]
>
> The essential idea in unemployment compensation is the creation of reserves during periods of employment from which compensation is paid to workmen who lose their positions when employment slackens and who cannot find other work. Unemployment compensation differs from relief in that payments are made as a matter of right, not on a needs basis, but only while the worker is involuntarily unemployed. * * * Payment of compensation is conditioned upon continued involuntary unemployment. Beneficiaries must accept suitable employment offered them or they lose their right to compensation. [S. Rep. 628, 74th Cong. 1st Sess. 1935 Page 11.]
>
> For the great bulk of industrial workers unemployment compensation will mean security during the period following unemployment while they are seeking another job, or are waiting to return to their old position. [*Id.* Page 12.]

As illustrated by this history, the UC program is designed to provide temporary wage insurance for individuals who are unemployed due to lack of suitable work. *In order to be eligible for UC, an individual must be able to accept suitable work if it is offered, must be available to accept that work and must not refuse suitable work if offered. In other words, an individual may not voluntarily make him/herself unavailable for offered suitable work. Rather, a fundamental premise of the UC program is that benefits are only available to individuals who are involuntarily unemployed because there is no suitable work available to them.*

The federal A&A requirements implement this design by testing whether the fact that an individual did not work for any week was *involuntary* due to the *unavailability of work.* (Note that the A&A test looks only to whether the unemployment is due to lack of work for each given week of benefits claimed. That is, it looks to why the individual is unemployed for a given week; it does not look to why the individual was separated from employment, except to the extent that the individual may have not been A&A for the week of the separation.) Since the BAA–UC experiment did not examine the federal A&A requirements from this perspective, it permits the payment of UC to individuals for whom suitable work may exist, thus contradicting the basic purpose of the A&A requirements.

The legislative history quoted above indicates that eligibility for UC is not based on the individual's personal need, except to the extent that his/her ''need'' is created by lack of suitable work. BAA–UC, however, extended eligibility for UC to parents based on considerations of compelling personal or family need regardless of whether there is a lack of suitable work. While the idea of providing financial assistance to parents or families experiencing birth or adoption may be admirable, it is not in keeping with the fundamental limitation of paying UC only to individuals who are unemployed due to lack of suitable work.

The legislative history also establishes a link between the public works programs in existence in 1935 and the UC program that bears on the A&A requirements. As noted in the Social Security Board's contemporaneous interpretation, an SSA provision (Section 303(a)(7)) requires that states make available to agencies of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of UC recipients. This requirement is predicated upon the understanding that UC recipients must be out of work due to lack of available work. It would make no sense to refer an individual, for whom work was available, to a public works program, which should be the employer of last resort. Senator Wagner, who introduced the SSA in the Senate, described the relationship between the proposed UC program and the government's public works programs (as well as public employment offices) as follows in the floor debate on the SSA:

> [Unemployment insurance] is not designed to supplant, but rather to supplement the public-works projects which must absorb the bulk of persons who may be disinherited for long periods of time by private industry. * * * A provision in the present bill requires that the Federal tax rebate shall be used to encourage a close connection between State job-insurance laws and unemployment-exchange offices. This provision emphasizes the fact that the [monetary] relief of existent unemployment is but a subordinate phase of the main task of providing work for all who are strong and willing. [79 Cong. Rec. 9284 (June 14, 1934).]

Thus, Congress intended the UC system to be subordinate to the main task of getting people back to work, which is, as noted above, implemented through the A&A requirements. BAA–UC is not consistent with this goal because it encourages parents to refuse available work.

Finally, as noted in the Social Security Board's letter, experience rating standards are meaningless if the test of involuntary unemployment due to lack of work is not used. Experience rating was originally established to ensure an equitable distribution among employers of the cost of the system, and to encourage employers to stabilize their work forces. (''Credits'' will be provided ''in the form of lower contribution rates * * * to employers who have stabilized their employment.'' (S. Rep. 628, 74th Cong. 1st Sess. 1935 Page 14.)) BAA–UC contradicts the intent of experience rating because it allows payments based on an individual's own actions without regard to an employer's attempt to stabilize employment by offering suitable work to its current and former employees. Although experience rating was discussed in the BAA–UC final rulemaking, that discussion did not recognize that stabilization of employment is one of the primary purposes of experience rating.

II. Responses to Comments

A. Overview

About 6,200 pieces of correspondence commenting on the NPRM were submitted by the close of the comment period on February 3, 2003. Roughly 74 percent of the commenters favored removal of the BAA–UC rule while the remainder opposed removal. Some commenters addressed areas beyond the scope of the NPRM, which was the removal of the BAA–UC regulation. These commenters addressed such matters as reforms to the UC program, including the eligibility of part-time workers and other expansions of eligibility. Because these areas are beyond the scope of the proposed rulemaking, they are not discussed in this preamble. All timely comments were considered and all correspondence is included in the rulemaking record.

Most commenters were individuals, including many who identified themselves as human resource professionals. Comments were also received from employers; groups representing employer interests; groups representing the human resource community; labor unions and groups representing various other interests.

B. Reasons for Repeal

(1) Need for Paid Family Leave

Many commenters opposing removal of the rule argued that paid family leave is needed because of financial barriers to taking family leave. Some noted that the final rule creating BAA–UC cited research supporting this need and that the NPRM proposing removal did not refute this research. Some also noted that the NPRM did not refute research that paid family leave might have positive effects on workforce attachment. Others claimed the rulemaking would have a negative effect on family life.

This rulemaking does not address whether paid family leave is needed or desirable. Thus, there is no need to discuss the research discussed in the BAA–UC Final Rule. The purpose of this rulemaking is to address whether a state's unemployment fund is the appropriate vehicle to fund family leave payments. As will be discussed in the next section, the removal of the BAA–UC rule does not prohibit states from establishing paid family leave programs nor does it prohibit integrating administration of these programs into a state's UC administrative infrastructure. Because no state will be required to repeal an existing BAA–UC program, and because other avenues are available to states for creating a paid leave program, the Department does not believe the rule would preclude paid family leave or have a negative effect on family life. Rather, by preserving the integrity of state unemployment funds, this rule helps assure that adequate funds will be available to benefit workers unemployed due to lack of suitable work (and, as a result, the families of those workers) under the UC program.

(2) Flexibility

Many commenters opposing removal of the rule cited preservation of state flexibility as a reason for maintaining the rule. Commenters opposing removal argued that there is state interest in flexible approaches, including BAA–UC, as indicated by the number of

BAA–UC legislative proposals in the states. Several observed that ''in 2002, over 20 states had legislation introduced looking at this issue.'' One commenter argued that repeal would have a ''chilling effect'' on state legislatures' attempts to create paid family leave while others asserted that the Department made the BAA–UC experiment available only two years ago and many states have just begun the process of deciding whether to adopt it. It was also observed that the approach taken in California (discussed above) is not available in all states, while the UC system offers a long-standing, stable infrastructure available in all states.

The only lack of flexibility that will be caused by removal of the BAA–UC rule, however, is that states will not be able to use their unemployment fund moneys to pay workers who take approved leave, or otherwise leave employment, following the birth or placement for adoption of a child. States can use other means of funding paid leave programs. Protecting the integrity of unemployment fund moneys against use for non-UC purposes was a major area of concern for most commenters supporting removal. Among other things, these commenters characterized BAA–UC as a ''back door'' expansion of the Family and Medical Leave Act (FMLA); as putting ''at risk the safety net for unemployed workers;'' as ''illegal;'' and a ''misuse'' of the UC program. We agree that, as discussed elsewhere, BAA–UC fundamentally differs from UC.

While we acknowledge that California's approach is limited to those states with temporary disability programs, nothing in federal law prohibits a state from using the existing UC administrative infrastructure for other programs, providing it properly allocates the costs of administration between the UC and non-UC programs. We also note that one commenter, citing state interest in paid leave, indicated the innovation and flexibility that several states have already demonstrated in fashioning an ''at-home infant care'' program where ''low-income working parents receive subsidies'' from non-UC funds for caring for infants at home.

(3) Unemployment Fund Balances

Most of the commenters supporting removal of the BAA–UC rule expressed concern with the solvency of state unemployment funds. Several commenters opposing removal disagreed with our assessment of the solvency of state funds, which is that most states have seen a drastic decline in fund balances and most states are below the Department's recommended level of solvency. For example, one commenter indicated that even though reserves have dropped from pre-recession levels, the UC ''funding situation is exceptionally well positioned to handle the demand for benefits.'' We believe our characterization of the fund balance situation is accurate. Indeed, arguments that the funds are well positioned can be made only because Congress distributed $8 billion to states to assist in the payment of UC and for other purposes, in recognition that fund levels were dropping. (Section 209 of Public Law 107–147, March 9, 2002.) This infusion of funds on average increased state balances by about 20 percent at the time of the distribution and cannot be expected to recur in future downturns.

Some commenters opposing removal of the BAA–UC rule objected to including all states, even those with ''abundant reserves,'' in our solvency arguments. One commenter noted that the Department could establish a solvency standard as a condition of a state adopting or implementing BAA–UC, and indicated that several commenters on the NPRM proposing the BAA–UC experiment had suggested establishing such a standard. Other commenters criticized the Department for not taking action to stop state tax cuts which they claim precipitated solvency problems. However, as the Department noted in the final rule creating the BAA–UC experiment, it has ''never interpreted Federal law to require ''solvency''' of state unemployment funds. (65 FR 37216 (June 13, 2000).) Even if the Department had authority to mandate a solvency standard, we believe it would be poor public policy to create a federal standard that would require states to deny specific types of benefits based on fund balances.

(4) Whether Certain Situations Are Exceptions to A&A

Most commenters agreed with the Department's position that BAA–UC is inconsistent with the federal A&A requirements. Some also argued that there is an ''involuntariness'' requirement in federal UC law. Others disagreed, stating that the Department has allowed exceptions to A&A; that there are no specific A&A requirements in federal law; that Congress expressly rejected A&A requirements; and that federal law contains no ''involuntariness'' requirement (which is a basic underpinning of the federal A&A requirements).

Commenters addressed four situations—illness, jury duty, approved training, and temporary lay-offs ''as they relate to the A&A requirements. Generally, those favoring removal of the rule supported the Department's analysis that these situations are materially different from the BAA–UC experiment and could not be used as a basis for supporting BAA–UC. Opponents of removing the rule argued that these situations are approved ''exceptions'' to the A&A requirement.

The preamble to the BAA–UC Final Rule noted that these four situations affect individuals' ability ''to meet the stricter interpretations of the A&A requirements.'' (65 FR 37213 (June 13, 2000).) Although that preamble also noted that none of these situations ''precisely parallels the payment of BAA–UC, they do operate on the same premises: that situations exist in which it is important to allow a flexible demonstration of availability and in which attachment to the workforce can be demonstrated, and indeed strengthened, without requiring a current demonstration of availability.'' (*Id.*) However, the preamble also noted that ''paying BAA–UC is a departure from past interpretations.'' (*Id.*) The preamble of the NPRM (67 FR 72124–72125 (December 4, 2002)) noted that, unlike BAA–UC, none of these situations permit a voluntary withdrawal from the workforce. Instead, all of these situations require that an individual initially be A&A for work. These situations represent a practical response to situations in which it does not seem sensible to apply a strict application of A&A to an individual who is initially A&A for suitable work. In particular:

• *Illness.* The interpretation pertaining to illness applies only to individuals who initially meet the A&A requirements, but who then become ill *and* who do not refuse suitable work. Until work is refused, the unemployment is due to lack of work, which is what the A&A requirements are designed to test. The A&A requirements are preserved because the individual must initially demonstrate availability before the illness and must be held ineligible if s/he refuses suitable work offered during the illness.

• *Jury Duty.* The interpretation pertaining to jury duty applies only to individuals who initially meet the A&A requirements, but who are then called for jury duty. The unemployment continues to be due to a lack of work. The A&A requirements are preserved because the individual must initially demonstrate availability before being called for jury duty and because attendance at jury duty may be taken as evidence that the individual would otherwise be available for work. Even if

the individual has a job, the individual would have to report for jury duty.

• *Approved training.* Approved training is limited to situations where the state, not the individual, determines that short-term training will improve an individual's job prospects and is appropriate and necessary. In other words, the state has determined that the training enhances the individual's availability for work by making him/her qualified for a wider range of jobs. The Committee Report explaining this provision noted that Congress considered ''training in occupational skills * * * so important to the employability of the individual'' because ''training is frequently necessary for obtaining new employment.'' S. Rep. 91–752 U.S.C.C.A.N. 3606, 3625 (1970). Attendance at such training is accepted as evidence of availability for work. Indeed, if the individual refuses training, or fails to attend training, the states must evaluate eligibility under their A&A provisions.

• *Temporary lay-offs.* An individual on temporary lay-off must be available to work for the employer who laid-off the individual as soon as the employer again has work for the individual. While this requires an individual's availability for work with only one employer, it is nonetheless a test of whether the unemployment is due to lack of suitable work.

As we noted above, unlike BAA–UC, none of these situations permit a voluntary withdrawal from the workforce. Unlike BAA–UC, all of these situations contain some link to involuntary unemployment caused by a lack of suitable work.

