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Rules and Regulations

Federal Register

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Wednesday, December 17, 2003

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH27

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, –61BT, and –24PHB Revision (Amendment 6): Correction and Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: correction and confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is correcting the direct final rule that was published in the **Federal Register** on October 7, 2003 (68 FR 57785). This direct final rule amended the NRC's regulations to revise the Standardized NUHOMS® cask system listing to include Amendment No. 6 to Certificate of Compliance (CoC) No. 1004. The correction removes the specified effective date for Amendment No. 5 to this cask system. The NRC is also confirming the effective date of December 22, 2003, for this direct final rule.

DATES: The effective date of December 22, 2003, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. These same documents may also be viewed and downloaded electronically via the rulemaking Web site (*http://ruleforum.llnl.gov*). For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Margaret Stambaugh, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5449, e-mail *mxs8@nrc.gov.*

SUPPLEMENTARY INFORMATION: On October 7, 2003 (68 FR 57785), the NRC published a direct final rule amending its regulations in 10 CFR part 72 to revise the Standardized NUHOMS® cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 6 to CoC No. 1004. This amendment will permit a part 72 licensee to store high burnup Babcock & Wilcox 15x15 spent fuel assemblies with an average burnup of up to 55,000 megawatt-days/metric ton of uranium, enrichment equal to 4.5 weight percent uranium-235, a maximum decay heat load of 1.3 kilowatt (kW) per assembly, and a maximum heat load of 24 kW per cask, under a general license. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on December 22, 2003. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

The NRC is also correcting this direct final rule to remove the specified effective date for Amendment No. 5 in the Standardized NUHOMS® cask system listing. On August 19, 2003 (68 FR 49683), the NRC published a direct final rule that would have added Amendment No. 5 to the Standardized NUHOMS® cask system listing with an effective date of November 3, 2003. The October 7, 2003, direct final rule for Amendment No. 6 included the anticipated effective date for Amendment No. 5. On October 30, 2003 (68 FR 61734), the NRC withdrew the August 19, 2003, direct final rule because it received significant adverse comment in response to an identical proposed rule which was published concurrently with that direct final rule. Therefore, the amendment to 10 CFR 72.214 setting out the text for Certificate of Compliance 1004 presented in the October 7, 2003, direct final rule for Amendment No. 6 is corrected to remove the effective date for Amendment No. 5 and the reference to the cask model number that would have been added by Amendment No. 5.

PART 72—[CORRECTED]

■ 1. In § 72.214, Certificate of Compliance 1004 is corrected to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

Amendment Number 5 Effective Date: [Reserved].

Amendment Number 6 Effective Date: December 22, 2003.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: Standardized NUHOMS® –24P, NUHOMS® –52B, NUHOMS® –61BT, and NUHOMS® –24PHB.

* * * * *

Dated in Rockville, Maryland, this 11th day of December, 2003.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 03–31090 Filed 12–16–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

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

[Docket No. 03–24]

RIN 1557–AB97

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

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing a final rule implementing authority provided to national banks by sections 1204, 1205, and 1206 of the American Homeownership and Economic Opportunity Act of 2000 (AHEOA). Section 1204 permits national banks to reorganize directly to be controlled by a holding company. Section 1205 increases the maximum term of service for national bank directors, permits the OCC to adopt regulations allowing for staggered terms for directors, and permits national banks to apply for permission to have more than 25 directors. Section 1206 permits national banks to merge with one or more of their nonbank affiliates, subject to OCC approval. In addition, the rule amends parts 5, 7, 9, and 34, for other purposes and makes several technical corrections.

EFFECTIVE DATE: January 16, 2004.

FOR FURTHER INFORMATION CONTACT: For questions concerning 12 CFR 5.20, contact Richard Cleva, Senior Counsel, Bank Activities and Structure Division, (202) 874–5300; or Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 5.32, contact Mark Ginsberg, Senior Licensing Analyst, Licensing Policy and Systems Division, (202) 874–5060; or Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 5.33, contact Crystal Maddox, Senior Licensing Analyst, Licensing Policy and Systems Division, (202) 874–5060; Richard Cleva, Senior Counsel, Bank Activities and Structure Division, (202) 874–5300; or Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 7.2024, contact Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 34.3, contact Mark Tenhundfeld, Assistant Director, or Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 9.18, contact Beth Kirby, Special Counsel, Securities and Corporate Practices Division, (202) 874–5210.

SUPPLEMENTARY INFORMATION: On February 7, 2003, the OCC published a notice of proposed rulemaking in the **Federal Register** (68 FR 6363) to implement the AHEOA and clarify our visitorial powers regulations (NPRM). In addition, we proposed to amend (1) 12 CFR part 5 concerning limited-purpose banks, factors to be considered in business combinations, and operating subsidiary activities eligible for after-the-fact notice requirements; (2) 12 CFR part 7 concerning national banks' ability to provide tax advice; (3) 12 CFR part 9 concerning the valuation of collective investment funds; and (4) 12 CFR part 34 to update regulatory text to conform to a statutory change. Various technical changes to correct citations or footnote numbering were also part of the NPRM.

The OCC received a total of 55 comments on the NPRM. Of this number, 34 addressed the parts of the proposal that implemented the AHEOA provisions and amended 12 CFR parts 5, 7, 9, and 34. These comments included two from bank holding companies, four from banking trade associations, one from a community trade association, one from a non-profit consumer group, one from a bank supervisors' trade association, and 25 from state bank supervisors' offices. While many of the commenters supported the proposed changes, many offered suggestions for changes. For the reasons discussed below, we have adopted the provisions of the NPRM with a number of changes in response to the comments received to clarify certain provisions.

Many of the comments we received on the proposal also addressed the revision to our visitorial powers regulation. A number of these comments contained thoughtful and detailed arguments that we will address in a rulemaking to be published separately in the **Federal Register**.

I. Amendments Implementing the AHEOA

A. Background

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

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

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

This final rule contains amendments to 12 CFR parts 5 and 7 to implement these changes made by the AHEOA.

B. Description of the Proposal, Comments Received, and Final Rule

1. Reorganization into a Holding Company Subsidiary—New § 5.32

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

Proposed new § 5.32 implemented this provision. Paragraph (a) stated the authority for engaging in section 1204 transactions. Paragraph (b) repeated the scope of the statute and provided that § 5.32 applies to a reorganization of a

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

[2] Pub. L. 106–569, 114 Stat. 2944.

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

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

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

national bank into a subsidiary of a bank holding company or of a company that will become a bank holding company through the reorganization. In order to clarify the types of entities that would be covered under this section, we have added a sentence at the end of paragraph (b) that states that, for purposes of § 5.32, ''bank holding company'' means *any* company that owns or controls a national bank, or will own or control one as a result of the reorganization. Thus, the term ''bank holding company'' is not limited to companies that would be bank holding companies under the definition of the term in the Bank Holding Company Act of 1956 (BHCA).

Pursuant to proposed § 5.32(c), a national bank must submit an application to, and obtain approval from, the OCC prior to participating in a section 1204 reorganization. Paragraph (d) described the procedural requirements for this type of transaction. In accordance with proposed § 5.32(d)(1), the application is deemed approved by the OCC as of the 30th day after the OCC receives it, unless the OCC otherwise notifies the applicant national bank. Approval of applications under § 5.32 is subject to the condition that the bank give the OCC 60 days' prior notice of any material change in its business plan or any material change from the proposed changes described in the bank's plan of reorganization. A few commenters recommended that the OCC give national banks notice that an application has been received and is complete to verify that the application is in process and to ensure that all parties know when the 30-day time period starts to run. We have not revised the proposal in response to this suggestion, however, because our standard application procedure includes sending out an acknowledgment letter that will provide the information the commenters requested.

These same commenters also suggested that the OCC provide banks with guidance regarding the type of changes to the business plan that would be material. The OCC has developed a policy addressing the circumstances that constitute a ''significant deviation'' from a national bank's existing business plan or operations and circumstances under which we will impose a written condition requiring a bank to provide notice of any significant deviation. This ''OCC Significant Deviation Policy'' is posted on our website as a sample to the Charters Booklet of the Comptroller's Licensing Manual.[6] We expect that this policy will provide the guidance commenters are seeking with respect to the changes we think should prompt the notice required by § 5.32. In order to make the final rule consistent with this Policy, we have changed the references to ''material change'' in the proposal to ''significant deviation.''

Paragraph (d)(2) of proposed § 5.32 implemented the statutory requirements that apply to the content of the reorganization plan. The plan must: (1) Specify how the reorganization is to be carried out; (2) be approved by a majority of the national bank's board of directors; (3) specify the amount and type of consideration that the bank holding company will provide for the stock of the bank, the date on which the shareholders' rights to participate in the exchange are to be determined, and the procedure for carrying out the exchange; (4) be submitted to the shareholders of the reorganizing bank at a meeting called in accordance with the procedures outlined in section 3 of the Merger Act;[7] and (5) where applicable, describe any changes to the bank's business plan resulting from the reorganization. Consistent with section 3 of the Merger Act, the proposal also required that at least two-thirds of the bank's shareholders approve a reorganization.

Paragraph (d)(3) of proposed § 5.32 provided that the OCC will review the financial and managerial resources and future prospects of the national bank when considering a section 1204 reorganization.

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

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

Proposed paragraph (g) of § 5.32 stated that the OCC's approval of a § 5.32 application will expire if a national bank has not completed the reorganization within one year of the date of such approval. A commenter suggested that the OCC incorporate flexibility into this provision for complicated transactions that may take longer than one year to complete by permitting banks to apply for a waiver of this restriction. We do not think it is necessary to amend the regulation to establish a formal waiver process, but we will evaluate the need for an extension of the standard time frame on a case-by-case basis in accordance with 5.13(g).[8]

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

We received no comments regarding proposed § 5.32 other than those we have discussed. Accordingly, we are adopting this provision as proposed with the changes just described.

2. Section 1206 Mergers—Revised § 5.33

Section 1206 of the AHEOA provided new authority for a national bank to merge with one or more of its nonbank affiliates, subject to the OCC's approval.

[6] This policy can be found on the OCC's Web site at *http://www.occ.treas.gov/corpbook/forms/SigDevPolicy8-03.pdf*. The policy defines a significant deviation from a bank;s business plan or operations to include, but not be limited to, a material deviation or material change in the bank's: (1) Projected growth, such as planning significant growth in a product or service; (2) strategy or philosophy, such as significantly reducing the emphasis of its targeted niche (for example, small business lending) in favor of significant expansion of another area (for example, funding large commercial real estate projects); (3) lines of business, such as intiating a new program for sub-prime lending; (4) funding sources such as shifting from core deposits to brokered deposits; (5) scope of activities, such as establishing transactional Internet banking or entering new, untested markets; (6) stock benefit plans for de novo banks, including the introduction of plans that were not previously reviewed during the chartering process with no objection by the OCC; and (7) relationships with a parent company or affiliate, such as a shift to signficant reliance on a parent or affiliate as a funding source or provider of back office support.

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

[8] This section provides that the OCC generally does not grant extensions unless the delay is beyond the control of the applicant.

Current § 5.33 sets forth application and notice procedures for national banks entering into business combinations, such as mergers or consolidations, with other national banks or state-chartered banks, as well as OCC review and approval standards for such transactions. The proposal contained amendments to § 5.33 to include Section 1206 Mergers within its scope.

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

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

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

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

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

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

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

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

A national bank applicant in a Section 1206 Merger *resulting in a national bank* would be required to follow the notice requirements of 12 U.S.C. 215a. A national bank applicant in a Section 1206 Merger *resulting in a nonbank affiliate* would be required to follow the notice requirements of 12 U.S.C. 214a. We proposed to amend § 5.33(f)(1) by adding references to the special procedures to be followed in Section 1206 Mergers. We did not receive any comments on the foregoing provisions and, therefore, we adopt them as proposed.

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

A few commenters urged the OCC to make the provisions in §§ 5.10 and 5.11 applicable to all Section 1206 Mergers either because this type of merger is unprecedented and likely to raise many important issues or because these mergers would result in arbitrary or uneven application of the Community Reinvestment Act (CRA)[9] and fair lending laws. For several reasons we decline to adopt the commenters' suggestion to impose a notice requirement in every Section 1206 Merger. First, if an insured national bank is involved in the merger, FDIC approval is required under the Bank Merger Act.[10] That approval requires publication of notice and provides for public comment. Second, where the national bank involved in the merger is uninsured, such as a trust bank, the OCC may determine on a case-by-case basis that an application presents significant and novel policy, supervisory, or legal issues and that public notice is, therefore, warranted. This standard covers the situations identified by commenters as appropriate for notice and hearings. Evaluating the need for public notice, or a hearing, on a case-by-case basis also avoids unnecessary burdens. In addition, we note that CRA is not applicable to transactions where no deposit facility is being acquired. Therefore, we decline the commenters' suggestion to impose a notice requirement in every Section 1206 Merger.

Finally, we proposed to make two technical changes to paragraph (f)(1). The reference to paragraph (g) for mergers or consolidations with a Federal savings association would be amended to refer more specifically to paragraph (g)(2) and the reference to a resulting state bank in the parenthetical following this reference would be corrected to refer to a national bank. No comments were received on these provisions. For the reasons discussed above, we adopt § 5.33(f) as proposed.

The proposal also added a new § 5.33(g)(4) to address Section 1206 Mergers of national banks with their nonbank affiliates when the resulting entity is a national bank. Section 5.33(g)(4)(i) stated that a national bank may enter into this type of Section 1206 Merger when the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers. This section also required a national bank to obtain the OCC's approval.

One commenter suggested that we modify the regulation to specify that a merger between an insured national bank and its nonbank affiliate must

[9] 12 U.S.C. 2901 *et seq.*

[10] 12 U.S.C. 1828(c).

receive prior approval by the FDIC. As noted above, if the national bank involved is insured, the transaction is also subject to approval by the FDIC under the Bank Merger Act. For purposes of clarification, we have added this language to the final rule. In addition, we have also added language stating that in determining whether to approve a merger under this section, the OCC will consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers. The OCC may deny the merger if it would have a negative effect on any of these factors.

A few commenters questioned the OCC's decision to condition the merger of a nonbank affiliate on whether the law of the state or other jurisdiction under which the affiliate is organized permits the affiliate to participate in such a merger. These commenters contended that there is no such requirement in the statute and that this condition encourages states to discriminate against national banks by enacting laws that prohibit this type of merger. One commenter suggested that this requirement be revised to permit the merger where the state's law permits a merger between the nonbank affiliate and any other body corporate. We believe the language of the proposal as drafted already achieves this result. The proposal required only that the state statute permit such a merger. As long as this is the case, the state statute providing merger authority need not specifically mention national banks. For these reasons, the state law provision is retained in the final rule.

Proposed § 5.33(g)(4)(ii) stated that a national bank entering into such a merger must follow the procedures and requirements contained in 12 U.S.C. 215a (which addresses the merger of state banks into national banks), as if the nonbank entity were a state bank. The proposal applied the procedures and requirements in 12 U.S.C. 215a because section 215a addresses the same issues that arise in a Section 1206 Merger and its requirements are familiar to national banks. In addition, we believe that these procedures and requirements impose the least amount of burden on the participants consistent with our supervisory objectives in reviewing the proposed transactions. We received no comments on this provision and, therefore, adopt it as proposed.

Proposed § 5.33(g)(4)(iii) stated that a nonbank affiliate entering into such a merger is to follow the procedures in the law of the state or other jurisdiction under which the nonbank entity is organized. Two commenters disagreed with the use of state law procedures for mergers of a nonbank affiliate into a national bank. One commenter contended that there is no such requirement in the statute and that it has the effect of requiring the national bank to follow both state and Federal law, which may be in conflict. We note, however, that in a merger of a state bank into a national bank, the state bank follows the procedures for mergers in state law. Proposed § 5.33(g)(4)(iii) simply treats nonbank affiliates the same as state banks by requiring them to follow the procedures contained in the law of the state in which they are incorporated. We believe that this similarity of treatment is appropriate and, therefore, have adopted this provision as proposed.

Proposed § 5.33(g)(4)(iv) stated that the rights of dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank entity shall be determined in accordance with the laws of the state or other jurisdiction under which the nonbank entity is organized. We received no comments suggesting changes to this section of the proposed rule and have, therefore, adopted it as proposed.

Proposed § 5.33(g)(4)(v) of the proposal stated that the corporate existence of each institution participating in the merger shall be continued in the resulting national bank, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating institutions shall be transferred to the resulting national bank in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 215a, as if the nonbank affiliate were a state bank. A few commenters suggested that this provision state that a national bank resulting from a merger with a nonbank affiliate may not exercise any power or engage in any activity that would not be permissible for a national bank under applicable provisions of Federal law other than section 215a–3. We note that this language is already set forth specifically in the statute at 12 U.S.C. 215a–3(b)(2). In addition, current § 5.33(e)(5) states that the OCC generally requires a national bank to discontinue nonconforming activities within a reasonable time following a business combination. This provision would be applicable to transactions under § 5.33(g)(4). Because the statute and our rules already address this point, we believe no further clarification is required, and we have adopted the provision as proposed.

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

Proposed § 5.33(g)(5)(i) stated that this type of section 1206 Merger may be entered into when the law of the state or other jurisdiction under which the nonbank affiliate is organized allows such mergers. It also provided that an uninsured national bank must obtain the OCC's approval for the transaction. As was done in § 5.33(g)(4)(i), we have added language to the final rule in § 5.33(g)(5)(i) stating that the OCC will consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers. The OCC may deny the merger if it would have a negative effect on any of these factors.

Proposed § 5.33(g)(5)(ii) stated that a national bank entering into such a merger shall follow the procedures and requirements contained in 12 U.S.C. 214a (which addresses the merger of national banks into state banks), as if the nonbank entity were a state bank. Section 5.33(g)(5)(iii) stated that a nonbank affiliate entering into such a merger shall follow the procedures and requirements in the law of the state or other jurisdiction under which the nonbank entity is organized. Section 5.33(g)(5)(iv) of the proposal stated that dissenting national bank shareholders may receive in cash the value of their national bank shares if they comply with the requirements of 12 U.S.C. 214a as if the nonbank affiliate were a state bank. That section also stated that the OCC may conduct an appraisal or reappraisal of dissenters' shares of stock in a national bank involved in a merger with a nonbank affiliate that results in a nonbank affiliate if all parties agree that the determination is final and binding on each party and agree on how the OCC's expenses relating to the appraisal will be divided among the parties and paid to the OCC. The proposal provided that rights of

dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank entity shall be determined in accordance with the laws of the state or other jurisdiction under which the nonbank entity is organized. We received no comments on these provisions and adopt them as proposed.

Proposed § 5.33(g)(5)(v) stated that the corporate existence of each entity participating in the merger shall be continued in the resulting nonbank affiliate, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating national bank shall be transferred to the resulting nonbank affiliate as set forth in 12 U.S.C. 214b, in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 214a, as if the nonbank affiliate were a state bank. A number of commenters suggested that we clarify that where the surviving entity is a nonbank affiliate, it does not succeed to any of the powers of the national bank, and that the national bank and its powers cease to exist. We agree that a national bank ceases to exist following consummation of a section 1206 Merger and that a surviving nonbank affiliate will not be permitted to exercise powers of the former national bank except to the extent permitted under state law or other law applicable to the resulting nonbank affiliate. The wording of the regulation does not say otherwise, however and in our view it is important to be clear that the surviving nonbank affiliate does enjoy corporate succession to the corporate rights, franchises, property, appointments, liabilities, and other interests of the former national bank. This is the same result as when a national bank merges into a state bank under 12 U.S.C. 214a and 214b. We do not believe that any change to the regulation is necessary by virtue of these comments and adopt this provision as proposed.

Finally, the proposal added a new paragraph (j)(1)(iv) to § 5.33 that permits applications for certain transactions under § 5.33(g)(4) to receive streamlined treatment. In order to qualify for such treatment, the acquiring bank must be an eligible bank, the resulting national bank must be well capitalized immediately following consummation of the transaction, the applicants in a prefiling communication must request and obtain approval from the appropriate district office to use the streamlined application, and the total assets acquired in the transaction must not exceed 10 percent of the total assets of the acquiring national bank, as reported in the bank's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application. We received no comments on this provision and adopt it as proposed.

3. National Bank Directors—§ 7.2024 (new)

Section 1205 of the AHEOA amended section 5145 of the Revised Statutes of the United States (12 U.S.C. 71) and section 31 of the Banking Act of 1933 (12 U.S.C. 71a) regarding national bank directors. Section 1205 increases the maximum term a director may serve from one to not more than three years and permits a national bank to adopt bylaws that provide for staggering the terms of its directors in accordance with the OCC's regulations. In addition, this section permits the OCC to exempt a national bank from the otherwise applicable requirement that it have no more than 25 directors.

The proposal added a new § 7.2024 conforming the OCC's rules to these provisions. Pursuant to proposed § 7.2024(a), national banks may adopt bylaws that provide for staggering the terms of their directors. Proposed § 7.2024(b) increased the permissible maximum term of national bank directors from one year to three years. Finally, paragraph (c) provided that a national bank may increase the size of its board of directors above the statutory limit of 25 provided that the bank satisfies the notice requirements set out in that section. We received two comments on this provision, both of which supported the proposal. Accordingly, we adopt it as proposed.

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

A. Part 5 Amendments

The final rule also revised three other provisions in part 5 of our regulations. Section 5.20 of our regulations contains the requirements that govern the organization of a national bank. The proposal amended § 5.20(e)(1) to provide that the newly organized bank may be a special purpose national bank that limits its activities to fiduciary activities or to any other activities within the business of banking. The purpose of this proposed change was to clarify that a limited purpose national bank may exist with respect to activities other than fiduciary activities, provided the activities in question are part of the business of banking. Some commenters expressed concern that this provision was too broad and that the expansion of the limited purpose charter had the potential to exclude from state oversight entities conducting activities only loosely related to banking. We agree that it is appropriate to provide further clarification of the scope of activities permissible for a limited purpose national bank, and we have amended this provision to require limited purpose national banks to conduct at least one of the following core banking functions: (1) Receiving deposits; (2) paying checks; or (3) lending money. These functions are based on 12 U.S.C. 36, which identifies activities that cause a facility to be considered a bank branch.

Section 5.33(e) of our regulations contains a listing of factors the OCC considers in evaluating applications for business combinations. These factors are based upon the factors set forth in the Bank Merger Act and the CRA. As part of the USA PATRIOT Act,[11] Congress amended the Bank Merger Act by adding a factor to be considered in evaluating merger transactions. This factor requires the responsible agencies to consider the effectiveness of any insured depository institution involved in a proposed merger in combating money laundering activities.[12] The proposal conformed our regulations with the statute by adding the factor at § 5.33(e)(1)(v).

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

We received no comments on these proposed changes to §§ 5.33(e) or 5.34(e) and therefore adopt these changes as proposed.

[11] Pub. L. 107–56, 115 Stat. 272 (Oct. 26, 2001).

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

B. Part 7 Amendment

As corporate transactions have become more sophisticated, an integral part of financial and transactional advice with respect to mergers and other corporate restructurings inevitably involves providing advice on the tax implications of those transactions. Recently amended § 5.34(e)(5)(v)(J) and (K) permit national banks to provide tax planning services and to provide financial and transactional advice on structuring, arranging, and executing financial transactions, including mergers, acquisitions, and divestitures. Providing tax planning services encompasses tax consulting in order for a bank to be able to offer comprehensive services in this area. Accordingly, the proposal deleted as outdated the prohibition against serving as an expert tax consultant that currently appears at § 7.1008.[13] We received no comments regarding this change, and therefore adopt it as proposed.

C. Part 9 Amendment

Currently, 12 CFR 9.18(b)(4)(i) requires valuation of collective investment funds at least every three months. However, certain funds are only required to be valued once a year. Those funds must be ''(a)(2) funds'' (*i.e.*, funds that may be held pursuant to 12 CFR 9.18(a)(2) that are primarily invested in real estate or other assets that are not readily marketable). A growing number of collective investment funds, including (a)(1) funds, however, are comprised of a mix of assets that are readily marketable and assets that are not readily marketable. Those funds do not qualify for the one-year valuation because they are not (a)(2) funds primarily invested in real estate or other assets that are not readily marketable. However, a one-year valuation may be appropriate for assets in those funds that are not readily marketable. Thus, we proposed to amend the regulation to require quarterly valuation of readily marketable assets in all collective investment funds, including (a)(1) funds. Assets that are not readily marketable must be valued at least once a year regardless of whether the assets are in (a)(1) or (a)(2) funds or whether the funds' assets are primarily invested in real estate or other assets that are not readily marketable. For purposes of an admission or withdrawal date, this provision does not negate the need to provide a current value at the time of such admission or withdrawal. We received no comments regarding this change, and therefore adopt it as proposed.

D. Part 34 Amendment

Section 34.3 restates the comprehensive authority vested in the OCC by 12 U.S.C. 371 to regulate real estate lending by national banks. Section 371 authorizes national banks to engage in real estate lending subject to 12 U.S.C. 1828(o) (real estate lending safety and soundness standards) and ''such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order.'' The cross-reference to 12 U.S.C. 1828(o) was added to the statute in 1991, but the text of the regulation was never revised to reflect it. Thus, the proposal updated the regulation to reflect that change to the underlying statute. Other portions of the regulation remain unchanged.[14] We received no comments regarding this change, and therefore adopt it as proposed.

III. Technical Amendments

The proposal contained the following technical amendments:

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

We received no comments regarding these changes, and therefore adopt them as proposed.

IV. Regulatory Analysis

CDRI Act Delayed Effective Date

This final rule takes effect 30 days after the date of its publication in the **Federal Register**, consistent with the delayed effective date requirement of the Administrative Procedure Act. *See* 5 U.S.C. 553(d). Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), 12 U.S.C. 4802(b), provides that regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions may not take effect before the first day of the quarter following publication unless the agency finds that there is good cause to make the rule effective at an earlier date. The regulations in this final rule provide procedures to be used by national banks wishing to take advantage of the new transactions or corporate governance options permitted by the AHEOA. The regulations make it easier for national banks to exercise this new statutory authority. Accordingly, the OCC finds that there is good cause to dispense with the requirements of the CDRI Act.

Regulatory Flexibility Act

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

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed. The amendments to the OCC's regulations relating to the AHOEA are permissive provisions that will be used only by banks that wish to take advantage of the new transactions, procedures, or corporate governance options permitted by the statute as implemented by the regulations. 12 CFR 5.33(g)(5) reduces burden by implementing a simpler way to

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

[14] We have proposed additional changes to part 34 in a separate rulemaking that invites comment on changes to the provisions governing preemption. *See* 68 FR 46119 (Aug. 5, 2003). The comment period for that rulemaking closed October 6, 2003.

accomplish a merger of a national bank into one of its nonbank affiliates. The amendments simply provide the OCC's implementation of the AHEOA or make other technical changes to the rules to correct existing errors or clarify various points. They do not impose any new requirements or burdens. As such, they will not result in any adverse economic impact.

Executive Order 12866

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

Unfunded Mandates Reform Act of 1995

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

Paperwork Reduction Act

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

The information collection requirements in this final rule are contained in §§ 5.32, 5.33, and 7.2024.

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

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

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

The respondents are national banks.

Estimated number of respondents: 270.

Estimated number of responses: 270.

Average hours per response: 24.

Estimated total burden hours: 5,580.

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

The respondents are national banks.

Estimated number of respondents: 1,000.

Estimated number of responses: 1,000.

Average hours per response: .5 hour.

Estimated total burden hours: 500 hours.

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

Executive Order 13132

Executive Order 13132 (Order) requires Federal agencies, including the OCC, to certify their compliance with that Order when they transmit to the Office of Management and Budget any draft final regulation that has Federalism implications. Under the Order, a regulation has Federalism implications if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' In the case of a regulation that has Federalism implications and that preempts state law, the Order imposes certain consultation requirements with state and local officials; requires publication in the preamble of a Federalism summary impact statement; and requires the OCC to make available to the Director of the Office of Management and Budget any written communications submitted by state and local officials. By the terms of the Order, these requirements apply to the extent that they are practicable and permitted by law and, to that extent, must be satisfied before the OCC promulgates a final regulation. In the opinion of the OCC, this final rule does not have Federalism implications.

List of Subjects

12 CFR Part 3

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

12 CFR Part 5

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

12 CFR Part 6

National banks.

12 CFR Part 7

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

12 CFR Part 9

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

12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

12 CFR Part 34

Mortgages, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, the OCC amends parts 3, 5, 6, 7, 9, 28, and 34 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

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

Appendix A to Part 3—[Amended]

■ 2. In appendix A to part 3:

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

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

* * * * *

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

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

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

Subpart B—Initial Activities

■ 4. In § 5.20, add new second and third sentences to paragraph (e)(1) to read as follows:

§ 5.20 Organizing a bank.

* * * * *

(e) *Statutory requirements*—(1) *General.* * * * The bank may be a special purpose bank that limits its activities to fiduciary activities or to any other activities within the business of banking. A special purpose bank that conducts activities other than fiduciary activities must conduct at least one of the following three core banking functions: receiving deposits; paying checks; or lending money. * * *

* * * * *

Subpart C—Expansion of Activities

■ 5. Add a new § 5.32 to Subpart C to read as follows:

§ 5.32 Expedited procedures for certain reorganizations.

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

(b) *Scope.* This section prescribes the procedures for OCC review and approval of a national bank's reorganization to become a subsidiary of a bank holding company or a company that will, upon consummation of such reorganization, become a bank holding company. For purposes of this section, a ''bank holding company'' means any company that owns or controls a national bank, or will own or control one as a result of the reorganization.

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

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

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

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

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

(iii) Specifies:

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

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

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

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

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

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

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

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

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

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

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

■ 6. In § 5.33:

■ a. revise paragraph (a);

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

■ c. paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) are redesignated as paragraphs (d)(2), (d)(3), (d)(6), and (d)(7), respectively; revise newly designated paragraph (d)(2); and add new paragraphs (d)(1), (d)(4), (d)(5), and (d)(8);

■ d. add new paragraph (e)(1)(v);

■ e. revise paragraph (e)(3)(ii);

■ f. revise the second sentence of paragraph (f)(1) and add two new sentences at the end of the paragraph;

■ g. add new paragraphs (g)(4) and (g)(5);

■ h. at the end of paragraph (j)(1)(ii), remove the term ''or'';

■ i. at the end of paragraph (j)(1)(iii), remove ''.'' and add ''; or''; and

■ j. add new paragraph (j)(1)(iv) to read as follows:

§ 5.33 Business combinations.

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

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

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

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

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

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

(2) *Business combination* means any merger or consolidation between a national bank and one or more depository institutions in which the resulting institution is a national bank, the acquisition by a national bank of all,

or substantially all, of the assets of another depository institution, the assumption by a national bank of deposit liabilities of another depository institution, or a merger between a national bank and one or more of its nonbank affiliates.

* * * * *

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

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

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

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

* * * * *

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

(e) * * *

(1) * * *

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

* * * * *

(3) * * *

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

* * * * *

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

* * * * *

(g) * * *

(4) *Mergers of a national bank with its nonbank affiliates under 12 U.S.C. 215a–3 resulting in a national bank.* (i) With the approval of the OCC, a national bank may merge with one or more of its nonbank affiliates, with the national bank as the resulting institution, in accordance with the provisions of this paragraph, provided that the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers. The transaction is also subject to approval by the FDIC under the Bank Merger Act, 12 U.S.C. 1828(c). In determining whether to approve the merger, the OCC shall consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers, and may deny the merger if it would have a negative effect in any such respect.

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

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

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

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

(5) *Mergers of an uninsured national bank with its nonbank affiliates under 12 U.S.C. 215a–3 resulting in a nonbank affiliate.* (i) With the approval of the OCC, a national bank that is not an insured bank as defined in 12 U.S.C. 1813(h) may merge with one or more of its nonbank affiliates, with the nonbank affiliate as the resulting entity, in accordance with the provisions of this paragraph, provided that the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers. In determining whether to approve the merger, the OCC shall consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers, and may deny the merger if it would have a negative effect in any such respect.

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

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

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

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

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

to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 214a, as if the nonbank affiliate were a state bank.

* * * * *

(j) * * *

(1) * * *

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

* * * * *

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

§ 5.34 Operating subsidiaries.

* * * * *

(e) * * *

(5) * * *

(v) * * *

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

* * * * *

PART 6—PROMPT CORRECTIVE ACTION

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

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

Subpart A—Capital Categories

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

§ 6.4 Capital measures and capital category definitions.

* * * * *

(c) * * *

(1) * * *

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

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

* * * * *

PART 7—BANK ACTIVITIES AND OPERATIONS

■ 10. Revise the authority citation for part 7 to read as follows:

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

Subpart A—Bank Powers

■ 11. Revise § 7.1008 to read as follows:

§ 7.1008 Preparing income tax returns for customers or public.

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

§ 7.1016 [Amended]

■ 12. In § 7.1016(a), redesignate footnote 30 as footnote 1.

Subpart B—Corporate Practices

■ 13. Add a new § 7.2024 to read as follows:

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

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

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

(c) *Number of directors.* A national bank's board of directors shall consist of no fewer than 5 and no more than 25 members. A national bank may, after notice to the OCC, increase the size of its board of directors above the 25 member limit. A national bank seeking to increase the number of its directors must notify the OCC any time the proposed size would exceed 25 directors. The bank's notice shall specify the reason(s) for the increase in the size of the board of directors beyond the statutory limit.

PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

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

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

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

§ 9.18 Collective investment funds.

* * * * *

(b) * * *

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

* * * * *

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

PART 28—INTERNATIONAL BANKING ACTIVITIES

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

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

Subpart B—Federal Branches and Agencies of Foreign Banks

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

PART 34—REAL ESTATE LENDING AND APPRAISALS

Subpart A—General

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

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

■ 21. Revise § 34.3 to read as follows:

§ 34.3 General rule.

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

Dated: October 17, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 03–31093 Filed 12–16–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11 and 91

[Docket No. FAA–2002–12261; Amendment Nos. 11–49 and 91–276]

RIN 2120–AH68

Reduced Vertical Separation Minimum in Domestic United States Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This document corrects the effective date of a final rule published in the **Federal Register** on October 27, 2003 (68 FR 61304). That rule permits the initiation of Reduced Vertical Separation Minimum (RVSM) flights in the airspace over the contiguous 48 States of the United States, the District of Columbia, Alaska, that portion of the Gulf of Mexico where the Federal Aviation Administration (FAA) provides air traffic services, the San Juan Flight Information Region (FIR), and the airspace between Florida and the San Juan FIR. The RVSM programs allows the use of 1,000-foot vertical separation at certain altitudes between aircraft that meet stringent altimeter and certain altitudes between aircraft that meet stringent altimeter and autopilot performance requirements. The October 27, 2003, rule also requires any aircraft that is equipped with Traffic Alert and Collision Avoidance System version II (TCAS II) and flown in RVSM airspace to incorporate a version of TCAS II software that is compatible with RVSM operations. This document corrects the effective date.

EFFECTIVE DATE: In this rule amendments numbers 2, 5, 7, 9, and 11 are effective December 17, 2003. In this rule amendments numbers 3, 6, 8, 10, and 12 are effective January 26, 2004.