Also, as the Department noted in the NPRM, none of these situations apply to BAA–UC. Under BAA–UC, unlike the illness exception, an offer of suitable work could be refused with no effect on eligibility. Unlike the illness and jury duty exceptions, no initial establishment of A&A was required to determine if the unemployment was linked to a lack of suitable work despite the individual's availability for work. Unlike approved training, BAA–UC did not address a situation where an individual is attempting to remedy his or her continuing unemployment; indeed, BAA–UC addressed a situation where a job is already available to the parent. Also, for approved training, the state must approve the training as increasing the individual's job prospects; no similar requirement existed for BAA–UC, with the result that increased attachment to the workforce for any one individual is highly speculative. Finally, unlike temporary lay-offs, BAA–UC did not require that the individual be available for at least one job; an offer of suitable work could be refused with no effect on eligibility. (One commenter noted a provision of a state's law that ''waived'' availability for individuals on temporary lay-off. In response, we note that, even under this provision, individuals must remain available for the job from which they were laid off.) These precedents differ from BAA–UC in that they do not permit an individual to *voluntarily remove* him/herself from being available for suitable work for a given week. BAA–UC, on the other hand, allowed payment to parents who have initiated their separation from the workforce and whose personal situation, rather than the lack of available suitable work, makes them unavailable for employment.

One commenter noted that individuals on temporary lay-off are ''not ''involuntarily [unemployed] due to lack of work'' since they voluntarily work in an industry that ''only provides work part of the year'' and that they are required to ''accept work from a single employer, regardless of what opportunities may otherwise exist for them in the job market.'' Similarly, the commenter noted work remains available for those on jury duty.

In response, we note that, as these situations indicate, the Department has been liberal and flexible in construing A&A. Concerning temporary lay-offs, it is sufficient that the individual be available for a single job opportunity. (Indeed, payment of UC to individuals on temporary lay-off allows employers to preserve their skilled workforces, which has been cited as one of the purposes of the UC program.) For jury duty, the Department believes it is unreasonable to deny UC to an individual, who has initially met the A&A requirement, because of a governmental compulsion to serve on a jury. If suitable work was available prior to the individual being called to serve on a jury, the individual would have been required to accept such work to meet the A&A requirement. Indeed, serving on a jury indicates an individual was otherwise available for work; even individuals who are employed must by law serve on juries and employers must permit them to serve.

We also note that, as a practical matter, it makes little sense to require individuals on temporary lay-off who intend to return to work with their former employers to be available for work that they will leave when their old job again becomes available. This creates unreasonable expectations for both the individual and the firms looking for new workers; indeed, most employers will not hire individuals on temporary lay-offs.

It does not follow that these situations support an argument that BAA–UC-eligible individuals are A&A. In all of the above situations an individual could be denied for failing to be A&A. Failure to attend jury duty or approved training will result in a denial for failure to be A&A; failure by an ill individual to accept suitable employment or failure to accept recall from a temporary lay-off will, at a minimum, result in a denial due to failure to be A&A. (We note that states also impose a disqualification for failure to accept suitable employment.)

Conversely, under BAA–UC, an individual could refuse work without any effect on current eligibility. As one commenter supporting removal noted, the BAA–UC rule was ''premised on the extraordinary assertion that ''able and available'' somehow can be interpreted to mean 'unavailable now but perhaps available in 3 months or later. * * * This interpretation * * * contradicts the plain meaning of the word 'available' by covering employed workers who take leave from employment *when the employer has work available* but the worker cannot, or does not wish to work.'' (Emphasis in original.)

(5) Voluntary Leaving and Other Situations

(a) Voluntary Leaving

Some commenters opposing removal of the rule argued that the Department had approved other exceptions to the A&A requirement. These commenters noted provisions of state UC laws that address voluntarily leaving a job to escape domestic violence, to escape sexual harassment, to follow a spouse, due to loss of child care, due to pregnancy or pregnancy-related disability, and due to the individual's illness. Others used these provisions as proof that there is no ''involuntariness'' requirement in federal law. Conversely, some commenters favoring removal of the rule argued that there is a specific ''involuntariness'' requirement.

The examples addressing voluntary leaving are distinct from the A&A requirement. The A&A requirement, a test of whether an individual is unemployed due to lack of suitable work, ''looks only to whether the unemployment is due to lack of work for each given week of benefits claimed. That is, it does not require that states hold an individual ineligible based on the reason for separation from employment, except to the extent that the individual may have not been A&A

for the particular week of the separation.'' (67 FR 72124 (December 4, 2002).) There is, simply put, no federal requirement that the initial separation be involuntary for an individual to be eligible for UC; however, the individual must be A&A for suitable employment. Indeed, in the early days of the UC program, many state laws did not contain any provision addressing voluntary separations from employment, but they all had provisions requiring an individual to be A&A for suitable work.

An example may help explain how voluntary leaving provisions are distinct from the A&A requirements. If an individual left work to care for an ill child, certain states will not disqualify that individual for voluntarily leaving employment. However, the individual must still be A&A to be eligible for UC. If caring for the ill child prevents the individual from being available for a new job, the individual will be held ineligible for not meeting the state's A&A requirements because the individual is not involuntarily unemployed due to lack of suitable work. However, after the child no longer needs care and the individual becomes available for work, the individual may immediately commence collecting UC. Thus, this voluntary leaving provision does not affect the requirement that the individual must be A&A.

(b) Other Situations

One commenter noted a state law provision relating to short-time compensation (more commonly known as ''worksharing'') under which an individual would not be denied UC ''by reason of application of provisions relating to availability for work'' as evidence that exceptions to the A&A requirement exist. (Under ''worksharing,'' an employer and its employees agree that the employees will work a reduced work week in lieu of having some employees totally laid-off.) In response, we note that worksharing is expressly permitted by federal law as an exception to the A&A requirements, and that, like temporary lay-offs, the individual must still be available to work for his/her employer. Section 401(d)(1)(C) of Public Law 102–318 provides that, under worksharing, individuals ''are not required to meet the availability for work or work search test requirements * * *, but are required to be available for their normal workweek.''

The same commenter noted a state law that permits individuals with a history of part-time work to limit their availability to part-time work under certain conditions. This is consistent with federal law because those individuals are available for work. They are involuntarily unemployed due to lack of suitable work, which, in their case, is limited to part-time work.

(6) Test Requires Changes in State Law

Some commenters expressed concern that our basis for A&A—to test whether an individual's unemployment was involuntary due to lack of suitable work—could result in states having to repeal several current provisions of state law. For example, one commenter noted that the Department ''indicates its approval of exceptions [to the A&A requirement] such as temporary lay-offs, jury duty, and other situations that do not comply with the narrow rule the Department'' articulated in the NPRM. These provisions of state law were discussed in sections (2) and (3) above as being consistent with the Department's position on A&A. Therefore, the Department's basis for A&A will not require any states to repeal such provisions.

(7) Legislative History

Several commenters favoring removal agreed with the Department's analysis that the legislative history supports the A&A requirements. Some commenters opposing removal noted that no specific A&A requirements exist in federal law. One such commenter disagreed with our analysis of legislative history, noting that the ''lack of a federal availability requirement is confirmed not only by the plain language of FUTA and SSA, but by their legislative histories, which show that [Congress] expressly declined to impose specific federal requirements for availability'' and, further, that Congress could clearly display its intention to create eligibility requirements as it did when it required individuals claiming ''extended and emergency benefits to apply for and accept suitable work and to actively engage in such work.'' This commenter further noted that even if ''widespread involuntary unemployment'' was the original impetus for UC provisions of the 1935 SSA, ''nothing in federal [UC] law limits states's ability to provide more expansive coverage.'' In support of this, the commenter also cited a 1936 Social Security Board statement that ''It is desirable that a State law should be at least as broad in its coverage as the Federal act. * * * The State may, of course, go further and adopt a wider coverage.''

Although several members of Congress wrote in opposition to removing the BAA–UC rule, the Department's extensive review of the legislative history and the provisions of the original 1935 SSA and subsequent enactments indicate a Congressional expectation that individuals must be A&A for suitable work as a condition of benefit eligibility. While the Department agrees that FUTA and SSA do not explicitly set forth an A&A requirement, the Department must, in its supervisory role in the administration of these laws, make reasonable interpretations of the requirements set forth therein. Not all of the statutory requirements are unambiguous. Thus, although a requirement may not be explicit, it may be implicit, especially when viewed in the light of the legislative history. Further, although the states are free ''to provide more expansive coverage'' than that contemplated in these federal laws, they are nevertheless constrained by the requirements of this legislation as interpreted by the Department. The Department's construction of an implicit federal A&A requirement is reasonable based on the statutory language, the Social Security Board's contemporaneous interpretation of this language, the purpose of the UC program as set forth in the legislative history, and subsequent acts of Congress, discussed below.

In subsequent enactments, Congress has acted several times to reaffirm that UC is payable only to individuals who are able and available for work. When Congress first enacted a provision requiring the reduction of UC due to receipt of retirement pay, it explained that it was establishing a ''uniform rule'' to address the fact that some recipients of these retirement payments ''have actually withdrawn from the labor force,'' that is, are not A&A. (S. Rep No. 1265, 94th Cong. 2d Sess. 22 (1976).) In 1993, Congress required that states refer individuals likely to exhaust UC to reemployment services and deny UC to individuals who failed to participate in these services. (Sections 303(a)(10) and (j), SSA.) This reflected Congress's interest in helping UC claimants get back to work, especially those expected to have the hardest time returning to work quickly, and its willingness to deny UC to those individuals unwilling to take positive steps toward reemployment. Providing reemployment services to individuals who are not able or willing to accept employment (that is, who are not A&A) would waste resources on some while denying reemployment services to others who could benefit.

Congress has also created several extensions of UC to address ''widespread involuntary unemployment'' during economic downturns. In Public Law 91–373, it created the permanent federal-state

extended benefit program (EB) to pay benefits ''during periods of high unemployment.'' (H. Rep. No. 752, 91st Cong. 2d Sess. Page 6 (1970).) Indeed, one of the ''triggers'' for determining if a high unemployment period exists is the total unemployment rate, which includes only workers who have recently demonstrated their availability by looking for work. Several temporary extensions have also been enacted during periods of high unemployment, including the current Temporary Extended Unemployment Compensation program. When Congress extended the Emergency Unemployment Compensation program in the early 1990's, it noted that ''[m]any people who have lost their jobs are spending months, and months and months, sometimes a year or more seeking the next job.'' (H. Rep. 268 103rd Cong. 1st Sess. Page 2 (1993).) The purpose behind these programs was clearly to pay individuals unable to find employment because of economic downturns.

As noted above, one commenter stated that special eligibility requirements exist for the EB program. Specifically, an individual claiming EB must conduct a sustained and systematic search for suitable work and must submit tangible proof of this work search. Although many commenters appeared to believe that an active work search is a federal requirement for regular UC and/or is necessary component of availability, this is not the case. Though an active work search is one way for the individual to indicate availability, it is not the only way. An individual's active registration with the state's employment service or the individual's use of union hiring halls or private recruiting firms are all acceptable indications of availability absent an active work search by the individual. Aside from the EB provisions, federal law does not require an active search for work and, as a result, one state (Pennsylvania) does not require any work search for the regular UC program. Thus, the fact that Congress required an active search for work for the long-term unemployed is unrelated to whether an A&A requirement exists for the regular program.

We note that the work search requirement was not part of the original 1970 enactment of the EB program, having been added in 1980. Also, Congress completely suspended the EB work search requirement in the early 1990's when it extended the Emergency Unemployment Compensation program. This EB requirement also is not applicable to the Temporary Extended Unemployment Compensation Program. The effect of these suspensions was that state law eligibility requirements, including the state A&A requirements, were used for determining eligibility for programs that were designed to ameliorate widespread involuntary unemployment. In sum, the EB work search provisions do not support the argument that there is no federal A&A requirement.

We note that even Congressional prohibitions on the denial of UC assume that individuals must be available for work. When it passed a federal prohibition on denying UC solely due to pregnancy, Congress noted that an individual must be ''able to work * * * and be available for employment'' (H. Rep. No. 752, 91st Cong. 2d Sess. Page 19 (1970)) and that pregnant workers must continue to meet the ''availability for work and ability to work'' requirements. (*Id.* at 21.)

Finally, we note that Congress indicated its expectation that an ''able'' requirement existed for UC when it permitted states to withdraw certain employee contributions from their unemployment funds for the payment of ''cash benefits with respect to their disability.'' (Current Sections 3304(a)(4)(A), FUTA, and 303(a)(5), SSA.) Individuals who lose their jobs because of a disability, and who are unable to perform any work because of such disability, are not unemployed due to a lack of suitable work. They are unemployed due to the disability. Thus, explicit statutory authority was necessary to permit payment to disabled individuals from state unemployment funds.

(8) Supreme Court Decisions

Two commenters cited *New York Tel. Co.* v. *New York State Dep't of Labor*, 440 U.S. 519, 537 (1979). One commenter noted that ''[i]t is unclear whether states have authority to use UI [that is, UC] funds to provide family leave absent a Department of Labor regulation'' and then cited *New York Tel. Co.* for the proposition that ''states have broad discretion to legislate in the area of UI.'' The other commenter citing *New York Tel. Co.* noted that the U.S. Supreme Court has treated the absence of ''explicit prerequisites'' for UC eligibility ''as a strong indication that Congress did not intend to restrict the States' freedom to legislate in this area'' and that ''as the Supreme Court has noted, 'when Congress wished to impose or forbid a condition for compensation, it did so explicitly.' '' Therefore, this commenter argues, the omission of a specific availability requirement in FUTA or SSA ''reflects the absence of any congressional intent to condition eligibility for regular UI benefits on claimants' availability for work, as a matter of federal law.''

As a general rule, we agree that where Congress has not imposed specific requirements related to FUTA or SSA, states are free to operate and determine whether to impose their own requirements. However, the principle that Congress intended to grant states freedom to design their UC systems in areas in which it did not impose explicit requirements does not mean that the Department is precluded from making reasonable interpretations of the specific requirements of FUTA and SSA. We note that (1) the interpretation of an ''able and available'' requirement was made contemporaneously with the passage of SSA by the first agency with responsibility for interpreting SSA; (2) the Department has consistently interpreted FUTA and SSA to include a federal A&A requirement; and (3) *New York Tel. Co.* does not discuss either a specific federal A&A requirement or its absence. Therefore, the conclusion that the second commenter draws that the general language of *New York Tel. Co.* means that there is no federal A&A requirement or that it is beyond the authority of the Department to construe such a requirement is not a persuasive position.

The language in *New York Tel. Co.*, cited by the second commenter, was used by the Court to discuss its prior holding in *Ohio Bureau of Employment Services* v. *Hodory*, 431 U.S. 471, 482–483 (1977). In *Hodory*, the Court affirmed Ohio's denial of benefits to workers unemployed by labor disputes even if the unemployed workers were not strikers themselves. (*Hodory*, 431 U.S. at 482–83.) *Hodory* held that benefits could thus be denied under certain circumstances even when a worker is *involuntarily* unemployed. (*Id.*) *New York Tel. Co.* also involved the issue of workers involved in labor disputes. Unlike Ohio, New York permitted strikers to obtain UC after a certain period of time had elapsed. 440 U.S. at 523. The Court recognized that New York's law required all individuals seeking UC to be A&A, including strikers, as demonstrated by the Court's quote of that law, which required an individual's ''capability and readiness, but inability to gain work.'' (*Id.* at 523, n.2, emphasis added.) Thus, although the striking individual's initial separation may be voluntary, his/her continued unemployment is involuntary, unlike BAA–UC where the individual is not available for any work.

In the course of its discussion of *Hodory*, the Court in *New York Tel. Co.*

emphasized that ''the issue of public benefits for strikers became a matter of express congressional concern in 1935 during the hearings and debates on the Social Security Act'' and that Congress left that matter specifically to the states. (*Id.* at 542.) The Court remarked that ''[t]he drafters of the Act apparently concluded that such proposals [to prohibit States from providing benefits to strikers] should be addressed to the individual state legislatures without dictation from Washington.'' (*Id.* at 542–43.)

However, the Court also noted that not all matters concerning UC were left to the States. The Court recognized that ''[f]rom the beginning * * * the Act has required a few specific requirements for federal approval.'' (*Id.* at 542.) The Court explained that these requirements included those found in Section 3304(a)(5), FUTA, which provide, among other things, that a ''State may not deny compensation to an otherwise qualified applicant because he had refused to accept work as a strikebreaker, or had refused to resign from a union as a condition of employment.'' (*Id.*) The Court also noted that Section 3304(a)(5), FUTA, ''from the start had provided'' that ''compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions'' and then listed the specific conditions under which an otherwise eligible individual could refuse to accept new work.

The Court's recognition of certain universal UC requirements is further supported by its quotation from the Senate Report: ''Except for a few standards which are necessary to render certain that the State unemployment compensation laws are genuine unemployment compensation acts and not merely relief measures, the States are free to set up any unemployment compensation system they wish * * *.'' (*Id.* at 543, n. 42.) Allowing payment of BAA–UC from unemployment funds would transform a ''genuine unemployment compensation'' program into relief measures for those who have a job available and choose not to work and, thus, *New York Tel. Co.* does not in any way support allowing a state to do so.

In a later case, the Court recognized that there are limits on its broad statement about state discretion in *New York Tel. Co.* In *Baker* v. *General Motors Corp.*, 478 U.S. 621, 633 (1986), the Court, citing *Hodory* and the Report of the Committee on Economic Security, recognized that involuntary unemployment, although nowhere specifically mentioned in FUTA or the SSA, ''is thus generally a necessary condition to eligibility for compensation.'' Athough *Baker* did not specifically refer to the A&A requirement, that requirement is the test of ''involuntary'' unemployment under the FUTA and the SSA.

In sum, while we agree with the commenter's statement and the Court's observation that states are free to design their UC systems as they choose as long as those systems meet federal requirements, we disagree with the commenter's conclusion that this principle voids the A&A requirement. As we have shown, the federal A&A requirement is part of the foundation that makes a UC system a true UC system, not a relief system. The Department has the authority to interpret what the test of continued ''involuntary'' unemployment requires, so long as its interpretation is based on a reasonable construction of FUTA and SSA. As discussed above, the Department and its predecessors have consistently interpreted federal law to require that individuals must be A&A as a condition of receiving UC.

(9) Whether BAA–UC Is Paid Leave

In the BAA–UC Final Rule, the Department addressed what were termed ''misconceptions'' regarding BAA–UC. The Department noted that ''[m]any respondents referred to BAA–UC as 'paid FMLA' leave or 'paid family leave.' '' The Department responded that ''[a]lthough there may be many cases where parents of newborns and newly-adopted children will be simultaneously eligible for BAA–UC and leave under the FMLA, the two are legally unrelated to each other.'' (65 FR 37212 (June 13, 2000).) The Department also said that BAA–UC is ''not a new program.'' (*Id.*)

Although the Department did not ask commenters to address this distinction, the overwhelming majority did comment about FMLA and/or paid leave. As previously noted, many of those supporting removal of the rule described BAA–UC as a ''back door'' expansion of the FMLA, while many of those opposing removal cited the need for ''paid family leave'' and discussed BAA–UC as though it were paid family leave. In other words, despite the Department's explanation of differences between UC and paid leave, these commenters viewed BAA–UC as paid family leave.

As one commenter supporting removal noted, the purpose of UC ''is to compensate a worker who becomes temporarily unemployed when the employer no longer has suitable work available * * *'' Family leave, the commenter noted, citing Section 2(b)(1) of FMLA, is ''to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity.'' This commenter concluded, ''Clearly, these are two entirely separate systems.'' Concerning the Department's rationale that BAA–UC might strengthen long-term attachment to the workforce, another commenter also noted that one ''could argue that paid leave programs for any purpose permitted by the FMLA might strengthen long-term attachment to the workforce,'' as might ''any leave policy'' and raised the concern that ''UC funds might be used not just for leave programs, but for other social benefits such as health or pension benefits.''

Thus, most commenters did not view the Department's attempts in the original BAA–UC rulemaking to distinguish between ''paid leave'' and BAA–UC as being sound. We agree. As we noted above, for individuals who were taking approved leave when an employer is holding a job open for them, BAA–UC would be a payment for voluntarily taking time off work rather than payment due to lack of suitable work. This makes the payment more in the nature of paid leave than UC. The payment is not made due to involuntary unemployment due to lack of suitable work, but due to the individual's decision to take time off from an existing job that is still available to the worker.

(10) Justification for Changes in Position

Commenters also addressed the soundness of the Department's justification for changing its position, both in the BAA–UC final rule and the NPRM. One commenter opposing removal argued, among other things, that repealing BAA–UC represents a ''radical shift in the agency's position [that] undermines [its] credibility. * * *'' Some commenters supporting removal took the opposite approach. One, for example, argued that the rulemaking creating BAA–UC ''failed to justify the Department's radical departure from over 60 years of precedent.''

We agree that the original BAA–UC rulemaking did not adequately justify a reversal of the Department's longstanding position. As previously noted, the BAA–UC rule failed to discuss why an A&A test exists, which is to test involuntary unemployment due to a continuing lack of suitable work. Due to this failure, the BAA–UC rulemaking resulted in a misapplication of federal law.

Executive Order 12866

The removal of 20 CFR part 604 is a ''significant regulatory action'' within the meaning of Section 3(f)(4) of Executive Order 12866 because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, this final rule was submitted to, and reviewed by, the Office of Management and Budget.

Before publication of the BAA–UC final rule (65 FR 37210 (June 13, 2000)), the Department prepared a Regulatory Impact Analysis which estimated that the rule would result in annual costs ranging from zero to $196 million, depending upon the number of states choosing to enact this voluntary program. (To establish the upper end of the cost range, the Regulatory Impact Analysis grouped the states into size groups—large, medium and small—and used the extent of state enactment of five representative types of UC benefit expansions (alternative base period, unrestricted good cause for voluntary quits, short-time compensation, dependents' allowances, and supplemental (or ''additional'') benefits) as an indicator of the likelihood of state enactment.) Since publication of the BAA–UC final rule, no state enacted BAA–UC, which means that no benefits have been paid, nor administrative costs expended. Removing the BAA–UC rule ends the possibility that BAA–UC and its associated administrative costs will be paid out of state unemployment funds with the result that the estimated costs would not be incurred. Therefore, the removal of the rule results in no costs or cost savings and potentially prevents costs from being incurred in the future. Because the Department expects the immediate economic impact of removing the rule to involve no costs, this regulatory action is unlikely to have an annual effect on the economy of $100 million or more and, consequently, is not ''economically significant'' within the meaning of Section 3(f)(1) of that Executive Order. No commenter claimed that there were any costs associated with removing the BAA–UC rule.

Finally, we have evaluated this regulatory action and find it consistent with the regulatory philosophy and principles set forth in Executive Order 12866. Though this action removes authority for states to fund a form of family leave from their unemployment funds, states continue to have flexibility to provide paid family leave from other funding sources. Further, because no state has enacted BAA–UC, no state is adversely affected in a material way by having to dismantle such an experiment. Finally, this action removes a regulation and imposes no alternative regulatory requirements.

Paperwork Reduction Act

This regulatory action contains no information collection requirements.

Executive Order 13132

We have reviewed this regulatory action in accordance with Executive Order 13132 regarding federalism. This Executive Order requires agencies, when formulating and implementing policies that have federalism implications, to the extent possible, to refrain from limiting state policy options, to consult with states before taking any action which would restrict states' policy options, and to take such action only where there is clear statutory and constitutional authority and the presence of a problem of national scope. The UC program is a matter of national scope, as evidenced by existing federal legislation, which limits state flexibility in certain areas. As discussed above, the Department has the authority to interpret what the test of continued ''involuntary'' unemployment requires, so long as its interpretation is based on a reasonable construction of FUTA and SSA. Policies with federalism implications are those with 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.

Because this regulatory action would limit state policy options, by eliminating authority to pay for family leave out of unemployment funds, we consulted with organizations representing state elected officials, who did not object to removal of the BAA–UC rule.

Executive Order 13175

This regulatory action does not have ''substantial direct effects on one or more Indian tribes, or the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' It affects primarily states and state agencies.

Executive Order 12988

This regulatory action has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the federal court system. The proposal, a mere one sentence, removes 20 CFR part 604. Given its brevity, it is not likely to lead to litigation resulting from drafting errors or ambiguities.

Unfunded Mandates Reform Act of 1995

This regulatory action has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and does not include any unfunded federal mandate.

Regulatory Flexibility Act

This regulatory action will not have a significant economic impact on a substantial number of small entities. This action affects states and state agencies, which are not within the definition of ''small entity'' under 5 U.S.C. 601(6). Under 5 U.S.C. 605(b), the Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Effect on Family Life

We certify that this regulatory action has been assessed in accordance with Section 654 of Public Law 105–277, 112 Stat. 2681, for its effect on family well-being. As discussed earlier in this preamble, we conclude that this action would not adversely affect the well-being of the nation's families. No state has enacted BAA–UC; consequently no families would experience a termination of BAA–UC benefits. Though the rule withdraws authorization for states to amend their UC laws to pay for such benefits from the state's unemployment fund, paid family leave could be provided from other funding sources. This rule preserves the availability of state unemployment funds for times when workers, who may support families, are unemployed due to lack of work.

Congressional Review Act

Consistent with the Congressional Review Act, 5 U.S.C. 801, *et seq.*, we will submit to Congress and the Comptroller General of the United States, a report regarding the issuance of this Final Rule prior to the effective date set forth at the outset of this document.

OMB has determined that this rule is not a ''major rule'' as defined by the Congressional Review Act (Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996). It is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability

of United States-based companies to compete with foreign-based companies in domestic and export markets.

Catalogue of Federal Domestic Assistance Number

20 CFR Part 604 is listed in the Catalogue of Federal Domestic Assistance at No. 17.225, Unemployment Insurance.

List of Subjects in 20 CFR Part 604

Unemployment compensation.

Signed at Washington, DC on October 3, 2003.

Emily Stover DeRocco,

Assistant Secretary of Labor.

Words of Issuance

■ For the reasons set forth in this preamble, and under the authority of 42 U.S.C. 503(a)(2) and (5) and 1302(a); 26 U.S.C. 3304(a)(1) and (4) and 3306(h); Secretary's Order No. 4–75 (40 FR 18515); and Secretary's Order No. 14–75 (November 12, 1975), Chapter V, Title 20, Code of Federal Regulations, is amended by removing part 604.

[FR Doc. 03–25507 Filed 10–8–03; 8:45 am]

BILLING CODE 4510–30–P

Federal Register

Thursday,
October 9, 2003

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1206

Mango Promotion, Research, and Information Order; Subpart B—Referendum Procedures; Referendum Order; Final Rule and Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1206

[Doc. # FV–02–708–FR]

Mango Promotion, Research, and Information Order; Subpart B—Referendum Procedures

AGENCY: Agricultural Marketing Service, Agriculture.

ACTION: Final rule.

SUMMARY: This rule establishes procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed Mango Promotion, Research, and Information Order (Order) is favored by first handlers and importers of mangos. The Order will be implemented if it is approved by a majority of the eligible first handlers and importers voting in the referendum. These procedures will also be used for any subsequent referendum under the Order, if it is approved in the initial referendum. The proposed Order is being published separately in this issue of the **Federal Register**. This proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996.

EFFECTIVE DATE: November 10, 2003.

FOR FURTHER INFORMATION CONTACT: Kathie M. Birdsell, RP, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535–8, Washington, DC 20250–0244; telephone 202–720–4835, fax 202–205–2800, or *kathie.birdsell@usda.gov*.