FOR FURTHER INFORMATION CONTACT: Robert Swain, telephone (202) 385–4576.

SUPPLEMENTARY INFORMATION: On October 27, 2003, we published in the **Federal Register** a final rule entitled, ''Reduced Vertical Separation Minimum in Domestic United States''. The Reduced Vertical Separation Minimum (RVSM) program allows the use of 1,000-foot vertical separation at certain altitudes between aircraft that meet stringent altimeter and autopilot performance requirements. The rule also requires any aircraft that is equipped with Traffic Alert and Collision Avoidance System version II (TCAS II) and flown in RVSM airspace to incorporate a version of TCAS II software that is compatible with RVSM operations. This action is to assist aircraft operators to save fuel and time, to enhance air traffic control flexibility, and to enhance airspace capacity. The effective date of the October 27, 2003, rule was inadvertently given as November 26, 2003.

The Office of Management and Budget (OMB) declared that the October 27, 2003, final rule is a major rule. Thus we should have given January 26, 2004, as the effective date in accordance with 5 U.S.C. 801(a)(4). However, we erroneously incorporated an incorrect effective date of October 1, 2003. This document changes the effective date of the October 27, 2003, rule to January 26, 2004.

List of Subjects

14 CFR Part 11

Administrative practice and procedure, Reporting and record-keeping requirements.

14 CFR Part 91

Air-traffic control, Aircraft, Airmen, Airports, Aviation safety, Reporting and record-keeping requirements.

The Amendment

■ For the reasons discussed in the preamble, the Federal Aviation Administration amends parts 11 and 91 of Title 14 of the Code of Federal Regulations as follows:

PART 11—GENERAL RULEMAKING PROCEDURES

■ 1. The authority citation for part 11 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, and 46102.

Subpart B—Paperwork Reduction Act Control Numbers

■ 2. Effective December 17, 2003, amend the table in § 11.201(b) by revising the entry for part 91 to read as follows:

§ 11.201 Office of Management and Budget (OMB) control numbers assigned under the Paperwork Reduction Act.

* * * * *

(b) * * *

14 CFR part or section identified and described	Current OMB control number
*	*
Part 91	2120–0005, 2120–0026, 2120–0027, 2120–0573, 2120–0606, 2120–0620, 2120–0631, 2120–0651
*	*

■ 3. Effective January 26, 2004, amend the table in § 11.201(b) by revising the entry for part 91 to read as follows:

§ 11.201 Office of Management and Budget (OMB) control numbers assigned under the Paperwork Reduction Act.

* * * * *

(b) * * *

14 CFR part or section identified and described	Current OMB control number
*	*
Part 91	2120–0005, 2120–0026, 2120–0027, 2120–0573, 2120–0606, 2120–0620, 2120–0631, 2120–0651, 2120–0679
*	*

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 4. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(b), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46540, 46505–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

■ 5. Effective December 17, 2003, amend § 91.159 by revising paragraph (b) to read as follows and by adding paragraph (c) to read as follows:

§ 91.159 VFR cruising altitude or flight level.

* * * * *

(b) When operating above 18,000 feet MSL to flight level 290 (inclusive) and—

(1) On a magnetic course of zero degrees through 179 degrees, any odd flight level +500 feet (such as 195, 215, or 235); or

(2) On a magnetic course of 180 degrees through 359 degrees, any even flight level +500 feet (such as 185, 205, or 225).

(c) When operating above flight level 290 and—

(1) On a magnetic course of zero degrees through 179 degrees, any flight level, at 4,000-foot intervals, beginning at and including flight level 300 (such as flight level 300, 340, or 380) or

(2) On a magnetic course of 180 degrees through 359 degrees, any flight level, at 4,000-foot intervals, beginning at and including flight level 320 (such as flight level 320, 360, or 400).

■ 6. Effective January 26, 2004, amend § 91.159 by revising paragraph (b) to read as follows and by removing paragraph (c).

§ 91.159 VFR cruising altitude or flight level.

* * * * *

(b) When operating above 18,000 feet MSL, maintain the altitude or flight level assigned by ATC.

■ 7. Effective December 17, 2003, amend § 91.179 by revising paragraph (b)(3) introductory text and removing paragraph (b)(4) to read as follows:

§ 91.179 IFR cruising altitude or flight level.

* * * * *

(b) * * *

(3) When operating at flight level 290 and above airspace, and—

* * * * *

■ 8. Effective January 26, 2004, amend § 91.179 by revising paragraph (b)(3) introductory text and adding a new paragraph (b)(4) to read as follows:

§ 91.179 IFR cruising altitude or flight level.

(b) * * *

(3) When operating at flight level 290 and above in non-RVSM airspace, and—

* * * * *

(4) When operating at flight level 290 and above in airspace designated as Reduced Vertical Separation Minimum (RVSM) airspace and—

(i) On a magnetic course of zero degrees through 179 degrees, any odd flight level, at 2,000-foot intervals beginning at and including flight level 290 (such as flight level 290, 310, 330, 350, 370, 390, 410); or

(ii) On a magnetic course of 180 degrees through 359 degrees, any even flight level, at 2000-foot intervals beginning at and including flight level 300 (such as 300, 320, 340, 360, 380, 400).

§ 91.180 [Removed]

■ 9. Effective December 17, 2003, remove § 91.180 from subpart B.

■ 10. Effective January 26, 2004, add § 91.180 to subpart B to read as follows:

§ 91.180 Operations within airspace designated as Reduced Vertical Separation Minimum airspace.

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft in airspace designated as Reduced Vertical Separation Minimum (RVSM) airspace unless:

(1) The operator and the operator's aircraft comply with the minimum standards of appendix G of this part; and

(2) The operator is authorized by the Administrator or the country of registry to conduct such operations.

(b) The Administrator may authorize a deviation from the requirements of this section.

■ 11. Effective December 17, 2003, in Appendix G, amend section 5 by revising the introductory text; redesignating paragraph (a) as paragraph (2) and revising newly redesignated paragraph (2); and amend section 8 by removing paragraphs (d), (e), and (f) to read as follows:

Appendix G to Part 91—Operations in Reduced Vertical Separation Minimum (RVSM) Airspace

* * * * *

Section 5. Deviation Authority Approval

The Administrator may authorize an aircraft operator to deviate from the requirements of § 91.706 for a specific flight in RVSM airspace if that operator has not been approved in accordance with Section 3 of this appendix, and if:

(2) The operator submits an appropriate request with the air traffic control center controlling the airspace, (request should be made at least 48 hours in advance of the operation unless prevented by exceptional circumstances); and

* * * * *

■ 12. Effective January 26, 2004, in Appendix G, amend section 5 by revising the introductory text; redesignating paragraph (2) as paragraph (a) and by revising newly redesignated (a); and amend section 8 by adding new paragraphs (d), (e), and (f) to read as follows:

Appendix G to Part 91—Operations in Reduced Vertical Separation Minimum (RVSM) Airspace

* * * * *

Section 5. Deviation Authority Approval

The Administrator may authorize an aircraft operator to deviate from the requirements of § 91.180 or § 91.706 for a specific flight in RVSM airspace if that operator has not been approved in accordance with section 3 of this appendix if:

(a) The operator submits a request in a time and manner acceptable to the Administrator; and

* * * * *

Section 8. Airspace Designation

* * * * *

(d) *RVSM in the United States.* RVSM may be applied in the airspace of the 48 contiguous states, District of Columbia, and Alaska, including that airspace overlying the waters within 12 nautical miles of the coast.

(e) *RVSM in the gulf of Mexico.* RVSM may be applied in the Gulf of Mexico in the following areas: Gulf of Mexico High Offshore Airspace, Houston Oceanic ICAO FIR and Miami Oceanic ICAO FIR.

(f) *RVSM in Atlantic High Offshore Airspace and the San Juan FIR.* RVSM may be applied in Atlantic High Offshore Airspace and in the San Juan ICAO FIR.

Issued in Washington, DC, on December 11, 2003.

Donald P. Byrne,

Assistant Chief Counsel.

[FR Doc. 03–31096 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM266; Special Conditions No. 25–255–SC]

Special Conditions: Airbus Model A320 Airplanes; Child Restraint System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are for Airbus Model A320 airplanes. These airplanes, as modified by AMSAFE Inc., will have novel and unusual design features associated with a child restraint system that attaches to the existing passenger lap belt. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: January 16, 2004.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (425) 227–2195; facsimile (425) 227–1149, e-mail *alan.sinclair@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On February 12, 2003, AMSAFE Inc., P.O. Box 1570, Higley, Arizona 85236, applied for a supplemental type certificate for the modification of Airbus Model A320 airplanes. The modification includes a child restraint system (identified by AMSAFE as a child safety system (CSS)) that attaches to the existing passenger lap belt and can be installed on certain seats of Airbus Model A320 airplanes in order to reduce the potential for injury in the event of an accident. The Model A320 is a swept-wing, conventional tail, twin-engine, turbofan-powered transport airplane.

Type Certification Basis

Under the provisions of § 21.101, AMSAFE Inc. must show that the Airbus Model A320 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A28NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A28NM are as follows: 14 CFR part 25, effective February 1, 1965, including Amendments 25–1 through 25–56; SFAR 27, effective February 1, 1974, including Amendments 27–1 through 27–5; and 14 CFR part 36 effective December 1, 1969, including Amendments 36–1 through 36–12. In addition, the certification basis includes other regulations and special conditions that are not pertinent to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A320 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A320 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should AMSAFE Inc. apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The AMSAFE Inc., Child Safety System (CSS) is an improved harness type child restraint system (CRS) that utilizes the seat back and the lap belt on passenger seats to provide upper torso restraint and to improve the restraint of small children. The physical characteristics of small children will govern the use of the CSS and must be defined according to accepted classification standards. The device is intended for children in the 1 to 4-year age group who are prohibited from being held in their parents' arms during taxi, take-off, and landing and must occupy their own passenger seat, typically with no supplemental restraint. The CSS is made with webbing and fastening hardware and consists of an adjustable strap that wraps horizontally around the seat back to secure the device to the passenger seat, and a double shoulder harness that is fastened around the child's upper torso. The ends of the device's shoulder harness are held in place using the existing passenger lap belt that is passed through two open loops on the lower ends of the device's shoulder straps. The current part 25 airworthiness regulations are not adequate to define the necessary certification criteria.

Discussion

The CSS is a non-conforming CRS, that is not approved for use on aircraft per Federal Motor Vehicle Safety Standard (FMVSS) 213 and as such the design requirements are established in these special conditions. It is a safety restraint device specifically designed for use by small children on JetBlue Airways Airbus A320 aircraft.

The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this particular design feature. Additional safety standards are therefore necessary to establish a level of safety equivalent to that established by the existing airworthiness standards for transport category airplanes.

Additionally, the operating regulations, 14 CFR 91.107 and 121.311, prohibit the use of any ''vest-type child restraints, and harness-type child restraints'' for commercial and private use operations. In order for the CSS, which is a harness-type child restraint, to be useable in the U.S., AMSAFE Inc., or their agent, must petition the FAA for an exemption from the operating regulations. The petition must be granted in order to allow use of the CSS.

The following special conditions can be characterized as addressing the safety performance of the system and the capability of the system to be installed and utilized without creating additional safety concerns. Because of the nature of the system and the direct interface with the crew and passengers, as well as the intended occupants, these special conditions are more rigorous from a design standpoint than for the standard lapbelt installation.

Discussion of Comments

Notice of proposed special conditions No. 25–03–07–SC for the Airbus Model A320 airplanes was published in the **Federal Register** on October 8, 2003 (68 FR 58042). One commenter responded.

The commenter, on behalf of its members, notes that the members generally support the special conditions, but express some concerns (some safety related, others not so) with the design and certification of the CSS. The commenter's concerns and FAA responses are as follows:

Comment 1: The CSS could endanger the child if installed on a seat with full breakover, and it would be difficult to control the seats where the CSS could be installed.

FAA Response: The FAA does not agree. Special Condition 1 requires that the CSS prevent serious head and other

injuries under dynamic landing conditions. If a seat with full breakover would cause serious head or other injuries to a child in a CSS, the CSS cannot be installed in such a seat. Special Condition 11 requires that seats, together with the child safety system, that can be shown to achieve Special Condition 1 need to be identified to the installer of the CSS. While this may incur some difficulty for an operator wishing to use the CSS, this is part of the responsibility the operator accepts for voluntarily using the CSS. Additionally, Special Condition 9 requires that the CSS be shown to not cause the affected seat back to fold over in a crash and cause injury to the occupant.

Comment 2: The CSS could potentially damage the tray table in the seat back or interfere with its operation by the passenger seated behind the CSS.

FAA Response: Interference with the use of a tray table is not a safety concern. Each potential user must determine whether or not to offer the CSS to airplane occupants. These special conditions do not require any operator to provide the CSS. Special Condition 10, however, is intended to ensure that items such as a tray table do not interfere with the performance of the CSS.

Comment 3: The seat back is not designed to carry the load of the CSS plus an occupant and may be damaged in an emergency.

FAA Response: Special Conditions 1 and 9 are intended to ensure that the combination of CSS and passenger seat will provide protection to the occupant during a dynamic event. Damage to the passenger seat is not addressed by these special conditions. Again, it is up to the potential installer/operator to determine if the CSS should be offered as an option to the airplane occupants.

Comment 4: There may be delay in releasing the harness in an emergency due to unfamiliarity by crewmembers, and additional training may be necessary for flight attendants.

FAA Response: Special conditions 3, 4, 5, and 6 are intended to fully address the issue of use of the CSS and the rapidity of egress of the occupant from the device. Training, if deemed necessary or appropriate, is one of the considerations for whether or not the CSS should be offered by the installer/operator.

The FAA agrees with the intent of the safety concerns expressed by the commenter, but, as noted above, considers that they are adequately addressed by the special conditions and existing certification requirements. The special conditions are therefore adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Airbus Model A320 airplanes modified by AMSAFE Inc. Should AMSAFE Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A28NM to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Airbus Model A320 airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Airbus Model A320 airplanes modified by AMSAFE Inc.

1. The child safety system (CSS) must provide child restraint protection under dynamic emergency landing conditions to prevent serious head and other injuries. It must protect a range of occupant statures for which the system is designed in accordance with Sections 2.3 and 2.4 of the Society of Automotive Engineers (SAE) document AS5276/1. The CSS must provide a consistent approach to energy absorption throughout that range.

2. Means must be provided to prevent the use of the CSS with children who are outside the range of statures for which the system was designed and tested. The range of statures for which the CSS is approved must be clearly labeled on the device.

3. There must be obvious, clear, and concise instructions readily available to the flight and cabin crew as to the proper installation and use of the CSS system for children.

4. The design of the CSS must prevent it from being incorrectly buckled and/or incorrectly installed such that the CSS would not properly perform its intended function.

5. The CSS must meet the minimum performance standards of Appendix 1 and the test conditions of Appendix 2 of Technical Standard Order C100b.

6. The CSS must not impede rapid egress of the occupant using the CSS and the occupants seated in the same row.

7. Means must be provided to prohibit the installation and use of the CSS in the emergency exit rows.

8. The CSS must be shown to operate safely in the following locations, or means must be provided to prohibit the installation and use of the CSS at these seat locations:

a. Behind any wall or seat back that has an inflatable airbag.

b. Any passenger seat that has an inflatable restraint system.

c. Side-facing seats.

9. It must be shown that the CSS will not cause the occupant's passenger seat back to fold over during a crash situation and cause injury to the occupant.

10. It must be shown that tray tables, phones or other devices installed in the seat back will not degrade the performance of the CSS.

11. Passenger seats approved for installation of the CSS must be clearly identified to the installer by location and part number.

12. The operating regulations, 14 CFR 91.107 and 14 CFR 121.311, prohibit the use of any ''vest-type child restraints, and harness-type child restraints'' in commercial and private use operations. It is therefore incumbent upon AMSAFE Inc., or their agent, to petition the FAA for exemption from these two regulations. The exemption must be granted in order for the system to be used by a U.S. operator.

Issued in Renton, Washington, on December 8, 2003.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31024 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–19–AD; Amendment 39–13391; AD 2003–25–08]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (Formerly Allison Engine Company) AE 3007A1, AE 3007A1/1, AE 3007A1/3, AE 3007A3, AE 3007A1E, and AE 3007A1P Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce Corporation (formerly Allison Engine Company) AE 3007A1, AE 3007A1/1, AE 3007A1/3, AE 3007A3, AE 3007A1E, and AE 3007A1P turbofan engines, with 1st to 2nd stage turbine spacers, part number (P/N) 23069627, 23070989, 23072849, or 23075364 installed. This AD reduces the life limit for 1st to 2nd stage turbine spacers, P/N 23072849, to a certain lower life limit, based on engine model. This AD also requires a one-time fluorescent penetrant inspection (FPI) of 1st to 2nd stage turbine spacers P/Ns 23069627, 23070989, 23072849, and 23075364 before reaching the spacer life limit, within specified cycles-since-new (CSN), and requires replacement of the spacer if found cracked, or with bent or missing aft tangs. This AD is prompted by a report that during a scheduled inspection, aft pilot tangs on a 1st to 2nd stage turbine spacer were found bent and cracked. We are issuing this AD to prevent 1st to 2nd stage turbine spacer failure, leading to uncontained turbine failure, engine shutdown, and damage to the airplane.

DATES: This AD becomes effective January 21, 2004.

ADDRESSES: You can get the service information identified in this AD from Rolls-Royce Corporation, P.O. Box 420, Indianapolis, IN 46206–0420; telephone (317) 230–6400; fax (317) 230–4243.

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

FOR FURTHER INFORMATION CONTACT: Michael Downs, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone: (847) 294–7870, fax: (847) 294–7834.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to Rolls-Royce Corporation (formerly Allison Engine Company) AE 3007A1, AE 3007A1/1, AE 3007A1/3, AE 3007A3, AE 3007A1E, and AE 3007A1P turbofan engines, with 1st to 2nd stage turbine spacers, P/N 23069627, 23070989, 23072849, or 23075364 installed. We published the proposed AD in the **Federal Register** on August 13, 2003 (68 FR 48326). That action proposed to reduce the life limit for 1st to 2nd stage turbine spacers, P/N 23072849, to a certain lower life limit, based on engine model. That action also proposed to require a one-time FPI of 1st to 2nd stage turbine spacers P/Ns 23069627, 23070989, 23072849, and 23075364 before reaching the spacer life limit, within specified CSN, and to require replacement of the spacer if found cracked, or with bent or missing aft tangs.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment received.

Request To Rewrite Paragraph (g)(1)

One commenter, the manufacturer, requests that we rewrite paragraph (g)(1) from ''For an engine inducted into the shop for any reason, if the spacer has accumulated 3,000 CSN or more'' to ''For an engine inducted into the shop for any reason, requiring disassembly of the engine core split lines, if the spacer has accumulated 3,000 CSN or more''. The commenter estimates that approximately two to four engines a year return to the shop to address external issues only. The commenter states that paragraph (g)(1), as written, creates a burden to the operators and imposes an engine core teardown on those engines returned to the shop for external issues only.

The FAA agrees. The requested change does not change the risk assessment or the inspection criteria of the AD, and as long as the upper limit of 9,800 CSN or the life limit is not exceeded, the operator should not be forced into an engine teardown if the spacer has 3,000 CSN or more. Paragraph (g)(1) is rewritten as requested in this AD.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have 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 published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. That regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. The material previously was included in each individual AD. Since the material is included in 14 CFR part 39, we will not include it in future AD actions.

Regulatory Findings

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.

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 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–NE–19–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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):

2003–25–08 Rolls-Royce Corporation (formerly Allison Engine Company): Amendment 39–13391. Docket No. 2003–NE–19–AD.

Effective Date

(a) This AD becomes effective January 21, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce Corporation (formerly Allison Engine Company) AE 3007A1, AE 3007A1/1, AE 3007A1/3, AE 3007A3, AE 3007A1E, and AE 3007A1P turbofan engines, with 1st to 2nd stage turbine spacer part number (P/N) 23069627, 23070989, 23072849, or 23075364 installed. These engines are installed on, but not limited to, EMBRAER EMB–135 and EMB–145 series airplanes.

Unsafe Condition

(d) This AD is prompted by a report that during a scheduled inspection, aft pilot tangs on a 1st to 2nd stage turbine spacer were found bent and cracked. We are issuing this AD to prevent 1st to 2nd stage turbine spacer failure, leading to uncontained turbine failure, engine shutdown, and damage to the airplane.

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.

1st to 2nd Stage Turbine Spacer Life Limits

(f) 1st to 2nd stage turbine spacer life limits are as follows:

(1) For P/N 23072849, the newly established life limit is:

(i) 13,100 cycles-since-new (CSN) for engine models AE 3007A1/1, AE 3007A1/3, AE 3007A1, AE 3007A3; and

(ii) 12,900 CSN for engine models AE 3007A1E and AE 3007A1P.

(2) For P/Ns 23069627, 23070989, and 23075364, the life limits are unchanged.

Inspection

(g) After the effective date of this AD, perform a one-time fluorescent penetrant inspection (FPI) of the 1st to 2nd stage turbine spacer P/Ns 23069627, 23070989, 23072849, and 23075364 and replace spacer if cracked or if aft pilot tangs are bent or missing, with a new or serviceable 1st to 2nd stage turbine spacer, using the following compliance criteria:

(1) For an engine inducted into the shop for any reason, requiring disassembly of the engine core split lines, if the spacer has accumulated 3,000 CSN or more.

(2) For installed engines, if the spacer has accumulated more than 9,300 CSN, inspect before accumulating an additional 500 cycles-in-service, or before accumulating 4,200 cycles-since-last FPI, whichever is more, but do not exceed the spacer life limit in paragraph (f) of this AD.

(3) For installed engines, if the spacer has accumulated 9,300 or less CSN, inspect before accumulating 9,800 CSN, or before accumulating 4,200 cycles-since-last FPI, whichever is more, but do not exceed the spacer life limit in paragraph (f) of this AD.

Alternative Methods of Compliance

(h) The Manager, Chicago Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR part 39.19.

Material Incorporated by Reference

(i) None.

Related Information

(j) The subject of this AD is addressed in Rolls-Royce Corporation alert service bulletin No. AE 3007A–A–72–265, Revision 1, dated April 10, 2003.

Issued in Burlington, Massachusetts, on December 9, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–31057 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16180; Airspace Docket No. 03–AEA–14]

Amendment of Class E Airspace; New York, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Finale rule.

SUMMARY: This action amends Class E airspace at New York, NY. The development of multiple area navigation (RNAV) Copter Standard Instrument Approach Procedures (SIAP) and the proliferation of airports within the metropolitan New York area with approved Instrument Flight Rules (IFR) operations and the resulting overlap of designated Class E–5 airspace has made this action necessary. This action consolidates the Class E–5 airspace designations for nineteen airports and results in the recision of twelve Class E–5 descriptions through separate rulemaking action. The area will be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On November 6, 2003, a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by consolidating existing Class E–5 airspace designations in the New York metropolitan area and incorporating those areas into the New York, NY description was published in the **Federal Register** (68 FR 62758–62759). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from the surface are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 ft above the surface for aircraft conducting IFR operations within the New York, NY Class E–5 airspace description.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700ft above the surface of the earth.

* * * * *

AEA NY E5 New York, NY (Revised)

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 40°49′00″ N., long. 73°17′02″ W., to lat. 40°36′00″ N., long. 73°12′27″ W., to lat. 40°29′42″ N., long. 73°30′53″ W., to lat. 40°29′43″ N., long. 73°52′12″ W., to lat. 40°15′00″ N., long. 74°00′00″ W., to lat. 40°14′32″ N., long. 74°29′47″ W., to lat. 40°24′45″ N., long. 74°51′22″ W., to lat. 41°08′17″ N., long. 75°00′00″ W., to lat. 41°23′15″ N., long. 74°43′13″ W., to lat. 41°26′08″ N., long. 73°52′54″ W., to lat. 41°16′48″ N., long. 73°34′53″ W., to the point of beginning excluding the airspace that coincides with the Wrightstown, NJ, Pittstown, NJ, Philadelphia, PA, Poughkeepsie, NY, Mewburgh, NY, and Danbury, CT Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on December 8, 2003.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–31026 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16614; Airspace Docket No. 03–AEA–17]

Amendment of Class E Airspace; New York, and New Jersey

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action removes the description of the Class E airspace designated for Republic Airport, Farmingdale, NY; Westchester County Airport, White Plains, NY; Ossining, NY; Linden Airport, NJ; Greenwood Lake Airport, West Milford, NJ; Somerset Airport, Sommerville, NJ; Sussex Airport, NJ; Aeroflex-Andover Airport, Andover, NJ; Old Bridge Airport, NJ; Princeton Airport, NJ; Solberg-Hunterdon Airport, Readington, NJ; Central Jersey Regional Airport, Manville, NJ. The affected Class E–5 airspace for the airport included in these descriptions will be consolidated into the New York, NY airspace description contained in Docket No. FAA–2003–16180; Airspace Docket No. 03–AEA–14, effective June 10, 2004.

DATES: *Effective date:* April 15, 2004.

Comment Date: Comments must be received on or before February 19, 2004.

ADDRESSES: Send comments of the rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16614/Airspace Docket No. 03–AEA–17 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the rule, any comments received, and any final disposition in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4890.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION: Although this action is a final rule, which involves the amendment of Class E airspace within New York, and New Jersey, by consolidating that airspace into one description, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the description of Class E airspace in the New York, NY area by removing the airspace designations for Babylon, NY; Ossining, NY; White Plains, NY; Andover, NJ; Linden, NJ; Manville, NJ; Old Bridge, NJ; Princeton, NJ; Readington, NJ; Somerville, NJ; Sussex, NJ; and West Milford, NJ. It consolidates those airspace areas into the New York, NY description. The proliferation of airports with Instrument Flight Rule (IFR) operations in the vicinity of New York, NY has resulted in the overlap of numerous Class E airspace areas that complicate the chart depictions. This action clarifies the airspace and diminishes the scope and complexity of charting. The IFR airports within those areas will be incorporated into the New York, NY Class E airspace area. Accordingly, since this action merely consolidates these airspace areas into one airspace designation and has inconsequential impact on aircraft operations in the area, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporated by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003 and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 Babylon, NY [Removed]
AEA NY E5 Ossining, NY [Removed]
AEA NY E5 White Plains, NY [Removed]
AEA NJ E5 Andover, NJ [Removed]
AEA NJ E5 Linden, NJ [Removed]
AEA NJ E5 Manville, NJ [Removed]
AEA NJ E5 Old Bridge, NJ [Removed]
AEA NJ E5 Princeton, NJ [Removed]
AEA NJ E5 Readington, NJ [Removed]
AEA NJ E5 Somerville, NJ [Removed]
AEA NJ E5 Sussex, NJ [Removed]
AEA NJ E5 West Milford, NJ [Removed]

* * * * *

Issued in Jamaica, New York on December 8, 2003.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–31025 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16291; Airspace Docket No. 03–AEA–08]

Modification of Class E Airspace; York, PA; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the geographic coordinates in the description of the York County, PA Class E–2 designated airspace that was published in Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003 and effective September 16, 2003.

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

Airspace Docket No. 99–AEA–09, published in the **Federal Register** on October 26, 1999 (64 FR 57557–57558), established the Class E–2 airspace area at York Airport, York County, PA. The description of the airspace incorporated the geographic reference point (GRP) for the airport. The designation was subsequently published in Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1.

Need for Correction

The final rule described the geographic position of the airport with a GRP. Other airspace designations for the airport incorporate the airport reference point (ARP) in the descriptions. This action deletes the GRP and incorporates the ARP for the airport in the description of the Class E–2 airspace designation.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

■ Accordingly, pursuant to the authority delegated to me, 14 CFR part 71 is corrected by making the following amendment:

PART 71—[CORRECTED]

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

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

§ 71.1 [Corrected]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003 and effective September 16, 2003, is corrected as follows:

Paragraph 6002 Class E Airspace Areas extending upward from the surface

* * * * *

AEA PA E2 York County, PA [CORRECTED]

York Airport, PA
(Lat. 39°55′01″ N., long. 76°52′23″ W.)

That airspace extending upward from the surface within a 6.5-mile radius of the York Airport.

* * * * *

Issued in Jamaica, New York on, December 8, 2003.

John McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–31029 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15228; Airspace Docket No. 03–AEA–04]

Establishment of Class E Airspace; Gettysburg, PA; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: Airspace Docket No. 03–AEA–04, published in the **Federal Register** on November 5, 1003 (68 FR 62515), established the description of the Class E airspace area at Gettysburg, PA. An error was discovered in the geographic coordinates for the Gettysburg Airport and Travel Center and the effective date was in error. This action corrects those errors.

DATES: The effective date of 0901 UTC, May 15, 2004, is changed to 0901 UTC, April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION: Airspace Docket No. 03–AEA–04. published in the **Federal Register** on November 5, 2003 (68 FR 62515), established the description of the Class E airspace area at Gettysburg, PA. The final rule established Class E airspace for the Gettysburg Airport and Travel Center with an effective date of May 15, 2004. The geographic coordinates describing the designated airspace area and the effective date were published in error. The date of May 15, 2004, is not an official charting date. This action corrects the geographic coordinates and changes the effective date to April 15, 2004.

In rule FR Doc. 03–27741 published on November 5, 2003 (68 FR 62515), make the following corrections. On page 62515 in the first column, change the effective date to read ''April 15, 2004.'' In the third column, change the geographic coordinates by removing ''(lat. 39°50′27″ N., long. 73°57′43″ W.)'' and substituting ''(lat. 39°50′27″ N., long. 77°16′27″ W.).''

Issued in Jamaica, New York, on December 8, 2003.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–31028 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15789; Airspace Docket No. 03–AEA–09]

Amendment of Class E Airspace; Charlottesville, VA; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; correction.

SUMMARY: An amendment to Airspace Docket No. 03–AEA–09, published in the **Federal Register** on November 6, 2003 (68 FR 62735), corrected the description of the Class E airspace area at Charlottesville, VA. The published effective date was in error. This action corrects this error.

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION: Airspace Docket No. 03–AEA–09, published in the **Federal Register** on November 6, 2003 (68 FR 62735), corrected the description of the Class E airspace area at Charlottesville, VA. The final rule amended the description of the Class E airspace for Charlottesville, VA to include Charlottesville-Albermarle Airport as the primary airport. The effective date was published as November 6, 2003. The effective date must be established to coincide with the earliest available charting date. This action corrects the effective date to February 19, 2004.

In rule FR Doc. 03–27899, published November 6, 2003, (68 FR 62735), make the following correction. On page 62735, in the first column, change the effective date to read ''February 19, 2004''.

Issued in Jamaica, New York, on December 8, 2003.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–31027 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Exemptions From Classification as a Banned Toy or Other Banned Article for Use by Children; Dive Sticks; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; Correction.

SUMMARY: This document corrects a citation error in the regulation that states certain requirements dive sticks must meet in order not to be banned hazardous substances. The Consumer Product Safety Commission is issuing this revision to correct an erroneous paragraph designation to the banning rule.

DATES: This rule is effective on December 17, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia M. Pollitzer, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7634; e-mail *ppollitzer@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

The Correction

On March 7, 2001, the Commission issued a final rule banning dive sticks that did not meet specified requirements. 66 FR 13645. That rule amended 16 CFR 1500.86(a) to add dive sticks that meet the specified requirements to the list of articles exempted from classification as a banned toy or other article intended for use by children. A citation in § 1500.86(a)(7) and (8) was incorrect.

As published, the final regulation contains erroneous citations which may be misleading and need to be clarified.

The Administrative Procedure Act

Section 553(b)(3)(B) of the Administrative Procedure Act (''APA'') authorizes an agency to dispense with notice and comment procedures when the agency, for good cause, finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' This amendment corrects typographical errors and does not make any substantive change. Accordingly, the Commission finds that notice and comment on this technical correction is unnecessary.

The APA also authorizes an agency, ''for good cause found and published with the rule,'' to dispense with the otherwise applicable requirement that a rule be published in the **Federal Register** at least 30 days before its effective date. 5 U.S.C. 553(d)(3). The Commission hereby finds that a 30 day delay of the effective date is unnecessary because this technical amendment merely corrects typographical errors.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

■ Accordingly, 16 CFR part 1500 is corrected by making the following correcting amendments:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES: ADMINISTRATION AND ENFORCEMENT REGULATIONS

■ 1. The authority for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278.

§ 1500.86 [Amended]

■ 2. In § 1500.86, paragraphs (a)(7) and (a)(8) are amended by removing the reference ''§ 1500.18(a)(18)'' and adding

the reference ''§ 1500.18(a)(19)'' in its place.

Dated: December 11, 2003.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–31127 Filed 12–16–03; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9099]

RIN 1545–BA78

Disclosure of Relative Values of Optional Forms of Benefit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that consolidate the content requirements applicable to explanations of qualified joint and survivor annuities and qualified preretirement survivor annuities payable under certain retirement plans, and specify requirements for disclosing the relative value of optional forms of benefit that are payable from certain retirement plans in lieu of a qualified joint and survivor annuity. These regulations affect plan sponsors and administrators, and participants in and beneficiaries of, certain retirement plans.

DATES: Effective Date: These final regulations are effective on December 17, 2003.

Applicability Date: These final regulations are applicable to QJSA explanations with respect to distributions with annuity starting dates on or after October 1, 2004, and to QPSA explanations provided on or after July 1, 2004.

FOR FURTHER INFORMATION CONTACT: John T. Ricotta at (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information (requirement to disclose information) contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–0928. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent varies from .01 to .99 hours, depending on individual circumstances, with an estimated average of .5 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR part 1 under section 417(a)(3) of the Internal Revenue Code of 1986 (Code).

A qualified retirement plan to which section 401(a)(11) applies must pay a vested participant's retirement benefit under the plan in the form of a qualified joint and survivor annuity (QJSA), except as provided in section 417. Section 401(a)(11) applies to defined benefit plans, money purchase pension plans, and certain other defined contribution plans. A QJSA is defined in section 417(b) as an annuity for the life of the participant with a survivor annuity for the life of the spouse (if the participant is married) that is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity that is payable during the joint lives of the participant and the spouse. Under section 417(b)(2), a QJSA for a married participant generally must be the actuarial equivalent of the single life annuity benefit payable for the life of the participant. However, a plan is permitted to subsidize the QJSA for a married participant. If the plan fully subsidizes the QJSA for a married participant so that failure to waive the QJSA would not result in reduced payments over the life of the participant compared to the single life annuity benefit, then the plan need not provide an election to waive the QJSA. *See* section 417(a)(5).

For a married participant, the QJSA must be at least as valuable as any other optional form of benefit payable under the plan at the same time. *See* § 1.401(a)–20, Q&A–16. Further, the anti-forfeiture rules of section 411(a) prohibit a participant's benefit under a defined benefit plan from being satisfied through payment of a form of benefit that is actuarially less valuable than the value of the participant's accrued benefit expressed in the form of an annual benefit commencing at normal retirement age. These determinations must be made using reasonable actuarial assumptions. However, *see* § 1.417(e)–1(d) for actuarial assumptions required for use in certain present value calculations.