SUPPLEMENTARY INFORMATION: A referendum will be conducted among eligible first handlers and importers of mangos to determine whether they favor issuance of the proposed Mango Promotion, Research, and Information Order (Order) [7 CFR part 1206]. The program will be implemented if it is approved by a majority of the first handlers and importers voting in the referendum. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) [Pub. L. 104–127, 7 U.S.C. 7411–7425]. It would cover domestic and imported mangos of the *Mangifera indica L.* variety from the family of *Anacardiaceae.* A proposed Order is being published separately in this issue of the **Federal Register**.

Executive Order 12866

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

Executive Order 12988

This rule has been reviewed under E.O. 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to an order may file a petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and requesting a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall be the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of USDA's final ruling.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The Act, which authorizes the Department to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The Act provides for alternatives within the terms of a variety of provisions.

Paragraph (e) of Section 518 of the Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those voting; (2) by a majority of the volume of the agricultural commodity voted in the referendum; or (3) by a majority of those persons voting who also represent a majority of the volume of the agricultural commodity voted in the referendum. In addition, Section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under an order. The Fresh Produce Association of the Americas (Association) has recommended that the Department conduct a referendum in which approval of an order would be based on a majority of the first handlers and importers voting. The Association also has recommended that a referendum be conducted prior to the proposed Order going into effect.

This rule establishes the procedures under which first handlers and importers of mangos may vote on whether they want a mango promotion, research, and information program to be implemented. This action adds a new subpart which establishes procedures to conduct an initial and future referenda. The new subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

There are approximately 5 first handlers and 55 importers of mangos who would be subject to the program and eligible to vote in the first referendum. The Small Business Administration [13 CFR 121.201] defines small agricultural service firms as those having annual receipts of $5 million or less. First handlers and importers would be considered agricultural service firms. Using these criteria, most first handlers and importers to be covered by the proposed program would be considered small businesses.

U.S. production of mangos is located in California, Florida, Hawaii, and Puerto Rico, according to the most recent U.S. Census of Agriculture (Census) which was in 1997. The Census does not include California production because California has so few producers that publishing production data would reveal confidential information. In 1997, production in Florida totaled 6.1 million pounds, Hawaii's production was 0.1 million pounds, and Puerto Rico's production as approximately 32.9 million pounds. For Florida and Hawaii combined, production fell from 16.6 million pounds in 1992 to 6.2 million pounds in 1997. Census data are published every five years. USDA does not report the value of U.S. production.

Seven countries account for 99 percent of the mangos imported into the United States. These countries and their share of the imports (from September 1, 2000, through June 30, 2001) are: Mexico (57 percent); Brazil (11 percent);

Ecuador (10 percent); Peru (10 percent); Guatemala (7 percent); Haiti (3 percent); and Costa Rica (1 percent). For the period from September 1, 2000, through June 30, 2001, the United States imported a total of 170,445 tons of mangos, valued at $106 million. In the previous full season (September 1, 1999, through August 31, 2000), 253,591 tons, valued at $141 million, were imported into the United States.

A preliminary estimate of per capita consumption of mangos by USDA's Economic Research Service (ERS) was 1.80 pounds in 2000. Per capita consumption has been trending upwards for several decades. In 1979 per capita consumption was 0.21 pounds, and in 1989 was 0.51 pounds.

This rule provides the procedures under which first handlers and importers of mangos may vote on whether they want the Order to be implemented. In accordance with the provisions of the Act, subsequent referenda may be conducted, and it is anticipated that the proposed procedures would apply. There are approximately 5 first handlers and 55 importers who will be eligible to vote in the first referendum. First handlers and importers of less than 500,000 pounds of mangos annually will be exempt from assessments and not eligible to vote in the referendum.

USDA will keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed. Further, the information will be available electronically.

Voting in the referendum is optional. However, if first handlers and importers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

The information collection requirements contained in this rule are designed to minimize the burden on first handlers and importers. This rule provides for a ballot to be used by eligible first handlers and importers to vote in the referendum. The estimated annual cost of providing the information by an estimated 5 first handlers and for an estimated 55 importers would be $5.00 for all first handlers or $1.00 per first handler and $55.00 for all importers or $1.00 per importer.

USDA considered requiring eligible voters to vote in person at various USDA offices across the country. USDA also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot would also be more cost-effective and reliable. USDA will provide easy access to information for potential voters through a toll-free telephone line and the Internet.

There are no federal rules that duplicate, overlap, or conflict with this rule.

This Final Regulatory Flexibility Analysis has a conforming change to the Order's Final Regulatory Flexibility Analysis. This change includes production information from Puerto Rico to address a concern of one commenter raised in a comment concerning the proposed Order's Initial Regulatory Flexibility Analysis. This commenter noted that Puerto Rico is covered by the Order as part of the United States, but Puerto Rico's production was not included in the economic information on the mango industry. Therefore, information on Puerto Rico was added to the analysis.

Paperwork Reduction Act

In accordance with the OMB regulation [5 CFR 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the referendum ballot, which represents the information collection and recordkeeping requirements that will be imposed by this rule, has been approved by OMB.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0209.

Expiration Date of Approval: February 28, 2006.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act. The burden associated with the ballot is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response for each first handler and importer.

Respondents: First handlers and importers.

Estimated Number of Respondents: 60.

Estimated Number of Responses per Respondent: 1 every 5 years (0.2).

Estimated Total Annual Burden on Respondents: 6.0 hours.

The estimated annual cost of providing the information by an estimated 5 first handlers would be $5.00 or $1.00 per first handler and for an estimated 55 importers would be $55.00 or $1.00 per importer.

Background

The Act, which became effective on April 4, 1996, authorizes the Department to establish a national research and promotion program covering domestic and imported mangos. The Association submitted an entire proposed Order on June 29, 2001, and revisions to the proposal on November 1, 2001. The proposal was published in the **Federal Register** on August 26, 2002 [67 FR 54908]. A slightly revised proposal that will be voted upon in the referendum is published in this issue of the **Federal Register**.

The proposed Order would provide for the development and financing of an effective and coordinated program of promotion, research, and consumer and industry information for mangos in the United States. The program would be funded by an assessment levied on first handlers and importers (to be collected by the Customs and Border Protection at time of entry into the United States) at an initial rate of ½ cent per pound. First handlers and importers of less than 500,000 pounds of mangos annually would be exempt from paying assessments. In addition, exports of U.S. mangos would be exempt from assessments.

The assessments would be used to pay for promotion, research, and consumer and industry information; administration, maintenance, and functioning of the National Mango Promotion Board; and expenses incurred by the Department in implementing and administering the Order, including referendum costs.

Section 1206 of the Act requires that a referendum be conducted among eligible first handlers and importers of mangos to determine whether they favor implementation of the Order.

That section also requires the Order to be approved by a majority of the first handlers and importers voting.

This final rule establishes the procedures under which first handlers and importers of mangos may vote on whether they want the mango promotion, research, and information program to be implemented. There are approximately 60 eligible voters.

This action adds a new subpart establishing procedures to be used in this and future referenda. This subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

Proposed referendum procedures were published in the **Federal Register** on August 26, 2002, [67 FR 54920], with a sixty-day comment period ending on October 25, 2002.

One comment was received from a producer. In addition to noting that the Regulatory Flexibility Analysis did not contain production information from Puerto Rico, the commenter argued that since the Order would be implemented if it is approved by a majority of eligible first handlers and importers voting in the referendum, this would be assessment without representation for growers. The commenter expressed the view that growers would pay for program assessments in the form of lower returns, without any direct benefit. We disagree. Domestic producers are not responsible for paying assessments under the proposed program. Although it is possible that an assessment may be passed back to producers in some form, only importers and first handlers of 500,000 or more pounds of mangos per calendar year would be responsible for paying assessments and eligible to vote in a referendum. Domestic producers, however, would be represented on the board, with two of the 18 voting positions.

The definitions of eligible first handler and eligible importer are modified in this final rule. The definitions of first handlers and importer have been modified in the proposed order rulemaking published separately in this issue of the **Federal Register**. In that action, the definition of first handler was revised based upon a comment received and was further clarified by the Department. As a result, an appropriate conforming change was made to the definition of importer in that rulemaking action. This final rule revises the definition of eligible first handler and eligible importer to conform to and reflect the changes that appear in the order definitions.

List of Subjects in 7 CFR Part 1206

Administrative practice and procedure, Advertising, Consumer information, Mangos, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7, Chapter XI of the Code of Federal Regulations is amended as follows:

1. Part 1206 is added to read as follows:

PART 1206—MANGO PROMOTION, RESEARCH, AND INFORMATION

Subpart A [Reserved]

Subpart B—Referendum Procedures.

Sec.

Authority: 7 U.S.C. 7411–7425.

Subpart A [Reserved]

Subpart B—Referendum Procedures.

§ 1206.100 General.

Referenda to determine whether eligible first handlers and importers of mangos favor the issuance, amendment, suspension, or termination of the Mango Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1206.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Department* means the U.S. Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(c) *Eligible first handler* means any person, (excluding a common or contract carrier), receiving 500,000 or more pounds of mangos from producers in a calendar year and who as owner, agent, or otherwise ships or causes mangos to be shipped as specified in this Order. This definition includes those engaged in the business of buying, selling and/or offering for sale; receiving; packing; grading; marketing; or distributing mangos in commercial quantities. The term first handler includes a producer who handles or markets mangos of the producer's own production.

(d) *Eligible importer* means any person importing 500,000 or more pounds of mangos into the United States in a calendar year as a principal or as an agent, broker, or consignee of any person who produces or handles mangos outside of the United States for sale in the United States, and who is listed as the importer of record for such mangos that are identified in the Harmonized Tariff Schedule of the United States by the numbers 0804.50.4040 and 0804.50.6040, during the representative period. Importation occurs when mangos originating outside of the United States are released from custody by the Customs and Border Protection and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-produced mangos immediately upon release by the Customs and Border Protection, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of mangos from the Customs and Border Protection when such mangos are entered or withdrawn for consumption in the United States.

(e) *Mangos* means all fresh fruit of *Mangifera indica L.* of the family *Anacardiaceae.*

(f) *Order* means the Mango Promotion, Research, and Information Order.

(g) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a mango farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(h) *Referendum agent* or *agent* means the individual or individuals designated by the Department to conduct the referendum.

(i) *Representative period* means the period designated by the Department.

(j) *United States* or *U.S.* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1206.102 Voting.

(a) Each eligible first handler and eligible importer of mangos shall be entitled to cast only one ballot in the referendum.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate first handler or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that

such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail, as instructed by the Department.

§ 1206.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible first handlers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1206.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence or such appointment, shall be performed by the agent.

§ 1206.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1206.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1206.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1206.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is OMB control number 0581–0209.

Dated: October 2, 2003.

A.J. Yates,

Administrator.

[FR Doc. 03–25456 Filed 10–8–03; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1206

[Doc. # FV–02–707–PR2]

RIN 0581–AC05

Mango Promotion, Research, and Information Order; Referendum Order

AGENCY: Agricultural Marketing Service, Agriculture.

ACTION: Proposed rule and referendum order.

SUMMARY: This proposed rule would establish an industry-funded promotion, research, and information program for fresh mangos. The proposed program—the Mango Promotion, Research, and Information Order (Order)—was submitted to the Department (the Department or USDA) by the Fresh Produce Association of the Americas (Association). Under the proposed Order, first handlers and importers of 500,000 or more pounds of mangos would pay an assessment of ½ cent per pound on domestic and imported mangos to the National Mango Promotion Board (Board). The Board would be appointed by the Department to conduct a program of research and promotion, industry information, and consumer information needed for the maintenance, expansion, and development of domestic markets for fresh mangos. The Order would be implemented if it is approved by a majority of the eligible first handlers and importers voting in a referendum. A separate final rule on referendum procedures is being published in this issue of the **Federal Register**.

DATES: To be eligible to vote, mango importers and first handlers must have imported or handled 500,000 or more pounds of mangos during the representative period from January 1 through December 31, 2002. The voting period for the referendum will be from November 10, 2003 through November 28, 2003. Ballots must be received by the referendum agents no later than the close of business, Eastern daylight-standard time, November 28, 2003, to be counted.

FOR FURTHER INFORMATION CONTACT: Kathie M. Birdsell, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535–S, Washington, DC 20250–0244, telephone 888–720–9917 (toll free), fax 202–205–2800, e-mail *kathie.birdsell@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed Order is issued under the Commodity Promotion, Research, and Information Act of 1996 (Act) (7 U.S.C. 7411–7425; Public Law 104–127; 110 Stat. 1029), or any amendments thereto.

Prior Documents: A proposed rule was published in the **Federal Register** on August 26, 2002 [67 FR 54908], with a 60-day comment period. In addition, the USDA published a proposed rule on the referendum procedures in the **Federal Register** on August 26, 2002 [67 FR 54920], also with a 60-day comment period.

Question and Answer Overview

Why Is USDA Proposing a Program for Mangos?

The Department received a proposal from the Association for this program. The Department issued a proposed rule to obtain comments on the proposal and to obtain information on the potential impact of the program on the mango industry before developing a final proposed program and conducting a referendum on it.

What Is the Purpose of the Mango Program?

The purpose of the program is to maintain, expand, and develop domestic markets for fresh mangos.

How Will the Mango Program Be Implemented?

A referendum will be conducted on the proposed Order. The Order will be implemented if it is approved by a majority of the eligible voters in the referendum.

When Will the Referendum Be Held?

The voting period for the referendum will be November 10, 2003 through November 28, 2003.

Who Will Be Covered by the Program?

Domestic first handlers and importers of 500,000 or more pounds of mangos per calendar year will pay assessments under the program. Domestic mangos that are exported will not be assessed under the Order.

Who Will Sit on the Board?

Under the proposal, there will be a 20-member Board consisting of eight U.S. importers, one U.S. first handler, two U.S. producers, seven foreign producers, and two non-voting U.S. wholesalers and/or retailers of mangos. The chairperson shall reside in the United States.

How Will Members of the Board Be Selected?

The U.S. importers, first handlers, and producers would be nominated by U.S. importers, first handlers, and producers, respectively. Foreign producers would be nominated by foreign producer associations. The U.S. wholesalers and/or retailers would be nominated by the Board. Two names must be submitted for each position. From the names submitted, the Department will appoint the members.

If the Mango Program Is Implemented and There Are Concerns About How It Is Operating, Can the Program Be Terminated?

Yes. After the program is implemented, the Department will conduct a referendum to determine whether the mango industry continues to support the program: (1) Every 5 years after the program is in effect, (2) at the request of the Board established under the proposed Order, or (3) when requested by 10 percent or more of first handlers and importers covered by the proposed Order. In addition, the Department may conduct a referendum at any time. If a majority of the first handlers and importers voting in the referendum do not favor continuation, the program will be terminated.

Executive Order 12866

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect.

Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act, a person subject to the Order may file a petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and requesting a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts

business shall have jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of USDA's final ruling.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USDA is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Act authorizes generic programs of promotion, research, and information for agricultural commodities. Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, government-supervised, generic commodity promotion programs.

The Association submitted a proposal on June 29, 2001, for this program to: (1) Develop and finance an effective and coordinated program of research, promotion, industry information, and consumer information regarding mangos; (2) strengthen the position of the mango industry in U.S. markets; and (3) maintain, develop, and expand domestic markets for mangos. The Association submitted changes to their proposal on November 1, 2001.

First handlers and importers of mangos must approve the program in a referendum in advance of its implementation. These persons would also serve on the proposed 20-member Board. The Board would be composed of eight U.S. importers, one U.S. first handler, two U.S. producers, seven foreign producers, and two non-voting wholesalers and/or retailers. If domestic production increases, additional U.S. first handlers would be added to the Board. The Board would administer the program under the Department's supervision. In addition, any person subject to the program may file with the Department a petition stating that the Order or any provision of the Order is not in accordance with the law and requesting a modification of the Order or an exemption from the Order. Administrative proceedings were discussed earlier in this proposed rule.

In this program, first handlers would be required to pay assessments, file reports, and submit assessments to the Board. Importers would be required to remit to the Board assessments not collected by the Customs and Border Protection (Customs) and to file reports with the Board. First handlers and importers of less than 500,000 pounds of mangos per calendar year and exports of U.S. mangos would be exempt from assessment. While the proposed Order would impose certain recordkeeping requirements on first handlers and importers, information required under the proposed Order could be compiled from records currently maintained and would involve clerical or accounting skills. The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act.

An estimated 89 respondents would provide information to the Board. They would be: 5 first handlers covered by the program, 3 exempt first handlers, 55 importers covered by the program, 3 exempt importers, 4 domestic producer nominees, 1 foreign producer organization, 14 foreign producer nominees, and 4 wholesaler and/or retailer nominees. The estimated total cost of providing information to the Board by all respondents would be $790.01. The estimated cost for all first handlers covered by the program would be $336.66 or $67.33 per first handler covered by the program; $7.50 for all exempt first handlers or $2.50 per exempt first handler; $393.34 for all importers covered by the program or $7.15 per importer covered by the program; $7.50 for all exempt importers or $2.50 for each exempt importer; $13.34 for all domestic producers or $3.34 per domestic producer; $1.67 for the foreign producer organization; $23.33 for all foreign producer nominees or $1.67 per foreign producer nominee; and $6.67 for the wholesaler and/or retailer nominees or $1.67 per wholesaler and/or retailer nominee. These totals have been estimated by multiplying total burden hours requested by $10.00 per hour, a sum deemed to be reasonable should the respondents be compensated for their time.

The Department would oversee the operation of the program. Every five years, the Department would conduct a referendum to determine whether the mango industry supports continuation of the program. In addition, the Secretary may conduct a referendum at any time, at the request of 10 percent or more of the first handlers and importers required to pay assessments, or at the request of the Board.

There are approximately 5 first handlers and 55 importers of mangos that would be covered by the program. First handlers and importers of less than 500,000 pounds of mangos per calendar year and exports of U.S. mangos would be exempt from assessments. The program would also affect domestic and foreign mango producers, an association of foreign mango producers, and wholesalers and retailers. These entities would serve on the Board or participate in the nomination process.

The Small Business Administration [13 CFR 121.201] defines small agricultural producers as those having annual receipts of $750,000 or less annually and small agricultural service firms as those having annual receipts of $5 million or less. First handlers, importers, wholesalers, and retailers would be considered agricultural service firms. Using these criteria, most producers, first handlers, and importers would be considered small businesses while wholesalers and retailers would not. The foreign producer association would consist of producers and would reflect the size of these entities.

U.S. production of mangos is located in California, Florida, Hawaii, and Puerto Rico according to the most recent U.S. Census of Agriculture (Census) which was in 1997. The Census does not include California production because California has so few producers that publishing production data would reveal confidential information. In 1997, production in Florida totaled 6.1 million pounds, Hawaii's production was 0.1 million pounds, and Puerto Rico's 1998 production was approximately 32.9 million pounds. For Florida and Hawaii combined, production fell from 16.6 million pounds in 1992 to 6.2 million pounds in 1997. Census data is published every five years. USDA does not report the value of U.S. production. Although domestic production accounts for only 8 percent of U.S. consumption of mangos, we anticipate that any increase in demand for mangos resulting from this program may lead to a corresponding increase in domestic production.

Seven countries account for 99 percent of the mangos imported into the United Sates. These countries and their share of the imports (from September 1, 2000, through June 30, 2001) are: Mexico (57 percent); Brazil (11 percent); Ecuador (10 percent); Peru (10 percent); Guatemala (7 percent); Haiti (3 percent); and Costa Rica (1 percent). For the period from September 1, 2000, through June 30, 2001, the United States imported a total of 170,445 tons of mangos, valued at $106 million. In the previous full season (September 1, 1999, through August 31, 2000), 253,591 tons, valued at $141 million, were imported into the United States. A preliminary estimate of per capita consumption of mangos by USDA's Economic Research

Service (ERS) was 1.8 pounds in 2000. Per capita consumption has been trending upwards for several decades. Per capita consumption was 0.21 pounds in 1979 and 0.51 pounds in 1989.

The proposed Order would authorize assessments on first handlers and on importers (collected by Customs) of mangos at a rate of ½ cent per pound. This would generate about $2.5 million to administer the program: About 8 percent from domestic production and 92 percent from imports. First handlers and importers of less than 500,000 pounds of mangos per year will be exempt. U.S. produced mangos that are exported are also exempt.

The cost of the assessment and reporting requirements for first handlers and importers is likely to be offset by the benefit of increased demand for mangos in the United States. The Association's goal for the program is to increase consumption of mangos in the United States by 30 percent after one year. In addition, U.S. consumers would benefit from additional information regarding mangos. Another benefit to first handlers and importers of mangos would be that they could serve on the Board and direct the Board's programs.

Associations and related industry media would receive news releases and other information regarding the implementation and referendum process. Furthermore, all information would be available electronically.

The Board would develop guidelines for compliance with the program. The Board would recommend changes in the assessment rate, programs, plans, projects, budgets, and any rules and regulations that might be necessary for the administration of the program. The administrative expenses of the Board are limited by the Act to no more than 15 percent of its assessment income.

There are no federal or state programs that duplicate, overlap, or conflict with this proposed rule.

With regard to alternatives to this proposed rule, the Act itself provides for authority to tailor a program according to the individual needs of an industry. A provision is made for permissive terms in an order under section 516 of the Act, and other sections provide for alternatives. For example, section 514 of the Act provides for orders applicable to: (1) Producers; (2) first handlers and other persons in the marketing chain as appropriate; and (3) importers (if imports are subject to assessment).

Section 515 of the Act provides for the establishment of a board to administer a program established under the Act. This section states that the board will consist of members considered by the Department, in consultation with the agricultural commodity industry involved, to be appropriate. The Act authorizes the following types of board members: Producers, first handlers, others in the marketing chain as appropriate, importers (if importers are subject to assessment), and members of the general public. The Association's proposal specified that the Board would consist of eight U.S. importers, one U.S. first handler, seven foreign producers, one public member, and two non-voting U.S. wholesalers and/or retailers of mangos. In reviewing the Association's proposal, the Department determined that an alternative composition of the Board would be more appropriate. Therefore, this proposed rule provides for the Board to consist of eight U.S. importers, one U.S. first handler, two U.S. producers, seven foreign producers, and two non-voting U.S. wholesalers and/or retailers.

Section 516 authorizes an order to provide for exemption of *de minimis* quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports.

In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under the order. An order also may provide for its approval in a referendum to be based upon: (1) Approval by a majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity.

This proposal includes provisions for domestic market expansion and improvement, reserve funds, and an initial referendum to be conducted prior to the Order going into effect. Approval would be based upon a majority of the first handlers and importers of mangos represented by those voting in the referendum.

We received comments on the initial regulatory flexibility analysis. One commenter questioned a statement in the analysis that indicated that an increase in demand for mangos resulting from this program may lead to a corresponding increase in production. We continue to believe that this statement has merit. Another commenter noted that Puerto Rico is covered by the Order as part of the United States, but Puerto Rico's production was not included in the economic information on the mango industry. Therefore, information on Puerto Rico was added to the analysis. Finally, one commenter noted that the 500,000 pound exemption for first handlers and importers would eliminate the regulatory burden on small packers and importers and also would benefit the program administratively.

Paperwork Reduction Act

In accordance with OMB regulations [5 CFR part 1320], which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that may be imposed by this Order were submitted to OMB for review. Those requirements would become effective only upon implementation of the Order if the referendum passes and after OMB approval.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number for background form (number 1 below): 0505–0001.

Expiration date of approval: February 28, 2006.

OMB Number for other information collections: 0581–0209.

Expiration Date of Approval: February 28, 2006.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the Act.

In addition, there will be the additional burden on first handlers and importers voting in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, is addressed in a proposed rule on referendum procedures which is published separately in this issue of the **Federal Register**.

Under the proposed program, first handlers would be required to pay assessments and file reports with and submit assessments to the Board. While the proposed Order would impose certain recordkeeping requirements on first handlers, information required under the proposed Order could be compiled from records currently maintained. Such records shall be retained for at least two years beyond the marketing year of their applicability.

An estimated 89 respondents would provide information to the Board. They would be: 5 first handlers covered by the program, 3 exempt first handlers, 55 importers covered by the program, 3 exempt importers, 4 domestic producer nominees, 1 foreign producer organization, 14 foreign producer nominees, and 4 wholesaler and/or retailer nominees. The estimated total cost of providing information to the Board by all respondents would be $790.01. The estimated cost for all first handlers covered by the program would be $336.66 or $67.33 per first handler covered by the program; $7.50 for all exempt first handlers or $2.50 per exempt first handler; $393.34 for all importers covered by the program or $7.15 per importer covered by the program; $7.50 for all exempt importers or $2.50 for each exempt importer; $13.34 for all domestic producers or $3.34 per domestic producer; $1.67 for the foreign producer organization; $23.33 for all foreign producer nominees or $1.67 per foreign producer nominee; and $6.67 for the wholesaler and/or retailer nominees or $1.67 per wholesaler and/or retailer nominee. These totals have been estimated by multiplying total burden hours requested by $10.00 per hour, a sum deemed to be reasonable should the respondents be compensated for their time.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other mango programs administered by USDA.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information monthly during the production season would coincide with normal industry business practices. Reporting, other than monthly, would impose an additional and unnecessary recordkeeping burden on first handlers and importers. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual first handlers who are subject to the provisions of the Act. The requirement to keep records for two years is consistent with normal industry practices.

Therefore, there is no practical method for collecting the required information without the use of these forms.

Information collection requirements that are included in this proposal include:

(1) A Background Information Form (OMB Form 0505–0001).

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hours per response for each Board nominee.

Respondents: First handlers, importers, domestic producers, foreign producers, and wholesalers and/or retailers.

Estimated number of Respondents: 40 for initial nominations, 13 in subsequent years.

Estimated number of Responses per Respondent: 1 every 3 years. (0.3)

Estimated Total Annual Burden on Respondents: 20 hours for the initial nominations and 6.7 hours annually thereafter.

(2) Voting in the nomination process

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: First handlers, importers, domestic producers, and a foreign producer organization.

Estimated number of Respondents: 65.

Estimated Number of Responses per Respondent: 1 every 3 years. (0.3)

Estimated Total Annual Burden on Respondents: 11 hours.

(3) An exemption application for first handlers and importers who will be exempt from assessments

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each exempt first handler and importer.

Respondents: Exempt First handlers and importers.

Estimated Number of Respondents: 6.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1.5 hours.

(4) Monthly report by each first handler of mangos

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per each first handler reporting on mangos handled.

Respondents: First handlers.

Estimated number of Respondents: 5.

Estimated number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 30 hours.

(5) A requirement to maintain records sufficient to verify reports submitted under the Order.

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

Respondents: First handlers and importers.

Estimated Number of Respondents: 60.

Estimated Total Annual Burden of Respondents: 30 hours.