If a plan provides a subsidy for one optional form of benefit (*i.e.*, the payments under an optional form of benefit have an actuarial present value that is greater than the actuarial present value of the accrued benefit), there is no requirement to extend a similar subsidy (or any subsidy) to every other optional form of benefit. Thus, for example, a participant might be entitled to receive a single-sum distribution upon early retirement that does not reflect any early retirement subsidy in lieu of a QJSA that reflects a substantial early retirement subsidy. As a further example, a participant might be entitled to receive a single-sum distribution at normal retirement age in lieu of a QJSA that is subsidized as described in section 417(a)(5).

Section 417(a) provides rules under which a participant (with spousal consent) may waive payment of the participant's benefit in the form of a QJSA. Section 417(a)(3) provides that a plan must provide to each participant, within a reasonable period before the annuity starting date (and consistent with such regulations as the Secretary may prescribe), a written explanation of the terms and conditions of the QJSA, the participant's right to make, and the effect of, an election to waive the QJSA form of benefit, the rights of the participant's spouse, and the right to revoke (and the effect of the revocation of) an election to waive the QJSA form of benefit.

Section 205 of the Employee Retirement Income Security Act of 1974 (ERISA), Public Law 93–406 (88 Stat. 829) as subsequently amended, provides rules that are parallel to the rules of sections 401(a)(11) and 417 of the Internal Revenue Code. In particular, section 205(c)(3) of ERISA provides a rule parallel to the rule of section 417(a)(3) of the Code.

Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretative jurisdiction over the ERISA provisions that are parallel to the

Code provisions addressed in these regulations. Therefore, these regulations apply for purposes of section 205(c)(3) of ERISA, as well as for section 417(a)(3) of the Code.

Regulations governing the requirements for waiver of a QJSA were published in the **Federal Register** on August 19, 1988 (TD 8219; 53 FR 31837). Section 1.401(a)–20, Q&A–36, provides rules for the explanation that must be provided under section 417(a)(3) as a prerequisite to waiver of a QJSA. Section 1.401(a)–20, Q&A–36, requires that such a written explanation contain a general description of the eligibility conditions and other material features of the optional forms of benefit and sufficient additional information to explain the relative values of the optional forms of benefit available under the plan (*e.g.*, the extent to which optional forms are subsidized relative to the normal form of benefit or the interest rates used to calculate the optional forms). In addition, § 1.401(a)–20, Q&A–36, provides that the written explanation must comply with the requirements set forth in § 1.401(a)–11(c)(3). Section 1.401(a)–11(c)(3) was issued prior to the enactment of section 417, and provides rules relating to written explanations that were required prior to a participant's election of a preretirement survivor annuity or election to waive a joint and survivor annuity. Section 1.401(a)–11(c)(3)(i)(C) provides that such a written explanation must contain a general explanation of the relative financial effect of these elections on a participant's annuity.

In addition, under section 411 and § 1.411(a)–11(c), so long as a benefit is immediately distributable (within the meaning of § 1.411(a)–11(c)(4)), a participant must be informed of his or her right to defer that distribution. This requirement is independent of the section 417 requirements addressed in these regulations.

Concerns have been expressed that, in certain cases, the information provided to participants under section 417(a)(3) regarding the available distribution forms does not adequately enable them to compare those distribution forms without professional advice. In particular, participants who are eligible for both subsidized annuity distributions and unsubsidized single-sum distributions may be receiving notices that do not adequately explain the value of the subsidy that is foregone if the single-sum distribution is elected. In such a case, merely disclosing the amount of the single-sum distribution and the amount of annuity payments, or merely stating that the single sum distribution does not include the subsidy that is included in the annuity payments, may not adequately enable those participants to make an informed comparison of the relative values of those distribution forms, even if the interest rate used to derive the single sum is disclosed. Furthermore, questions have been raised as to how the relative values of optional forms of benefit are required to be expressed under current regulations.

Accordingly, proposed regulations were published in the **Federal Register** on October 7, 2002 (67 FR 62417) that would consolidate the content requirements applicable to explanations of qualified joint and survivor annuities and qualified preretirement survivor annuities payable under certain retirement plans, and provide disclosure requirements that would enable participants to compare the relative values of the available distribution forms using more readily understandable information.

After consideration of the comments received concerning the proposed regulations, these final regulations adopt provisions of the proposed regulations with certain modifications, the most significant of which are highlighted below.

Explanation of Provisions

These regulations provide guidance regarding the required description of the relative values of optional forms of benefit compared to the value of the QJSA and the content of the required disclosure of relative values. Commentators generally approved of the increased disclosure that would result from the approach in the proposed regulations, and these final regulations are substantially similar to the proposed regulations.

As under the proposed regulations, the description of the relative value of an optional form of benefit compared to the value of the QJSA must be expressed in a manner that provides a meaningful comparison of the relative economic values of the two forms of benefit without the participant having to make calculations using interest or mortality assumptions. In order to provide this comparison, the benefit under one or both optional forms of benefit must be converted, taking into account the time value of money and life expectancies, so that both are expressed in the same form. While one commentator requested that the regulations only permit comparisons to be made on the basis of present value, the regulations do not take this approach. Instead, the final regulations retain the examples of techniques that may be used for this comparison that were included in the proposed regulation: expressing the actuarial present value of the optional form of benefit as a percentage or factor of the actuarial present value of the QJSA; stating the amount of an annuity payable at the same time and under the same conditions as the QJSA that is the actuarial equivalent of the optional form of benefit; or stating the actuarial present value of both the QJSA and the optional form of benefit. However, a specific example has been added illustrating the use of the actuarial present value to express relative value.

The comparisons required under the proposed regulations depended on which form of benefit constitutes the QJSA for the participant. One commentator noted that this would result in a different comparison for married and unmarried participants, creating an unnecessary burden for plan sponsors in situations where the benefit options are identical for married and unmarried participants. Furthermore, if the plan sponsor did not know whether a participant is married, the plan would need to provide comparisons that covered both possibilities. In response to the comment, the final regulations permit a plan to use a uniform basis of comparison of relative value (*i.e.*, either the QJSA for married participants or the QJSA for unmarried participants) for both married and unmarried participants, if the benefit options are the same for married and unmarried participants. Thus, in a plan in which the applicable QJSA form for unmarried participants is a straight life annuity and the applicable QJSA form for married participants is a 50 percent joint and contingent annuity (and each of these forms of distribution are available to all participants on the same terms), the plan may choose to compare the relative value of the plan's optional forms of benefit to the value of the straight life annuity with respect to the required disclosure for all participants or the plan may choose to compare the relative value of the plan's optional forms of benefit to the value of the 50 percent joint and contingent annuity with respect to the required disclosure for all participants.

Since disclosing the relative value of every optional form of benefit regardless of the degree of subsidy may be too burdensome, and may provide participants with information that appears more precise than is warranted based on the inexact nature of the actuarial assumptions used, the final regulations follow the proposed regulation in providing for certain simplifications in the disclosure. Under one simplification, two or more optional forms of benefit that have approximately

the same value could be grouped for purposes of disclosing relative value. Under the proposed regulations, two or more optional forms of benefit were treated as having approximately the same value if those optional forms of benefit varied in relative value in comparison to the value of the QJSA by 5 percentage points or less when the relative value comparison is made by expressing the actuarial present value of each of those optional forms of benefit as a percentage of the actuarial present value of the QJSA.

Several commentators recommended changes in this 5 percentage point band. One commentator suggested that a band of 7.5 percentage points be used to simplify compliance and ease the administrative burden to plans. The commentator said that a band of 7.5 percentage points would allow a plan to treat unsubsidized optional forms of benefit for virtually all retiring participants as having approximately equal value. By contrast, another commentator favored a maximum band of 3 percentage points in order for participants to receive adequate disclosure about significant differences in value. The commentator said that a 5 percentage point difference in value was significant enough to be brought to the participant's attention.

These final regulations generally retain the 5 percentage point banding rule of the proposed regulations. This rule aims to minimize the compliance burdens for plans to the extent consistent with providing participants with information on differences in value that are material in light of the inexact nature of the actuarial assumptions used.

The proposed regulations also would have allowed a plan to treat all of its forms of benefit as approximately equal in value if the actuarial present value of all of those forms is not less than 95 percent of the actuarial present value of the QJSA. The final regulations permit a plan that is comparing the relative value of each optional form to the value of the QJSA for a married participant to treat each presently available optional form of benefit that has an actuarial present value of at least 95 percent of the actuarial present value of the QJSA as having approximately the same value as the QJSA. In addition, in the case of a plan that is comparing the relative value of each optional form to the value of the single life annuity, if all of the optional forms of benefit presently available have actuarial present values that are at least 95 percent, but not greater than 102.5 percent, of the actuarial present value of the presently available single life annuity, the plan is permitted to treat all the presently available forms of distribution as approximately equal in value.

Some commentators recommended that participants have the right to know what actuarial assumptions were used in the plan's estimates of relative value. The final regulations require that this information be made available upon request if it is not provided in the notice.

Several commentators raised questions concerning whether the methods used in disclosing relative value of a plan's optional forms of benefit in accordance with these regulations affect the application of the requirement at § 1.401(a)–20, Q&A–16, that the QJSA for married participants be at least as valuable as any other optional form of benefit under the plan. While this issue is not addressed in these final regulations, there is no requirement, or implication, that the same actuarial assumptions used by a plan for purposes of disclosing relative value in accordance with these regulations must be applied for purposes of the requirement in § 1.401(a)–20, Q&A–16, that the QJSA for married participants be at least as valuable as any other optional form of benefit under the plan.

One commentator requested that these regulations address the use of electronic media to deliver the QJSA explanation or the QPSA explanation. The IRS and the Treasury Department are considering the extent to which the QJSA explanation and the QPSA explanation, as well as other notices under the various Internal Revenue Code requirements relating to qualified retirement plans, can be provided electronically, taking into account the effect of the Electronic Signatures in Global and National Commerce Act (ESIGN), Public Law 106–229, 114 Stat. 464 (2000). The IRS and the Treasury Department have invited comments on these issues, and anticipate issuing further guidance regarding electronic notices.

Commentators raised a number of other issues, including issues that relate to basic QJSA rules that are not addressed in these regulations and a request for the final regulations to include model language that can be included in a QJSA notice. These regulations do not include model language for several reasons, including the wide variety of distribution alternatives found in plans (including the variety of actuarial assumptions used to calculate optional forms of benefit), the variations in the average participant in the plan for purposes of understandability, as well as inclusion in the regulations of several detailed examples showing how the information can be provided in order to disclose relative value.

Effective Date

These final regulations are applicable to QJSA explanations with respect to distributions with to annuity starting dates on or after October 1, 2004, and to QPSA explanations provided on or after July 1, 2004. In the case of a retroactive annuity starting date under section 417(a)(7), when required under § 1.417(e)–1(b)(3)(vi), the date of commencement of payments based on the retroactive annuity starting date is substituted for the annuity starting date for purposes of this effective date.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that qualified retirement plans of small businesses typically commence distribution of benefits to few, if any, plan participants in any given year and, similarly, only offer elections to waive a QPSA to few, if any, participants in any given year. Thus, the collection of information in these regulations will only have a minimal economic impact on most small entities. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Linda S.F. Marshall and John T. Ricotta of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Paragraph (c)(3) of § 1.401(a)–11 is revised to read as follows:

§ 1.401(a)–11 Qualified joint and survivor annuities.

* * * * *

(c) * * *

(3) *Information to be provided by plan.* For rules regarding the information required to be provided with respect to the election to waive a QJSA or a QPSA, see § 1.417(a)(3)–1.

* * * * *

■ **Par. 3.** A–36 of § 1.401(a)–20 is revised to read as follows:

§ 1.401(a)–20 Requirements of qualified joint and survivor annuity and qualified preretirement survivor annuity.

* * * * *

A–36. For rules regarding the explanation of QPSAs and QJSAs required under section 417(a)(3), see § 1.417(a)(3)–1.

* * * * *

■ **Par. 4.** Section 1.417(a)(3)–1 is added to read as follows:

§ 1.417(a)(3)–1 Required explanation of qualified joint and survivor annuity and qualified preretirement survivor annuity.

(a) *Written explanation requirement*—(1) *General rule.* A plan meets the survivor annuity requirements of section 401(a)(11) only if the plan meets the requirements of section 417(a)(3) and this section regarding the written explanation required to be provided a participant with respect to a QJSA or a QPSA. A written explanation required to be provided to a participant with respect to either a QJSA or a QPSA under section 417(a)(3) and this section is referred to in this section as a section 417(a)(3) explanation. See § 1.401(a)–20, Q&A–37, for exceptions to the written explanation requirement in the case of a fully subsidized QPSA or QJSA, and § 1.401(a)–20, Q&A–38, for the definition of a fully subsidized QPSA or QJSA.

(2) *Time for providing section 417(a)(3) explanation*—(i) *QJSA explanation.* See § 1.417(e)–1(b)(3)(ii) for rules governing the timing of the QJSA explanation.

(ii) *QPSA explanation.* See § 1.401(a)–20, Q&A–35, for rules governing the timing of the QPSA explanation.

(3) *Required method for providing section 417(a)(3) explanation.* A section 417(a)(3) explanation must be a written explanation. First class mail to the last known address of the participant is an acceptable delivery method for a section 417(a)(3) explanation. Likewise, hand delivery is acceptable. However, the posting of the explanation is not considered provision of the section 417(a)(3) explanation.

(4) *Understandability.* A section 417(a)(3) explanation must be written in a manner calculated to be understood by the average participant.

(b) *Required content of section 417(a)(3) explanation*—(1) *Content of QPSA explanation.* The QPSA explanation must contain a general description of the QPSA, the circumstances under which it will be paid if elected, the availability of the election of the QPSA, and, except as provided in paragraph (d)(3) of this section, a description of the financial effect of the election of the QPSA on the participant's benefits (*i.e.*, an estimate of the reduction to the participant's estimated normal retirement benefit that would result from an election of the QPSA).

(2) *Content of QJSA explanation.* The QJSA explanation must satisfy either paragraph (c) or paragraph (d) of this section. Under paragraph (c) of this section, the QJSA explanation must contain certain specific information relating to the benefits available under the plan to the particular participant. Alternatively, under paragraph (d) of this section, the QJSA explanation can contain generally applicable information in lieu of specific participant information, provided that the participant has the right to request additional information regarding the participant's benefits under the plan.

(c) *Participant-specific information required to be provided*—(1) *In general.* A QJSA explanation satisfies this paragraph (c) if it provides the following information with respect to each of the optional forms of benefit presently available to the participant (*i.e.*, optional forms of benefit with an annuity starting date for which the QJSA explanation applies)—

(i) A description of the optional form of benefit;

(ii) A description of the eligibility conditions for the optional form of benefit;

(iii) A description of the financial effect of electing the optional form of benefit (*i.e.*, the amount payable under the form of benefit to the participant during the participant's lifetime and the amount payable after the death of the participant);

(iv) In the case of a defined benefit plan, a description of the relative value of the optional form of benefit compared to the value of the QJSA, in the manner described in paragraph (c)(2) of this section; and

(v) A description of any other material features of the optional form of benefit.

(2) *Requirement for numerical comparison of relative values*—(i) *In general.* The description of the relative value of an optional form of benefit compared to the value of the QJSA under paragraph (c)(1)(iv) of this section must be expressed to the participant in a manner that provides a meaningful comparison of the relative economic values of the two forms of benefit without the participant having to make calculations using interest or mortality assumptions. Thus, in performing the calculations necessary to make this comparison, the benefits under one or both optional forms of benefit must be converted, taking into account the time value of money and life expectancies, so that the values of both optional forms of benefit are expressed in the same form. For example, such a comparison may be expressed to the participant using any of the following techniques—

(A) Expressing the actuarial present value of the optional form of benefit as a percentage or factor of the actuarial present value of the QJSA;

(B) Stating the amount of the annuity that is the actuarial equivalent of the optional form of benefit and that is payable at the same time and under the same conditions as the QJSA; or

(C) Stating the actuarial present value of both the optional form of benefit and the QJSA.

(ii) *Use of one form for both married and unmarried individuals*—(A) *In general.* Under the rules of this paragraph (c)(2)(ii), in lieu of providing different QJSA explanations for married and unmarried individuals, the plan may provide a QJSA explanation to an individual that does not vary based on the participant's marital status. Except as specifically provided in paragraph (c)(3)(iii) of this section, any reference in this section to comparing the relative value of an optional form of benefit to the value of the QJSA may be satisfied using the substitution permitted under paragraph (c)(2)(ii)(B) or (C) of this section.

(B) *Substitution of single life annuity for married individual.* For a married participant, in lieu of comparing the value of each optional form of benefit presently available to the participant to the value of the QJSA, the plan can

compare the value of each optional form of benefit (including the QJSA) to the value of a QJSA for an unmarried participant (*i.e.*, a single life annuity), but only if that same single life annuity is available to that married participant.

(C) *Substitution of joint and survivor annuity for unmarried individual.* For an unmarried participant, in lieu of comparing the value of each optional form of benefit presently available to the participant to the value of the QJSA for that individual (which is a single life annuity), the plan can compare the value of each optional form of benefit (including the single life annuity) to the value of the joint and survivor annuity that is the QJSA for a married participant, but only if that same joint and survivor annuity is available to that unmarried participant.

(iii) *Simplified presentations permitted*—(A) *Grouping of certain optional forms.* Two or more optional forms of benefit that have approximately the same value may be grouped for purposes of a required numerical comparison described in this paragraph (c)(2). For this purpose, two or more optional forms of benefit have approximately the same value if none of those optional forms of benefit vary in relative value in comparison to the value of the QJSA by more than 5 percentage points when the relative value comparison is made by expressing the actuarial present value of each of those optional forms of benefit as a percentage of the actuarial present value of the QJSA. For such a group of optional forms of benefit, the requirement relating to disclosing the relative value of each optional form of benefit compared to the value of the QJSA can be satisfied by disclosing the relative value of any one of the optional forms in the group compared to the value of the QJSA, and disclosing that the other optional forms of benefit in the group are of approximately the same value. If a single-sum distribution is included in such a group of optional forms of benefit, the single-sum distribution must be the distribution form that is used for purposes of this comparison.

(B) *Representative relative value for grouped optional forms.* If, in accordance with paragraph (c)(2)(iii)(A) of this section, two or more optional forms of benefits are grouped, the relative values for all of the optional forms of benefit in the group can be stated using a representative relative value as the approximate relative value for the entire group. For this purpose, a representative relative value is any relative value that is not less than the relative value of the member of the group of optional forms of benefit with the lowest relative value and is not greater than the relative value of the member of that group with the highest relative value when measured on a consistent basis. For example, if three grouped optional forms have relative values of 87.5 percent, 89 percent, and 91 percent of the value of the QJSA, all three optional forms can be treated as having a relative value of approximately 90 percent of the value of the QJSA. As required under paragraph (c)(2)(iii)(A) of this section, if a single-sum distribution is included in the group of optional forms of benefit, the 90 percent relative factor of the value of the QJSA must be disclosed as the approximate relative value of the single sum, and the other forms can be described as having the same approximate value as the single sum.

(C) *Special rules.* If the plan is comparing the value of each optional form to the value of the QJSA for a married participant, this paragraph (c)(2)(iii)(C) provides a grouping rule that is in addition to the grouping rules of paragraph (c)(2)(iii)(A) of this section. Under this special rule, the relative value of all optional forms of benefit that have an actuarial present value that is at least 95 percent of the actuarial present value of the QJSA for a married participant is permitted to be described by stating that those optional forms of benefit are approximately equal in value to the QJSA, or that all of those forms of benefit and the QJSA are approximately equal in value. In addition, if a plan is comparing the value of optional forms of benefit to the value of the single life annuity and all optional forms of benefit have actuarial present values that are at least 95 percent, but not greater than 102.5 percent, of the actuarial present value of the single life annuity, the plan is permitted to describe the relative value of all optional forms of benefit by stating that all the optional forms of benefit are approximately equal in value, or that all of those forms of benefit and the single life annuity are approximately equal in value.

(iv) *Actuarial assumptions used to determine relative values.* For the purpose of providing a numerical comparison of the value of an optional form of benefit to the value of the immediately commencing QJSA under this paragraph (c)(2), the following rules apply—

(A) If an optional form of benefit is subject to the requirements of section 417(e)(3) and § 1.417(e)–1(d), any comparison of the value of the optional form of benefit to the value of the QJSA must be made using the applicable mortality table and the applicable interest rate as defined in § 1.417(e)–1(d)(2) and (3) (or, at the option of the plan, another reasonable interest rate and reasonable mortality table used under the plan to calculate the amount payable under the optional form of benefit); and

(B) All other optional forms of benefit payable to the participant must be compared with the QJSA using a single set of interest and mortality assumptions that are reasonable and that are applied uniformly with respect to all such optional forms payable to the participant (regardless of whether those assumptions are actually used under the plan for purposes of determining benefit payments).

(v) *Required disclosure of assumptions*—(A) *Explanation of concept of relative value.* The notice must provide an explanation of the concept of relative value, communicating that the relative value comparison is intended to allow the participant to compare the total value of distributions paid in different forms, that the relative value comparison is made by converting the value of the optional forms of benefit presently available to a common form (such as the QJSA or a single-sum distribution), and that this conversion uses interest and life expectancy assumptions. The explanation of relative value must include a general statement that all comparisons provided are based on average life expectancies, and that the relative value of payments ultimately made under an annuity optional form of benefit will depend on actual longevity.

(B) *Disclosure of assumptions.* A required numerical comparison of the value of the optional form of benefit to the value of the QJSA under this paragraph (c)(2) is required to include a disclosure of the interest rate that is used to develop the comparison. If all optional forms of benefit are permitted to be grouped under paragraph (c)(2)(iii)(A) of this section, then the requirement of this paragraph (c)(2)(v)(B) does not apply for any optional form of benefit not subject to the requirements of section 417(e)(3) and § 1.417(e)–1(d)(3).

(C) *Offer to provide actuarial assumptions.* If the plan does not disclose the actuarial assumptions used to calculate the numerical comparison required under paragraph (c)(2) of this section, then, the notice must be accompanied by a statement that includes an offer to provide, upon the participant's request, the actuarial assumptions used to calculate the relative value of optional forms of benefit under the plan.

(3) *Permitted estimates of financial effect and relative value*—(i) *General rule.* For purposes of providing a description of the financial effect of the distribution forms available to a participant as required under paragraph (c)(1)(iii) of this section, and for purposes of providing a description of the relative value of an optional form of benefit compared to the value of the QJSA for a participant as required under paragraph (c)(1)(iv) of this section, the plan is permitted to provide reasonable estimates (*e.g.*, estimates based on data as of an earlier date than the annuity starting date, a reasonable assumption for the age of the participant's spouse, or, in the case of a defined contribution plan, reasonable estimates of amounts that would be payable under a purchased annuity contract), including reasonable estimates of the applicable interest rate under section 417(e)(3).

(ii) *Right to more precise calculation.* If a QJSA notice uses a reasonable estimate under paragraph (c)(3)(i) of this section, the QJSA explanation must identify the estimate and explain that the plan will, upon the request of the participant, provide a more precise calculation and the plan must provide the participant with a more precise calculation if so requested. Thus, for example, if a plan provides an estimate of the amount of the QJSA that is based on a reasonable assumption concerning the age of the participant's spouse, the participant can request a calculation that takes into account the actual age of the spouse, as provided by the participant.

(iii) *Revision of prior information.* If a more precise calculation described in paragraph (c)(3)(ii) of this section materially changes the relative value of an optional form compared to the value of the QJSA, the revised relative value of that optional form must be disclosed, regardless of whether the financial effect of selecting the optional form is affected by the more precise calculation. For example, if a participant provides a plan with the age of the participant's spouse and that information materially changes the relative value of an optional form of benefit (such as a single sum) compared to the value of the QJSA, then the revised relative value of the optional form of benefit and the value of the QJSA must be disclosed, regardless of whether the amount of the payment under that optional form of benefit is affected by the more precise calculation.

(4) *Special rules for disclosure of financial effect for defined contribution plans.* For a written explanation provided by a defined contribution plan, a description of financial effect required by paragraph (c)(1)(iii) of this section with respect to an annuity form of benefit must include a statement that the annuity will be provided by purchasing an annuity contract from an insurance company with the participant's account balance under the plan. If the description of the financial effect of the optional form of benefit is provided using estimates rather than by assuring that an insurer is able to provide the amount disclosed to the participant, the written explanation must also disclose this fact.

(d) *Substitution of generally applicable information for participant information in the section 417(a)(3) explanation*—(1) *Forms of benefit available.* In lieu of providing the information required under paragraphs (c)(1)(i) through (v) of this section for each optional form of benefit presently available to the participant as described in paragraph (c) of this section, the QJSA explanation may contain the information required under paragraphs (c)(1)(i) through (v) of this section for the QJSA and each other optional form of benefit generally available under the plan, along with a reference to where a participant may readily obtain the information required under paragraphs (c)(1)(i) through (v) of this section for any other optional forms of benefit that are presently available to the participant.

(2) *Financial effect and comparison of relative values*—(i) *General rule.* In lieu of providing a statement of the financial effect of electing an optional form of benefit as required under paragraph (c)(1)(iii) of this section, or a comparison of relative values as required under paragraph (c)(1)(iv) of this section, based on the actual age and benefit of the participant, the QJSA explanation is permitted to include a chart (or other comparable device) showing the financial effect and relative value of optional forms of benefit in a series of examples specifying the amount of the optional form of benefit payable to a hypothetical participant at a representative range of ages and the comparison of relative values at those same representative ages. Each example in this chart must show the financial effect of electing the optional form of benefit pursuant to the rules of paragraph (c)(1)(iii) of this section, and a comparison of the relative value of the optional form of benefit to the value of the QJSA pursuant to the rules of paragraph (c)(2) of this section, using reasonable assumptions for the age of the hypothetical participant's spouse and any other variables that affect the financial effect, or relative value, of the optional form of benefit. The requirement to show the financial effect of electing an optional form can be satisfied through the use of other methods (*e.g.*, expressing the amount of the optional form as a percentage or a factor of the amount payable under the normal form of benefit), provided that the method provides sufficient information so that a participant can determine the amount of benefits payable in the optional form. The chart (or other comparable device) must be accompanied by the disclosures described in paragraph (c)(2)(v) of this section explaining the concept of relative value and disclosing certain interest assumptions. In addition, the chart (or other comparable device) must be accompanied by a general statement describing the effect of significant variations between the assumed ages or other variables on the financial effect of electing the optional form of benefit and the comparison of the relative value of the optional form of benefit to the value of the QJSA.

(ii) *Actual benefit must be disclosed.* The generalized notice described in this paragraph (d)(2) will satisfy the requirements of paragraph (b)(2) of this section only if the notice includes either the amount payable to the participant under the normal form of benefit or the amount payable to the participant under the normal form of benefit adjusted for immediate commencement. For this purpose, the normal form of benefit is the form under which payments due to the participant under the plan are expressed under the plan, prior to adjustments for form of benefit. For example, assuming that a plan's benefit accrual formula is expressed as a straight life annuity, the generalized notice must provide the amount of either the straight life annuity commencing at normal retirement age or the straight life annuity commencing immediately.

(iii) *Ability to request additional information.* The generalized notice described in this paragraph (d)(2) must be accompanied by a statement that includes an offer to provide, upon the participant's request, a statement of financial effect and a comparison of relative values that is specific to the participant for any presently available optional form of benefit, and a description of how a participant may obtain this additional information.

(3) *Financial effect of QPSA election.* In lieu of providing a specific description of the financial effect of the QPSA election, the QPSA explanation may provide a general description of the financial effect of the election. Thus, for example, the description can be in the form of a chart showing the reduction to a hypothetical participant's normal

retirement benefit at a representative range of participant ages as a result of the QPSA election (using a reasonable assumption for the age of the hypothetical participant's spouse relative to the age of the hypothetical participant). In addition, this chart must be accompanied by a statement that includes an offer to provide, upon the participant's request, an estimate of the reduction to the participant's estimated normal retirement benefit, and a description of how a participant may obtain this additional information.

(4) *Additional information required to be furnished at the participant's request*— The generalized notice described in paragraph (d)(2) of this section must be accompanied by a statement that includes an offer to provide, upon the participant's request, information described in this paragraph (d)(4)(i) and (ii), and a description of how a participant may obtain this additional information.

(i) *Explanation of QJSA.* If, as permitted under paragraphs (d)(1) and (2) of this section, the content of a QJSA explanation does not include all the items described in paragraph (c) of this section, then, upon a participant's request for any of the information required under paragraphs (c)(1)(i) through (v) of this section for one or more presently available optional forms (including a request for all optional forms presently available to the participant), the plan must furnish the information required under paragraphs (c)(1)(i) through (v) of this section with respect to those optional forms. Thus, with respect to those optional forms of benefit, the participant must receive a QJSA explanation specific to the participant that is based on the participant's actual age and benefit. In addition, the plan must comply with paragraph (c)(3)(iii) of this section. Further, if as permitted under paragraph (c)(2)(v)(B) of this section, the plan does not disclose the actuarial assumptions used to calculate the numerical comparison required under paragraph (c)(2) of this section, then, upon request, the plan must provide the actuarial assumptions used to calculate the relative value of optional forms of benefit under the plan.

(ii) *Explanation of QPSA.* If, as permitted under paragraph (d)(3) of this section, the content of a QPSA explanation does not include all the items described in paragraph (b)(1) of this section, then, upon a participant's request, the plan must furnish an estimate of the reduction to the participant's estimated normal retirement benefit that would result from a QPSA election.

(e) *Examples.* The following examples illustrate the application of this section. Solely for purposes of these examples, the applicable interest rate that applies to any distribution that is subject to the rules of section 417(e)(3) is assumed to be 52½ percent, and the applicable mortality table under section 417(e)(3) and § 1.417(e)–1(d)(2) is assumed to be the table that applies as of January 1, 2003. In addition, solely for purposes of these examples, assume that a plan which determines actuarial equivalence using 6 percent interest and the applicable mortality table under section 417(e)(3) and § 1.417(e)–1(d)(2) that applies as of January 1, 1995, is using reasonable actuarial assumptions. The examples are as follows:

Example 1. (i) Participant M participates in Plan A, a qualified defined benefit plan. Under Plan A, the QJSA is a joint and 100 percent survivor annuity, which is actuarially equivalent to the single life annuity determined using 6 percent interest and the section 417(e)(3) applicable mortality table that applies as of January 1, 1995. On October 1, 2004, M will terminate employment at age 55. When M terminates employment, M will be eligible to elect an unreduced early retirement benefit, payable as either a single life annuity or the QJSA. M will also be eligible to elect a single-sum distribution equal to the actuarial present value of the single life annuity payable at normal retirement age (age 65), determined using the applicable mortality table and the applicable interest rate under section 417(e)(3).

(ii) Consistent with paragraph (c) of this section, Participant M is provided with a QJSA explanation that describes the single life annuity, the QJSA, and single-sum distribution options under the plan, and any eligibility conditions associated with these options. Participant M is married when the explanation is provided. The explanation indicates that, if Participant M commenced benefits at age 55 and had a spouse age 55, the monthly benefit under an immediately commencing single life annuity is $3,000, the monthly benefit under the QJSA is estimated to be 89.96 percent of the monthly benefit under the immediately commencing single life annuity or $2,699, and the single sum is estimated to be 74.7645 times the monthly benefit under the immediately commencing single life annuity or $224,293.

(iii) The QJSA explanation indicates that the single life annuity and the QJSA are of approximately the same value, but that the single-sum option is equivalent in value to a monthly benefit under the QJSA of $1,215. (This amount is 45 percent of the value of the QJSA at age 55 ($1,215 divided by 89.96 percent of $3,000 equals 45 percent).) The explanation states that the relative value comparison converts the value of the single life annuity and the single-sum options to the value of each if paid in the form of the QJSA and that this conversion uses interest and life expectancy assumptions. The explanation specifies that the calculations relating to the single-sum distribution were prepared using 5.5 percent interest and average life expectancy, that the other calculations were prepared using a 6 percent interest rate and that the relative value of actual annuity payments for an individual can vary depending on how long the individual and spouse live. The explanation notes that the calculation of the QJSA assumed that the spouse was age 55, that the amount of the QJSA will depend on the actual age of the spouse (for example, annuity payments will be significantly lower if the spouse is significantly younger than the participant), and that the amount of the single-sum payment will depend on the interest rates that apply when the participant actually takes a distribution. The explanation also includes an offer to provide a more precise calculation to the participant taking into account the spouse's actual age.

(iv) In accordance with paragraph (c)(3)(ii) of this section, Participant M requests a more precise calculation of the financial effect of choosing a QJSA taking into account that Participant M's spouse is 50 years of age. Using the actual age of Participant M's spouse, Plan A determines that the monthly payments under the QJSA are 87.62 percent of the monthly payments under the single life annuity, or $2,628.60 per month, and provides this information to M. Plan A is not required to provide an updated calculation of the relative value of the single sum because the value of single sum continues to be 45 percent of the value of the QJSA.

Example 2. (i) The facts are the same as in *Example 1,* except that the comparison of the relative values of optional forms of benefit to the value of the QJSA is not expressed as a percentage of the actuarial present value of the QJSA, but instead is expressed by disclosing the actuarial present values of the optional forms and the QJSA. In addition, the Plan uses the applicable interest rate and the applicable mortality table under section 417(e)(3) for all comparison purposes.

(ii) Accordingly, the QJSA explanation indicates that the QJSA has an actuarial present value of $498,089, while the single-sum payment has an actuarial present value of $224,293 (*i.e.* the amount of the single sum is $224,293) and that the single life annuity is approximately equal in value to the QJSA. The explanation states that the relative value comparison converts the value of single life annuity and the QJSA into an amount payable in the form of the single-sum option (even though a single-sum distribution in that amount is not available under the plan) and that this conversion uses interest and life expectancy assumptions. The explanation specifies that the calculations were prepared using 5.5 percent interest and average life expectancy, and that the relative value of actual annuity payments for an individual can vary depending on how long the individual and spouse live. The explanation notes that the calculation of the QJSA assumed that the spouse was age 55, that the amount of the QJSA will depend on the actual age of the spouse (for example, annuity payments will be significantly lower if the spouse is significantly younger than the participant), and that the amount of the single-sum payment will depend on the interest rates that apply when the participant

actually takes a distribution. The explanation also includes an offer to provide a more precise calculation to the participant taking into account the spouse's actual age.

Example 3. (i) The facts are the same as in *Example 1,* except that, in lieu of providing information specific to Participant M in the QJSA notice as set forth in paragraph (c) of this section, Plan A satisfies the QJSA explanation requirement in accordance with paragraph (d)(2) of this section by providing M with a statement that M's monthly benefit under an immediately commencing single life annuity (which is the normal form of benefit under Plan A, adjusted for immediate commencement) is $3,000, along with the following chart. The chart shows the financial effect of electing each optional form of benefit for a hypothetical participant with a $1,000 benefit and a spouse who is the same age as the participant. Instead of showing the relative value of these optional forms of benefit compared to the value of the QJSA, the chart shows the relative value of these optional forms of benefit compared to the value of the single life annuity. Separate charts are provided for ages 55, 60, and 65 as follows:

AGE 55 COMMENCEMENT

Optional form	Amount of distribution per $1,000 of immediate single life annuity	Relative value
Life Annuity	$1,000 per month	n/a.
QJSA (Joint and 100 percent survivor annuity)	$900 per month ($900 per month for survivor annuity).	Approximately the same value as the Life Annuity.
Lump sum	$74,764	Approximately 45 percent of the value of the Life Annuity.

AGE 60 COMMENCEMENT

Optional form	Amount of distribution per $1,000 of immediate single life annuity	Relative value
Life Annuity	$1,000 per month	n/a.
QJSA (Joint and 100 percent survivor annuity)	$878 per month ($878 per month for survivor annuity).	Approximately the same value as the Life Annuity.
Lump sum	$99,792	Approximately 66 percent of the value of the Life Annuity.

AGE 65 COMMENCEMENT

Optional form	Amount of distribution per $1,000 of immediate single life annuity	Relative value
Life Annuity	$1,000 per month	n/a.
QJSA (Joint and 100 percent survivor annuity)	$852 per month ($852 per month for survivor annuity).	Approximately the same value as the Life Annuity.
Lump sum	$135,759	Approximately the same value as the Life Annuity.

(ii) In accordance with paragraph (d)(4)(i) of this section, when Participant M requests specific information regarding the amounts payable under the QJSA, the joint and 100 percent survivor annuity, and the single-sum distribution and provides the age of M's spouse, Plan A determines that M's QJSA is $2,628.60 per month and the single-sum distribution is $224,293. The actuarial present value of the QJSA (determined using the 5.5 percent interest and the section 417(e)(3) applicable mortality table) is $498,896 and the actuarial present value of the single life annuity is $497,876. Accordingly, the specific information discloses that the single-sum distribution has a value that is 45 percent of the value of the single life annuity available to M on October 1, 2004. In accordance with paragraph (c)(2)(iii)(C) of this section, the QJSA notice provides that the QJSA is of approximately the same value as the single life annuity.

Example 4. (i) The facts are the same as in *Example 1,* except that under Plan A, the single-sum distribution is determined as the actuarial present value of the immediately commencing single life annuity. In addition, Plan A provides a joint and 75 percent survivor annuity that is reduced from the single life annuity and that is the QJSA under Plan A. For purposes of determining the amount of the QJSA, if the participant is married the reduction is only half of the reduction that would normally apply under the actuarial assumptions specified in Plan A for determining actuarial equivalence of optional forms.

(ii) In lieu of providing information specific to Participant M in the QJSA notice as set forth in paragraph (c) of this section, Plan A satisfies the QJSA explanation requirement in accordance with paragraph (d)(2) of this section by providing M with a statement that M's monthly benefit under an immediately commencing single life annuity (which is the normal form of benefit under Plan A, adjusted for immediate commencement) is $3,000, along with the following chart showing the financial effect and the relative value of the optional forms of benefit compared to the QJSA for a hypothetical participant with a $1,000 benefit and a spouse who is three years younger than the participant. For each optional form generally available under the plan, the chart shows the financial effect and the relative value, using the grouping rules of paragraph (c)(2)(ii) of this section. Separate charts are provided for ages 55, 60, and 65, as follows:

AGE 55 COMMENCEMENT

Optional form	Amount of distribution per $1,000 of immediate single life annuity	Relative value
Life Annuity	$1,000 per month	Approximately the same value as the QJSA.

AGE 55 COMMENCEMENT—Continued

Optional form	Amount of distribution per $1,000 of immediate single life annuity	Relative value
QJSA (joint and 75 percent survivor annuity for a participant who is married).	$956 per month ($717 per month for survivor annuity).	n/a.
Joint and 100 percent survivor annuity	$886 per month ($886 per month for survivor annuity).	Approximately the same value as the QJSA.
Lump sum	$165,959	Approximately the same value as the QJSA.

AGE 60 COMMENCEMENT

Optional form	Amount of distribution per $1,000 of immediate single life annuity	Relative value
Life Annuity	$1,000 per month	Approximately 94 percent of the value of the QJSA.
QJSA (joint and 75 percent survivor annuity for a participant who is married).	$945 per month ($709 per month for survivor annuity).	n/a.
Joint and 100 percent survivor annuity	$859 per month ($859 per month for survivor annuity).	Approximately 94 percent of the value of the QJSA.
Lump sum	$151,691	Approximately the same value as the QJSA.

AGE 65 COMMENCEMENT

Optional form	Amount of distribution per $1,000 of immediate single life annuity	Relative value
Life Annuity	$1,000 per month	Approximately 93 percent of the value of the QJSA.
QJSA (joint and 75 percent survivor annuity for a participant who is married).	$932 per month ($699 per month for survivor annuity).	n/a.
Joint and 100 percent survivor annuity	$828 per month ($828 per month for survivor annuity).	Approximately 93 percent of the value of the QJSA.
Lump sum	$135,759	Approximately 93 percent of the value of the QJSA.

(iii) The chart disclosing the financial effect and relative value of the optional forms specifies that the calculations were prepared assuming that the spouse is three years younger than the participant, that the calculations relating to the single-sum distribution were prepared using 5.5 percent interest and average life expectancy, that the other calculations were prepared using a 6 percent interest rate, and that the relative value of actual payments for an individual can vary depending on how long the individual and spouse live. The explanation states that the relative value comparison converts the single life annuity, the joint and 100 percent survivor annuity, and the single-sum options to value of each if paid in the form of the QJSA and that this conversion uses interest and life expectancy assumptions. The explanation notes that the calculation of the QJSA depends on the actual age of the spouse (for example, annuity payments will be significantly lower if the spouse is significantly younger than the participant), and that the amount of the single-sum payment will depend on the interest rates that apply when the participant actually takes a distribution. The explanation also includes an offer to provide a calculation specific to the participant upon request, and an offer to provide mortality tables used in preparing calculations upon request.

(iv) In accordance with paragraph (d)(4)(i) of this section, Participant M requests specific information regarding the amounts payable under the QJSA, the joint and 100 percent survivor annuity, and the single sum.

(v) Based on the information about the age of Participant M's spouse, Plan A determines that M's QJSA is $2,856.30 per month, the joint and 100 percent survivor annuity is $2,628.60 per month, and the single sum is $497,876. The actuarial present value of the QJSA (determined using the 5.5 percent interest and the section 417(e)(3) applicable mortality table, the actuarial assumptions required under section 417) is $525,091. Accordingly, the value of the single-sum distribution available to M on October 1, 2004, is 94.8 percent of the actuarial present value of the QJSA. In addition, the actuarial present value of the life annuity and the 100 percent joint and survivor annuity are 95.0 percent of the actuarial present value of the QJSA.

(vi) Plan A provides M with a QJSA explanation that incorporates these more precise calculations of the financial effect and relative value of the optional forms for which M requested information.

(f) *Effective date.* This section applies to QJSA explanations with respect to distributions with annuity starting dates on or after October 1, 2004, and to QPSA explanations provided on or after July 1, 2004. In the case of a retroactive annuity starting date under section 417(a)(7), when required under § 1.417(e)–1(b)(3)(vi), the date of commencement of the actual payments based on the retroactive annuity starting date is substituted for the annuity starting date for this purpose.

§ 1.417(e)–1 [Amended]

■ **Par. 5.** In § 1.417(e)–1, paragraph (b)(2) is amended by removing the language ''§ 1.401(a)–20 Q&A–36'' and adding ''§ 1.417(a)(3)–1'' in its place.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 6.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7808.

■ **Par. 7.** In § 602.101, paragraph (b) is amended by adding an entry for ''§ 1.417(a)(3)–1'' in numerical order to the table to read in part as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.417(a)(3)–1	1545–0928
* * * * *	

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 3, 2003.

Gregory Jenner,

Deputy Assistant Secretary (Tax Policy).

[FR Doc. 03–31033 Filed 12–16–03; 8:45 am]

BILLING CODE 4830–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1626

RIN 3046–AA54

Procedures—Age Discrimination in Employment Act

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Final rule.

SUMMARY: This rule revises the regulations on the processing of age discrimination charges to provide that the Commission will issue a notice, when it has dismissed or otherwise terminated the processing of an age discrimination charge, that the right to file a lawsuit on the charge under the Age Discrimination in Employment Act (ADEA) will expire in 90 days. These amendments also delete references to the previously applicable two- or three-year limitations period for filing a civil action. Finally, EEOC is deleting its list of ADEA referral states because the list is obsolete and unnecessary. These changes conform the Commission's regulations to the procedures adopted by the Commission to implement section 115 of the Civil Rights Act of 1991.

EFFECTIVE DATE: January 16, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel at (202) 663–4669 (voice) or (202) 663–7026 (TTY). This final rule is also available in the following formats: large print, braille, audiotape and electronic file on computer disk. Requests for this notice in an alternative format should be made to EEOC's Publication Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: The Commission published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on August 12, 2002 (67 FR 52431), proposing revisions to part 1626 of its regulations. These changes were proposed to (1) conform the Commission's regulations to the procedures it adopted for the processing of charges under the Age Discrimination in Employment Act (ADEA) following passage of section 115 of the Civil Rights Act of 1991 (CRA) and (2) delete an obsolete and unnecessary list of State Fair Employment Practices Agencies to which EEOC will send copies of ADEA charges.

The current § 1626.7(a) provides that charges will not be rejected as untimely provided that they are not barred by the statute of limitations contained in section 6 of the Portal to Portal Act. This provision recognized the Commission's authority to file suit within the Portal to Portal Act's limitation period even if the aggrieved party did not have a private right of action because the charge was filed more than 180 days (or 300 days in a referral jurisdictions) after the discriminatory event took place. Following passage of the CRA, the statute of limitations contained in the Portal to Portal Act is no longer applicable to ADEA lawsuits filed by either the aggrieved party or the Commission. We therefore proposed to delete the current § 1626.7(a). The Commission will dismiss ADEA charges filed more than 180 days (or 300 days in a referral jurisdiction) after the discriminatory act, absent waiver, estoppel or equitable tolling.

The current § 1626.9(b) and (c) contain a list of states to which the Commission refers charges under section 14(b) of the ADEA. These lists were created when there were relatively few such agencies. Since almost all states now have laws prohibiting age discrimination, we proposed to delete the lists because they are obsolete and unnecessary. The regulation continues to provide that the Commission will refer age charges to appropriate state agencies.

Section 7(d) of the ADEA requires that, upon receipt of a charge, the Commission shall promptly attempt to eliminate any alleged unlawful practice by informal methods of conciliation, conference and persuasion. Under current § 1626.12, EEOC issues a notice if this attempt at conciliation fails. To eliminate any possible confusion between this failure of conciliation notice and the new Notice of Dismissal or Termination (NDT), we proposed to add a sentence to § 1626.12 stating that notice under this section is not a Notice of Dismissal or Termination under § 1626.20.

The second sentence and last two sentences of the current § 1626.15(b) concern the tolling of the ADEA's statute of limitations during EEOC conciliation. Because this tolling provision no longer applies, we proposed to delete these sentences. We also proposed an editorial change to the third sentence, eliminating a reference to the current second sentence that was being deleted.

The Commission proposed to add three new sections. Section 1626.17 was modeled on 29 CFR 1601.28 and provides for issuance of a Notice of Dismissal or Termination to an aggrieved person when EEOC dismisses or otherwise terminates its processing of an ADEA charge. Notification will be made by issuing a Notice of Dismissal or Termination to each aggrieved person. In the case of a charge concerning more than one aggrieved person, Notices of Dismissal or Termination will only be issued when the charge is dismissed or EEOC's proceedings are terminated as to all aggrieved persons.

Section 1626.18 concerns the institution of private civil actions. Paragraph (a) states that a civil action may be filed by an aggrieved person in either federal or state court under section 7 of the ADEA. Paragraph (b) makes clear that an aggrieved person need not wait for a Notice of Dismissal or Termination to be issued in order to file a civil action, but can file suit on a pending charge any time after 60 days have elapsed from the filing of the charge. Paragraph (c) provides that the right to file a private suit under the ADEA expires 90 days after receipt of a Notice of Dismissal or Termination. Paragraph (d) provides that when the Commission becomes aware that an aggrieved person has filed a private lawsuit under the ADEA against the respondent named in the charge, the Commission will terminate further processing of the charge or the portion of the charge affecting that person unless it is determined that further proceedings will effectuate the purposes of the ADEA.

Section 1626.19 clarifies that, unlike Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, and Title I of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, the ADEA does not require the filing of a charge before the Commission has authority to investigate and litigate a possible violation of the ADEA. In addition, the termination of proceedings on an age discrimination charge and the issuance of a Notice of Dismissal or Termination does not prevent the Commission from investigating or litigating a matter that may have been the subject of or related to a charge on which a Notice of Dismissal or Termination was issued.

Two comments were received in response to the NPRM. Both expressed support for the proposed revisions. They noted that conforming the regulations to existing practice would provide helpful clarification and avoid unnecessary confusion.

In addition to this over-all support for the proposed changes, one of the two commenters encouraged the Commission to exercise thoughtful restraint in enforcing the ADEA where a timely charge has not been filed or after a Notice of Dismissal or Termination has been issued. This comment did not request any change in the regulation. The Commission does, however, want to reassure the commenter that it intends to exercise its enforcement discretion responsibly. The other commenter suggested further clarification of §§ 1626.17(a), 1626.17(a)(3), and 1626.18.

In § 1626.17(a), we proposed that Notices of Dismissal or Termination be issued in the case of a charge involving more than one aggrieved person only when EEOC terminates its processing as to all aggrieved persons. The commenter suggests that it would better serve judicial economy to issue Notices of Dismissal or Termination to the aggrieved persons seriatim during the process as we make determinations rather than to all at the end. We disagree and think the suggested alternative would be inefficient and not serve judicial economy. Seriatim issuance would likely lead to consecutive court filings by individuals as they receive the Notices and either premature termination of EEOC's processing of the remainder of the charge or early EEOC intervention in the lawsuit(s). The Commission believes that its proposal better serves efficiency and judicial economy by allowing orderly completion of the administrative process, appropriate pre-suit conciliation efforts by EEOC and contemporaneous filing of individual lawsuits.

In § 1626.17(a)(3), we proposed that the issuance of a Notice of Dismissal or Termination would not preclude the Commission from offering the recipient of the notice such assistance as it deems necessary or appropriate or from continuing to investigate. The commenter argues that this is vague, could mislead the aggrieved person into thinking that EEOC will intervene in his or her lawsuit and overstates EEOC's authority. The proposed language on rendering assistance was borrowed from our Title VII and ADA procedural regulations. *See* 29 CFR 1601.28(a)(4)(''The issuance of a notice of right to sue does not preclude the Commission from offering such assistance to a person issued such notice as the Commission deems necessary or appropriate.''). That language has appeared in 29 CFR 1601.28 for over 25 years. We are not aware of any evidence that this language has been found to be confusing or that individuals have been misled by it. Furthermore, the statement that the Commission could continue to investigate or litigate after a Notice is issued is simply a recognition that the Commission's jurisdiction under the ADEA is not dependent on the filing of a charge.

In § 1626.18(b), we state that an aggrieved person who files a charge may file a lawsuit without waiting for a Notice of Dismissal or Termination as long as 60 days have passed since the filing of the charge. The commenter argues that § 1626.18 does not present a clear picture of the aggrieved person's right to file a private lawsuit because, among other things, it does not mention that the right to file an individual lawsuit terminates if the Commission files suit on the charge. We agree that the individual's right to file a lawsuit is terminated when the Commission files a lawsuit and have added some language to § 1626.18(c) to make that clear. The commenter also argues that subsection (b) either makes an unwarranted assumption not based on clear statutory language or places undue emphasis on the 60-day provision of the ADEA. We believe subsection (b) is based on clear statutory authority allowing a private ADEA lawsuit to be filed anytime after 60 days from filing of the charge up to 90 days after issuance of the Notice of Dismissal or Termination or the filing of a Commission lawsuit. We do not believe that § 1626.18 gives improper emphasis to the right to file a lawsuit before the Notice is issued.

In § 1626.18(d), we stated that the Commission ''may'' dismiss a charge if a private lawsuit has been filed. The commenter states that the word ''may'' in subsection (d) should be ''shall'' because ''may'' implies that the Commission has unfettered discretion. Proposed subsection (d) provided that the EEOC ''may'' dismiss a charge if a private lawsuit is filed on the charge unless an EEOC official determines that further processing would effectuate the purposes of the Act. The effect and intent of the proposed provision, as indicated in the preamble to the NPRM, was that EEOC would terminate further proceedings unless an appropriate official made an affirmative determination that further processing would effectuate the purposes of the Act. While we do not think that the use of ''shall'' instead of ''may'' changes the result, we agree with the commenter that ''shall'' makes more sense in light of the ''unless'' clause and have made that change.

Finally, we made three minor editorial changes. We changed ''Associate General Counsel'' to ''General Counsel'' in §§ 1626.17(b) and 1626.18(d). We modified § 1626.17(c)(2) slightly to mirror the similar, but better stated, language in § 1626.17(a)(1). We also added a cross reference to § 1626.12 in § 1626.18(b).

Regulatory Procedures

Executive Order 12866

Pursuant to Executive Order 12866, EEOC has coordinated this final rule with the Office of Management and Budget. Under section 3(f)(1) of Executive Order 12866, EEOC has determined that the regulation will not 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 or local tribal governments or communities. Therefore, a detailed cost-benefit assessment of the regulation is not required.

Paperwork Reduction Act

This final rule contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities, because it does not affect any small entities. The regulation affects what the Commission does and what aggrieved parties can do. For this reason, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 29 CFR Part 1626

Administrative practice and procedure, aged, equal employment opportunity.

Dated: December 10, 2003.

For the Commission.

Cari M. Dominguez,

Chair.

■ For the reasons set forth in the preamble, EEOC amends 29 CFR part 1626 as follows:

PART 1626—PROCEDURES—AGE DISCRIMINATION IN EMPLOYMENT ACT

■ 1. The authority citation for part 1626 continues to read as follows:

Authority: Sec. 9, 81 Stat. 605, 29 U.S.C. 628; sec. 2, Reorg. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

§ 1626.7 [Amended]

■ 2. Section 1626.7 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b).

§ 1626.9 [Amended]

■ 3. Section 1626.9 is amended by removing the paragraph designation ''(a)'' and by removing paragraphs (b) and (c).

■ 4. Section 1626.12 is amended by adding a sentence at the end of the section to read as follows:

§ 1626.12 Conciliation efforts pursuant to section 7(d) of the Act.

* * * Notification under this section is not a Notice of Dismissal or Termination under § 1626.17.

§ 1626.15 [Amended]

■ 5. Paragraph (b) of § 1626.15 is amended by:

(a) removing the second sentence;

(b) removing the words ''Such notice will'' and adding in their place, the words ''Notice of commencement of conciliation will''; and

(c) removing the last two sentences.

§§ 1626.17, 1626.18, 1626.19 [Redesignated as §§ 1626.20, 1626.21 and 1626.22]

■ 6. Sections 1626.17, 1626.18 and 1626.19 are redesignated as §§ 1626.20, 1626.21 and 1626.22.

■ 7. A new section 1626.17 is added to read as follows:

§ 1626.17 Notice of Dismissal or Termination.

(a) *Issuance of Notice of Dismissal or Termination.* (1) Where a charge filed with the Commission under the ADEA is dismissed or the Commission's proceedings are otherwise terminated, the Commission will issue a Notice of Dismissal or Termination on the charge as described in paragraph (c) of this section to the person(s) claiming to be aggrieved. In the case of a charge concerning more than one aggrieved person, the Commission will only issue a Notice of Dismissal or Termination when the charge is dismissed or proceedings are otherwise terminated as to all aggrieved persons.

(2) Where the charge has been filed under the ADEA and Title VII or the Americans with Disabilities Act (ADA), the Commission will issue a Notice of Dismissal or Termination under the ADEA at the same time it issues the Notice of Right to Sue under Title VII or the ADA.

(3) The issuance of a Notice of Dismissal or Termination does not preclude the Commission from offering such assistance to a person receiving the notice as the Commission deems necessary or appropriate. The issuance does not preclude or interfere with the Commission's continuing right to investigate and litigate the same matter or any ADEA matter under its enforcement authority.

(b) *Delegation of Authority to Issue Notices of Dismissal or Termination.* The Commission hereby delegates authority to issue Notices of Dismissal or Termination, in accordance with this section, to: District Directors; Area Directors; Local Directors; the Director of the Office of Field Programs; the General Counsel; the Director of Field Management Programs, Office of Field Programs; or their designees.

(c) *Contents of the Notice of Dismissal or Termination.* The Notice of Dismissal or Termination shall include:

(1) A copy of the charge;

(2) Notification that the charge has been dismissed or the Commission's proceedings have otherwise been terminated; and

(3) Notification that the aggrieved person's right to file a civil action against the respondent on the subject charge under the ADEA will expire 90 days after receipt of such notice.

■ 8. A new section 1626.18 is added to read as follows:

§ 1626.18 Filing of private lawsuit.

(a) An aggrieved person may file a civil action against the respondent named in the charge in either Federal or State court under section 7 of the ADEA.

(b) An aggrieved person whose claims are the subject of a timely pending charge may file a civil action at any time after 60 days have elapsed from the filing of the charge with the Commission (or as provided in § 1626.12) without waiting for a Notice of Dismissal or Termination to be issued.

(c) The right of an aggrieved person to file suit expires 90 days after receipt of the Notice of Dismissal or Termination or upon commencement of an action by the Commission to enforce the right of such person.

(d) If the Commission becomes aware that the aggrieved person whose claim is the subject of a pending ADEA charge has filed an ADEA lawsuit against the respondent named in the charge, it shall terminate further processing of the charge or portion of the charge affecting that person unless the District Director; Area Director; Local Director; Director of the Office of Field Programs; the General Counsel; the Director of Field Management Programs; or their designees determine at that time or at a later time that it would effectuate the purpose of the ADEA to further process the charge.

■ 9. A new section 1626.19 is added to read as follows:

§ 1626.19 Filing of Commission lawsuit.

The right of the Commission to file a civil action under the ADEA is not dependent on the filing of a charge and is not affected by the issuance of a Notice of Dismissal or Termination to any aggrieved person.

[FR Doc. 03–31042 Filed 12–16–03; 8:45 am]

BILLING CODE 6570–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–03–111]

Drawbridge Operation Regulations: Niantic River, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Amtrak Bridge across the Niantic River, mile 0.0, at Niantic, Connecticut. This temporary deviation will allow the bridge to remain in the closed position from 7 a.m. on January 2, 2004 through 8 p.m. on February 15, 2004. This temporary deviation is necessary to facilitate structural repairs at the bridge.

DATES: This deviation is effective from January 2, 2004 through February 15, 2004.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York, 10004, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District Bridge Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Project Officer, First Coast Guard District Bridge Branch, (212) 668–7165.

SUPPLEMENTARY INFORMATION: The vertical clearance under the Amtrak Bridge in the closed position is 11 feet at mean high water and 14 feet at mean low water. The existing regulations are listed at 33 CFR 117.215(a).

The bridge owner, National Railroad Passenger Corporation (Amtrak), requested a temporary deviation from the Drawbridge Operation Regulations to facilitate scheduled structural maintenance, replacement of flange angles and tread plates, at the bridge.

The Coast Guard coordinated this project with the mariners who normally use this waterway to minimize the impact on the marine transportation system.

Under this temporary deviation the Amtrak Bridge, mile 0.0, across the Niantic River, may remain in the closed position from 7 a.m. on January 2, 2004 through 8 p.m. on February 15, 2004. Vessels that can pass under the bridge without a bridge opening may do so at all times.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: December 9, 2003.

Vivien S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 03–31099 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 03–027]

RIN 1625–AA00

Security Zone; Suisun Bay, Concord, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the navigable waters of the United States adjacent to the Military Ocean Terminal Concord (MOTCO), California (formerly United States Naval Weapons Center Concord, California). In light of recent terrorist actions against the United States, the security zone is necessary to ensure the safe onloading and offloading of military equipment and to ensure the safety of the nearby public from potential subversive acts. The security zone will prohibit all persons and vessels from entering, transiting through or anchoring within a portion of the Suisun Bay surrounding the MOTCO unless authorized by the Captain of the Port (COTP) or his designated representative.

DATES: This rule is effective from 7 a.m. p.s.t. on December 8, 2003, to 11:59 p.m. p.s.t. on December 19, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 03–027] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Additionally, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** as the schedule and other logistical details were not known until a date fewer than 30 days prior to the start date of the military operation. Publishing a NPRM and delaying this rule's effective date would be contrary to the public interest since the safety and security of the people, ports, waterways, and properties of the Port Chicago and Suisun Bay areas would be jeopardized without the protection afforded by this security zone. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of all cargo vessels, their crews, the public and national security.

Background and Purpose

Since the September 11, 2001, terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the conflict in Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002), that the security of the U.S. is endangered as evidenced by the September 11, 2001, attacks and that such disturbances continue to endanger the international relations of the United States. *See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks,* (67 FR 58317, September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism,* (67 FR 59447, September 20, 2002). Additionally, a Maritime Advisory was issued to: *Operators of U.S. Flag and Effective U.S. controlled Vessels and Other Maritime Interests,* detailing the current threat of attack, MARAD 02–07 (October 10, 2002).

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*), and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, United States Army officials

have requested that the Captain of the Port, San Francisco Bay, California, establish a temporary security zone in the navigable waters of the United States surrounding the Military Ocean Terminal Concord (MOTCO), California, to safeguard vessels, cargo and crew engaged in military operations. This temporary security zone is necessary to safeguard the MOTCO terminal and the surrounding property from sabotage or other subversive acts, accidents or criminal acts. This zone is also necessary to protect military operations from compromise and interference and to specifically protect the people, ports, waterways, and properties of the Port Chicago and Suisun Bay areas.

Discussion of Rule

In this temporary rule, the Coast Guard is establishing a fixed security zone around Military Ocean Terminal Concord (MOTCO), California, encompassing the navigable waters, extending from the surface to the sea floor, within a line connecting the following coordinates: latitude 38°03′07″ N and longitude 122°03′00″ W; thence to latitude 38°03′15″ N and longitude 122°03′04″ W; thence to latitude 38°03′30″ N and longitude 122°02′35″ W; thence to latitude 38°03′50″ N and longitude 122°01′15″ W; thence to latitude 38°03′41″ N and longitude 122°00′03″ W; thence to latitude 38°03′18″ N and longitude 121°59′31″ W, and along the shoreline back to the beginning point. Persons and vessels are prohibited from entering, transiting through or anchoring within the security zone unless authorized by the Captain of the Port (COTP) or his designated representative.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, will also face imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: Seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years, and a civil penalty of not more than $25,000 for each day of a continuing violation.

The Captain of the Port will enforce this zone and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

Regulatory Evaluation

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

Although this regulation restricts access to portions of navigable waters, the effect of this regulation will not be significant because the zone will encompass only a small portion of the waterway for a short duration. Vessels and persons may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port or his designated representative.

The size of the zone is the minimum necessary to provide adequate protection for MOTCO, vessels engaged in operations at MOTCO, their crews, other vessels operating in the vicinity, and the public. The entities most likely to be affected are commercial vessels transiting to or from Suisun Bay via the Port Chicago Reach section of the channel.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to anchor or transit to or from Suisun Bay via the Port Chicago Reach section of the channel. Although the security zone will occupy a section of the navigable channel (Port Chicago Reach) adjacent to the Marine Ocean Terminal Concord (MOTCO), vessels may receive authorization to transit through the zone by the Captain of the Port or his designated representative on a case-by-case basis. Additionally, vessels engaged in recreational activities, sightseeing and commercial fishing will have ample space outside of the security zone to engage in these activities. Small entities and the maritime public will be advised of this security zone via public notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where located under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–097 to read as follows:

§ 165.T11–097 Security Zone; Navigable Waters of the United States Surrounding Military Ocean Terminal Concord (MOTCO), Concord, California.

(a) *Location.* The security zone, which will be marked by lighted buoys, will encompass the navigable waters, extending from the surface to the sea floor, surrounding the Military Ocean Terminal Concord, Concord, California, within a line connecting the following coordinates: latitude 38°03′07″ N and longitude 122°03′00″ W; thence to latitude 38°03′15″ N and longitude 122°03′04″ W; thence to latitude 38°03′30″ N and longitude 122°02′35″ W; thence to latitude 38°03′50″ N and longitude 122°01′15″ W; thence to latitude 38°03′41″ N and longitude 122°00′03″ W; thence to latitude 38°03′18″ N and longitude 121°59′31″ W, and along the shoreline back to the beginning point.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entering, transiting through or anchoring in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Patrol Commander on scene on VHF–FM channel 13 or 16 or the Captain of the Port at telephone number 415–399–3547 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

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

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by local law enforcement and the MOTCO police as necessary.

(e) *Effective period.* This section becomes effective at 7 a.m. p.s.t. on December 8, 2003, and terminates at 11:59 p.m. p.s.t. on December 19, 2003.

Dated: December 3, 2003.

Gerald M. Swanson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 03–31098 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPT–2002–0078; FRL–7307–3]

RIN 2070–AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 65 chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA. This action requires persons who intend to manufacture, import, or process these chemical substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the chemical substance for a use designated by this rule as a significant new use. The required notification will provide EPA with the opportunity to evaluate the intended

use, and if necessary, to prohibit or limit that activity before it occurs to prevent any unreasonable risk of injury to human health or the environment.

DATES: The effective date of this rule is February 17, 2004, without further notice, unless EPA receives adverse or critical comments, or notice of intent to submit adverse or critical comments before January 16, 2004. This rule shall be promulgated for purposes of judicial review at 1 p.m. (e.s.t.) on December 31, 2003.

If EPA receives adverse or critical comments or notice of intent to submit adverse or critical comments before January 16, 2004, on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR before the effective date for the chemical substance for which the adverse or critical comment or notice of intent to submit adverse or critical comment is received and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Adverse or critical comments or notice of intent to submit adverse or critical 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: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: James Alwood, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8974, e-mail address: *alwood.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this rule. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers (NAICS 325), e.g., Manufacturers, importers, processors, and users of chemicals
- Petroleum and coal product industries (NAICS 324), e.g., Manufacturers, importers, processors, and users of chemicals

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical 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–2002–0078. 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/*. The OPPTS harmonized test guidelines referenced in this document are available at *http://www.epa.gov/opptsfrs/home/guidelin.htm/*. A frequently updated electronic version of 40 CFR part 721 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr721_00.html/*, a beta site currently under development.

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 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–20027–0078. 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–2002–0078. 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 Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2002–0078. 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?

We invite you to provide your views on the various options in this document, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. 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 rule.
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 in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

EPA is promulgating this SNUR using direct final procedures. This SNUR will require persons to notify EPA at least 90 days before commencing manufacturing, importing, or processing a chemical substance for any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which appear at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Substances Subject to this Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721, subpart E. In this unit, EPA provides a brief description for each chemical substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned for non-confidential chemical identities), basis for the action taken by EPA in the TSCA section 5(e) consent order or as a non-section 5(e) SNUR for the chemical substance (including the statutory citation and specific finding), toxicity concern, and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of this document by reference to 40 CFR part 721, subpart E where the significant new uses are described in detail. Certain new uses, including production limits and other uses designated in the rule are claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII.

Where the underlying TSCA section 5(e) consent order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a chemical substance, the tests are described in this unit. As explained further in Unit VI., the SNUR for such chemical substances contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a significant new use notice (SNUN) at least 90 days in advance. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the chemical substance, but for which no production limit has been established in the TSCA section 5(e) consent order. Descriptions of recommended tests are provided for informational purposes.

Data on potential exposures or releases of the chemical substances, testing other than that specified in the TSCA section 5(e) consent order for the chemical substances, or studies on analogous chemical substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification. Persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs, as stated in 40 CFR 721.1(c), including submission of test data on health and environmental effects as described in 40 CFR 720.50.

EPA is not publishing SNURs for PMNs 99–255, 99–314, 99–350/351/352/353, 99–534,99–848, 00–277/278/280, 00–281–285, 00–286–292, 00–502/503/504, 00–574/575/576/577/608,00–901, 00–1085, 00–1093, 01–558, 01–584, 01–629, 01–728, 01–757, 01–776, 02–16, 02–195, 02–415, 02–536, 02–609, and 02–700, which are subject to a final TSCA section 5(e) consent order. The TSCA section 5(e) consent orders for these chemical substances are derived from an exposure finding based solely on substantial production volume and significant or substantial human exposure and/or release to the environment of substantial quantities. For these cases there were limited or no toxicity data available for the PMN substances. In such cases, EPA regulates the new chemical substances under TSCA section 5(e) by requiring certain toxicity tests. For instance, chemical substances with potentially substantial releases to surface waters would be subject to toxicity testing of aquatic organisms and chemicals with potentially substantial human exposures would be subject to health effects testing for mutagenicity, acute effects, and subchronic effects. However, for these chemical substances, the short-term toxicity testing required by the TSCA section 5(e) consent order is usually completed within 1 to 2 years of notice of commencement (NOC). EPA's experience with exposure-based SNURs requiring short-term testing is that the SNUR is often revoked within 1 to 2 years when the test results are received. Rather than issue and revoke SNURs in such a short span of time, EPA will defer publication of exposure-based SNURs until either a NOC or data demonstrating risk are received unless the toxicity testing required is long-term. EPA is issuing this explanation and notification as required in 40 CFR 721.160(a)(2) as it has determined that SNURs are not needed at this time for these chemical substances which are subject to a final section 5(e) consent order under TSCA.

PMN Number P–97–1108

Chemical name: (generic) Polycarboxylic acid ester.

CAS number: Not available.

Basis for action: The PMN substance will be used as a plasticizer. Based on structural analogy to esters, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 part per billion (ppb) of the PMN substance in surface waters. Since

environmental releases are not expected as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that release of the PMN substance to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish chronic toxicity study (OPPTS 850.1400 test guideline), a daphnid chronic toxicity study (OPPTS 850.1300 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. A porous pot study (OPPTS 835.3220 test guideline) would help to characterize possible environmental effects of the PMN substance as well.

CFR citation: 40 CFR 721.3110.

PMN Number P–98–848

Chemical name: Silicic acid ($H_6SiO_2O_7$), magnesium strontium salt(1:1:2), dysprosium and europium-doped.

CAS number: 181828–07–9.

Effective date of section 5(e) consent order: June 1, 2000.

Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(1)(A)(ii)(I) of TSCA based on a finding that the PMN substance may present an unreasonable risk to human health.

Recommended testing: EPA has determined that a 90-day subchronic inhalation study (OPPTS 870.3465 test guideline) and a 2-year bioassay (OPPTS 870.4200) would help to characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.9511.

PMN Number P–98–1033/1034/1035

Chemical name: (generic) Halogen substituted oxetanes.

CAS number: Not available.

Effective date of section 5(e) consent order: April 6, 1999.

Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(1)(A)(ii)(II) of TSCA based on a finding that these PMN substances are expected to be produced in substantial quantities, there may be significant or substantial human exposure to the PMN substances, and the PMN substances may enter the environment in substantial quantities.