Background

The Act authorizes the Department, under a generic authority, to establish agricultural commodity research and promotion orders. The Act provides for a number of optional provisions that allow the tailoring of orders for different commodities. Section 516 of the Act provides permissive terms for orders, and other sections provide for alternatives. For example, section 514 of the Act provides for orders applicable to: (1) Producers; (2) first handlers and others in the marketing chain as appropriate; and (3) importers (if importers are subject to assessment). Section 516 authorizes an order to provide for exemption of *de minimis* quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports. In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under an order. An order also may provide for its approval in a referendum based upon different voting patterns. Section 515 provides for establishment of a board from among producers, first handlers

and others in the marketing chain as appropriate, and importers, if imports are subject to assessment.

This proposed Order includes provisions for domestic market expansion and improvement, reserve funds, and an initial referendum to be conducted prior to the program going into effect. Approval would be based upon a majority of the first handlers and importers voting in the referendum.

The Association has requested the establishment of a Mango Promotion, Research, and Information Order (Order) pursuant to the Act. The Act authorizes the establishment and operation of generic promotion programs which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. This proposal would provide for the development and financing of an effective and coordinated program of research, promotion, and information for mangos. The purpose of the program is to maintain, expand, and develop domestic markets for fresh mangos.

The program would not become effective until approved in a referendum conducted by USDA. Section 518 of the Act provides for USDA to: (1) Conduct an initial referendum, preceding a proposed Order's effective date, among persons who would pay assessments under the program; or (2) implement a proposed Order, pending the conduct of a referendum, among persons subject to assessments, within three years after assessments first begin.

In accordance with section 518(e) of the Act, the results of the referendum must be determined one of three ways: (1) By a majority of those persons voting; (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity.

The Association has recommended that the Department conduct a referendum in which approval of the proposed Order would be based on a majority of the eligible first handlers and importers voting in the referendum. The Association has also recommended that a referendum be conducted prior to the proposed Order going into effect.

In accordance with the Act, USDA would oversee the program's operations. In addition, the Act requires the Department to conduct subsequent referenda: (1) Not later than 7 years after assessments first begin under the proposed Order; or (2) at the request of the Board established under the proposed Order; or (3) at the request of 10 percent or more of the number of persons eligible to vote. The Association has requested that a referendum be conducted every five years to determine if first handlers and importers want the program to continue.

In addition to these criteria, the Act provides that the Department may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the proposed Order or a provision of the proposed Order is favored by persons eligible to vote.

A national research and promotion program for mangos would help the industry to increase consumption of mangos in the United States.

Worldwide, mangos rank first in terms of overall fruit consumption per capita. In the United States, mango consumption currently ranked sixteenth at 1.8 pounds per capita in 2000, according to ERS. In contrast, bananas ranked number one in the United States with a per capita consumption of 29.2 pounds. According to the Association, the low level of mango consumption is due, in part, to lack of product awareness. U.S. consumers are largely unfamiliar with the varieties of mangos, their nutritional benefits, and how to handle them.

Except for a pilot project conducted by the Association with voluntary contributions in 1999, mango promotion has been virtually nonexistent in the United States. There are no large industry members capable of promoting the commodity independently. The mango industry is fragmented. Distribution is conducted by a large number of small importers receiving product from multiple countries of origin. This makes coordinated research and promotion efforts extremely difficult in the absence of a national program.

Average annual U.S. mango prices have been declining since 1990. Increased supply accompanied by current demand levels will most likely yield lower wholesale prices in the future.

A national program would generate funds through mandatory assessments on domestic and imported mangos to be used to conduct research and market development strategies such as sales promotion, publicity, public relations, and advertising. Such a program would also provide centralized communications and facilitate better distribution management for industry members. Section 516(f) of the Act allows an order to authorize the levying of assessments on imports of the commodity covered by the program or on products containing that commodity, at a rate comparable to the rate determined for the domestic agricultural commodity covered by the proposed Order. The Association has proposed to assess imports.

The assessment levied on domestically-produced and imported mangos would be used to pay for promotion, research, and consumer and industry information as well as administration, maintenance, and functioning of the Board. Expenses incurred by the Department in implementing and administering the proposed Order, including referenda costs, also would be paid from assessments. Sections 516(e)(1) and (2) of the Act state that an order may provide for credits of assessments for generic and branded activities. The Association has elected not to propose credits for generic or branded activities. Therefore, the terms ''generic activities'' and ''branded activities'' are not defined in the proposed Order, and credits for assessments would not be allowed.

The Association's initial proposal, dated June 29, 2001, provided for the assessments to be paid by producers and included no exemptions. Subsequently, the Association sent a letter to the Department to revise its proposal by changing the U.S. producer assessment to a U.S. first handler assessment and to exempt handlers and importers of less than 500,000 pounds of mangos per calendar year and exports of U.S. mangos. These modifications reflected a change in industry preferences for program coverage.

First handlers would be required to pay assessments to the Board and maintain records on all mangos handled, including mangos produced by a first handler.

Assessments on imported mangos would be collected by Customs at the time of entry into the United States and remitted to the Board.

All information obtained from persons subject to this proposed Order as a result of recordkeeping and reporting requirements would be kept confidential by all officers, employees, and agents of USDA and of the Board. However, this information may be disclosed only if the Department considers the information relevant, and the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Department or to which the Department or any officer of USDA is a party. Other exceptions for disclosure of confidential information would include the issuance of general

statements based on reports or on information relating to a number of persons subject to an order if the statements do not identify the information furnished by any person or the publication, by direction of the Department of the name of any person violating an order and a statement of the particular provisions of an order violated by the person.

The proposed Order provides for USDA to conduct an initial referendum preceding the proposed Order's effective date. Therefore, approval of the proposed Order will be determined by a majority of the eligible first handlers and importers voting in the referendum. The proposed Order also provides for subsequent referenda to be conducted (1) every 5 years after the program is in effect; (2) at the request of the Board established under the proposed Order; or (3) when requested by 10 percent or more of first handlers and importers of mangos covered by the proposed Order. In addition, the Department may conduct a referendum at any time.

The Act requires that an order provide for the establishment of a board to administer the program under USDA supervision. The Department modified the Association's proposal by adding two domestic producers and eliminating the public member position to help ensure that the program will benefit the domestic mango industry. Therefore, the proposed Order provides for a 20-member Board consisting of eight U.S. importers, one U.S. first handler, two U.S. producers, seven foreign producers, and two non-voting wholesalers and/or retailers. In addition, the Department included a separate definition for foreign producers.

To ensure fair and equitable representation of the mango industry on the Board, the Act requires membership on the Board to reflect the geographical distribution of the production of mangos and the quantity or value of imports. We anticipate that this program will assist domestic producers by increasing the demand for mangos. It is possible that domestic production will expand accordingly, in which case reapportioning of the Board would be required under the Order.

Upon implementation of the proposed Order and pursuant to the Act, at least once every five years, the Board will review the geographical distribution of production of mangos in the United States, the geographical distribution of the importation of mangos into the United States, the quantity of mangos produced in the United States, and the quantity of mangos imported into the United States. The review will be based on Board assessment records and statistics from the Department. If warranted, the Board will recommend to the Department that membership on the Board be altered to reflect any changes in geographical distribution of domestic mango production and importation and the quantity of domestic production and imports. To help ensure equitable representation of importers and first handlers on the Board, additional first handlers may be added to the Board if the quantity of domestic production increases to a level where first handlers would be entitled to an additional member on the Board. Currently, each importer member represents about 42.6 million pounds of imported mangos, and the first handler member represents about 6.2 million pounds of domestic mango production.

Board members will serve terms of three years and be able to serve a maximum of two consecutive terms, except that the wholesaler/retailer positions shall carry a term of one year. Wholesaler and retailer members may serve three consecutive one-year terms. When the Board is first established, the U.S. first handler, two U.S. importers, one U.S. producer, and two foreign producers will be assigned initial terms of four years; three U.S. importers, one U.S. producer, and two foreign producers will be assigned initial terms of three years; and three U.S. importers, and three foreign producers will be assigned initial terms of two years. Thereafter, these positions will carry a three-year term. Members serving initial terms of two or four years will be eligible to serve a second term of three years. Each term of office will end on December 31, with new terms of office beginning on January 1.

Comments

The proposal was published in the **Federal Register** on August 26, 2002 [67 FR 54908], with a 60-day comment period ending on October 25, 2002. In addition, the USDA published a proposed rule on the referendum procedures in the **Federal Register** on August 26, 2002 [67 FR 54920], with the same 60-day comment period. Twenty-two comments from 21 persons or organizations were received by the deadline. Commenters included domestic packers, private farms, four foreign interests, and an American produce association. Nineteen of the 22 comments were in support of the proposed program while three were opposed. Two comments were received late, however, they did not raise any issues different from those timely received. Some of the favorable comments recommended changes to the proposal. Recommendations that have been adopted are discussed herein.

The opposing comments also raised additional issues and concerns regarding the proposed program. These commenters questioned the constitutionality of the program; offered their own views of the impact of the proposed program on the domestic mango industry; discussed the state of the domestic mango industry and the comparative advantages and disadvantages for U.S. mango growers in terms of regulatory requirements, ability to export, costs of production and the like; and questioned the make-up of the proposed board. Questions were raised as to program focus with regard to imports. Two of the commenters referenced an agricultural economic study conducted in Florida, at the state level, to support their views. The commenters believe the proposed program would not benefit U.S. growers. Two opponents concluded that the proposed program should not be applied to domestic production (producers) and that domestic production should be exempt from assessments. We disagree. We are of the view that this program is constitutional and consistent with the provisions of the Act and that the benefits of this program would outweigh program costs. In addition, a favorable comment also supported one exemption for U.S. producers based upon the volume of U.S. production.

The commenters from Florida and Puerto Rico also expressed the belief that the proposed mango program represents, for domestic producers, taxation without representation. However, domestic producers are not responsible for paying assessments under the proposed program. Although it is possible that the assessment will be passed back to the producers, only importers and first handlers of fresh mangos would be responsible for paying assessments into the program. Handlers and importers of less than 500,000 pounds of mangos, per calendar year, are exempt from paying assessments. Further, 92 percent of the assessment funds would come from imported mangos. USDA recognized the interests of domestic producers by adding two U.S. producers to the Board. These two members represent two of the 18 voting positions on the Board which represents 11 percent of the seats on the Board.

In contrast, six other commenters stated that they supported USDA adding domestic producer seats to the Board. In addition, five of these commenters noted that they were also satisfied that the proposal requires that, at least once every five years, the Board would

review the geographic distribution and production of mangos to ensure equitable Board composition and that additional U.S. first handlers would be added if domestic production increases.

One commenter who supported the program requested that the definition of first handler in § 1206.6 be revised for clarity. The commenter proposed a rewrite of the definition, including in the text the time frame of a calendar year for the handling of 500,000 pounds or more of mangos. Specifying the time frame has merit. However, we believe that with one additional change, the definition of first handler is clear and consistent with the overall regulatory provisions. A separate reference to retailer in the definition of first handler is not needed. All persons, including retailers who meet the terms of the definition of first handler as provided in § 1206.6 would be covered under the provisions of the Mango Order. Accordingly, the reference is deleted. Further, as a result of the time frame change to § 1206.6, an appropriate conforming change has been made to the definition of importer in § 1206.9.

Another commenter expressed support for the program and recommended that the definition of foreign producer in § 1206.8 more closely reflect the definition of domestic producers in § 1206.16 to ensure that foreign producer members on the Board are actually producers of mangos and not merely exporters of mangos to the United States. This comment has merit and § 1206.8 is revised accordingly.

Three commenters in support of the program recommend that the term of office for the wholesaler/retailer position be reduced from three years to one year. This would expose the Board to a wider range of firms with marketing and consumer sales experience and allow a broader base of wholesalers and retailers. This comment has merit. Accordingly, USDA has added a term limitation for these positions of three, one-year terms in § 1206.32.

The same three commenters also recommended a three-week voting period for the referendum instead of four. Due to the relatively small number of eligible voters in a referendum, this comment has been adopted and requires no change in the text of the Order.

Regarding the foreign producer positions on the Board, one commenter stated support for the definition of foreign producer in the Order because the definition excludes persons who are solely exporters or brokers. The commenter also stated that there is no well recognized organization that represents the interests of producers in exporting countries. This commenter also expressed the view that a single organization representing each exporting country would be more feasible and practical than one organization representing the interests of the producers of all exporting countries. This comment has merit and we have eliminated the requirement that there be one foreign producer organization from § 1206.31(g) of the Order. This would provide flexibility in the Order concerning foreign producer organizations.

This commenter also recommended that the Order be changed to allow the government of an exporting country to nominate foreign producer members if there is no national producer organization in that country. We disagree with this comment. As stated above, we have removed the limitation on the number of foreign producer organizations. In countries where there is currently no such organization, producers may create one in order to submit nominees for the foreign producer positions on the Board. This would be consistent with other national research and promotion programs supervised by USDA. Another commenter recommended that each of the seven major exporting countries be represented on the Board. Section 1206.31(g) already provides that foreign producer member nominees be representative of the major countries exporting mangos to the United States.

Two of the commenters who supported the Order stated that they would like a means of expressing their views to the Board if they do not have a member on the Board. All Board meetings will be open to the public, and any person will have the opportunity to contact the Board's staff or members at any time without making any changes to the Order. Accordingly, no change to the Order is made as a result of this comment.

One commenter who supported the Order requested that USDA develop grade standards for mangos. The Board will not have the authority to develop grade standards, and this issue is best addressed to the USDA's fruit and vegetable grading service. Therefore, this comment is denied.

Another commenter who favored the program requested that the Board's promotional campaigns disseminate variety-specific information on mangos. The Board, once it is appointed and has a staff, will make decisions regarding the types of promotional campaigns it will conduct. This may include dissemination of information on all different varieties of mangos. The Act requires mangos of all origins be promoted generically and § 1206.50(d) of the Order requires that all varieties of mangos be treated equally.