Recommended testing: EPA has determined that the following studies would help to characterize the health effects of these PMN substances: A 28-day oral toxicity study in rats (OPPTS 870.3050) that includes a neurotoxicity functional observational battery (National Technical Information Service (NTIS): PB 91–154617) for all test doses with the highest dose set at 1,000 milligram/kilogram (mg/kg), and for the highest test dose group only, histopathologic examination to include testes/ovaries and lungs; an *in vivo* mouse micronucleus assay (intraperitoneal) (OPPTS 870.5395); and an oral developmental toxicity study in one species (OPPTS 870.3700). EPA has determined that a fish acute toxicity study (OPPTS 850.1075), a daphnid acute toxicity study (OPPTS 850.1010), and an algal acute toxicity study (OPPTS 850.5400) would help to characterize the environmental effects of these PMN substances. The PMN submitter has agreed not to exceed the production volume limit without performing these toxicity studies using P–98–1033.

CFR citation: 40 CFR 721.5546.

PMN Number P–99–783

Chemical name: (generic) Chromate(2-), [3-hydroxy-4-[(2-hydroxy-1-naphthenyl)azo]-7-nitro-1-substituted][N-[7-hydroxy-8-[(2-hydroxy-5-nitrophenyl)azo]-1-substituted]-, salt.

CAS number: Not available.

Basis for action: The PMN substance will be used for the dyeing of wool fiber. Based on structural analogy to anionic dyes, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 7 part per billion (ppb) of the PMN substance in surface waters. Since significant environmental exposure is not expected as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that release of the PMN substance to surface waters in significant amounts from domestic manufacture may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. A stock solution should be prepared and its pH adjusted to 7.0 prior to testing. The dilution water of the daphnid acute toxicity test should have a hardness of less than 180.0 mg/liter(L) as $CaCO_3$ and a total organic carbon (TOC) concentration of less than 2.0 mg TOC/L. The green algal growth medium should also have a TOC of less than 2.0 mg TOC/L. The daphnid test should be done with a flow-through method and measured concentrations. The algal toxicity test should be done with the static method and measured concentrations.

CFR citation: 40 CFR 721.5288.

PMN Number P–99–817

Chemical name: (generic) Salt of an acrylic acid – acrylamide terpolymer

CAS number: Not available.

Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to polyanionic polymers, EPA has identified concerns for lung toxicity from respiratory overload if the PMN substance is inhaled. Since significant human exposure is unlikely when the PMN substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance as a solid may result in significant human exposure. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the 90-day inhalation toxicity study with a 60-day holding period (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance. Attention should be given to the lungs, including histopathology of the lungs (inflamation, epithelial hyperplasia, and fibrosis), bronchoalveolar lavage (BAL) analysis for markers of lung injury, and lung burden analysis for clearance of the test material (EPA–748–R–96–001). The neurotoxicity components and examination of organs other than the lungs are not required.

CFR citation: 40 CFR 721.9640.

PMN Number P–99–897

Chemical name: (generic) Substituted benzothiazole-azo-substituted benzoquinoline nickel complex.

CAS number: Not available

Basis for action: The PMN substance will be used as a material for optical disks. Based on analogy to nickel, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 5 ppb of the PMN substance in surface waters. Since environmental releases are not expected as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that release of the PMN substance to surface waters may cause significant adverse environmental effects. Based on this

information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.5340.

PMN Number P–99–920
Chemical name: Poly(oxy-1,2-ethanediyl), alpha-(9Z)-9-octadecenyl-.omega.-hydroxy-, phosphate, ammonium salt.
CAS number: 58857–49–1
Basis for action: The PMN substance will be used as a dispersing agent for pigment pastes. Based on structural analogy to anionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 8 ppb of the PMN substance in surface waters. Since significant environmental releases are not expected as described in the PMN, EPA has not determined that the proposed processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture may result in release of the PMN substance to surface waters which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. Tests for fish and daphnids should be done with a flow through method and measured concentrations. The algal test can be done with a static method and measured concentrations. A stock solution of PMN substance should be prepared and adjusted to pH 7 with either HCl or NaOH.
CFR citation: 40 CFR 721.5293.

PMN Number P–99–928
Chemical name: 2-propanol, 1,1',1'-nitrilotris-, compds. with ethanol 2-[2-(C_{12-14}-alkyloxy) ethoxy] derivs. hydrogen sulfates.
CAS number: 222975–06–6.
Basis for action: The PMN substance will be used as a surfactant in a toilet bowl cleaner. Based on structural analogy to anionic surfactants, EPA is concerned that toxicity to aquatic organisms from the PMN substance may occur at a concentration of 50 ppb in surface waters. Since significant environmental releases are not expected, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substance could result in releases to surface waters resulting in significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. Fish and daphnid tests should be done with a flow-through method and measured concentrations. The algal test should also be done with measured concentrations of PMN substance.
CFR citation: 40 CFR 721.5358.

PMN Number P–99–951 and P–99–952
Chemical name: (generic) Polyisobutene epoxide.
CAS number: Not available.
Basis for action: The PMN substances will be used as described in the PMNs. Based on structural analogy to epoxides, EPA is concerned that toxicity to aquatic organisms from the PMN substances may occur at a concentration as low as 10 ppb in surface waters. Since significant environmental releases are not expected as described in the PMNs, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substances may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substances may result in releases that may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substances. The fish and daphnid tests should be done using the flow-though method and measured concentrations. The algae test should be done using the static method and measured concentrations.
CFR citation: 40 CFR 721.2685.

PMN Number P–99–1075
Chemical name: 2-Propenoic acid, 2-methyl-, (octahydro-4,7-methano-1H-indene-5,?- diyl)bis(methylene) ester.
CAS number: 43048–08–4.
Basis for action: The PMN substance will be used as a coating agent for resin curing. Based on analogy to methacrylates and esters, EPA is concerned that toxicity to aquatic organisms from the PMN substance may occur at a concentration as low as 5 ppb in surface waters. EPA determined that use of the PMN substance as described in the PMN did not present an unreasonable risk because the PMN substance is imported and would not be released to surface waters. EPA has determined that domestic manufacturing and other uses of the PMN substance may result in releases to surface waters which exceed the concern concentration. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii)
Recommended testing: EPA has determined that a fish chronic toxicity study (OPPTS 850.1400 test guideline), a daphnid chronic toxicity study (OPPTS 850.1300 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.8485.

PMN Number P–99–1202
Chemical name: (generic) Sulfonyl azide intermediate.
CAS number: Not available
Basis for action: The PMN substance will be used as a reactive additive for polymers. Based on structural analogy to azides, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since environmental releases are not expected as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that any release of the PMN substance to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii). Also, based on submitted test data, EPA has identified concerns for blood, kidney and lung toxicity from inhalation exposure to the PMN substance. Since significant human exposure is unlikely when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the

PMN substance as a powder may result in significant human exposure. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i).
Recommended testing: EPA has determined that a fish chronic toxicity study (OPPTS 850.1400 test guideline), a daphnid chronic toxicity study (OPPTS 850.1300 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should use a flow-through method and measured concentrations. The algal toxicity test should use the static method and measured concentrations. A 90-day inhalation toxicity study (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.983.

PMN Number P–99–1288
Chemical name: (generic) Substituted anilino halobenzamide.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogues for anilines and phenols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since environmental releases are not expected as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture may result in release of the PMN substance to surface waters which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be performed with a flow-through method and measured concentrations. The algal test should be done with measured concentrations. A stock solution of the PMN substance should be prepared and its pH adjusted to pH 7 with either HCl or NaOH.
CFR citation: 40 CFR 721.4096.

PMN Number P–99–1295
Chemical name: (generic) Chlorohydroxyalkyl butyl ether.
CAS number: Not available
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to halo alcohols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 3 ppb of the PMN substance in surface waters. Since environmental releases are not expected as the PMN substance is not released to surface waters above 3 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substance resulting in release to surface waters above 3 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be performed under flow through conditions with measured concentrations. The algal test should be performed under static conditions with measured concentrations.
CFR citation: 40 CFR 721.3438.

PMN Number P–99–1304
Chemical name: (generic) Substituted benzenesulfonic acid salt.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to anionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance in surface waters. Since significant environmental releases are not expected, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk to the environment. EPA has determined, however, that other uses of the PMN substance resulting in release to surface waters in significant amounts, may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii). Also, based on structural analogues, EPA has identified concerns for lung effects from inhalation exposure to the PMN substance. Since significant human exposure is unlikely for the use described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk to human health. EPA has determined, however, that other uses of the PMN substance, may result in significant human exposure. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations. A stock solution should be prepared and its pH adjusted to 7.0 with either HCl or NaOH. A 90-day inhalation toxicity study (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.1648.

PMN Number P–99–1341
Chemical name: 2-Naphthalenecarboxylic acid, 4,4'-methylenebis [3-hydroxy-, strontium salt.
CAS number: 235083–90–6.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to phenols, anionic surfactants, and inorganic metal salts, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 3 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above10 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substance resulting in release to surface waters above 10 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline); a daphnid acute toxicity study (OPPTS 850.1010 test guideline), an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. All studies should use the

static method and nominal concentrations.
CFR citation: 40 CFR 721.5253.

PMN Number P–99–1342
Chemical name: 2-Naphthalenecarboxylic acid, 4,4'-methylenebis [3-hydroxy-, zinc salt
CAS number: 235083–88–2.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to phenols, anionic surfactants, and inorganic metal salts, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 3 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 10 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substance resulting in release to surface waters above 10 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. All studies should use the static method and nominal concentrations.
CFR citation: 40 CFR 721.5252.

PMN Number P–00–7
Chemical name: D-Glucuronic acid, polymer with 6-deoxy-L-mannose and D-glucose, acetate, calcium magnesium potassium sodium salt.
CAS number: 125005–87–0.
Basis for action: The PMN substance will be used as an oilfield drilling fluid, an oilfield spacer fluid, in oilfield cementing, in cementitious packaged products, in concrete applications, and in foam applications. Based on structural analogues and submitted test data, EPA has identified concerns for lung effects from inhalation exposure to the PMN substance. Since significant inhalation exposure is unlikely when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as described in the PMN may result in significant human exposure. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i) and (b)(3)(ii).
Recommended testing: EPA has determined that the 90-day inhalation toxicity study with a 60-day holding period (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance. Attention should be given to the lungs, including histopathology of the lungs (inflamation, epithelial hyperplasia, and fibrosis), (BAL) analysis for markers of lung injury, and lung burden analysis for clearance of the test material (EPA–748–R–96–001). The neurotoxicity components and examination of organs other than the lungs are not required in the 90-day study.
CFR citation: 40 CFR 721.2076.

PMN Number P–00–368
Chemical name: (generic) Benzenesulfonamide, alkylphenylsubstitutedphenyl substituted carbonyl-.
CAS number: Not available.
Effective date of section 5(e) consent order: March 28, 2001.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that the PMN substance may present an unreasonable risk of injury to human health and the environment.
Recommended testing: EPA has determined that a subchronic inhalation toxicity study (OPPTS 870.3465) would help to characterize the potential health effects of the PMN substance. EPA has also determined that a fish chronic toxicity study (OPPTS 850.1400) and a daphnid chronic toxicity test (OPPTS 850.1300) would help to characterize potential environmental effects.
CFR citation: 40 CFR 721.1620.

PMN Number P–00–636
Chemical name: (generic) Alkylated nitroso-phenylenediamine.
CAS number: Not available.
Basis for action: The PMN substance will be used as a polymerization inhibitor. Based on test data for the PMN substance and analogy to structurally similar compounds, EPA has identified human health concerns for systemic effects, reproductive effects, and cancer from dermal exposure to the PMN substance. Since significant worker exposure is unlikely when the PMN substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance without dermal protection could result in worker exposures which may cause significant adverse human health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(i), (b)(3)(ii), and (b)(1)(i)(C).
Recommended testing: The Agency has determined that the results of a 2-generation reproduction/fertility effects study (OPPTS 870.3800 test guideline) and a carcinogenicity study (OPPTS 870.4200 test guideline) would help to characterize possible human health effects of the PMN substance.
CFR citation: 40 CFR 721.5935.

PMN Number P–00–838
Chemical name: (generic) Substituted alkyl sulfonamide.
CAS number: Not available.
Basis for action: The PMN substance will be used for a contained use in an article. Based on structural analogy to neutral organic compounds, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface waters above 1 ppb, EPA has not determined that the proposed processing and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that releases to surface waters above 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: The Agency has determined that the results of a fish chronic toxicity study (OPPTS 850.1400 test guideline) would help to characterize possible environmental effects of the PMN substance. This test should be conducted with flow-through conditions and measured concentrations.
CFR citation: 40 CFR 721.9572.

PMN Number P–00–912
Chemical name: (generic) Epoxy resin containing phosphorus.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. EPA has identified health concerns for carcinogenicity, reproductive toxicity in males, and developmental toxicity based on structural analogy to epoxides. EPA also identified health and environmental concerns because the PMN substance may be persistent, bioaccumulative, and potentially toxic based on physical/chemical properties of the PMN substance as described in the New Chemical Program's Persistent, Bioiaccumulative, and Toxic (PBT) Category (64 FR 60194, FRL-6907-7, November 4, 1999). Since significant worker and environmental exposure is

unlikely when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may cause significant adverse effects. EPA has determined, however, that use of the PMN substance other than as described in the PMN could result in exposures which may cause serious chronic effects and significant environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(l)(i)(C), (b)(3)(ii), and (b)(4)(ii).

Recommended testing: EPA has determined that the results of the tiered testing as described in the New Chemical Program's PBT Category would help to characterize the PBT properties of the PMN substance. EPA has also determined that a fish chronic toxicity study (OPPTS 850.1400 test guideline), a daphnid chronic toxicity study (OPPTS 850.1300 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations The algal test should be conducted with static methods and measured concentrations. In addition, a 2-year, two-species oral carcinogenicity study (OPPTS 870.4200 test guideline) and a 90-day oral subchronic in rats (OPPTS 870.3100 test guideline), with attention to pathology of the reproductive organs, would help to characterize the health effects of the PMN substance.

CFR citation: 40 CFR 721.2752.

PMN Number P–00–966

Chemical name: (generic) Haloarylalkylketoester.

CAS number: Not available.

Basis for action: The PMN substance will be used as an agricultural product intermediate. Toxicity data on structurally similar esters indicate that the PMN substance may cause toxicity to aquatic organisms. Based on this data, EPA expects toxicity to aquatic organisms to occur at a concentration as low as 200 ppb of the PMN substance in surface waters. Since environmental releases to surface waters are not expected to exceed 200 ppb, EPA has not determined that the proposed processing and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that if releases to surface waters were to exceed a concentration of 200 ppb, the PMN substance may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: The Agency has determined that an algal toxicity test (OPPTS 850.5400 test guideline), an aquatic invertebrate acute toxicity test (OPPTS 850.1010 test guideline), and a fish acute toxicity test (OPPTS 850.1075 test guideline) would help to characterize possible environmental effects of the PMN substance. Ready biodegradation testing (OPPTS 835.3110 test guideline) would help to characterize possible environmental effects of the PMN substance as well. The aquatic toxicity tests should be conducted with flow-through conditions and measured concentrations.

CFR citation: 40 CFR 721.3062.

PMN Number P–00–991

Chemical name: Formaldehyde, polymer with (chloromethyl) oxirane and phenol, reaction products with 6H-dibenz[c,e][1,2]oxaphosphorin-6-oxide.

CAS number: 300371–38–4.

Basis for action: The PMN substances will be used in the manufacturing of composites. Based on structural analogy to epoxides, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 6 ppb of the PMN substances in surface waters. Since significant environmental exposure is not expected, as the PMN substances are not released to surface waters above 6 ppb, as described in the PMNs, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substances may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substances resulting in release to surface waters above 6 ppb may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal acute toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substances.

CFR citation: 40 CFR 721.5560

PMN Number P–00–1055

Chemical name: (generic) Sulfonated-copper phthalocyanine salt of a triarylmethane dye

CAS number: Not available.

Basis for action: The PMN substance will be used as a shading additive for ink. Based on analogy to cationic dyes, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface waters above 1 ppb, as described in the PMN, EPA has not determined that proposed manufacturing, processing, and use of the use of the PMN substance may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substance resulting in release to surface waters above 1 ppb may cause significant adverse environmental effects. Also, based on analogy to triarylmethane pigments and dyes, EPA has identified health concerns for mutagenicity and cancer effects from inhalation exposure to the PMN substance. Since significant inhalation exposure is unlikely when the PMN substance is used described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance in the form of a powder may result in significant human exposure. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii) and (b)(l)(i)(C).

Recommended testing: EPA has determined that a developmental toxicity study with two species (rats and mice) by gavage (OPPTS 870.3700 test guideline), a 2-generation reproductive and toxicity study (OPPTS 870.3800 test guideline), an Ames assay/salmonella study (OPPTS 870.5100 test guideline), a micronucleus assay (OPPTS 870.5395 test guideline), and a carcinogenicity study in rats (OPPTS 870.4200 test guideline) would help to characterize human health effects. In addition, a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal acute toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects.

CFR citation: 40 CFR 721.9674.

PMN Number P–00–1205

Chemical name: (generic) 6-Methoxy-1H-benz[de]isoquinoline-2 [3H]-dione derivative.

CAS number: Not available.

Basis for action: The PMN substance will be used as an intermediate in the manufacture of aqueous dyes. Toxicity data on structurally similar chemicals indicate that the PMN substance may cause toxicity to aquatic organisms. Based on this data, EPA expects toxicity to aquatic organisms to occur at a concentration of 30 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface waters above 30 ppb, EPA has not determined that the

proposed processing and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substance resulting in release to surface waters above 10 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: The Agency has determined that the results of a fish acute toxicity test (OPPTS 850.1075 test guideline) and a fish acute toxicity mitigated by humic acid (OPPTS 850.1085 test guideline), and an activated sludge sorption/desorption isotherm test (OPPTS 835.1110 test guideline) would help to characterize environmental effects of the PMN substance.
CFR citation: 40 CFR 721.9078.

PMN Number P–00–1220
Chemical name: (generic) Phenol-biphenyl polymer condensate.
CAS number: Not available.
Basis for action: The PMN substance will be used as an electric molding. Based on structural analogy to phenols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that any release of the PMN substance to surface water may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal acute toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.5713.

PMN Number P–01–1
Chemical name: (generic) Chloroformate.
CAS number: Not available
Basis for action: The PMN substance will be used as an intermediate. Based on analogy to acid halides and neutral organic compounds, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance and 70 ppb of the PMN substance's hydrolysis product in surface waters. EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk as the PMN substance is not released to surface waters above 2 ppb. EPA has determined, however, that other uses of the PMN substance resulting in releases to surface waters above 2 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a hydrolysis study at 25 °C and pH 7 (OPPTS 835.2120 test guideline), a ready biodegradability study (OPPTS 835.3110 test guideline), a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal acute toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.3835.

PMN Number P–01–7
Chemical name: (generic) Ethylenediaminetetraacetic acid mixed salt.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. EPA has identified concerns for reproductive toxicity in males and mutagenicity based on submitted test data, and carcinogenicity based on analogy to nitrilotriacetic acid. Since significant worker exposure is unlikely when the PMN substance is used as described in the PMN, EPA has not determined that the proposed processing and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture or use of the PMN substance in a powder form may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i) and (b)(l)(i)(C).
Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in two species (OPPTS 870.3700) and a carcinogenicity study in rats (OPPTS 870.4200) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.2098.

PMN Number P–01–9
Chemical name: (generic) Halogenated arylsilane.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. EPA has identified environmental concerns because the PMN substance may be persistent, bioaccumulative, and potentially toxic based on physical/chemical properties of the PMN substance as described in the New Chemical Program's PBT Category. Also, based on structural analogy to neutral organics, EPA expects toxicity to aquatic organisms at surface water concentrations as low as 1 ppb. Since significant environmental exposure is not expected, as the PMN substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that release to surface water may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that the results of the tiered testing as described in the New Chemicals Program's PBT Category would help to characterize the PBT properties of the PMN substance. EPA has determined that the results of a fish chronic toxicity study (OPPTS 850.1400), a daphnid chronic toxicity study (OPPTS 850.1300), and an algal toxicity study (OPPTS 850.5400) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations The algal test should be conducted with static methods and measured concentrations.
CFR citation: 40 CFR 721.9506.

PMN Number P–01–22
Chemical name: Propanoic acid, 2-(trimethoxysilyl)-, ethyl ester.
CAS number: 137787–41–8.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to alkoxysilanes, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 10 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface waters above 10 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substance resulting in release to surface waters above 10 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075), a daphnid acute toxicity study (OPPTS 850.1010), and an algal toxicity study (OPPTS 850.5400) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through conditions and measured concentrations. The algae test should be conducted with static conditions and measured concentrations.
CFR citation: 40 CFR 721.7290.

PMN Number P–01–69
Chemical name: (generic) Substituted naphthalene hydrazide.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to phenols and hydrazines. EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since environmental releases are not expected as described in the PMN, EPA has not determined that the proposed manufacturing, processing and use of the PMN substance as described in the PMN may present an unreasonable risk. EPA has determined, however, that any release of the PMN substance to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with the flow-through method and measured concentrations. The algae test should be conducted with the static method and measured concentrations.
CFR citation: 40 CFR 721.4258.

PMN Number P–01–71
Chemical name: Phenol, 2,2'-[6-(2,4-dibutoxyphenyl)-1,3,5-triazine-2,4-diyl]bis[5-butoxy-.
CAS number: 208343–47–9.
Basis for action: The PMN substance will be used as an ultraviolet absorber for use in photographic emulsions. Based on structural analogy to phenols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the PMN substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that any release to surface waters water may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish chronic toxicity study (OPPTS 850.1400 test guideline), and a daphnid chronic toxicity study (OPPTS 850.1300 test guideline) would help to characterize the environmental effects of the PMN substance. The fish and daphnid studies should be conducted with flow-through method and measured concentrations.
CFR citation: 40 CFR 721.5718.

PMN Number P–01–77
Chemical name: (generic) Disubstituted benzenedicarboxcylic acid.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. EPA has identified health concerns for developmental toxicity based on structural analogy to phthalate esters. Since significant worker exposure is unlikely when the PMN substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as an intermediate could result in exposures which may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii). Also, based on structural analogy to esters, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 12 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the PMN substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing and use of the PMN substance as described in the PMN may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substance resulting in release to surface water may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a Combined Repeated Dose with Reproductive/Developmental Toxicity (OPPTS 870.3650) or a Reproductive/Development Toxicity Test (OPPTS 870.3550) would help to characterize the human health effects of the PMN substance. EPA has also determined that a fish acute toxicity study (OPPTS 850.1075), a daphnid acute toxicity study (OPPTS 850.1010), and an algal toxicity study (OPPTS 850.5400) would help characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with the flow-through conditions and measured concentrations. The algae test should be conducted with the static method and measured concentrations.
CFR citation: 40 CFR 721.2060.

PMN Number P–01–85
Chemical name: (generic) Mono esters from 2-propenoic acid.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to esters, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the PMN substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that any release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. All tests should be conducted with flow-through methods and measured concentrations.
CFR citation: 40 CFR 721.8340.

PMN Number P–01–97
Chemical name: (generic) Polyaziridinyl ester of an aliphatic alcohol.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. EPA has identified health concerns for mutagenicity, carcinogenicity, male reproductive toxicity, and developmental toxicity based on structural analogy to epoxides. Since significant worker exposure is unlikely, when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing,

and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as described in the PMN may result in serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b)(l)(i)(C).

Recommended testing: EPA has determined that a 90-day oral subchronic toxicity study in rats (OPPTS 870.3100 test guideline), with attention to pathology of the reproductive organs, and a carcinogenicity study in rats (OPPTS 870.4200 test guideline) would help to characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.7250.

PMN Number P–01–144

Chemical name: Propanamide, N-(2-hydroxyethyl)-3-methoxy-.

CAS number: 35544–45–7.

Basis for action: The PMN substance will be used as an organic stripper additive. EPA has identified health concerns for the solvent properties of the PMN substance. Since significant worker exposure is unlikely, when the PMN substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as described in the PMN could result in exposures which may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that a prenatal developmental toxicity study (OPPTS 870.3700 test guideline), a 28-day oral toxicity study in rats (OPPTS 870.3050) that includes a neurotoxicity functional observational battery (NTIS: PB 91-154617) for all test doses with the highest test dose set at 1,000 mg/kg, and for the highest test dose group only, histopathologic examination shall be extended to include testes/ovaries and lungs, an acute oral toxicity (OPPTS 870.1100 test guideline), a mammalian erythrocyte micronucleus test (OPPTS 870.5395 test guideline), and a salmonella typhimurium reverse mutation assay (OPPTS 870.5265 test guideline) would help to characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.8130.

PMN Number P–01–149

Chemical name: Sulfuric acid, mono-C_{9-11}-alkyl esters, sodium salts.

CAS number: 84501–49–5.

Basis for action: The PMN substance will be used as a component in surfactant/foaming agent for leather processing. Based on structural activity relationship analysis, EPA has identified health concerns for internal organ effects. Since significant worker exposure is unlikely, when the PMN substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that an increase in production volume may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that a 90-day subchronic oral toxicity study in rodents (OPPTS 870.3100 test guideline) would help to characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.3130.

PMN Number P–01–152

Chemical name: Benzenamine, 4-methoxy-2-methyl-N-(3-methylphenyl)-.

CAS number: 93072–06–1.

Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to neutral organic compounds, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 5 ppb of the PMN substance in surface waters. EPA also identified environmental concerns because the PMN substance may be persistent, bioaccumulative, and potentially toxic based on physical/chemical properties of the PMN substance as described in the New Chemical Program's PBT Category. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 5 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substance resulting in release to surface waters above 5 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(4)(ii).

Recommended testing: EPA has determined that the results of the tiered testing as described in the New Chemicals Program's PBT Category would help to characterize the PBT properties of the PMN substance. EPA has determined that the results of a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.1070.

PMN Number P–01–170

Chemical name: Acetic acid, [(5-chloro-8-quinolinyl)oxy-]-, 1-methylhexyl ester.

CAS number: 99607–70–2.

Basis for action: The PMN substance will be used as a seed safener. Based on test data, there is concern for liver toxicity and thyroid effects. Since significant worker exposure is unlikely, EPA has not determined that the proposed processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture or use without protective equipment may cause serious health effects. Based on this information, the PMN substance meets the concern criteria in § 721.170(b)(3)(i).

Recommended testing: The Agency recommends no further toxicity testing for hazard assessment of the PMN substance. However, additional information on human exposures to the PMN substance would help to characterize potential risks.

CFR citation: 40 CFR 721.304.

PMN Number P–01–298

Chemical name: (generic) Substituted propane

CAS number: Not available.

Basis for action: The PMN substance will be used as a polymer additive. EPA has identified health concerns for mutagenicity, neurotoxicity, developmental toxicity, liver toxicity and kidney toxicity based on submitted test data. Since significant worker exposure is unlikely, when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may cause significant adverse effects. EPA has determined, however, that use of the PMN substance other than as described in the PMN may result in serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(3)(i).

Recommended testing: EPA has determined that a prenatal development toxicity study by the oral route in two species (OPPTS 870.3100 test guideline) would help to characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.8140.

PMN Number P–01–320

Chemical name: Propane, 1, 1,1,2,2,3,3-heptafluoro-3-methoxy-.

CAS number: 375–03–1.

Basis for action: The PMN substance will be used as heating transfer fluid and a refrigerant. EPA has identified

health concerns for liver and kidney toxicity based on submitted test data and cardiac sensitization and developmental toxicity based on analog data. Since significant worker exposure is unlikely, when the PMN substance is used described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that an increase in production volume or use of the PMN substance other than as described in the PMN could result in serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i) and (b)(4)(ii).
Recommended testing: EPA has determined that a 90-day subchronic inhalation study in rodents (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.8145.

PMN Number P–01–397

Chemical name: (generic) Dihydro quinacridone derivative.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to neutral organic compounds, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 2 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that an increase in production volume or other uses of the PMN substance resulting in releases to surface waters above 2 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish chronic toxicity study (OPPTS 850.1400 test guideline), a daphnid chronic toxicity study (OPPTS 850.1300 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through conditions and measured concentrations. The algae test should be conducted with static condition and nominal concentrations.
CFR citation: 40 CFR 721.9079.

PMN Number P–01–420

Chemical name: (generic) Aromatic acrylate.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to acrylates, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 3 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the PMN substance is not released to surface waters as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.330.

PMN Number P–01–423

Chemical name: (generic) Substituted benzoic acid.
CAS number: Not available.
Basis for action: The PMN substance will be used as a dye intermediate. EPA has identified health concerns for developmental toxicity, irritation to lung, skin, eyes, and mucous membranes, blood toxicity, male reproductive toxicity, and dermal sensitization based on analogue data. Since significant worker exposure is unlikely, when the PMN substance is used as described in the PMN, EPA has not determined that the proposed processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture could result in exposures which may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic inhalation study in rodents (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.1680.

PMN Number P–01–433

Chemical name: (generic) Halogenated alkane.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate. Based on analogy to structural analogues, EPA has concerns for carcinogenicity and cardiac sensitization. Also, based on analogy to neutral organic chemicals, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 400 ppb of the PMN substance in surface waters. Since significant worker and environmental exposure is unlikely, when the PMN substance is used as described in the PMN, EPA has not determined that the manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA determined, however, that use of the PMN substance other than as an intermediate may result in exposures which may cause serious health effects and significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b)(4)(ii).
Recommended testing: EPA has determined that a 90-day subchronic inhalation study in rodents (OPPTS 870.3465 test guideline) and a cardiac sensitization study would help to characterize the human health effects of the PMN substance. EPA has also determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.535.

PMN Number P–01–441

Chemical name: (generic) Modified phenolic resin
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. EPA has identified environmental concerns because the PMN substance may be persistent, bioaccumulative, and potentially toxic based on physical/chemical properties of the PMN substance as described in the New Chemical Program's PBT Category. EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 9 ppb of the PMN substance in surface waters based on structural analogy to phenols. Since environmental exposure is not expected, as the PMN substance is not released to surface waters as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has

determined, however, that other uses of the PMN substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that the results of the tiered testing as described in the New Chemical Program's PBT Category would help to characterize the PBT properties of the PMN substance. EPA has also determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.5905.

PMN Number P–01–459
Chemical name: Chromate(3-), bis[3-[[6-amino-1,4-dihydro-2-[[[4-[(2-hydroxy-1-naphthalenyl)azo] phenyl]sulfonyl]amino]-4-(oxo-.kappa.O)-5-pyrimidinyl]azo-.kappa.N1]-4-(hydroxy-.kappa.O)-5-nitrobenzenesulfonato(3-)]-, trisodium.
CAS number: 178452–72–7
Basis for action: The PMN substance will be used as an acid dye for dyeing leather. Based on submitted test data, EPA has identified human health concerns for blood, liver, and spleen effects. Since significant worker exposure is unlikely, as inhalation exposure is not expected for the use described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance in a powder form may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i).
Recommended testing: EPA has determined that a 90-day inhalation study with a 60-day holding period (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.8940.

PMN Number P–01–460
Chemical name: Chromate(3-), bis[3-[[6-amino-1,4-dihydro-2-[[[4-[(2-hydroxy-1-naphthalenyl)azo] phenyl]sulfonyl]amino]-4-(oxo-.kappa.O)-5-pyrimidinyl]azo-.kappa.N1]-4-(hydroxy-.kappa.O)-5-nitrobenzenesulfonato(3-)]-, sodium triethanolamine salts.
CAS number: 327177–98–0.
Basis for action: The PMN substance will be used as an acid dye for dyeing leather. Based on submitted test data, EPA has identified human health concerns for blood, liver, and spleen effects. Since significant worker exposure is unlikely, as inhalation exposure is not expected for the use described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance in a powder form may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i).
Recommended testing: EPA has determined that a 90-day inhalation study with a 60-day holding period (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.8950.

PMN Numbers P–00–992 and P–01–471
Chemical name: (generic) Phosphorous modified epoxy resin.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to epoxides, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 6 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 6 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as described in the PMN could cause releases to surface waters above 6 ppb which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish chronic toxicity study (OPPTS 850.1400 test guideline), a daphnid chronic toxicity study (OPPTS 850.1300 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through conditions and measured concentrations. The algae test should be conducted with static conditions and nominal concentrations.
CFR citation: 40 CFR 721.3135.

PMN Number P–01–481
Chemical name: (generic) Polyurethane polymer.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on physical/ chemical properties and submitted test data, EPA has identified health concerns for inhalation exposure. Since significant inhalation exposure to workers is unlikely, when the PMN substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than that as described in the PMN may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i).
Recommended testing: The Agency is not recommending further toxicity testing to evaluate potential health effects. However, additional information on human exposures to the PMN substance would help to characterize potential health risks.
CFR citation: 40 CFR 721.9959.

PMN Number P–01–561
Chemical name: (generic) Modified phenolic resin.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to polyphenols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 20 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the PMN substance is not released to surface waters as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that any release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.5908.

PMN Number P–01–573
Chemical name: (generic) Aromatic aldehyde phenolic resin
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to phenols, EPA is concerned that toxicity to

aquatic organisms may occur at a concentration of 1 ppb in surface waters. Since significant environmental exposure is unlikely, as the PMN substance is not released to surface waters, as described in the PMN, EPA has not determined that manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that any release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.5762.

PMN Number P–01–578

Chemical name: (generic) Alkoxylated alkyl amine.

CAS number: Not available.

Basis for action: The PMN substance will be used as described in the PMN. Based on analogy to cationic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely, when the PMN substance is used as described in the PMN, EPA has not determined that the proposed manufacturing and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as described in the PMN could result in exposures which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that an algal toxicity study (OPPTS 850.5400 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and a fish acute toxicity study (OPPTS 850.1075 test guideline) would help to characterize the environmental effects of the PMN substance. All tests should be conducted with static methods and nominal concentrations.

CFR citation: 40 CFR 721.647.

PMN Number P–01–646

Chemical name: 1-propanaminium, 3-amino-, N, N, N-trimethyl-N-soya acyl derivs., chloride

CAS number: 391232–99–8

Basis for action: The PMN substance will be used as described in the PMN. Based on analogy to cationic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 200 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely, when the PMN substance is used as described in the PMN, EPA has not determined that the proposed manufacturing and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as described in the PMN could result in exposures which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(4)(ii) .

Recommended testing: EPA has determined that an algal toxicity study (OPPTS 850.5400 test guideline), a daphnid acute toxicity study OPPTS 850.1010 test guideline), and a fish acute toxicity study (OPPTS 850.1075 test guideline) would help to characterize the environmental effects of the PMN substance. All tests should be conducted with static methods and nominal concentrations.

CFR citation: 40 CFR 721.7270

PMN Number P–01–716

Chemical name: (generic) Polyurea.

CAS number: Not available.

Basis for action: The PMN substance will be used as described in the PMN. EPA has identified environmental concerns because the PMN substance may be persistent, bioaccumulative, and potentially toxic based on physical/chemical properties of the PMN substance as described in the New Chemical Program's PBT category. EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters based on submitted test data. Since environmental exposure is not expected, as the PMN substance is not released to surface waters as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i).

Recommended testing: EPA has determined that the results of the tiered testing as described in the New Chemical Program's PBT Category would help to characterize the PBT properties of the PMN substance. EPA has also determined that an algal toxicity study (OPPTS 850.5400 test guideline), a fish chronic toxicity study (OPPTS 850.1400 test guideline), a daphnid chronic toxicity study (OPPTS 850.1300 test guideline), a fish bioaccumulation test (OPPTS 850.1730), and a shake-flask die-away test (OPPTS 835.3170 test guideline) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.9929.

PMN Number P–01–781

Chemical name: Silane, triethoxy[3-(oxiranylmethoxy)propyl]-

CAS number: 2602–34–8.

Basis for action: The PMN substance will be used as described in the PMN. EPA has identified health concerns for carcinogenicity based on analogy to epoxides. EPA has concerns also for mutagenicity, developmental toxicity, reproductive toxicity, irritation, and sensitization based on analogy to trimethoxy silane derivatives. Since significant worker exposure is unlikely, when the PMN substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as described in the PMN may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C) and (b)(3)(ii) . Also, based on structural analogy to epoxides, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 10 ppb of the PMN substance in surface waters. Since environmental exposure is not expected as the PMN substance is not released to surface waters above 10 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that releases to surface waters above 10 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a combined chronic toxicity/carcinogenicity study (OPPTS 870.4300 test guideline) and a 90-day subchronic inhalation study in rodents with attention to pathology of the reproductive organs (OPPTS 870.3465 test guidelines) would help to characterize the health effects of the PMN substance. EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity

study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with the flow-through conditions and measured concentrations. The algae test should be conducted with the static method and measured concentrations.
CFR citation: 40 CFR 721.9501.

PMN Number P–01–833
Chemical name: (generic) Polyethyleneamine crosslinked with substituted polyethylene glycol.
CAS number: Not available.
Basis for action: The PMN substance will be used as an absorbent polymer. Based on toxicity data for other high molecular weight, water swellable polymers, EPA has identified potential lung toxicity from inhalation exposure. Since significant inhalation exposure is unlikely when the PMN substance is used as identified in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as described in the PMN may lead to inhalation exposure which could cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day inhalation toxicity study with a 60-day holding period (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance. Attention should be given to the lungs, including histopathology of the lungs (inflamation, epithelial hyperplasia, and fibrosis), BAL analysis for markers of lung injury, and lung burden analysis for clearance of the test material (EPA–748–R–96–001). The neurotoxicity components and examination of organs other than the lungs are not required.
CFR citation: 40 CFR 721.7255.

PMN Number P–02–17
Chemical name: (generic) Phenyl azo dye.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on the submitted 28-day study, EPA has concerns for effects to the testes. Also, based on structural analogy to the azo reduction product, EPA has concerns for developmental toxicity, hemolytic anemia, kidney toxicity, liver toxicity, spleen toxicity, and irreversible ocular phototoxicity. Since significant inhalation exposure to workers is unlikely for the use described in the PMN, EPA has not determined that manufacturing, processing, and use of the PMN substance as described in the PMN may present an unreasonable risk. EPA has determined, however, that use of the PMN substance as a solid may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i) and (b)(3)(ii).
Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in two species (OPPTS 870.3700 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.5917.

PMN Number P–02–90
Chemical name: (generic) Nickel, cobalt mixed metal oxide.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. EPA has identified health concerns for developmental toxicity, mutagenicity, carcinogenicity, cardiotoxicity, immunotoxicity, neurotoxicity, and allergenicity based on the presence of various metal oxides as well as lung effects from exposure to insoluble particles and pulmonary carcinogenicity due to the crystalline nature of the PMN material. Since significant worker exposure is unlikely when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may cause significant adverse effects. EPA has determined, however, that domestic manufacture or use of the PMN substance other than as described in the PMN may result in serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic inhalation toxicity study in rat (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.5315.

PMN Number P–02–207
Chemical name: Piperdinium, 1,1-dimethyl-, chloride.
CAS number: 24307–26–4.
Basis for action: The PMN substance will be used as described in the PMN. Based on submitted test data, EPA has identified health concerns for neurotoxicity and chronic toxic effects for the PMN substance. Since significant worker exposure is unlikely when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may cause significant adverse effects. EPA has determined, however, that use of the PMN substance other than as described in the PMN may result in serious health effects. Also, based on structural analogy to cationic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at surface water concentrations as low as 300 ppb of the PMN substance in surface waters. Since environmental releases are not expected as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that release of the PMN substance to surface water may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i), and (b)(4)(ii).
Recommended testing: EPA has determined that information on potential human and environmental exposures would help to characterize the potential health and environmental risks of the PMN substance.
CFR citation: 40 CFR 721.6167.

PMN Number P–02–262
Chemical name: (generic) Substituted benzophenone.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on analogy to benzophenones, EPA has identified health concerns for neurotoxicity and liver toxicity. Since significant worker exposure is unlikely when the PMN substance is used as described in the PMN, EPA has not determined that the proposed processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture of the PMN substance could result in exposures which may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii). Also, based on structural analogy to neutral organic chemicals, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 20 ppb of the PMN substance in surface waters. Since environmental releases are not expected as described in the PMN, EPA has not determined that the proposed manufacturing, processing and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that any release of the PMN substance to surface water may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a 90-day oral

subchronic study in rats (OPPTS 870.3465 test guideline) would help characterize the human health effects of the PMN substance. EPA has also determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal acute toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.1747.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for 5 of the 65 chemical substances, regulation was warranted under section 5(e) of TSCA, pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit III. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters; the SNUR provisions for these chemical substances listed in this document are consistent with the provisions of the TSCA section 5(e) consent orders.

In the other 60 cases for which the proposed uses are not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure that:

1. EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins.
2. EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use.
3. When necessary, to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that chemical substance occurs.
4. All manufacturers, importers, and processors of the same chemical substance which is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Manufacturers, importers, and processors are responsible for ensuring that a new chemical substance subject to a final SNUR is listed on the TSCA Inventory.

V. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4). In accordance with 40 CFR 721.160(c)(3)(ii), this rule will be effective February 17, 2004, unless EPA receives a written notice by January 16, 2004, of adverse or critical comments, or notice of intent to submit adverse or critical comments on EPA's action. If EPA receives such a notice, EPA will publish a document to withdraw the direct final SNUR for the specific chemical substance to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific chemical substance providing a 30-day comment period.

This action establishes SNURs for a number of chemical substances. Any person who submits adverse or critical comments or notice of intent to submit adverse or critical comments, must identify the chemical substance and the new use to which it applies. EPA will not withdraw a SNUR for a chemical substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a TSCA section 5(e) consent order requires or recommends certain testing, Unit III. lists those recommended tests.

However, EPA has established production limits in the TSCA section 5(e) consent orders for several of the chemical substances regulated under this rule, in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. Under recent consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier consent orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of the tests specified in the TSCA section 5(e) consent orders are included in Unit III. The SNURs contain the same production volume limits as the consent orders. Exceeding these production limits is defined as a significant new use.

The recommended studies may not be the only means of addressing the potential risks of the chemical substance. However, SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on:

1. Human exposure and environmental release that may result from the significant new use of the chemical substances.
2. Potential benefits of the chemical substances.
3. Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2. EPA is required to keep this information confidential to protect the CBI of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.1725(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the chemical substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure in § 721.1725(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the chemical substance and must identify the specific use for which it intends to manufacture or import the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances

subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e., it is below the level that would be a significant new use, that person can manufacture or import the chemical substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a *bona fide* intent to manufacture or import the chemical substance, under the procedure described in § 721.11, would automatically be informed of the production volume that would be a significant new use. Thus, the person would not have to make multiple *bona fide* submissions to EPA for the same chemical substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.1725(b)(1).

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant ''new'' use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. TSCA section 5(e) consent orders have been issued for 5 chemical substances and notice submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received an NOC and the chemical substance has not been added to the TSCA Inventory, no other person may commence such activities without first submitting a PMN. For chemical substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the effective date of the rule, the chemical substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 45 of the 65 chemical substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that any of the significant new uses described in the following regulatory text are ongoing.

As discussed in the **Federal Register** of April 24, 1990, EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the chemical substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the chemical substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the public docket.

X. Statutory and Executive Order Reviews

1. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that proposed or final SNURs are not a ''significant regulatory action'' subject to review by OMB, because they do not meet the criteria in section 3(f) of the Executive order.

2. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

3. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a ''significant new use.'' By definition of the word ''new,'' and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR only requires that any person who intends to engage in such activity in the

future must first notify EPA by submitting a SNUN, no economic impact will even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 1,000 SNURs, the Agency receives on average only 10 notices per year. Of those SNUNs submitted, none appear to be from small entities in response to any SNUR. In addition, the estimated reporting cost for submission of a SNUN (see Unit IX.), are minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published on June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented it's general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

4. Unfunded Mandates Reform Act

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

5. Executive Order 13132: Federalism

This action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999).

6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This rule does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This does not significantly or uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), do not apply to this rule.

7. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

9. National Technology Transfer Advancement Act

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

10. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

11. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive order.

12. Executive Order 12988: Civil Justice Reform

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

13. Congressional Review Act

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 final rule may take effect, the Agency promulgating it must submit a final rule report, which includes a copy of the final rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this final 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 final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 7, 2003.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. By adding new § 721.304 to subpart E to read as follows

§ 721.304 Acetic acid, [(5-chloro-8-quinolinyl)oxy-], 1-methyl hexyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as acetic acid, [(5-chloro-8-quinolinyl)oxy-]-, 1-methylhexyl ester (PMN P–01–170;

CAS No. 99607–70–2) is subject to reporting under this section for the significant new use described in paragraph (a)(1) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), and (a)(5)(iv).

(ii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(f).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), and, (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 3. By adding new § 721.330 to subpart E to read as follows:

§ 721.330 Aromatic acrylate (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as an aromatic acrylate (PMN P–01–420) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 4. By adding new § 721.535 to subpart E to read as follows:

§ 721.535 Halogenated alkane (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as halogenated alkane (PMN P–01–433) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 5. By adding new § 721.647 to subpart E to read as follows:

§ 721.647 Alkoxylated alkyl amine (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as an alkoxylated alkyl amine (PMN P–01–578) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

■ 6. By adding new § 721.983 to subpart E to read as follows:

§ 721.983 Sulfonyl azide intermediate (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as sulfonyl azide intermediate (PMN P–99–1202) is subject to reporting under this section for the significant new use described in paragraph (a)(1) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(f), (v)(1), and (x)(1).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 7. By adding new § 721.1070 to subpart E to read as follows:

§ 721.1070 Benzenamine, 4-methoxy-2-methyl-N-(3-methylphenyl).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as benzenamine, 4-methoxy-2-methyl-N-(3-methylphenyl) (PMN P–01–152; CAS No. 93072–06–1) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=5).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 8. By adding new § 721.1620 to subpart E to read as follows:

§ 721.1620 Benzenesulfonamide, alkylphenyl substituted phenyl substituted carbonyl- (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as benzenesulfonamide alkylphenyl substituted phenyl substituted carbonyl- (PMN P–00–368) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63(a)(4), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(6)(i), (b) (concentration set at 1.0%), and (c). As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the new chemical exposure limit (NCEL) provisions listed in the TSCA section 5(e) consent order for this chemical substance.

(ii) *Hazard communication program*. Requirements as specified in § 721,72(a), (b), (c), (d), (e) (concentration set at 1.0%), (f), (g)(1)(iv), (g)(2)(ii), (g)(2)(iv), (g)(3)(ii), (g)(4)(i), and (g)(5).

(iii) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=30).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (f), (g), (h), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 9. By adding new § 721.1648 to subpart E to read as follows:

§ 721.1648 Substituted benzenesulfonic acid salt (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as substituted benzenesulfonic acid (PMN P–99–1304) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

■ 10. By adding new § 721.1680 to subpart E to read as follows:

§ 721.1680 Substituted benzoic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as substituted benzoic acid (PMN P–01–423) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 11. By adding new § 721.1747 to subpart E to read as follows:

§ 721.1747 Substituted benzophenone (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as a substituted benzophenone (PMN P–02–262) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(f).

(ii) *Release to water*. Requirement as specified § 721.90(b)(1) and (c)(1).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 12. By adding new § 721.2060 to subpart E to read as follows:

§ 721.2060 Disubstituted benzenedicarboxylic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as a disubstituted benzenedicarboxylic acid (PMN P–01–77) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(g).

(ii) *Release to water*. Requirements as specified § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 13. By adding new § 721.2076 to subpart E to read as follows:

§ 721.2076 D-Glucuronic acid, polymer with 6-deoxy-L-mannose and D-glucose, acetate, calcium magnesium potassium sodium salt.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as D-Glucuronic acid, polymer with 6-deoxy-L-mannose and D-glucose, acetate, calcium magnesium potassium sodium salt (PMN P–00–7; CAS No.125005–87–0) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j) (oilfield drilling fluid, oilfield spacer fluid, oilfield cementing, cementitious packaged products, concrete applications, and foam applications).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 14. By adding new § 721.2098 to subpart E to read as follows:

§ 721.2098 Aliphatic polycarboxylic acid metal salt (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as an aliphatic polycarboxylic acid metal salt (PMN P–01–7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(v)(1), (x)(1), and (f).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 15. By adding new § 721.2685 to subpart E to read as follows:

§ 721.2685 Polyisobutene epoxide (generic).

(a) *Chemical substances and significant new uses subject to reporting*. (1) The chemical substances identified generically as polyisobutene epoxide (PMNs P–99–951 and P–99–952) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

■ 16. By adding new § 721.2752 to subpart E to read as follows:

§ 721.2752 Epoxy resin containing phosphorus (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as an epoxy resin containing phosphorus (PMN P–00–912) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.575(b)(1) apply to this section.

■ 17. By adding new § 721.3062 to subpart E to read as follows:

§ 721.3062 Haloarylalkylketoester (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as a haloarylalkylketoester. (PMN P–00–966) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=200).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 18. By adding new § 721.3110 to subpart E to read as follows:

§ 721.3110 Polycarboxylic acid ester (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as a polycarboxylic acid ester (PMN P–97–1108) is subject to reporting under this section for the significant new use described in paragraph (a)(1) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or evocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 19. By adding new § 721.3130 to subpart E to read as follows:

§ 721.3130 Sulfuric acid, mono-C_{9-11}-alkyl esters, sodium salts.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as sulfuric acid, mono-C_{9-11}-alkyl esters, sodium salts (PMN P–01–149; CAS No. 84501–49–5) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(s) (5,000 kilogram (kg)).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 20. By adding new § 721. 3135 to subpart E to read as follows:

§ 721.3135 Phosphorous modified epoxy resin (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a phosphorous modified epoxy resin (PMNs P–00–992 and P–01–471) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90(a)(4), (b)(4), and (c)(4) (N=6).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 21. By adding new § 721.3438 to subpart E to read as follows:

§ 721.3438 Chlorohydroxyalkyl butyl ether (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as chlorohydroxyalkyl butyl ether (PMN P–99–1295) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=3).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 22. By adding new § 721.3835 to subpart E to read as follows:

§ 721.3835 Chloroformate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a chloroformate (PMN P–01–1) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Releases to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 23. By adding new § 721.4096 to subpart E to read as follows:

§ 721.4096 Substituted anilino halobenzamide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted anilino halobenzamide (PMN P–99–1288) is subject to reporting under this section for the significant new use described in paragraph (a)(1) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 24. By adding new § 721.4258 to subpart E to read as follows:

§ 721.4258 Substituted naphthalene hydrazide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted naphthalene hydrazide (PMN P–01–69) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirement as specified § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 25. By adding new § 721.5252 to subpart E to read as follows:

§ 721.5252 2-Naphthalenecarboxylic acid, 4,4'-methylenebis [3-hydroxy-, zinc salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-Naphthalenecarboxylic acid, 4,4'-methylenebis [3-hydroxy-, zinc salt (P–99–1342; CAS No. 235083–88–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=10).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Record keeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 26. By adding new § 721.5253 to subpart E to read as follows:

§ 721.5253 2-Naphthalenecarboxylic acid, 4,4'-methylenebis [3-hydroxy-, strontium salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-Naphthalenecarboxylic acid, 4,4'-methylenebis [3-hydroxy-, strontium salt (PMN P–99–1341; CAS No. 235083–90–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=10).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Record keeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 27. By adding new § 721.5288 to subpart E to read as follows:

§ 721.5288 Chromate(2-), [3-hydroxy-4-[(2-hydroxy-1-naphthenyl)azo]-7-nitro-1-substituted][N-[7-hydroxy-8-[(2-hydroxy-5-nitrophenyl)azo]-1-substituted]-, salt (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as chromate(2-), [3-hydroxy-4-[(2-hydroxy-1-naphthenyl)azo]-7-nitro-1-substituted][N-[7-hydroxy-8-[(2-hydroxy-5-nitrophenyl)azo]-1-substituted]-, salt (PMN P–99–783) is subject to reporting under this section for the significant new use described in paragraph (a)(1) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 28. By adding new § 721.5293 to subpart E to read as follows:

§ 721.5293 Poly(oxy-1,2-ethanediyl), alpha-(9Z)-9-octadecenyl-.omega.-hydroxy-, phosphate, ammonium salt.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as poly(oxy-1,2-ethanediyl), alpha-(9Z)-9-octadecenyl-.omega.-hydroxy-, phosphate, ammonium salt (PMN P–99–920; CAS No. 58857–49–1) is subject to reporting under this section for the significant new use described in paragraph (a)(1) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 29. By adding new § 721.5315 to subpart E to read as follows:

§ 721.5315 Nickel, cobalt mixed metal oxide (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as nickel, cobalt mixed metal oxide. (PMN P–02–90) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(f) and (j).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

■ 30. By adding new § 721.5340 to subpart E to read as follows:

§ 721.5340 Substituted benzothiazole-azo-substituted benzoquinoline nickel complex (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as substituted benzothiazole-azo-substituted benzoquinoline nickel complex (PMN P–99–897) is subject to reporting under this section for the significant new use described in paragraph (a)(1) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 31. By adding new § 721.5358 to subpart E to read as follows:

§ 721.5358 2-propanol, 1,1',1'-nitrilotris-, compds. with ethanol 2-[2-($C_{12–14}$- alkyloxy) ethoxy] derivs. hydrogen sulfates.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as 2-propanol, 1,1',1'-nitrilotris-, compds. with ethanol 2-[2-($C_{12–14}$- alkyloxy) ethoxy] derivs. hydrogen sulfates (PMN P–99–928; CAS No. 222975–06–6) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j) (surfactant used in toilet bowl cleaner).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of 721.185 apply to this section.

■ 32. By adding new § 721.5546 to subpart E to read as follows:

§ 721.5546 Halogen substituted oxetanes (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substances identified generically as halogen substituted oxetanes. (PMNs P–98–1033 through P–98–1035) are subject to reporting under

this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(q).

(ii) *Hazard communication program*. A significant new use of these chemical substances is any manner or method of manufacture, import, or processing associated with any use of these chemical substances without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for these chemical substances, the employer becomes aware that these chemical substances may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this chemical substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the chemical substances are reintroduced into the workplace.

(B) The employer must ensure that persons who will receive or who have received the chemical substances from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), (h), and (i) are applicable to manufacturers, importers, and processors of these chemical substances.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

■ 33. By adding new § 721.5560 to subpart E to read as follows:

§ 721.5560 Formaldehyde, polymer with (chloromethyl) oxirane and phenol, reaction products with 6H-dibenz[c,e][1,2]oxaphosphorin-6-oxide.

(a) *Chemical substance and significant new uses subject to reporting*. (1)The chemical substance identified as formaldehyde, polymer with (chloromethyl) oxirane and phenol, reaction products with 6H-dibenz[c,e][1,2]oxaphosphorin-6-oxide. (PMN P–00–991; CAS No. 300371–38–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=6).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 34. By adding new § 721.5713 to subpart E to read as follows:

§ 721.5713 Phenol - biphenyl polymer condensate (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as a phenol - biphenyl polymer condensate (PMN P–00–1220) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 35. By adding new § 721.5718 to subpart E to read as follows:

§ 721.5718 Phenol, 2,2'-[6-(2,4-dibutoxyphenyl)-1,3,5-triazine-2,4-diyl]bis[5-butoxy-.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as phenol, 2,2'-[6-(2,4-dibutoxyphenyl)-1,3,5-triazine-2,4-diyl]bis[5-butoxy- (PMN P–01–71; CAS No. 208343–47–9) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 36. By adding new § 721.5762 to subpart E to read as follows:

§ 721.5762 Aromatic aldehyde phenolic resin (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as aromatic aldehyde phenolic resin (PMN P–01–573) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1)

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in ' 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of sect; 721.185 apply to this section.

■ 37. By adding new § 721.5905 to subpart E to read as follows:

§ 721.5905 Modified phenolic resin (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as a modified phenolic resin (PMN P–01–441) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 38. By adding new § 721.5908 to subpart E to read as follows:

§ 721.5908 Modified phenolic resin (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as modified phenolic resin (PMN P–01–561) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 39. By adding new § 721.5917 to subpart E to read as follows:

§ 721.5917 Phenyl azo dye (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as a phenyl azo dye (PMN P–02–17) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(v)(2), (w)(2), and (x)(2).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 40. By adding new § 721.5935 to read as follows:

§ 721.5935 Alkylated nitroso-phenylenediamine (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as alkylated nitroso-phenylenediamine (PMN P–00–636) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63(a)(1) and (a)(3).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), and (e) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 41. By adding new § 721.6167 to subpart E to read as follows:

§ 721.6167 Piperdinium, 1,1-dimethyl-, chloride.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as piperdinium, 1,1-dimethyl-, chloride. (PMN P–02–207; CAS No. 24307–26–4) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j).

(ii) *Release to water*. Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

■ 42. By adding new § 721.7250 to subpart E to read as follows:

§ 721.7250 Polyaziridinyl ester of an aliphatic alcohol (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as a polyaziridinyl ester of an aliphatic alcohol (PMN P–01–97) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.575(b)(1) apply to this section.

■ 43. By adding new § 721.7255 to subpart E to read as follows:

§ 721.7255 Polyethyleneamine crosslinked with substituted polyethylene glycol (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as polyethyleneamine crosslinked with substituted polyethylene glycol with substituted polyethylene glycol (PMN P–01–833) is subject to reporting under this section

for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j) (absorbent polymer).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 44. By adding new § 721.7270 to subpart E to read as follows:

§ 721.7270 1-propanaminium, 3-amino-, N, N, N-trimethyl-N-soya acyl derivs., chloride.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as 1-propanaminium, 3-amino-, N, N, N-trimethyl-N-soya acyl derivs., chloride (PMN P–01–646; CAS No. 391232–99–8) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725 apply to this section.

■ 45. By adding new § 721.7290 to subpart E to read as follows:

§ 721.7290 Propanoic acid, 2-(trimethoxysilyl)-, ethyl ester.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as propanoic acid, 2-(trimethoxysilyl)-, ethyl ester (PMN P–01–22; CAS No. 137787–41–8) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified § 721.90(a)(4), (b)(4), and (c)(4) (N=10).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 46. By adding new § 721.8130 to subpart E to read as follows:

§ 721.8130 Propanamide, -(2-hydroxyethyl)-3-methoxy-.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as propanamide, -(2-hydroxyethyl)-3-methoxy- (PMN P–01–144; CAS No. 35544–45–7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j) (organic stripper additive).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 47. By adding new § 721.8140 to subpart E to read as follows:

§ 721.8140 Substituted propane (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as a substituted propane (PMN P–01–298) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j) (polymer additive).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 48. By adding new § 721.8145 to subpart E to read as follows:

§ 721.8145 Propane,1,1,1,2,2,3,3-heptafluoro-3-methoxy-.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as propane,1,1,1,2,2,3,3-heptafluoro-3-methoxy- (PMN P–01–320; CAS No. 375–03–1) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified § 721.80(j) (heating transfer fluid and a refrigerant) and (s) (100,000 kg)

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 49. By adding new § 721.8340 to subpart E to read as follows:

§ 721.8340 Mono esters from 2- propenoic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as mono esters from 2-propenoic acid (PMN P–01–85) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 50. By adding new § 721.8485 to subpart E to read as follows:

§ 721.8485 2-Propenoic acid, 2-methyl-, (octahydro-4,7-methano-1H- indene-5-diyl)bis(methylene) ester.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as 2-propenoic acid, 2-methyl-, (octahydro-4,7-methano- 1H- indene-5-diyl)bis(methylene) ester (PMN P–99–1075; CAS No. 43048–08–4) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(f).

(ii) *Release to water*. Requirements as specified in § 721.90(b)(1) and (c)(1).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of these chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 51. By adding new § 721.8940 to subpart E to read as follows:

§ 721.8940 Chromate(3-), bis[3-[[6-amino-1,4-dihydro-2-[[[4-[(2-hydroxy-1-naphthalenyl)azo] phenyl]sulfonyl] amino]-4-(oxo-.kappa.O)-5- pyrimidinyl]azo-.kappaN1] -4-hydroxy-.kappa.O)-5-nitrobenzenesulfonato(3-)]-, trisodium.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as chromate(3-), bis[3-[[6-amino-1,4-dihydro-2-[[[4-[(2-hydroxy-1-naphthalenyl)azo] phenyl] sulfonyl]amino]-4-(oxo-.kappa.O)-5-pyrimidinyl]azo-.kappaN1] -4-hydroxy-.kappa.O)-5-nitrobenzenesulfonato(3-)]-, trisodium (PMN P–01–459; CAS No. 178452–72–7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80 (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 52. By adding new § 721.8950 to subpart E to read as follows:

§ 721.8950 Chromate(3-), bis[3-[[6-amino-1,4-dihydro-2-[[[4-[(2-hydroxy-1-naphthalenyl)azo]phenyl]sulfonyl]amino]-4-(oxo-.kappa.O)-5-pyrimidinyl]azo-.kappaN1]-4-hydroxy-.kappa.O)-5-nitrobenzenesulfonato(3-)]-, sodium triethanolamine salts.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as chromate(3-), bis[3-[[6-amino-1,4-dihydro-2- [[[4-[(2-hydroxy-1-naphthalenyl)azo] phenyl]sulfonyl]amino]-4-(oxo-.kappa.O)-5-pyrimidinyl]azo-.kappaN1] -4-hydroxy-.kappa.O)-5-nitrobenzenesulfonato(3-)]-, sodium triethanolamine salts. (PMN P–01–460; CAS No. 327177–98–0) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80 (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 53. By adding new § 721.9078 to subpart E to read as follows:

§ 721.9078 6-Methoxy-1H-benz[de]isoquinoline-2 [3H]-dione derivative (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as 6-methoxy-1H-benz[de]isoquinoline-2 [3H]-dione derivative (PMN P–00–1205) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=30).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 54. By adding new § 721.9079 to subpart E to read as follows:

§ 721.9079 Dihydro quinacridone derivative (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as dihydro quinacridone derivative (PMN P–01–397) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(s) (1,000 kg).

(ii) *Release to water*. Requirements as specified § 721.90(a)(4), (b)(4), and (c)(4) (N=2).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements*. The

provisions of § 721.185 apply to this section.

■ 55. By adding new § 721.9501 to subpart E to read as follows:

§ 721.9501 Silane, triethoxy[3-oxiranylmethoxy)propyl]-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as silane, triethoxy[3-oxiranylmethoxy)propyl]- (PMN P–01–781; CAS No. 2602–34–2) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(y)(l).

(ii) *Release to water.* Requirements as specified § 721.90(a)(4), (b)(4), and (c)(4) (N=10).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 56. By adding new § 721.9506 to subpart E to read as follows:

§ 721.9506 Halogenated arylsilane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a halogenated arylsilane (PMN P–01–9) is subject to reporting under this section for the significant new use described in paragraph (a)(1) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 57. By adding new § 721.9511 to subpart E to read as follows:

§ 721.9511 Silicic acid ($H_6SiO_2O_7$), magnesium, strontium salt(1:1:2), dysprosium and europium-doped.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as silicic acid ($H_6SiO_2O_7$) magnesium, strontium salt(1:1:2), dysprosium and europium-doped. (PMN P–98–848; CAS No.181828–07–9) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (manufacture or import of the chemical substance where greater than 5% of the chemical substance is below the 10 micron (respirable particles) threshold).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 58. By adding new § 721.9572 to subpart E to read as follows:

§ 721.9572 Substituted alkyl sulfonamide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted alkyl sulfonamide (PMN P–00–838) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 59. By adding new § 721.9640 to subpart E to read as follows:

§ 721.9640 Salt of an acrylic acid – acrylamide terpolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as salt of an acrylic acid – acrylamide terpolymer (PMN P–99–817) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(v)(2), (w)(2), and (x)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 60. By adding new § 721.9674 to subpart E to read as follows:

§ 721.9674 Sulfonated-copper phthalocyanine salt of a triarylmethane dye (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as sulfonated-copper phthalocyanine salt of a triarylmethane dye (PMN P–00–1055) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(v)(1), (w)(1), and (x)(1).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

■ 61. By adding new § 721.9929 to subpart E to read as follows:

§ 721.9929 Polyurea (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a polyurea (PMN P–01–716) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 62. By adding new § 721.9959 to subpart E to read as follows:

§ 721.9959 Polyurethane polymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a polyurethane polymer (PMN P–01–481) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

[FR Doc. 03–31121 Filed 12–16–03; 8:45 am]

BILLING CODE 6560–50–S

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1185

Institute of Museum and Library Services; Governmentwide Debarment and Suspension (Nonprocurement), and Requirements for Drug-Free Workplace (Grants); Correction

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and Humanities.

ACTION: Final rule; correction.

SUMMARY: The Institute of Museum and Library Services (IMLS) joined several agencies in publishing Governmentwide Debarment and Suspension (Nonprocurement), and Requirements for a Drug-Free Workplace (Grants) in the **Federal Register** of November 26, 2003. Inadvertently, amendatory instructions were deleted from part 1185. This document corrects the amendatory language revising part 1185.

DATES: Effective on November 26, 2003.

FOR FURTHER INFORMATION CONTACT: Nancy Weiss, General Counsel, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, Washington, DC 20506; telephone 202–606–5414; TDD: 202–606–8636.

SUPPLEMENTARY INFORMATION: The IMLS published a document in the **Federal Register** on November 26, 2003, in which the amendatory instructions were inadvertently deleted from part 1185. In FR Doc. 03–28454 published on November 26, 2003, make the following correction to page 66639.

PART 1185—[CORRECTED]

■ In rule FR Doc. 03–28454 published on November 26, 2003 (68 FR 66534) make the following correction. On page 66639, in the third column, correct amendatory instruction 1 to read as follows:

''1. Part 1185 is revised to read as set forth in instruction 1 at the end of the common preamble.''

Dated: December 2, 2003.

Nancy E. Weiss,

General Counsel.

[FR Doc. 03–30994 Filed 12–16–03; 8:45 am]

BILLING CODE 7036–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; FCC 03–242]

Ensure Compatibility With Enhanced 911 Emergency Calling Systems

AGENCY: Federal Communications Commission.

ACTION: Clarification.

SUMMARY: In this document, the Commission denies in part, and grants in part, a Petition from OnStar Corporation (OnStar). The action is necessary to clarify that OnStar telematics units that provide a Commercial Mobile Radio Service (CMRS) personal calling service are handsets or mobile phones in accordance with part 20 of the Commission's rules. The Commission also grants a temporary, conditional waiver of its E911 Phase II rules, including the equipment activation requirements, as they apply to wireless licensees that furnish the underlying wireless service for OnStar analog and first generation digital telematics units installed in OnStar equipped vehicles prior to December 31, 2005. The waiver allows OnStar and its wireless carrier partners a reasonable period to continue their cooperative effort to adjust the performance of OnStar's digital equipment.

FOR FURTHER INFORMATION CONTACT: David Siehl at (202) 418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the *Order* released on October 21, 2003. The complete text of the *Order* is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Order* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2989, or via e-mail *qualexint@aol.com.*

Synopsis of the Order

1. OnStar's provision of telematics services combines wireless communications, autonomous geographic positioning system (GPS) capability, and voice recognition technology that are integrated into automobiles' electrical architecture. OnStar telematics units cannot be removed from vehicles.

2. On December 3, 2002, OnStar filed its Petition seeking clarification. The

Commission's Wireless Telecommunications Bureau (Wireless Bureau) released a Public Notice, 68 FR 2252 (January 16, 2003), seeking comment on the Petition.

3. The *Order* finds that telematics units provided by OnStar that are not capable of providing wireless calling service are not within the definition of § 20.3, and therefore, not subject to the E911 requirements of § 20.18(g) of the Commission's rules. On the other hand, although OnStar telematics units do not have the appearance of ''traditional'' portable handsets, some units are also capable of providing a commercial mobile radio service (CMRS) in addition to telematics services. 911 calls may be made from them over the underlying CMRS network of the carrier licensees, with whom OnStar has reached agreements to provide that wireless service. Their capability to function as mobile phones and to provide commercial wireless service through a licensee qualifies them as mobile phones within the definition § 20.3 and, thus, within the scope of the E911 requirements pursuant to § 20.18(g) of the Commission's rules.

4. The *Order* further determines that licensees who provide CMRS service in accordance with § 20.18 have a responsibility in terms of the requirements of that section with respect to OnStar telematics units that are capable of providing CMRS.

5. The *Order* concludes that the circumstances regarding OnStar's telematics units that provide commercial calling service warrant granting a waiver to (1) cover carriers who currently providing underlying wireless service to OnStar, and (2) its prospective wireless partners with whom it is attempting to work out arrangements as it migrates from analog to digital based equipment and service. Grant of a waiver of the E911 Phase II rules serves to clarify the obligations of CMRS licensees by resolving that OnStar telematics units that provide CMRS do not have to be included in the count for the equipment activation requirements under § 20.18(g) prior to December 31, 2005. The grant of the waiver is conditioned on the determinations the Commission makes on the larger telematics issues in its *Further Notice of Proposed Rulemaking,* 68 FR 3214 (January 23, 2003), proceeding in the same docket, CC Docket No. 94–102.

Ordering Clauses

6. *It is ordered* that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and §§ 0.131, 0.331, 1.3, of the Commission's rules, 47 CFR 0.131, 0.331, 1.3, the Petition for Ruling filed by OnStar Corporation on December 3, 2002 is denied in part and granted in part.

7. *It is further ordered* that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and §§ 0.131, 0.331, 1.3, of the Commission's rules, 47 CFR 0.131, 0.331, 1.3, a waiver of the Commission's E911 Phase II rules pursuant to part 20 of the Commission's rules is granted to wireless licensees with respect to OnStar Corporation's telematics equipment that is capable of providing a commercial wireless service, as described, and subject to the conditions set forth, herein.