Two of the commenters who are opposed to the program expressed the belief that USDA should have notified them when USDA received the proposal from the Association. USDA does not announce to the public when a proposal is received because, at that point, it is not known whether the proposal will be accepted by USDA. Notice to all potentially affected parties is made by publishing in the **Federal Register** the initial proposed rule requesting comments. In addition to that proposed rule, USDA issued a news release. Further, fruit and vegetable industry trade paper and magazine coverage of the proposal from the development stages, prior to the submission to USDA, and to date has been extensive. Therefore, the industry received substantial advance notice.

Finally, miscellaneous non-substantive changes are made by the Department for clarity in the definition of Market and Marketing in § 1206.12 and § 1206.78 to update the OMB control number.

The proposed Order is summarized as follows:

Sections 1206.1 through 1206.24 of the proposed Order define certain terms, such as mango, first handler and importer, which are used in the proposed Order. The definitions of eligible first handler and eligible importer were modified to improve clarity and be consistent with current Agency rules.

Sections 1206.30 through 1206.37 include provisions relating to the Board. These provisions cover establishment and membership, nominations and appointments, term of office, vacancies, procedures, compensation and reimbursement, powers, duties and prohibited activities of the Board, which is the governing body authorized to administer the proposed Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about mangos, subject to oversight of the Department.

Sections 1206.40 through 1206.43 cover budget review and approval; financial statements; authorize the collection of assessments; specify how assessments would be used; specify who pays the assessment and how; exemptions; and authorize the imposition of a late-payment charge on past-due assessments.

The Association recommends a proposed assessment rate of ½ cent per pound for domestic mangos and imported mangos. The assessment rate will be reviewed and may be modified

with the approval of the Department, after the first referendum is conducted as stated in § 1206.71(b). Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures as set forth in 7 CFR 3.1 through 3.36 for all research and promotion programs administered by USDA [60 FR 12533, March 7, 1995].

Sections 1206.50 through 1206.52 address programs, plans, and projects; require the Board to periodically conduct an independent review of its overall program; and address patents, copyrights, trademarks, information, publications, and product formulations developed through the use of assessment funds.

Sections 1206.60 through 1206.62 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information from such books, records, or reports.

Sections 1206.70 through 1206.78 describe the rights of the Secretary of Agriculture (Secretary); address referenda; authorize the Secretary to suspend or terminate the Order when deemed appropriate; prescribe proceedings after suspension or termination; and address personal liability, separability, amendments, and the OMB control number.

In addition to adding a definition of foreign producer and changing the composition of the Board, the Department made minor changes to the Association's proposal which do not materially affect the program.

The Department has determined that this proposed Order is consistent with and will effectuate the purposes of the Act.

For the proposed Order to become effective, it must be approved by a majority of the eligible importers and first handlers voting in the referendum.

Referendum Order

It is hereby directed that a referendum be conducted among eligible mango importers and first handlers to determine whether they favor implementation of the Mango Promotion, Research, and Information Order.

The referendum shall be conducted from November 10, 2003 through November 28, 2003. Ballots will be mailed to all known mango importers and first handlers on or before October 27, 2003. First handlers and importers who handled or imported 500,000 pounds or more of fresh mangos, respectively, from January 1 through December 31, 2002, are eligible to vote. Eligible voters who do not receive a ballot by mail should call the following toll-free telephone number to receive a ballot: 1 (888) 720–9917. All ballots will be subject to verification. Ballots must be received by the referendum agents no later than the close of business, Eastern daylight-standard time, November 28, 2003, to be counted.

Kathie M. Birdsell and Margaret B. Irby, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2535-S, Stop 0244, Washington, DC 20250–0244, are designated as the referendum agents of the Department to conduct the referendum. The Procedure for the Conduct of Referenda in connection with the Mango Promotion, Research, and Information Order, 7 CFR 1206.100–1206.108, which is being published separately in this issue of the **Federal Register**, shall be used to conduct the referendum.

List of Subjects in 7 CFR Part 1206

Administrative practice and procedure, Advertising, Consumer information, Mangos, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended as follows:

1. The authority citation for part 1206 continues to read as follows:

Authority: 7 U.S.C. 7411–7425.

2. Subpart A is added Part 1206 to read as follows:

PART 1206—MANGO PROMOTION, RESEARCH, AND INFORMATION

Subpart A—Mango Promotion, Research, and Information Order Definitions

Sec.

Authority: 7 U.S.C. 7411–7425.

Subpart A—Mango Promotion, Research, and Information Order Definitions

§ 1206.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425; Public Law 104–127; 110 Stat. 1029), or any amendments thereto.

§ 1206.2 Board.

Board or National Mango Promotion Board means the administrative body established pursuant to § 1206.30, or such other name as recommended by the Board and approved by the Department.

§ 1206.3 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1206.4 Customs.

Customs means the Customs and Border Protection of the U.S. Department of Homeland Security.

§ 1206.5 Department.

Department means the U.S. Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1206.6 First handler.

First handler means any person, (excluding a common or contract carrier), receiving 500,000 or more pounds of mangos from producers in a calendar year and who as owner, agent, or otherwise ships or causes mangos to be shipped as specified in this Order. This definition includes those engaged in the business of buying, selling and/or offering for sale; receiving; packing; grading; marketing; or distributing mangos in commercial quantities. The term first handler includes a producer who handles or markets mangos of the producer's own production.

§ 1206.7 Fiscal period.

Fiscal period means a calendar year from January 1 through December 31, or such other period as recommended by the Board and approved by the Department.

§ 1206.8 Foreign producer.

Foreign producer means any person who is engaged in the production and sale of mangos outside of the United States and who owns, or shares the ownership and risk of loss of the crop for sale in the U.S. market or who is engaged, outside of the United States, in the business of producing, or causing to be produced, mangos beyond the person's own family use and having value at first point of sale.

§ 1206.9 Importer.

Importer means any person importing 500,000 or more pounds of mangos into the United States in a calendar year as a principal or as an agent, broker, or consignee of any person who produces or handles mangos outside of the United States for sale in the United States, and who is listed as the importer of record for such mangos.

§ 1206.10 Information.

Information means information and programs that are designed to develop new markets, marketing strategies, increase market efficiency, and activities that are designed to enhance the image of mangos in the United States. These include:

(a) Consumer information, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of mangos; and

(b) Industry information, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the mango industry, and activities to enhance the image of the mango industry.

§ 1206.11 Mangos.

Mangos means all fresh fruit of *Mangifera indica L.* of the family *Anacardiaceae.*

§ 1206.12 Market or marketing.

Marketing means the sale or other disposition of mangos in the U.S. domestic market. To market means to sell or otherwise dispose of mangos in interstate or intrastate channels of commerce.

§ 1206.13 Order.

Order means an order issued by the Department under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1206.14 Part and subpart.

Part means the Mango Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a subpart of such part.

§ 1206.15 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1206.16 Producer.

Producer means any person who is engaged in the production and sale of mangos in the United States and who owns, or shares the ownership and risk of loss of, the crop or a person who is engaged in the business of producing, or causing to be produced, mangos beyond the person's own family use and having value at first point of sale.

§ 1206.17 Promotion.

Promotion means any action taken to present a favorable image of mangos to the general public and the food industry for the purpose of improving the competitive position of mangos and stimulating the sale of mangos in the United States. This includes paid advertising and public relations.

§ 1206.18 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of mangos, including research relating to nutritional value, cost of production, new product development, varietal development, nutritional value and benefits, and marketing of mangos.

§ 1206.19 Retailer.

Retailer means a person engaged in the business of selling mangos only to consumers.

§ 1206.20 Secretary.

Secretary means the Secretary of Agriculture of the United States.

§ 1206.21 Suspend.

Suspend means to issue a rule under section 553 of title 5, U.S.C., to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1206.22 Terminate.

Terminate means to issue a rule under section 553 of title 5, U.S.C., to cancel permanently the operation of an order or part thereof beginning on a certain date specified in the rule.

§ 1206.23 United States.

United States or U.S. means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1206.24 Wholesaler.

Wholesaler means any person engaged in the purchase, assembly, transportation, storage, and distribution of mangos for sale to other wholesalers, retailers, and foodservice firms.

National Mango Promotion Board

§ 1206.30 Establishment and membership.

(a) *Establishment of the National Mango Promotion Board.* There is hereby established a National Mango Promotion Board composed of eight importers, one first handler, two domestic producers, seven foreign producers, and two non-voting wholesalers and/or retailers of mangos in the United States. The chairperson shall reside in the United States and the Board office shall also be located in the United States.

(b) *Importer districts.* The importer seats shall be allocated based on the volume of mangos imported into the Customs Districts identified by their name and Code Number as defined in the Harmonized Tariff Schedule of the United States. The initial allocation will be two seats for District I, three seats for District II, two seats for District III, and one seat for District IV.

(1) *District I* includes the Customs Districts of Portland, ME (01), St. Albans, VT (02), Boston, MA (04), Providence, RI (05), Ogdensburg, NY (07), Buffalo, NY (09), New York City, NY (10), Philadelphia, PA (11), Baltimore, MD (13), Norfolk, VA (14), Charlotte, NC (15), Charleston, SC (16), Savannah, GA (17), Tampa, FL (18), San Juan, PR (49), Virgin Islands of the United States (51), Miami, FL (52) and Washington, DC (54).

(2) *District II* includes the Customs Districts of Mobile, AL (19), New Orleans, LA (20), Port Arthur, TX (21), Laredo, TX (23), Minneapolis, MN (35), Duluth, MN (36), Milwaukee, WI (37), Detroit, MI (38), Chicago, IL (39), Cleveland, OH (41), St. Louis, MO (45), Houston, TX (53), and Dallas-Fort Worth, TX (55).

(3) *District III* includes the Customs Districts of El Paso, TX (24), Nogales, AZ (26), Great Falls, MT (33), and Pembina, ND (34).

(4) *District IV* includes the Customs Districts of San Diego, CA (25), Los Angeles, CA (27), San Francisco, CA (28), Columbia-Snake, OR (29), Seattle, WA (30), Anchorage, AK (31), and Honolulu, HI (32).

(c) Adjustment of membership. At least once every five years, the Board will review the geographical distribution of production of mangos in the United States, the geographical distribution of the importation of mangos into the United States, the quantity of mangos produced in the United States, and the quantity of mangos imported into the United States. The review will be based on Board assessment records and statistics from the Department. If warranted, the Board will recommend to the Department that membership on the Board be altered to reflect any changes in geographical distribution of domestic mango production and importation and the quantity of domestic production and imports. To ensure equitable representation, additional first handlers may be added to the Board to reflect increases in domestic production.

§ 1206.31 Nominations and appointments.

(a) Voting for first handler, importer, and domestic producer members will be made by mail ballot.

(b) There shall be two nominees for each position on the Board.

(c) Nominations for the initial Board will be handled by the Department. Subsequent nominations will be handled by the Board's staff.

(d) Nominees to fill the first handler member position on the Board shall be solicited from all known first handlers. The nominees shall be placed on a ballot which will be sent to all first handlers for a vote. The nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the first handlers' first and second choice nominees.

(e) Nominees to fill the importer positions on the Board shall be solicited from all known importers of mangos. The members from each district shall select the nominees for two positions on the Board. Two nominees shall be submitted for each position. The nominees shall be placed on a ballot which will be sent to importers in the districts for a vote. For each position, the nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the importers' first and second choice nominees.

(f) Nominees to fill the domestic producer member positions on the Board shall be solicited from all known domestic producers. The nominees shall be placed on a ballot which will be sent to all domestic producers for a vote. The nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the producers' first and second choice nominees.

(g) Nominees to fill the foreign producer member positions on the Board shall be solicited from organizations of foreign mango producers. Each organization shall submit two nominees for each position, and the nominees shall be representative of the major countries exporting mangos to the United States.

(h) The Board will nominate the wholesaler and/or retailer members.

(i) From the nominations, the Department shall select the members of the Board.

§ 1206.32 Term of office.

The term of office for first handler, importer, domestic producer, and foreign producer members of the Board will be three years, and these members may serve a maximum of two consecutive three-year terms. The term of office for wholesaler/retailer members shall be one year, and these members may serve a maximum of three consecutive one-year terms. When the Board is first established, the first handler, two importers, one domestic producer, and two foreign producers will be assigned initial terms of four years; three importers, one domestic producer, and two foreign producers will be assigned initial terms of three years; and three importers and three foreign producers will be assigned initial terms of two years. Thereafter, each of these positions will carry a full three-year term. Members serving initial terms of two or four years will be eligible to serve a second term of three years. Each term of office will end on December 31, with new terms of office beginning on January 1.

§ 1206.33 Vacancies.

(a) In the event that any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a Board member, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Department that the member be removed from office. If the Department finds the recommendation of the Board shows adequate cause, the Department shall remove such member from office.

(c) Should any member position become vacant, successors for the unexpired term of the member shall be appointed in the manner specified in § 1206.31, except that nomination and replacement shall not be required if the unexpired term is less than six months.

§ 1206.34 Procedure.

(a) At a Board meeting, it will be considered a quorum when at least ten voting members are present.

(b) At the start of each fiscal period, the Board will select a chairperson and vice chairperson who will conduct meetings throughout that period.

(c) All Board members will be notified at least 30 days in advance of all Board and committee meetings unless an emergency meeting is declared.

(d) Each voting member of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by one vote more than 50 percent of the total votes represented by the Board members present.

(e) It will be considered a quorum at a committee meeting when at least one more than half of those assigned to the committee are present. Committees may consist of individuals other than Board members, and such individuals may vote in committee meetings. Committee members shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board.