8. *It is further ordered* that this waiver is granted until December 31, 2005, unless otherwise modified by the Commission.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–31105 Filed 12–16–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI81

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Dugong (*Dugong dugon*) in the Republic of Palau

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the United States Fish and Wildlife Service (Service), determine endangered status for the population of dugong (*Dugong dugon*) in the Republic of Palau pursuant to the Endangered Species Act of 1973, as amended (Act). Currently, the dugong is listed under the Act as endangered throughout its entire range, except in the Republic of Palau. It is believed that Palauan waters support one of the most isolated populations of dugong in the world, and it is unlikely that this population is receiving any recruitment from other areas. The Palauan population is seriously threatened by poaching.

EFFECTIVE DATE: January 16, 2004.

ADDRESSES: The complete supporting file for this rule is available for public inspection, by appointment, during normal business hours at the Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Eleanora Babij at the above address, or by phone, 703–358–1708; fax, 703–358–2276; or e-mail, *ScientificAuthority@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The dugong (*Dugong dugon*) is the only extant species in the Family Dugongidae and is one of only four extant members of the mammalian Order Sirenia. It is the only herbivorous mammal that is strictly marine; other members of the Order Sirenia, including three species of manatees, all use fresh water to varying degrees (Marsh *et al.* 1995). It has a large range that spans the waters of at least 37 countries and includes tropical and subtropical coastal and inland waters from East Africa to the Solomon Islands (Marsh *et al.* 2002). Historically, the dugong's distribution is believed to be broadly coincident with the tropical Indo-Pacific distribution of its food plants, phanerogamous, or flowering, seagrasses of the families Potamogetonaceae and Hydrocharitaceae (Husar 1978). Currently, throughout much of its range, the dugong is represented by relict populations separated by large areas where its numbers have been greatly reduced or it is already extirpated (Marsh *et al.* 2002).

It is thought that most dugong populations around isolated archipelagoes have always been small. This is mostly due to the fact that dugongs are largely restricted to a diet of rooted vascular macrophytes, such as seagrass, found only in protected inshore waters (Brownell *et al.* 1981). It has been suggested that dugongs select seagrasses that are lower seral or pioneer species, and species of genera such as *Halophila* and *Halodule* are favored in many areas. Dugongs optimize their diet by selecting species that are more digestible and have higher nutrients and/or species that can compensate for grazing. Dugongs generally frequent coastal waters that support extensive seagrass meadows (Marsh and Lawler 1998) where these food species can be found. Major concentrations of dugong tend to occur in wide, shallow, protected bays; wide, shallow mangrove channels; and in the lees of large inshore islands (Heinsohn *et al.* 1979). Shallow waters, such as tidal sandbanks (Marsh *et al.* 1984) and

estuaries, have also been reported as sites for calving.

Dugongs do not appear to be well adapted to activity in rough seas, where the necessity to surface frequently to breathe may impose heavy energy costs (Anderson and Birtles 1978). Food requirements and energy demands combine to force dugongs to use inshore areas frequently, where they may be taken by hunters with even the smallest watercraft. It has been reported that animals subject to hunting pressure frequent deeper waters during the daytime (Brownell *et al.* 1981) and move toward the shore to feed at night. However, Nishiwaki and Marsh (1985) found that there is diurnal (daytime) inshore feeding in some areas.

Dugongs are long-lived, with a low reproductive rate, long generation time, and a high investment in each offspring. Marsh (2002) has suggested that females do not bear their first calf until they are at least 10 and up to 17 years old. The gestation period is 13–15 months, and the litter size is usually one. The calf suckles for 14–18 months, and periods between successive calving range from 2.4 to 7 years (Nowak 1991). Population simulations by Marsh (1995, 1999) have revealed that, even with the most optimistic combinations of life-history parameters (low natural mortality and no human-induced mortality), a dugong population is unlikely to increase more than 5 percent per year.

In the Micronesian area, dugongs occur only in Palau, except for occasional sightings around Yap and Guam (Nishiwaki *et al.* 1979, as cited in Marsh *et al.* 1995). It is believed that Palauan waters support one of the most isolated populations of dugong in the world. The closest dugong populations are found in Papua Barat, 800 km to the south, and in the Philippines, 850 km to the west. In both of these areas, dugongs are under threat from human exploitation, and it is unlikely that the Palauan population is supplemented by recruitment from either of these areas (Marsh *et al.* 1995). The dugong's close ties to the shore increase its chances of local extinction and may limit the chances of long-distance dispersal and recolonization or recruitment through immigration (Brownell *et al.* 1981).

Full aerial surveys have been conducted in these waters around Palau in 1977–1978, 1983, and 1991. One survey was partially completed in 1998, but was halted because of the loss of the aircraft (The Nature Conservancy 2002). The numbers of individuals observed were 15 in 1977 and 34 in 1978 (Brownell *et al.* 1981). Of these numbers, 13 percent of the specimens seen in 1977 were calves, whereas 24 percent were calves in 1978, indicating an apparent increase in the reproductive rate (Eldredge 1991). The population in Palau was resurveyed in 1983 by Rathbun *et al.* (1988), with the total number of individuals observed being 38, including three calves. A survey conducted in 1991 by Marsh *et al.* (1992) covered 55 percent of the waters inside the barrier reefs. Twenty-six dugongs were sighted, including four calves. This is a minimum count because some dugongs on the surface are missed by observers and others are not seen because they are too far below the water surface (Marsh and Lawler 1998). The number of dugongs sighted in the 1991 survey suggests a reduction in the number of dugongs in Palauan waters over the earlier estimates from the 1980s. After the 1991 survey, the total dugong population for Palau was considered to be a few hundred animals at most (The Nature Conservancy 2002). While incomplete, the 1998 survey yielded more adults with calves than did the 1991 survey, indicating that the population was, at a minimum, still reproductively viable (ibid). The latest survey in this area was completed in March 2003. Although the final report is not yet complete, results from the overflight are 20 adults and 7 calves (Chris Swenson, Service, pers. com. 2003).

Previous Federal Action

The dugong is currently listed under the Act as endangered throughout its entire range, except in the Republic of Palau. Prior to the enactment of the Act, species were afforded protection through the Endangered Species Conservation Act of 1969. Under this 1969 Act, the Service prepared two lists: a ''Native'' list and a ''Foreign'' list. Originally, the dugong was included in the ''Foreign'' list of protected species and was listed on December 2, 1970 (35 FR 18320). When the Act became effective in 1973, it supplanted the Endangered Species Conservation Act of 1969. The ''Foreign'' and ''Native'' lists were combined to create one list of endangered and threatened species (39 FR 1171; January 4, 1974). On this list, the dugong was listed as endangered throughout its entire range.

When the lists were combined, the United Nations Trust Territory of the Pacific Islands (Republic of Palau) was under the jurisdiction of the United States (U.S.). Section 4(b)(5) of the Act requires that notice of proposed regulations be given to affected States in which the species occurs. The U.S. population of dugong was included on the list without prior notice to the Republic of Palau. Therefore, in 1988, the Service amended the Code of Federal Regulations to exclude the U.S. population from the listing. The Republic of Palau was then formally notified, and on August 5, 1993, we published a proposal to extend the endangered classification to the dugong population in Palau (58 FR 41688) and opened a 60-day public comment period.

The proposal was not finalized, however, because of budget limitations and subsequent litigation-driven listing priorities. Additionally, after three decades as part of the UN Trust Territory of the Pacific under U.S. administration, this westernmost cluster of the Caroline Islands opted for independence in 1978 rather than joining the Federated States of Micronesia. A Compact of Free Association with the United States was approved in 1986, but not ratified until 1993. It entered into force the following year when the islands gained independence (Central Intelligence Agency 2002). Finally, on December 2, 2002 (67 FR 71529), we published a notice to reopen the comment period on our proposal to list the dugong as endangered in the Republic of Palau for 90 days to allow all interested parties to submit additional information and written comments for our consideration.

All populations of the dugong are also listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). In addition, dugong are also listed as vulnerable to extinction in the IUCN Red List (The World Conservation Union [IUCN] 2002).

Summary of Comments and Recommendations

In the August 5, 1993, proposed rule (58 FR 41688), we requested all interested parties to submit factual reports or information that might contribute to the development of a final listing decision. We contacted appropriate Federal agencies, State agencies, county governments, scientific organizations, and other interested parties to request information and comments. We published a legal notice in the *Pacific Daily News* on August 16, 1993. The first public comment period was open for 60 days and closed on October 4, 1993. We re-opened a second comment period on December 2, 2002, for an additional 90 days, closing on March 3, 2003 (67 FR 71529). During this time, we contacted the government in the Republic of Palau for comment. The Ministry of State responded positively, indicating that Palau was fully committed to coordinating its efforts with the United States and other

countries in protecting the dugong population from becoming extinct. We did not receive any requests for a public hearing during either comment period.

We received 10 comment letters, including 1 letter from a peer-reviewer. Nine of the comment letters supported the proposal, and one was opposed. Some additional information was provided and has been incorporated into the ''Summary of Factors'' of this final rule. Comments of a similar nature or point regarding the proposed rule have been grouped into issues and are discussed below.

Issue 1: Two commenters questioned our ability to declare a species endangered in countries outside U.S. jurisdiction. One of these respondents believed that, if we declared a species endangered in another country, this would open the way for individuals in other countries to declare something endangered in the United States for political reasons and not for conservation purposes.

Our Response: We have the jurisdiction to list foreign species under section 4 of the Act. In fact, the listing of foreign species predates the Act with the Endangered Species Conservation Act of 1969. Initial publication of the ''United States List of Endangered Foreign Fish and Wildlife'' appeared in the **Federal Register** on June 2, 1970 (35 FR 8491). In addition, the Endangered Species Act of 1973 requires that foreign species (including subspecies and distinct vertebrate populations) be give the same consideration as native U.S. species with regard to addition to the Lists of Endangered and Threatened Wildlife and Plants.

Individuals in other countries cannot list species under the U.S. Federal Endangered Species Act. The Fish and Wildlife Service in the Department of the Interior and the National Oceanic and Atmospheric Administration-National Marine Fisheries Service in the Department of Commerce share responsibility for administration of the Act. These two agencies are the only ones that can list a species under the Act. However, members of the public may petition to have a foreign species listed, delisted, or reclassified under the Act, and the Service can initiate its own review process for foreign species.

Conservation measures provided to foreign species listed as endangered or threatened under the Act include recognition and awareness of the species' status, international cooperation, requirements for Federal protection in the United States and its territories, and prohibitions against certain activities. Recognition through listing also encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Issue 2: One respondent stated that, while the Palauan population of dugong should be listed as endangered, a more appropriate status for the Australian population of dugong would be ''vulnerable.''

Our Response: The dugong, which included the Australian population, was part of a rulemaking involving foreign species that were listed as endangered on December 2, 1970 (35 FR 18319). The Australian population of dugongs is not currently the focus of this rulemaking. The Act requires that we conduct periodic reviews of listed species at least once every 5 years. On the basis of such a review, we make a determination of whether a species is listed appropriately or should be removed from the List (delisted) or reclassified (from endangered to threatened, or threatened to endangered). The status of dugong will be reviewed as part of this process and reclassified if needed. A classification of ''vulnerable'' does not exist under the Act.

Issue 3: One respondent indicated that critical habitat should be designated for the dugong population in Palau and extended well beyond the areas delimited by the current distribution.

Our Response: Although habitat loss can become a serious threat for the dugong, we do not designate critical habitat outside the United States or on the high seas. The Solicitor for the Department of Interior has noted that the provisions found in the Act do not involve the Secretary of State or consultations with foreign governments when it comes to matters involving critical habitat. In addition, there are obvious difficulties and constraints on U.S. entities operating in other countries to designate critical habitat. Therefore, we have adopted the position that critical habitat may not be determined in foreign countries.

Summary of Factors Affecting the Species

Section 3 of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal List of Endangered and Threatened Wildlife. After a thorough review and consideration of all information available, we determine that the population of dugong in the Republic of Palau should be classified as an endangered species. We may determine a species to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors, and their application to the population of dugong (*Dugong dugon*) in the Republic of Palau, are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The most important dugong habitat in Palau is around Malakal Harbour and in the waters between Babelthuap Island and the barrier reef, especially to the west (Marsh *et al.* 2002). Dugongs typically graze in lagoons with relatively low seagrass biomass in waters more than 7 meters deep. They feed on virtually all species of seagrasses, and are seldom found far from seagrass beds (Anderson and Birtles 1978). Impacts on, or destruction of, these seagrass beds may have future implications for the sustainability of dugong populations in Palauan waters. Palau is experiencing an increase in development. Seagrass ecosystems are very sensitive to human influence (Poiner and Peterken 1996).

With no land-use plans in place, deteriorating water quality from activities such as land clearing and other non-point-source impacts are likely to be more serious threats than point-source impacts such as sewage discharge or anchor damage (Marsh *et al.* 2002). These activities cause increases in sedimentation and turbidity which, in turn, lead to degredation through smothering and lack of light (ibid.). *Halophila ovalis,* one of the preferred food species of dugongs, appears to be particularly sensitive to light reduction (Longstaff *et al.* 1999). Duration and frequency of light deprivation events are apparently the primary factors affecting the survival of this seagrass in environments that experience light deprivation (ibid.). Habitat destruction associated with increased development and water projects could become a serious threat (Marsh *et al.* 2002).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The most serious threat to the dugong population in Palau is from poaching activities. Although hunting is illegal, dugongs are still poached regularly in the Koror area and along the western coast of Babeldaob (Marsh *et al.* 2002). Hunting of dugong in this area is a deliberate act, not an opportunistic one. The meat of dugong is oftentimes obtained for special occasions, particularly festive occasions, rather than sold. The meat is often served to guests without their knowledge because

there is disapproval of killing dugongs among many people, especially women (Marsh *et al.* 1995). All of the hunters indicated that they preferred the meat of females and juveniles rather than that of adult males. If females and immature animals are preferentially taken, future recruitment will be reduced more significantly than if hunting targets males or takes animals at random.

Although the main motive for hunting dugongs is for their meat, these animals are also killed for the creation of jewelry items made from the animals' ribs. In the past, atlas vertebrae from dugongs were obtained to make bracelets that were only worn by chiefs (Brownell *et al.* 1981). Although this traditional use has diminished in importance, Marsh *et al.* (1995) found jewelry that was locally crafted from dugong ribs on sale at four stores in Koror. At least two of the retailers knew this activity was illegal (ibid.).

Traditionally dugongs were hunted from canoes with heavy spears (Rathbun *et al.* 1988). More recently, dugongs have been hunted mainly at night from small outboard-powered boats (>35hp) with spears, firearms, or dynamite (Brownell *et al.* 1981). Most dugongs are harpooned after being chased (Marsh and Lawler 1998). The dugongs are ambushed from boats as they move with the tide onto or off the shallow seagrass beds where they feed at night (Brownell *et al.* 1988). Residents indicate that dugong movements are predictable and they are relatively easy prey. In 1992, 23 knowledgeable locals (including 5 admitted dugong hunters) were interviewed by Marsh *et al.* (1995). These informants claimed that at least 13 dugongs had been killed in 1990. At least five dugongs were taken between December 1996 and December 1997. Marsh (2002) found that all hunters were aware that killing dugongs was illegal and that the motive for the hunting was that it is an exciting way to obtain meat.

Marsh *et al.* (1995) considered that any deliberate exploitation of dugongs in Palau is unsustainable. Population modeling by Marsh (1986) has suggested that a sustainable level of exploitation of dugongs may be as low as 2 percent of females per year. This means that at least 250 females would be needed to support an annual take of 5 females from Palauan waters. A population of this size is considered to be extremely unlikely given the low number of dugongs sighted during the aerial surveys, suggesting that documented levels of take are not sustainable and will lead to further declines of the species. Marsh (1994) considers that any deliberate exploitation of dugongs in Palau is unsustainable and the current small population found in Palau is unlikely to be able to sustain the current level of poaching (Marsh and Lawler 1998).

C. Disease or Predation

Dugongs are susceptible to a wide range of diseases. Some of these diseases are infectious or parasitic and include pneumonia, pancreatitis, and dermatitis. Wild dugongs support a range of parasites, including at least 19 species of trematodes and one species of nematode internally, and a barnacle and a copepod externally (Eros *et al.* 2000). Bryden *et al.* (1998) and Smith *et al.* (1978) found that dugongs may also carry a range of other diseases documented in marine mammals such as leptospirosis, lobomycosis, cryptococcosus, blastomycosis, caliciviruses, salmonellosis, morbillivirus, toxoplasmosis, tuberculosis, and hepatitis. Any outbreak of disease could have devastating effects on this isolated population.

While it appears that people have had the most serious and long-term impacts on dugong populations, sharks are probably the main natural enemy of dugongs. It has been reported that dugongs will defend themselves against sharks, however. Lekagul and McNeely (1977) found that individual dugongs will ''gang up'' on sharks in shallow waters and drive them off by butting them with their heads. Even so, a devastating attack was reported by Anderson and Prince (1985), during which 10 killer whales surrounded and killed approximately 40 dugongs.

D. The Inadequacy of Existing Regulatory Mechanisms

Marsh and Lawler (1998) identified strengthening and enforcing laws to protect dugongs in Palau as the highest conservation priority in ''Action Plan for the Management of the Dugong in Palau''. Until recently, Palauan legislation relevant to the dugong was found in the chapter entitled Protected Sea Life, subchapter iv, on dugongs. The first section of the law stated that ''no person shall kill, trap, capture, wound, possess, transport, restrain or otherwise have under his control any dugong or any part or product.'' A person found guilty of violating this section for the first time could face a jail term of not more than 6 months, or a fine of not more than $50.00, or both. For any subsequent offense, the convicted person would be imprisoned for not more than 1 year, or fined not more than $100.00, or both. If a dugong was accidentally caught in a fishing net or by any other fishing method and was still alive, it was required to be released immediately. If found dead, and this fact was affirmed by the chief executive officer of the state, the dead dugong would be released to the person who found it. Marsh *et al.* (1995) found that the hunters they interviewed were not willing to stop hunting while others were continuing to do so, especially when the punishment itself was of little consequence.

In 1996 and 1997, the Palau Conservation Society began a Dugong Management and Education Program (Marsh *et al.* 2002). The dugong was used as a target species to raise awareness and establish pride in Palau's natural heritage. This effort was aimed, in part, at raising the understanding of the general public about the status of the dugong in Palau as well as trying to increase public support for tougher laws to protect dugongs. The effort seemed to be effective in changing attitudes. In 1998, although hunting activities continued, it was being conducted secretly, as opposed to occurring more openly as was found in 1991 (Marsh *et al.* 2002).

On October 31, 2002, a new law was passed in Palau to help protect the dugong. It sharply increased penalties and may be more effective in deterring poachers than the previous law. First-time offenders now face a $5,000 to $10,000 fine and a jail term of 3 months to 1 year. Each subsequent offense can result in a fine of $10,000 to $20,000 and a jail sentence of 6 months to 3 years. The government can seize the dugong or part of the dugong that was taken in violation of the law as well as any assets used in the taking of the dugong, including boats, cars, and nets. The new law also encourages citizens to protect dugongs by lodging complaints against violators. If the case is won, the citizen responsible for the complaint can receive any expenses incurred in the action and a reward of 50 percent of any fine actually collected from the violator. In addition, the new law calls for the establishment of educational programs for Palauan citizens and the general public about the dugong. Finally, there is a section that requires the completion of Environmental Impact Statements before any new development occurring in dugong habitat. This would allow the Ministry of Resources and Development or the Environmental Quality Protection Board to deny any construction permits or require appropriate mitigation if dugong habitats are adversely affected.

As discussed, the Republic of Palau has significantly strengthened its legislation banning dugong hunting.

Poaching, which is considered to be the most serious threat to dugongs in Palau, needs to be stopped if dugong are to survive in this area. However, the strengthening of any law must also be accompanied by effective enforcement. The effectiveness of this new law is unknown at this time.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Fishing and boating activities around dugong populations could have potential impacts on the species. In Palau, mortality of dugongs caused by collisions with speedboats has not been a major problem. However, this has the potential to become a problem in Malakal Harbor, which is an important dugong area (Marsh *et al.* 2002). Additionally, there is some circumstantial evidence that dugongs cease to use previously favored habitats when the volume of boat traffic becomes high (Marsh and Lawler 1998). In Palau, this boat traffic may be from recreational or fishing boats. In many other parts of the world, dugongs often drown in gill nets (Paterson 1990). In Palau, fishermen have the knowledge and gear to catch dugongs in this manner. However, they do not purposely use their fishing gear to catch dugongs because of the potential for damage to their nets (Marsh and Lawler 1998).

Conclusion

In developing this rule, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats facing this species. The dugong population in Palau is imperiled primarily by poaching activities. The current small population found in this area is unlikely to be able to sustain the current level of poaching. It is believed that Palauan waters support one of the most isolated populations of dugong in the world, and it is unlikely that this population is receiving any recruitment from other areas. Currently, the dugong is listed under the Act as endangered throughout its entire range, except in the Republic of Palau. This species is in danger of extinction ''throughout all or a significant portion of its range'' (section 3(6) of the Act), and because of the high potential that these threats could result in the extinction of the dugong in Palau, the preferred action is to list the population of dugong in the Republic of Palau as endangered. This action will result in the classification of the entire species of dugong as endangered, wherever it occurs.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition of conservation status, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies and groups, and individuals. The protection required of Federal agencies and the prohibitions against take and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or upon the high seas, with respect to any species that is proposed to be listed or is listed as endangered or threatened and with respect to its proposed or designated critical habitat, if any is being designated. Because the dugong is not native to the United States, no critical habitat is being proposed for designation with this rule. Regulations implementing the interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. Currently, with respect to the dugong, no Federal activities are known that would require conferral or consultation.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. As such, these prohibitions are applicable to the population of dugong in Palau. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to ''take'' (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or to attempt any of these) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Anderson, P., and A. Birtles. 1978. Behavior and ecology of the dugong, *Dugong dugon* (Sirenia): observations in Shoalwater and Cleveland Bays, Queensland. *Australian Wildlife Resources* 5:1–23.

Anderson, P. K., and R. I. T. Prince. 1985. Predation on dugongs: attacks by killer whales. *Journal of Mammology* 66:554–556.

Brownell, R.L., P. K. Anderson, R. P. Owen, and K. Ralls. 1981. The status of dugongs at Palau, an isolated island group. *In* H. Marsh (ed.): *The Dugong: Proceedings of a Seminar/Workshop held at James Cook University 8–13 May 1979.* Department of Zoology, James Cook University of North Queensland, Townsville, Australia. Pp. 11–23.

Brownell, R. L., J. Engbring, K. Ralls, and G. B. Rathbun. 1988. Status of dugongs in waters around Palau. *Marine Mammal Science* 4(3):265–270.

Bryden, M., H. Marsh, and P. Shaughnessy. 1998. *Dugongs, Whales, Dolphins and Seals. A Guide to the Sea Mammals of Australasia.* Allen and Unwin: St. Leonards NSW.

Central Intelligence Agency. 2002. The World Factbook. On-line at: *http://www.cia.gov/cia/publications/factbook/geos/ps.html.*

Eldredge, L. G. 1991. Annotated checklist of the marine mammals of Micronesia. *Micronesica* 24(2):217–230.
Eros, C., H. Marsh, R. Bonde, T. O'Shea, C. Beck, C. Recchia, and K. Dobbs. 2000. Procedures for the Salvage and Necropsy of the Dugong (*Dugong dugon*). Research Publication No. 64, Great Barrier Reef Marine Park Authority. 74 pp.
Heinsohn, G. E., H. Marsh, and P. K. Anderson. 1979. Australian dugong. *Oceans* 12(3):48–52.
Hilton-Taylor, C. (Compiler) (2000). *2000 IUCN Red List of Threatened Species.* IUCN, Gland, Switzerland, and Cambridge, UK. xviii + 61 pp.
Hughes, G. R., and R. Oxley-Oxland. 1971. A survey of dugong (*Dugong dugon*) in and around Antonio Enes, Northern Mozambique. *Biological Conservation* 3(4):299–301.
Husar, S. 1978. *Dugong dugon. Mammalian Species* 88:1–7.
IUCN (The World Conservation Union). 2002. *2002 IUCN Red List of Threatened Species.*
Lekagul, B., and J. A. McNeely. 1977. *Mammals of Thailand.* Sahakarnbhat, Bangkok. 758 pp.
Longstaff, B. J., N. R. Loneragan, M. J. O'Donohue, and W. C. Dennison. 1999. Effects of light deprivation on the survival and recovery of the seagrass *Halophila ovalis* (R. Br) Hook. *Journal of Experimental Marine Biology and Ecology* 234:1–27
Marsh, H., G. E. Heinsohn, and P. W. Channells. 1984. Changes in the ovaries and uterus of the dugong, *Dugong dugong* (Sirenia: Dugongidae), with age and reproductive activity. *Australian Journal of Zoology* 32:743–66.
Marsh, H. 1986. The status of the dugong in Torres Strait. *In* A. K. Haines, G. C. Williams, and D. Coates (eds.): *Torres Strait Fisheries Seminar, Port Moresby, February 1985.* Australian Government Publishing Service, Canberra, pp. 53–76.
Marsh, H., G. B. Rathbun, T. O'Shea, and T. Preen. 1992. An assessment of the status of dugongs in Palau including comments on sea turtles. A report to the Ministry of Natural Resources, Republic of Palau. IUCN Sirenia Specialist Group.
Marsh, H., G. B. Rathbun, T. J. O'Shea, and A. R. Preen. 1995. Can dugongs survive in Palau? *Biological Conservation* 72:85–89.
Marsh, H., and I. Lawler. 1998. Action plan for the management of the dugong (*Dugong dugon*) in Palau. Prepared for the U.S. Marine Mammal Commission. James Cook University. Townsville, Australia.
Marsh, H., H. Penrose, C. Eros, and J. Hugues. 2002. Dugong. Status Report and Action Plans for Countries and Territories. Early Warning and Assessment Report Series, United Nations Environment Program. Pp. 84–88.
The Nature Conservancy. 2002. Management of the dugong (*Dugong dugon*) in Palau. Project Proposal. Palau Country Program. Pacific Island Countries Operating Unit, Koror, Palau.
Nishiwaki, M., T. Kasuya, N. Miyazaki, N. Toboyama, and T. Kataoka. 1979. Present distribution of the dugong in the world. *Scientific Report Whales Resource Institute* 31:133–141.
Nishiwaki, M., and H. Marsh. 1985. The dugong. *In* S. H. Ridgeway and R. J. Harrison (eds.): *Handbook of Marine Mammals Vol 3.* Academic Press, London. Pp. 1–31.
Paterson, R. 1990. Effects of longterm anti-shark measures on target and non-target species in Queensland. *Biological Conservation* 52:147–159.
Poiner, I. R., and C. Peterken. 1996. Seagrasses. *In* Zann, L. P. and P. Kailola (eds.) *The State of the Marine Environment Report for Australia.* Technical Annex: Great Barrier Reef Marine Park Authority, Townsville, Australia. Pp. 40–45.
Rathbun, G. B., R. L. Brownell, K. Ralls, and J. Engbring. 1988. Status of dugongs in waters around Palau. *Marine Mammal Science* 4:265–270.
Smith, A. W., N. A. Vedrus, T. G. Akers, and W. E. Gilmartin. 1978. Hazards of disease transfer from marine mammals to land mammals: review and recent findings. *Journal of the American Veterinary Medical Association.* 173(9):1131–1133.

Author

The primary author of this notice is Eleanora Babij, Division of Scientific Authority, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section; telephone 703/358–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Accordingly, 50 CFR chapter I is amended as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the following entry under Mammals in the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Dugong	*Dugong dugon*	East Africa to southern Japan, including Palau.	Entire	E	4,740	NA	NA.
*	*	*	*	*	*		*

Dated: October 16, 2003.

Marshall P. Jones, Jr.,

Director, Fish and Wildlife Service.

[FR Doc. 03–31126 Filed 12–16–03; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 68, No. 242
Wednesday, December 17, 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.

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

1 CFR Part 11

RIN 3095–AB35

Price Changes to Federal Register Publications

AGENCY: Administrative Committee of the Federal Register (ACFR).

ACTION: Proposed rule.

SUMMARY: The Administrative Committee of the Federal Register (ACFR) proposes increases in the prices charged for the paper and microfiche editions of Federal Register publications. The price changes would apply to the daily **Federal Register** (paper and microfiche editions), the Federal Register Index, the Code of Federal Regulations (CFR) (paper and microfiche editions), and the Weekly Compilation of Presidential Documents. The Administrative Committee has determined that it is necessary to increase prices to enable the Government Printing Office (GPO) to recover the full cost of producing and distributing **Federal Register** publications.

DATES: Comment will be accepted through January 16, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *fedreg.legal@nara.gov.*
- Fax: 202–741–6026.
- Mail: Office of the Federal Register (NF), National Archives and Records Administration, 700 Pennsylvania Ave., Washington, DC 20408.
- Hand Delivery/Courier: Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC 20002.

Instructions: All comments received will be posted on a National Archives and Records Administration (NARA)/Office of the Federal Register (OFR) Web page, including any personal information provided.

Docket: For access to the docket to read comments received, go to *http://www.archives.gov/federal_register/acfr/docket.html.*

FOR FURTHER INFORMATION CONTACT: Michael White at 202–741–6025, or *michael.white@nara.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the Federal Register Act (44 U.S.C. Chapter 15), the Administrative Committee of the Federal Register is responsible for establishing the prices charged for **Federal Register** publications. The Administrative Committee must set prices according to the funding mechanisms authorized under law for the Federal Register program. By law, **Federal Register** publications are sold and distributed to the public by GPO's Superintendent of Documents. GPO receives no appropriation for the costs associated with producing **Federal Register** publications. Operating funds for the sales program are derived from subscribers and single copy buyers. The Administrative Committee periodically reviews data submitted by the Superintendent of Documents to determine whether subscription rates and single copy charges produce sufficient revenue to fully recover the Superintendent of Document's printing, handling, and distribution costs, including postal rate increases.

Over the past decade, the Administrative Committee has balanced two imperatives: the need to produce and price the paper editions of **Federal Register** publications in a fiscally sound manner, and the public benefit derived from making this essential regulatory information available to the public free of charge online via the GPO Access system *(http://www.gpoaccess.gov/nara).* Since 1994, when the Administrative Committee began providing online access to the **Federal Register**, the number of paid subscriptions has declined by 85 percent. The decline in paper subscription revenue far exceeds the savings realized from producing fewer paper copies. Over the same time period in which sales of **Federal Register** publications have fallen, use of online **Federal Register** publications through GPO Access has expanded rapidly. Information retrievals from the online edition of the **Federal Register** grew from just under 15 million documents in calendar year 1996 to over 68 million documents downloaded in calendar year 2002. Over the same period, information retrievals from the online edition of the CFR grew from about 725,000 documents to more than 87 million documents downloaded. At the same time, there are still some subscribers who prefer to pay for the convenience of receiving bound, paper editions for their libraries and internal distribution systems. The price of these paper publications must reflect the economic reality of producing and distributing them.

While the Federal Register Act does not provide any specific guidelines on the prices to be charged for **Federal Register** publications, the longstanding policy of the Administrative Committee is to operate the program on a break-even basis. Due to fluctuations in subscriptions and single copy buying patterns, some temporary funding shortfalls may be unavoidable. But it is implicit in the statutory scheme that the ACFR and GPO's Superintendent of Documents may not operate the Federal Register sales program over the long term with a built-in deficit caused by a known insufficiency of funds. GPO's current analysis indicates that the portion of its revolving fund dedicated to the Federal Register sales program has been depleted to the point that prices should be raised to support the program in the future.

To determine current costs and prepare a proposed price schedule, the Superintendent of Documents conducted an in-depth study of actual costs from prior years and made conservative estimates of future costs. This proposed rule takes into account GPO's actual production and distribution costs since 2001 and projected costs for fiscal year 2004. The pricing analysis includes GPO's recent cost-cutting initiatives to streamline and improve its operations. Specific actions to cut costs that have been taken or are presently underway include: reducing personnel expenses through an employee buyout plan; reorganizing the Superintendent of Documents organization and operations; consolidating distribution facilities; and closing GPO Bookstores. GPO has also reevaluated and subsequently reduced

estimated handling charges as they apply to Federal Register products. The new handling charges of $1.46 per copy for the **Federal Register** (down from $2.39) and $1.59 for the CFR (down from $2.39) were factored into the pricing analysis. The Administrative Committee believes these efforts will help minimize the need to raise prices of **Federal Register** publications in the future.

Based on all the information available, the Administrative Committee has determined that it should make price adjustments to certain publications to accurately reflect the current costs of production and distribution, and thereby avoid running a deficit. If the proposed prices are adopted, the Administrative Committee projects that the **Federal Register** program will achieve full cost recovery. In the current ACFR price regulations, the stated prices include postage. In this proposed rule, the Administrative Committee has decided to exclude postage from the stated prices, except for single issues of certain editions, because postal rate making decisions and timing are entirely beyond the control of the Committee. If the proposed rule is adopted, the prevailing postal rates will be applied to orders, based on the method of delivery requested by customers. The prices for single issues of the **Federal Register** (paper and microfiche) and the Weekly Compilation of Presidential Documents, and single volumes of the CFR on microfiche, would continue to include postage because the cost of delivery is only a small component of the total cost.

This proposed rule would increase the subscription rates for the paper editions of the daily **Federal Register**, the Federal Register Index, the Code of Federal Regulations (CFR) and the Weekly Compilation of Presidential Documents. The cost to customers for the LSA (List of CFR Sections Affected), with postage calculated at the current periodical rate, is unchanged. The subscription rates and the single copy prices of the microfiche editions of the daily **Federal Register** and CFR also will increase slightly. In addition, the Administrative Committee would establish a multi-tiered price schedule for single copies of the **Federal Register** to account for the true cost of publishing issues of varying size.

The following figures state the proposed percentage of increase for **Federal Register** publications. To be consistent with past analyses, the calculation includes the current basic postal rates applicable to each publication. Under this analysis, it will be necessary to increase the price of the paper **Federal Register** subscription by 21 per cent, and the price of the paper CFR subscription by 12 percent. The average increase for all paper **Federal Register** subscriptions amounts to 16 per cent. The overall price change for paper and microfiche editions combined amounts to a 14 per cent increase. The increases are primarily attributable to higher labor expenses, paper costs, and a substantial decline in sales of printed publications, causing upward pressure on the average cost per subscription. Pricing for the microfiche editions of the **Federal Register** and the CFR are determined through a competitive bidding process.

While the rate increases discussed in this proposed rule will affect subscribers of the paper and microfiche editions, the success of our online publications demonstrates that the Administrative Committee is fulfilling its mission to provide the broader public with essential information on the functions, actions, and regulatory requirements of the Federal government. The Administrative Committee is constantly engaged in efforts to improve the quality of our online publications, including investments in new technology applications that will enhance e-government services to the public. In early 2003, the OFR and GPO helped the Environmental Protection Agency and other agency partners launch Regulations.gov as part of the President's eRulemaking initiative. OFR and GPO created a one-stop regulatory clearinghouse for this application to enhance public participation in the rulemaking process (see *http://www.regulations.gov*). This system is based, in large part, on OFR/GPO production systems and online **Federal Register** publications. More than 2 million users have accessed proposed and final regulations through this new resource, and the system has garnered a number of awards from various e-Government organizations. In addition, GPO, in consultation with OFR, recently completed an effort to thoroughly rewrite and reorganize its **Federal Register** and CFR web pages to improve the user experience. And GPO is also actively engaged in acquiring a new search and retrieval engine for **Federal Register** databases, including the e-CFR, which is a prototype for a currently updated, online version of the CFR (*http://www.gpoaccess.gov/ecfr*). For members of the public who prefer to read the printed editions, GPO continues to provide free access to **Federal Register** publications at Federal Depository libraries located throughout the nation.