(f) In lieu of voting at a properly convened meeting and, when in the

opinion of the chairperson of the Board such action is considered necessary, the Board may take action if supported by one vote more than 50 percent of the members by mail, telephone, electronic mail, facsimile, or any other means of communication. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board. All telephone votes shall be confirmed promptly in writing. All votes shall be recorded in Board minutes.

(g) There shall be no voting by proxy.

(h) The chairperson shall be a voting member and shall reside in the U.S.

(i) The organization of the Board and the procedures for conducting meetings of the Board shall be in accordance with its bylaws, which shall be established by the Board and approved by the Department.

§ 1206.35 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board, incurred by them in the performance of their duties as Board members.

§ 1206.36 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Department for approval such bylaws as may be necessary for the functioning of the Board, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the Board a chairperson, other officers, committees, and subcommittees, as the Board determines appropriate;

(d) To employ persons, other than the members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop programs, plans, and projects, and enter into contracts or agreements, which must be approved by the Department before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that: any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and, make such other reports available as the Board or the Department considers relevant. Furthermore, any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Department or the Board may require;

(3) The Department may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

(f) To prepare and submit for approval of the Department calendar year budgets in accordance with § 1206.40;

(g) To maintain such records and books and prepare and submit such reports and records from time to time to the Department as the Department may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(h) To cause its books to be audited by a competent auditor at the end of each calendar year and at such other times as the Department may request, and to submit a report of the audit directly to the Department;

(i) To give the Department the same notice of Board and committee meetings as is given to members in order that the Department's representative(s) may attend such meetings.

(j) To act as intermediary between the Department and any first handler or importer;

(k) To furnish to the Department any information or records that the Department may request;

(l) To receive, investigate, and report to the Department complaints of violations of the Order;

(m) To recommend to the Department such amendments to the Order as the Board considers appropriate; and

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the mango industry's position in the U.S. domestic market; maintain and expand existing markets and uses for mangos; and to carry out programs, plans, and projects designed to provide maximum benefits to the mango industry.

§ 1206.37 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that would be a conflict of interest; and

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments, other than recommending to the Department amendments to the Order.

Expenses and Assessments

§ 1206.40 Budget and expenses.

(a) At least 60 days prior to the beginning of each calendar year, and as may be necessary thereafter, the Board shall prepare and submit to the Department a budget for the calendar year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data or at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Department, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Board's approved budget and which are

consistent with governing bylaws need not have prior approval by the Department.

(d) The Board is authorized to incur such expenses, including provision for a reserve, as the Department finds reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Department, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Voluntary contributions shall be free from any encumbrance by the donor, and the Board shall retain complete control of their use.

(g) The Board shall reimburse the Department for all expenses incurred by the Department in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(h) The Board may not expend for administration, maintenance, and functioning of the Board in any calendar year an amount that exceeds 15 percent of the assessments and other income received by the Board for that calendar year. Reimbursements to the Department required under paragraph (g) of this section, are excluded from this limitation on spending.

(i) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: Provided that the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Department, such reserve funds may be used to defray any expenses authorized under this part.

§ 1206.41 Financial statements.

(a) As requested by the Department, the Board shall prepare and submit financial statements to the Department on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Department within 30 days after the end of the time period to which it applies.

(c) The Board shall submit annually to the Department an annual financial statement within 90 days after the end of the calendar year to which it applies.

§ 1206.42 Assessments.

(a) The funds to cover the Board's expenses shall be paid from assessments on first handlers and importers, donations from any person not subject to assessments under this Order, and other funds available to the Board and subject to the limitations contained therein.

(b) The assessment rate shall be ½ cent per pound on all mangos. The assessment rate will be reviewed and may be modified by the Board with the approval of the Department, after the first referendum is conducted as stated in § 1206.71(b).

(c) *Domestic mangos.* First handlers of domestic mangos are required to pay assessments on all mangos handled for the U.S. market. This includes mangos of the first handler's own production.

(d) *Imported mangos.* Each importer of mangos shall pay an assessment to the Board through Customs on mangos imported for marketing in the United States.

(1) The assessment rate for imported mangos shall be the same or equivalent to the rate for mangos produced in the United States.

(2) The import assessment shall be uniformly applied to imported mangos that are identified by the numbers 0804.50.4040 and 0804.50.6040 in the Harmonized Tariff Schedule of the United States.

(3) The assessments due on imported mangos shall be paid when they enter or are withdrawn for consumption in the United States.

(e) Each person responsible for remitting assessments under paragraph (c) of this section shall remit the amounts due to the Board's office on a monthly basis no later than the fifteenth day of the month following the month in which the mangos were marketed, in such manner as prescribed by the Board.

(f) A late payment charge shall be imposed on any person failing to remit to the Board the total amount for which the person is liable by the payment due date established under this section. The amount of the late payment charge shall be prescribed by the Department.

(g) An additional charge shall be imposed on any person subject to a late payment charge in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed by the Department.

(h) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(i) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Department.

§ 1206.43 Exemptions.

(a) Any first handler or importer of less than 500,000 pounds of mangos per calendar year may claim an exemption from the assessments required under § 1206.42. Mangos produced domestically and exported from the United States may annually claim an exemption from the assessments required under § 1206.42.

(b) A first handler or importer desiring an exemption shall apply to the Board, on a form provided by the Board, for a certificate of exemption. A first handler shall certify that the first handler will handle less than 500,000 pounds of domestic mangos for the fiscal period for which the exemption is claimed. An importer shall certify that the importer will import less than 500,000 pounds of mangos during the fiscal period for which the exemption is claimed.

(c) Upon receipt of an application, the Board shall determine whether an exemption may be granted. The Board then will issue, if deemed appropriate, a certificate of exemption to each person who is eligible to receive one. It is the responsibility of these persons to retain a copy of the certificate of exemption.

(d) Importers who receive a certificate of exemption shall be eligible for reimbursement of assessments collected by Customs. These importers shall apply to the Board for reimbursement of any assessments paid. No interest will be paid on the assessments collected by Customs. Requests for reimbursement shall be submitted to the Board within 90 days of the last day of the calendar year the mangos were actually imported.

(e) Any person who desires an exemption from assessments for a subsequent calendar year shall reapply to the Board, on a form provided by the Board, for a certificate of exemption.

(f) The Board may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt mangos and, in the case of importers, proof of payment of assessments.

Promotion, Research, and Information

§ 1206.50 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Department for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer information, with respect to mangos; and

(2) The establishment and conduct of research with respect to: the use, nutritional value and benefits, sale, distribution, and marketing of mangos in the United States; the creation of new products thereof, to the end that the marketing and use of mangos in the United States may be encouraged, expanded, improved, or made more acceptable; and to advance the image, desirability, or quality of mangos in the United States.

(b) No program, plan, or project shall be implemented prior to its approval by the Department. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the Board shall terminate such program, plan, or project.

(d) No program, plan, or project including advertising shall be false or misleading or disparaging to another agricultural commodity. Mangos of all origins shall be treated equally.

§ 1206.51 Independent evaluation.

The Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and other programs conducted by the Board pursuant to the Act. The Board shall submit to the Department, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§ 1206.52 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government, as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Department. Upon termination of this subpart, § 1206.73 shall apply to determine disposition of all such property.

Reports, Books, and Records

§ 1206.60 Reports.

(a) Each first handler will be required to provide to the Board periodically such information as may be required by the Board, with the approval of the Department, which may include but not be limited to the following:

(1) Number of pounds of domestic mangos handled;

(2) Number of pounds of domestic mangos on which an assessment was paid;

(3) Name and address of the producers from whom the first handler has received mangos;

(4) Date that assessment payments were made on each pound of domestic mangos handled;

(5) Number of pounds of domestic mangos exported;

(6) The first handler's tax identification number;

(b) Each importer may be required to provide to the Board periodically such information as may be required by the Board, with the approval of the Department, which may include but not be limited to the following:

(1) Number of pounds of mangos imported;

(2) Number of pounds of mangos on which an assessment was paid;

(3) Name, address, and tax identification number of the importer; and

(4) Date that assessment payments were made on each pound imported.

§ 1206.61 Books and records.

Each first handler and importer shall maintain and make available for inspection by the Department such books and records as are necessary to carry out the provisions of this part, any regulations issued under this part, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1206.62 Confidential treatment.

All information obtained from books, records, or reports under the Act and this part shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members, first handlers, or importers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this part, together with a statement of the particular provisions of this part violated by such person.

Miscellaneous

§ 1206.70 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1206.71 Referenda.

(a) *Initial Referendum.* The Order shall not become effective unless:

(1) The Department determines that the Order is consistent with and will effectuate the purposes of the Act; and

(2) The Order is approved by a majority of the first handlers and importers voting, who, during a representative period determined by the Department, have been engaged in the handling or importation of mangos.

(b) *Subsequent referenda.* Every five years, the Department shall hold a referendum to determine whether first handlers and importers of mangos favor the continuation of the Order. The

Order shall continue if it is favored by a majority of the first handlers and importers voting who, during a representative period determined by the Department, have been engaged in the handling or importation of mangos. The Department will also conduct a referendum if 10 percent or more of all non-exempt, first handlers and importers of mangos request the Department to hold a referendum. In addition, the Department may hold a referendum at any time.

§ 1206.72 Suspension and termination.

(a) The Department shall suspend or terminate this part or subpart or a provision thereof if the Department finds that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Department determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Department shall suspend or terminate this subpart at the end of the marketing year whenever the Department determines that its suspension or termination is approved or favored by a majority of the first handlers and importers voting who, during a representative period determined by the Department, have been engaged in the handling or importation of mangos.

(c) If, as a result of a referendum the Department determines that this subpart is not approved, the Department shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1206.73 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Department to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Department, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Department;

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;

(3) From time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the trustees, to such person or persons as the Department may direct; and

(4) Upon request of the Department, execute such assignments or other instruments necessary and appropriate to vest in such persons title and right to all funds, property and claims vested in the Board or the trustees pursuant to the Order.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Department to be disposed of, to the extent practical, to one or more mango industry organizations in the interest of continuing mango promotion, research, and information programs.

§ 1206.74 Effect of termination or amendment.

Unless otherwise expressly provided by the Department, the termination or amendment of this part or any subpart thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this part; or

(b) Release or extinguish any violation of this part; or

(c) Affect or impair any rights or remedies of the United States, or of the Department, or of any other persons with respect to any such violation.

§ 1206.75 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1206.76 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1206.77 Amendments.

Amendments to this subpart may be proposed from time to time by the Board or by any interested person affected by the provisions of the Act, including the Department.

§ 1206.78 OMB control number.

The control numbers assigned to the information collection requirements of this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, are OMB control number 0505–0001 and OMB control number 0581–0209.

Dated: October 2, 2003.

A.J. Yates,

Administrator.

[FR Doc. 03–25457 Filed 10–8–03; 8:45 am]

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Federal Register

Thursday,
October 9, 2003

Part V

The President

Proclamation 7716—Child Health Day, 2003

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 7716 of October 6, 2003

Child Health Day, 2003

By the President of the United States of America

Parents, teachers, and mentors play a critical role in helping children learn to make healthy choices in life. On Child Health Day, we emphasize our commitment to teaching our children the benefits of good health.

The safety and well-being of our children is a priority shared by all Americans. As children grow and develop, they face many risks and dangers. Through the HealthierUS Initiative and the President's Challenge, my Administration is working to help children learn the benefits of a healthy body and mind.

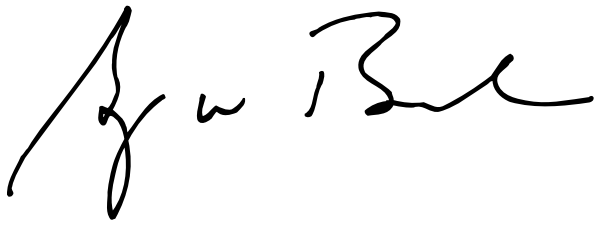
Across our country, parents and caregivers can play a vital part in creating a more healthy America by teaching children good nutrition and important safety procedures. We can all help young Americans improve their health by encouraging them to eat healthy foods and to get regular exercise. Good nutrition can improve students' ability to concentrate and help them succeed in the classroom. Families must encourage our young people to avoid harmful activities. Families can also protect their children by ensuring that they are immunized against preventable diseases and making sure that homes, day care centers, and schools have been checked for potential hazards. Parents can help prevent accidents and injuries by securing infants, toddlers, and small children in child safety seats and booster seats, checking consumer safety warnings, and making sure young people wear protective gear during recreational activities.

By teaching our children to make safe, healthy decisions, families and all Americans can help our young people reach their full potential, become responsible leaders in their communities, and make our Nation better.

The Congress, by a joint resolution approved May 18, 1928, as amended (36 U.S.C. 105), has called for the designation of the first Monday in October as ''Child Health Day'' and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Monday, October 6, 2003, as Child Health Day. I call upon families, schools, child health professionals, communities, and governments to help all our children discover the rewards of good health and wellness.

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



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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 659/P.L. 108–91

Hospital Mortgage Insurance Act of 2003 (Oct. 3, 2003; 117 Stat. 1158)

H.R. 978/P.L. 108–92

To amend chapter 84 of title 5, United States Code, to provide that certain Federal annuity computations are adjusted by 1 percentage point relating to periods of receiving disability payments, and for other purposes. (Oct. 3, 2003; 117 Stat. 1160)

S. 111/P.L. 108–93

To direct the Secretary of the Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, and for other purposes. (Oct. 3, 2003; 117 Stat. 1161)

S. 233/P.L. 108–94

Coltsville Study Act of 2003 (Oct. 3, 2003; 117 Stat. 1163)

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