The Proposed Amendments

The increased prices for **Federal Register** publications are reflected in proposed amendments to 1 CFR part 11. The following rates would be effective 30 days after issuance of a final rule. The annual subscription rate for the daily **Federal Register** paper edition would be $749. For a combined **Federal Register**, Federal Register Index and LSA (List of CFR Sections Affected) subscription, the price would be $808. The price of a single copy of the daily **Federal Register** would be based on the number of pages: $11 for an issue less than 200 pages; $22 for an issue between 200 and 400 pages; and $33 for an issue with more than 400 pages. The annual subscription price of the microfiche edition of the **Federal Register**, which includes the Federal Register Index and LSA, would be $165. The price of a single copy of the daily **Federal Register** microfiche edition would be $3. The annual price for the Federal Register Index would be $29. The annual subscription price for the monthly LSA would be $30. The annual subscription rate for a full set of CFR volumes would be $1,019 for the paper edition and $247 for the microfiche edition. The price of a single volume of the CFR microfiche edition would be $4. The annual Subscription rate for the Weekly Compilation of Presidential Documents would be $113. The price of a single copy of the Weekly Compilation of Presidential Documents would be $5.

Regulatory Analyses

Executive Order 12866

The proposed rule has been drafted in accordance with Executive Order 12866, section 1(b), ''Principles of Regulation.'' The Administrative Committee has determined that this proposed rule is not a significant regulatory action, as defined under section 3(f) of Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply to rate increases necessary to recover the costs to the Government of printing and distributing **Federal Register** publications. This proposed rule would not have a significant impact on small entities because it would not impose any substantive requirements, and any increased costs could be avoided by accessing **Federal Register** publications on the Internet via the free GPO Access service. In addition, Federal depository libraries located throughout the nation provide free access to the bound paper editions or microfiche editions of **Federal Register** publications, as well as

free use of computers for access to the online editions.

Federalism

This proposed rule has no federalism implications under Executive Order 13132. It would not impose compliance costs on State or local government or preempt State law.

List of Subjects in 1 CFR Part 11

Code of Federal Regulations, **Federal Register**, Government publications, Weekly Compilation of Presidential Documents.

For the reasons discussed in the preamble, the Administrative Committee of the **Federal Register** proposes to amend part 11 of chapter 1 of title 1 of the Code of Federal Regulations as set forth below:

PART 11—SUBSCRIPTIONS

1. The authority citation for part 11 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

2. In § 11.2, revise paragraph (a) to read as follows:

§ 11.2 Federal Register.

(a) The subscription price for the paper edition of the daily **Federal Register** is $749 per year. A combined subscription to the daily **Federal Register**, the monthly **Federal Register** Index, and the monthly LSA (List of CFR Sections Affected) is $808 per year for the paper edition, or $165 per year for the microfiche edition. Six-month subscriptions for the paper and microfiche editions are also available at one-half the annual rate. Those prices exclude postage. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage.

* * * * *

3. In § 11.3, revise paragraph (a) to read as follows:

§ 11.3 Code of Federal Regulations.

(a) The subscription price for a complete set of the Code of Federal Regulations is $1,019 per year for the bound, paper edition, or $247 per year for the microfiche edition. Those prices exclude postage. The prevailing postal rates will be applied to orders according to the delivery method requested. The Government Printing Office sells individual volumes of the paper edition of the Code of Federal Regulations at prices determined by the Superintendent of Documents under the general direction of the Administrative Committee. The price of a single volume of the microfiche edition is $4 per copy, including postage.

* * * * *

4. In § 11.6, revise paragraph (a) to read as follows:

§ 11.6 Weekly Compilation of Presidential Documents.

(a) The subscription price for the paper edition of the Weekly Compilation of Presidential Documents is $113 per year, excluding postage. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of an individual copy is $5, including postage.

* * * * *

5. Revise § 11.7 to read as follows:

§ 11.7 Federal Register Index.

The annual subscription price for the monthly **Federal Register** Index, purchased separately, in paper form, is $29. The price excludes postage. The prevailing postal rates will be applied to orders according to the delivery method requested.

6. Revise § 11.8 to read as follows:

§ 11.8 LSA (List of CFR Sections Affected).

The annual subscription price for the monthly LSA (List of CFR Sections Affected), purchased separately, in paper form, is $30. The price excludes postage. The prevailing postal rates will be applied to orders according to the delivery method requested.

By order of the Committee.
Dated: December 12, 2003.

Raymond A. Mosley,

Secretary, Administrative Committee of the Federal Register.

[FR Doc. 03–31145 Filed 12–16–03; 8:45 am]

BILLING CODE 1505–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 275

RIN 0584–AD29

Food Stamp Program: High Performance Bonuses

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This rulemaking proposes to amend Food Stamp Program (FSP) regulations to implement provisions of section 4120 of the Farm Security and Rural Investment Act of 2002 (FSRIA). This section authorizes the Food and Nutrition Service (FNS) to award bonuses to States that demonstrate high or improved performance in administering the FSP. This rule proposes performance measures for these bonuses for fiscal year (FY) 2005 and beyond. It also proposes the data that will be used to measure the identified performance. The performance bonuses are meant to act as an incentive for State agencies to improve or maintain high performance in administering the FSP.

DATES: Comments must be received on or before February 17, 2004.

ADDRESSES: You may mail comments to the Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, Attention: Program Design Branch. You may FAX comments to us at 703–305–2486, Attention: Program Design Branch. You may also hand-deliver comments to us on the 8th floor at the above address.

FOR FURTHER INFORMATION CONTACT: Moira Johnston, Senior Program Analyst, Program Design Branch, Program Development Division, Food Stamp Program, FNS, 3101 Park Center Drive, Room 812, Alexandria, Virginia, (703) 305–2515, or via the Internet at *Moira.Johnston@fns.usda.gov*.

SUPPLEMENTARY INFORMATION:

Additional information on Comment Filing/Electronic Access

Electronic Access and Filing Address

You may view and download an electronic version of this proposed rule at *http://www.fns.usda.gov/fsp/*. You may also comment via the Internet at the same address. Please include ''Attention: RIN 0584–AD29'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your message, contact us directly at 703–305–2515.

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any change you recommend. Where possible, you should reference the specific section or paragraph of the proposed rule you are addressing. We

may not consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period or comments delivered to an address other than those listed above.

We will make all comments, including names, street addresses, and other contact information of respondents, available for public inspection on the 8th floor, 3101 Park Center Drive, Alexandria, Virginia 22302 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday, excluding Federal holidays. Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address, or other contact information from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Executive Order 12866

This proposed rule was determined to be significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3105, subpart V and related notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' paragraph of this rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. The changes will affect State and local welfare agencies that administer the FSP, to the extent that they must implement the provisions described in this action.

Unfunded Mandate Analysis

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

Regulatory Impact Analysis

Need for Action

This NPRM is needed to implement the provisions of Section 4120 of the FSRIA that authorized FNS to establish performance measures relating to actions taken to correct errors, reduce rates of error, improve the eligibility determinations and other indicators of effective administration; measure States' performance against these performance measures; and award performance bonus payments totaling $48 million for each fiscal year to State agencies that show high or improved performance relating to the performance measures.

Benefits

State agencies will benefit from the provisions of this rule because they have the potential to be awarded bonuses for high or improved performance in administering the FSP.

Recipients will benefit from the provisions of this rule because, as the State agencies seek to improve their performance in determining eligibility, issuing benefits, and attracting and retaining participants, their actions will positively affect applicants and participants.

Costs

The cost of implementing these provisions is $48 million each fiscal year, or $240 million over 5 years.

Executive Order 13132

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have ''federalism implications,'' agencies are directed to provide a statement for inclusion in the preamble to the regulation describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation With State Officials

Prior to drafting the rule, we received input from State and local agencies. Since the FSP is a State administered, Federally funded program, our national headquarters staff and regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding FSP implementation and policy issues. This arrangement allows State and local agencies to provide feedback that forms the basis for any discretionary decisions made in this and other FSP rules. In addition, we solicited ideas at various State, regional, national, and professional conferences. Finally, we consulted with State government representatives and our partners in the anti-hunger arena through meetings with such entities as the National Conference of State Legislators (NCSL), the National Governors Association (NGA), the American Public Human Services Association (APHSA), the Food Research and Action Center (FRAC) and the Center on Budget and Policy Priorities (CBPP).

Nature of Concerns and the Need To Issue This Rule

State agencies expressed their preferences that performance measures for the high performance bonuses

should be based on: (1) Activities that FNS and State agencies value most; (2) outcomes that State agencies could influence; (3) available data, even if imperfect, so as not to impose additional collection and reporting requirements on State agencies.

Extent to Which We Met Those Concerns

FNS took the State agencies' preferences into consideration when drafting this NPRM. In addition, FNS will consider comments on the NPRM prior to publishing the final rulemaking. This NPRM is required by law to implement the high performance bonuses for FY 2005 and beyond.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of food stamp households and individual participants, FNS has determined that there is no adverse effect on any of the protected classes. The rulemaking is directed at State agencies and not applicants or recipients. If there were a trickle down effect on applicants or recipients, it would more than likely be positive and affect all applicants and recipients as this rulemaking includes incentives for State agencies to improve the eligibility determination and certification systems.

FNS has no discretion in implementing any of these changes, which were effective upon enactment of the FSRIA on May 13, 2002. We do have discretion regarding the performance measures used to award bonuses. However, as discussed above, these performance measures are directed at State agencies. To the extent States act on these incentives, customer service and payment accuracy may improve. Therefore, FNS anticipates no adverse impact on any of the individuals eligible for food stamps and no disproportionate impact on any protected class.

In general, all data available to FNS indicate that protected individuals have the same opportunity to participate in the Food Stamp Program as non-protected individuals. FNS specifically prohibits the State and local government agencies that administer the FSP from engaging in actions that discriminate based on race, color, national origin, gender, age, disability, marital or family status. Regulations at 7 CFR 272.6 specifically state that ''State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs. Discrimination in any aspect of program administration is prohibited by these regulations, the Food Stamp Act of 1977 (the Act), the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15.'' Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6.

Paperwork Reduction Act

There are no revisions to information collections identified in this rule. This proposed rule contains information collections that have been previously approved by OMB. The burden for the Quality Control Negative Case Action Review Schedule (FNS–245) is approved under OMB #0584–0034. The Quality Control Review Schedule (FNS–380–1) is approved under OMB #0584–0299. The Integrated Quality Control Review Worksheet (FNS–380) is approved under OMB #0584–0074. The State Coupon Issuance and Participation Estimates (FNS–388) is approved under OMB #0584–0081.

FNS is committed to compliance with the GPEA, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Background

Section 16(a) of the Food Stamp Act of 1977 (the Act), 7 U.S.C. 2025(a), establishes the base administrative cost-sharing rate between the Federal Government and States at 50 percent. That is, pursuant to Section 16(a), the Department will typically reimburse half a State's costs incurred in administering the FSP. The Act prior to FSRIA and FSP regulations at 7 CFR 277.4(b)(l)(ii) provide that a State agency would receive enhanced funding if it has a payment error rate less than or equal to 5.9 percent and a negative case error rate less than the national weighted mean negative case error rate for the previous year. State agencies and advocate groups have expressed concerns that this incentive is too narrowly focused on payment accuracy and should be modified to also reward States for efficient management of the FSP in other areas.

On May 13, 2002, the enactment of FSRIA (Pub. L. 107–171) re-designed the quality control (QC) system, doing away with enhanced funding and replacing it with bonuses for States with high or improved performance administering the FSP, while significantly reducing liabilities assessed against States with poor accuracy outcomes.

This NPRM proposes to implement only those provisions related to the high performance bonuses. Elimination of enhanced funding and changes in the liability system will be dealt with in a separate rulemaking.

What Are the Legislation's Basic Provisions for Performance Bonuses?

Section 4120 of the FSRIA amended section 16 of the Act to authorize FNS to establish performance measures relating to actions taken to correct errors, reduce rates of error, improve eligibility determinations, and other indicators of effective administration; measure States' performance against these performance measures; and award performance bonus payments totaling $48 million for each fiscal year to State agencies that show high or improved performance relating to the performance measures. Section 16(d)(3) prohibits a State from being eligible for a performance bonus payment any fiscal year for which it has a liability amount established. Section 16(d)(4) provides that the amount of the bonus payment and whether or not to award such bonus payment is not subject to administrative or judicial review. Pursuant to section 16(d)(2)(B)(ii) of the amended Act, FNS is to award the bonus payments in the fiscal year following the fiscal year of performance.

How Is the Legislation To Be Implemented To Measure and Reward Performance for FY 2003 and 2004?

For FY 2003 and FY 2004, section 16(d)(1)(A) of the Act authorized FNS to establish performance measures through guidance. FNS issued guidance implementing the performance measures for FY 2003 on September 30, 2002. The performance measures for FY 2004 had not been established at the time FNS drafted this proposed rule.

How Is the Legislation To Be Implemented To Measure and Reward Performance for FY 2005 and Beyond?

For FY 2005 and beyond, section 16(d)(2) of the Act provides that FNS must establish the performance measures through regulation. This rule proposes the performance measures for FY 2005 and beyond.

Does the Legislation Require FNS To Consult With Organizations?

Under Section 16(d)(2)(A)(iii) FNS is required to solicit ideas from State agencies and organizations that represent States' interests prior to issuing the proposed rule. In June 2002, FNS held two meetings, one in Alexandria, Virginia, and one in Dallas, Texas, with representatives from all the State agencies to discuss the FSRIA and to solicit their ideas for implementation. FNS took the opportunity at that time to solicit ideas from State agency representatives specifically on the performance measures. On July 2, 2002, FNS met with representatives from State agencies, APHSA, NCSL and NGA, and on July 11, 2002, FNS officials met with representatives from CBPP and FRAC specifically to solicit ideas on possible performance measures for the high performance bonuses. FNS officials also solicited ideas from State agencies through on-going discussions and through the September 30, 2002 guidance.

Were Methods for Structuring Bonuses Discussed at These Meetings?

During these discussions, the participants also put forth ideas on how to structure the bonuses. For example, some of the issues explored included but were not limited to:

- How many States should FNS reward? Should FNS reward more States with less money or fewer States with more money?
- How many measures should FNS propose? Should FNS propose several individual measures? Or, should it propose a few measures that are made up of several elements that are then indexed or weighted?
- Should FNS measure improvements or absolutes? Or, both?
- What percentage of the $48 million should go towards payment accuracy versus other measures?
- How does FNS apportion the money? By size of State? By caseload or dollars issued?
- Should FNS allow States to choose whether or not to compete for the bonuses? Or, should it be mandatory?

What Were Some of the Possible Performance Measures Discussed During These Meetings?

During the meetings, the participants discussed many ideas on possible performance measures. The performance measures discussed included but were not limited to: per case State administrative costs, recipient claims establishment, payment accuracy, general customer service, application processing timeliness, increasing family self-sufficiency, participation levels, participation rates, nutrition education, fair hearings, and creativity/innovations.

What Were Some of the Criteria Participants in These Meetings Used To Evaluate the Possible Performance Measures?

In examining the possible measures, participants used several criteria to determine which ones to pursue and which ones to set aside. Participants felt very strongly that the measures should be ones that the States could influence. For example, the number of individuals participating in the FSP relates more to the size of the State and condition of the economy than to State agency actions. However, the percentage of eligible citizens actually participating in the Program can be influenced by State agency practices such as outreach, accessibility of offices, the length of the application form, and the speed of application processing. In addition, two key considerations were the value of the performance reflected by the measure, and the availability of objective data for a given measure. In some areas, FNS has considerable data but participants did not believe that these data measured core areas of FSP performance. For example, FNS has data on recipient claims. Participants expressed concern, however, about rewarding States with high error rates and that have a much larger pool of claims to establish and collect. In addition, participants emphasized that State agencies were already financially rewarded in that they retain a certain percentage of all the claims they collect.

FNS has data on the amount of States' administrative costs. Participants expressed concern, however, about rewarding States with low administrative costs that may have less effective programs. In other instances, an activity may advance a key part of the FSP mission but data is not available or not sufficient to gauge success. For example, nutrition education promotes the basic purpose of the FSP, which is to improve the nutrient intake of low-income persons. While food intake data is relevant to measure nutrient intake, it is not sufficient because it is not collected annually and the sample sizes are not sufficient to develop statistically adequate estimates of nutritional intake at the State level. The measures that FNS decided to propose following the conclusion of the meetings, while not perfect, met the basic criteria mentioned above.

Were There Overall Themes That Emerged During the Discussions?

During the discussions mentioned above, as well as subsequent in-house discussions, the following overall themes emerged concerning the performance measures:

- Performance measures should be based on: (1) Activities that FNS and State agencies value most; (2) outcomes that State agencies could influence; (3) available data, even if imperfect, so as not to impose additional collection and reporting requirements on State agencies.
- The bonuses should be structured as simply as possible; several individual performance measures are preferable over composite measures that would include several categories that would be ''weighted.''
- FNS should award more States with smaller bonuses, since recognition may be as important as money.
- FNS should make awards proportional to State's caseloads to give all States sufficient incentive to compete for these bonuses.
- FNS should emphasize rewarding excellence, but also award improvement. This will give all States an opportunity to receive an award and motivate more States to try.
- Awards should reflect a balancing of the goals of program integrity and program access. Integrity continues to be one of FNS' highest priorities.
- FNS should measure all States in all areas, as opposed to having them choose which bonuses to compete for, because the data are available, are public information, and will motivate States to improve.

What Performance Measures and Bonus Structure Has FNS Decided To Propose for FY 2005 and Beyond?

While there are many measures, many ways to divide the money, and many ways to structure the bonuses, FNS believes the following proposed scheme reflects the values of the FSP, strikes a good balance between payment accuracy and access, and recognizes both improvements and excellence.

How Many Proposed Categories Are There?

There are 7 proposed categories that would provide bonuses for up to 30 States.

What Are the Proposed Categories?

The 7 categories include the lowest and most improved combined payment error rates, the lowest and most improved negative error rates, the highest and most improved participant access rates, and the best application processing timeliness rate. Following is a detailed discussion of each proposed measure and the proposed data that would be used for each measure.

As mentioned above, FNS and representatives of partnering agencies and organizations considered many categories. One of these categories was for innovation. Generally, FNS believes that a determination of ''most innovative'' would require a subjective determination, unlike the other measures discussed and eventually proposed in this rulemaking that are based on objective and quantifiable data. Therefore, FNS decided at the time of this proposed rulemaking to reserve such a category for the annual non-monetary awards that FNS gives out at the American Association of Food Stamp Directors Conference. FNS is interested in the idea of rewarding innovation, and would like to solicit comments on whether or not to include as a high performance bonus a category for innovation. Specifically, what criteria could be used to rank innovative projects?

Payment Accuracy

FNS proposes to divide $24 million (50 percent of the total amount) among the 7 States with the lowest and the 3 States with the most improved combined payment error rate (the error rate). FNS believes allocating 50 percent of the total amount towards payment accuracy sends a strong signal that payment accuracy is still one of the Agency's highest priorities. In addition, it is an established index that measures outcomes that are influenced by many aspects of FSP management, such as policies, training and customer service. In general terms, the error rate consists of the rate of over issuances and under issuances to participating households. More specifically, the regulations at 7 CFR part 275 define the error rate, prescribe how this data is collected and manipulated, and describe how the error rate is determined. These data are the most readily available data of all the proposed performance measures. They are selected from random sampling of approximately 54,000 cases that are reviewed by the States and validated by FNS. Determination of error rates is a long established practice, one that the State agencies and others are familiar with. Therefore, for the sake of brevity, this proposed rule will not detail the QC data collection process.

How Will the Most Improved Error Rate Be Determined—by Percent Decrease (Relative) or by Percentage Point Decrease (Absolute)?

FNS proposes that the most improved error rate be determined by measuring the percentage points decreased (absolute improvement). For example, if State A has an error rate of 10 percent in FY 2003 and an error rate of 6 percent in 2004, its improvement is 4 percentage points, or a 40 percent improvement. If State B has an error rate of 6 percent in 2003 and an error rate of 3 percent in FY 2004, its improvement is 3 percentage points, or a 50 percent improvement. FNS proposes to rank State A higher than State B because its absolute improvement (4 percentage points) is greater.

FNS believes absolute improvement has more of an impact on the national FSP than relative improvement. For example, if States A and B both issued $100 million in benefits, State A would have reduced its payment error by $4 million while State B would have reduced its payment error by only $3 million.

Negative Error Rate

FNS proposes to divide $6 million among the 4 States with the lowest and the 2 States with the most improved negative error rate. The negative error rate measures the correctness of the State agency's action to deny an application, or suspend or terminate the benefits of a participating household. It also measures whether a State correctly determined a household's eligibility in terms of the State's compliance with Federal procedural requirements. For example, a case may be reported as an invalid denial because the State denied the application prior to the 30th day, even though the household is not eligible. The negative error rate is the best measure FNS has of how many people walk in the door and do not get the services and benefits as provided by statute. As with the error rate, the determination of the negative error rate is spelled out in 7 CFR part 275. Again, it is long standing practice and, therefore, this proposed rule will not detail how FNS determines the negative error rate.

How Will the Most Improved Negative Error Rate Be Determined—by Percent Decrease (Relative) or by Percentage Point Decrease (Absolute)?

FNS proposes to determine the most improved negative error rate by measuring the percentage points improved. For example, if two States have the same caseload: State A starts with a 6 percent negative error rate and State B starts with a 3 percent negative error rate. State A reduces its error rate to 4.5 percent, a reduction of 1.5 percentage points (absolute) and a 25 percent (relative) reduction. State B reduces its error rate to 2 percent, a reduction of 1 percentage point (absolute) and a 33 percent (relative) reduction.

Our proposal is to acknowledge State A because it has had a larger effect on its State caseload than State B (1.5 percentage points versus 1 percentage point).

If both States start with the same caseload, it is clear that State A has affected more cases in its improvement. When the caseloads are different, State A still has had a bigger impact in proportion to its caseload than has State B.

FNS would like to solicit comments on whether States must attain a certain threshold to be rewarded for improvement. For example, if a State improves its negative error rate from 20 percent to 15 percent should it be rewarded, even though its negative error rate is still very high?

Participant Access Rate

FNS proposes to divide $12 million among the 4 States with the highest and the 4 States with the most improved participant access rate. This measure is central to the purpose of the FSP in that it reflects the degree to which those in need of nutritional assistance are accessing the benefits to which they are eligible. FNS and others discussed measuring States' performance based on the participation rate that FNS publishes every year. The participation rate measures the rate at which eligible individuals are participating in the FSP. In determining this measure, FNS makes adjustments for things that would make a household or individual otherwise ineligible for the FSP such as resources, alien status, household composition and whether or not an individual has reached the time limits for able-bodied adults without dependents. It also makes adjustments for things that would make a household otherwise eligible for the FSP such as annual income versus monthly income. For example, a household could have an annual income

above 130 percent of the poverty line, and at first glance would be ineligible for the FSP. But, because the sole breadwinner was laid off halfway through the year, the household was ''poor'' for many months within that year, and thus income eligible for the FSP for those months. The participation rate is based in part on data from the Census Bureau's March Supplement to the Current Population Survey. FNS then makes the adjustments discussed above. As this process takes time, the participation rate is not available until a year after the bonuses are to be awarded.

FNS is proposing that States be measured against a participant access rate (PAR). The PAR differs from the participation rate, in that it measures the ratio of participants in the FSP to the number of persons in poverty in the State. In calculating the PAR, FNS does not make adjustments for things that would make individuals otherwise ineligible for the FSP such as resources or alien status, or otherwise eligible, such as monthly income versus annual income. Therefore, it is available within the timeframe needed in order to award the bonuses within the statutory time frame.

What Data Will FNS Use To Calculate the Participant Access Rate?

FNS proposes to use a variety of data sources to calculate the participant access rate. FNS proposes that the denominator be composed of data from the Census Bureau's March Supplement to the Current Population Survey. FNS would use the annual State counts of persons below 125 percent of poverty from the Census Bureau shortly after it is released, usually in late September. These counts are based on income received in the previous calendar year. For the numerator, or the number of food stamp participants, FNS proposes to use administrative counts of participants by State over the same calendar year for the Census Bureau's persons below 125 percent of poverty, averaging 12 months of data.

The threshold of 125 percent of poverty differs from what FNS used for fiscal years 2003 and 2004 (100 percent of poverty). However, our analysis shows that using 125 percent of poverty better correlates to our official Food Stamp Program participation rates. We are examining whether 130 percent of poverty is an even better match. However, at this time, this data is not readily available from the Census Bureau and would require time to obtain. If we are guaranteed to receive this data from the Census Bureau within a reasonable timeframe and the data better correlates to our official statistics, in the final rule making we will use numbers of people below 130 percent rather than 100 percent of poverty.

FNS is also considering using data from the American Community Survey (ACS) instead of the Current Population Survey because ACS has a larger sample and is released earlier than the official poverty statistics. Currently, the only ACS data available is for 2002. We will examine how well the ACS poverty counts correlate to the official Food Stamp Program participation rate, when the 2002 rates are available this coming summer. If the ACS data provides a better proxy for the official program participation rate, in final rule making we will use the ACS rather than the CPS.

Would FNS Make Adjustments for Special State Specific Situations That Might Affect the Number of People Receiving Food Stamps?

FNS proposes to make adjustments for two special situations. First, because persons receiving Supplemental Security Income (SSI) are ineligible for food stamps in California, FNS proposes to reduce the number of persons below 125 percent of poverty in California by the percentage of such persons who received SSI in the previous year. Second, because some individuals residing on reservations may choose to receive food assistance from either the FSP or the Food Distribution Program on Indian Reservations (FDPIR) but not both simultaneously, FNS proposes to add to the number of food stamp participants the number of FDPIR participants using administrative data averaged over a calendar year.

FNS proposes to not make adjustments for State option programs that offer State benefits through the FSP to immigrants because they are not Federal food assistance programs.

Application Processing Timeliness

FNS proposes to divide $6 million among the 6 States with the highest percentage of timely processed applications. FNS believes application-processing timeliness is an important aspect of customer service, not only because it measures whether households get the food stamps as provided by statute in a timely fashion, but also because it is a well established standard that is mandated by section 11(e)(3) of the Act (7 U.S.C. 2025(e)(3)). Many State agencies and advocates agree. However, FNS also recognizes that reliable data for measuring application-processing timeliness are not readily available and/or reliable. Currently, FNS collects some of this information on the Program Activity Statement (Form FNS–366) such as data on certification, fair hearings and fraud control. However, in many instances these data are reported inconsistently or inaccurately. For example, States have different reporting systems (manual or automatic) or eligibility workers may understate the number of late decisions for fear of being reprimanded. In addition, FNS does not validate the data that the State agencies report. A review of the data from the current Form FNS–366B indicates a wide range of performance. Rewarding States that report stellar performance may reflect reporting differences rather than exceptional timeliness. Finally, if we were to use the Form FNS–366B to collect this data, we would have to mandate consistent systems and reporting processes that would result in an additional burden on States. In light of these concerns, FNS is proposing to use other data for this measure.

What Data Does FNS Propose Using To Measure Application-Processing Timeliness?

FNS proposes collecting data on application-processing timeliness through the QC system. FNS has initiated collection of data as part of the QC reviews beginning with FY 2003 cases for use in determining the measure and evaluating its use in measuring these data (FNS–380). Instructions for collecting this information, which can be found in the *FNS Handbook 310: The Food Stamp Program Quality Control Review Handbook,* have already been shared with the Regional offices and State agencies. FNS is seeking particular comment on this data collection instrument and its ability to collect the sought after information.

What Application-Processing Standard Does FNS Propose To Use To Measure Timeliness?

FNS proposes to use the application-processing standard of 30 days (or 7 days for expedited service). An applicant must be given the ''opportunity to participate'' (as defined in 7 CFR 274.2) within thirty days (or 7 days for expedited service). New applications that are processed outside this standard would be considered untimely for this measure, with one exception as discussed below.

Will FNS Count Client Caused Delays as Untimely?

Yes. Any application processed outside of the 30-day processing standard will be considered untimely for this measure including client caused

delays, with one exception. FNS is proposing not to include in the measure applications that are properly pended because the applicant failed to provide requested verification. Properly pended means the State agency has taken the actions described in 7 CFR 273.2(h)(1)(i)(C) and it has pended the application in accordance with 273.2(h)(2)(i).

FNS recognizes that the regulations at 7 CFR 273.2(h)(2)(i) provide procedures for State agencies that, for one reason or another, are unable to meet the 30-day standard. For example, if the delay is the fault of the State agency, the State agency may not deny the application, but must hold it pending while taking immediate corrective action. If the delay is the fault of the applicant (for example, the household failed to complete the application), the State agency may either deny the application or hold it pending for 30 days from the date of the initial request for verification. Some may argue that FNS should measure States' compliance with these regulations rather than States' performance under a 30-day standard mandated in section 11(e)(3) of the Act. Why then does this rulemaking propose to measure State agencies' performance against the statutory 30-day limit as opposed to compliance with the regulations? First, FNS believes that the incidence of client caused delays does not vary that much by State, and therefore, with this methodology States are on an even playing field. Second, FNS would not want to reward a State that is relatively weak in meeting the 30-day standard but good at getting benefits out within 60 days. Furthermore, FNS believes it would be difficult, based upon certification records, to consistently distinguish between delays that are client versus agency caused, except in the situation described above. However, given the considerable discussion around this measure, FNS is soliciting comments on whether to exclude all client-caused delays from this measure and, if so, how to work that into the existing reporting and QC framework.

Will Both Approvals and Denials Be Included in the Determination of Timeliness?

FNS proposes that only approvals be included in the determination of timeliness since this measure is focused on meeting the 30-day standard for providing eligible households the opportunity to participate.

Will Every Case Identified for QC Review in the Performance Year Be Evaluated for Timeliness?

FNS proposes that QC reviewers evaluate for timeliness only new applications in the State QC active sample that were filed on or after the beginning of the fiscal year because they were filed within the performance measurement year for which the bonuses are awarded.

FNS realizes that this approach reduces the sample size. For example, if a QC reviewer pulls a case for review in November, chances are it was originally certified in the previous fiscal year. Therefore, that case will not be included in the sample for the application-processing-timeliness measure. It may be several months into the fiscal year before the QC reviewers sample cases that are certified within the performance measurement year. FNS will monitor the sample size and, depending upon the confidence it has in the data and comments it receives on the approach, reevaluate this method of measuring timeliness. However, we believe this sample size will give us enough data to make a determination of State rankings.

Will This Information Be Validated?

Federal reviewers will examine the data during the Federal re-review process and possibly at the end of the review period.

General Questions

Can a State Agency Win More Than One Bonus in the Same General Category, i.e., the Best and the Most Improved Payment Error Rate?

FNS proposes that a State cannot be awarded two bonuses in the same category, *i.e.*, the best and most improved participant access rate. FNS proposes that if a State were among the most improved in a category, it would not be counted among the best. This allows the ''next best'' State to receive an award as being among the best States. A State may be awarded bonuses for different general categories, such as most improved negative error rate and highest participant access rate.

How Will FNS Ascertain the Winners of Each Category When There Is a Tie?

Where there is a tie to the fourth decimal point, FNS proposes to add the additional State(s) into the category. For example, if 7 awards should be made for the lowest error rate, but there are 3 States that are tied for the 7th spot, 9 States would receive the award.

Can a State Agency That Has a Liability Amount Established Receive a Bonus?

No. Section 4120 of the SFIRA provided in section 16(d)(3) of the Act that a State may not be eligible for a performance bonus payment in any fiscal year for which it has a liability amount. To have a liability amount established, a State's combined payment error rate must exceed 105 percent of the national performance measure for payment errors for two consecutive fiscal years. Therefore, since FY 2003 was the first year for which a State could have poor performance as discussed above, it would not have a liability amount established unless it has poor performance in FY 2004 as well. However, note that no State will have a liability established in accordance with section 16(d)(3) of the Act in FY 2003 and, therefore, all States are eligible for a high performance bonus for that year.

How Will the Money Be Apportioned?

FNS proposes that the money be divided among States in proportion to the size of their caseloads (average number of households per month for the fiscal year for which performance is measured). For example, if 6 states are to split $6 million and State A accounts for 40 percent of all food stamp participants in these 6 states, State A will receive 40 percent of $6 million, or $2.4 million. FNS believes that this is the most equitable way to apportion the money. This method recognizes that more effort is needed to influence a large State's performance versus a small State's performance. At the same time, though, it provides a per-case award so that each case is in effect weighted equally.

When Will the Bonuses for FY 2005 and Subsequent Fiscal Years' Performance Be Awarded?

The bonuses for performance in FY 2005 will be awarded in FY 2006, as required by section 16(d)(2)(B)(ii) of the Act. For each subsequent fiscal year, FNS will award bonuses in the fiscal year following the performance measurement year.

Is FNS's Decision To Award a Performance Bonus Payment Subject to Administrative or Judicial Review?

No. Section 16(d)(4) of the Act specifically states that the determination by the Secretary whether, and in what amount, to award a performance bonus payment under this subsection shall not be subject to administrative or judicial review.

Where Does FNS Propose Revising the Regulations To Include the High Performance Bonuses?

FNS proposes to codify these provisions in a new section at 7 CFR 275.24.

List of Subjects in 7 CFR Part 275

Administration, Management evaluation reviews, Quality control reviews, Data analysis and evaluation, Corrective action, Responsibilities for reporting on program performance, Program performance.

Accordingly, 7 CFR part 275 is proposed to be amended as follows:

PART 275—PERFORMANCE REPORTING SYSTEM

1. The authority citation for Part 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

2. A new § 275.24 is added to read as follows.

§ 275.24 High performance bonuses.

(a) General rule. (1) FNS will award bonuses totaling $48 million for each fiscal year to State agencies that show high or improved performance in accordance with the performance measures under paragraph (b) of this section.

(2) FNS will award the bonuses no later than September 30th of the fiscal year following the performance measurement year.

(3) A State agency is not eligible for a bonus payment in any fiscal year for which it has a liability amount established.

(4) The determination whether, and in what amount, to award a performance bonus payment is not subject to administrative or judicial review.

(5) FNS will divide the award money among the States in each category (*see* paragraph (b) of this section) in proportion to the size of their caseloads (the average number of households per month for the fiscal year for which performance is measured).

(6) A State cannot be awarded two bonuses in the same category; the relevant categories are payment accuracy (which is outlined in paragraph (b)(1) of this section), negative error rate (which is outlined in paragraph (b)(2) of this section), or participant access rate (which is outlined in paragraph (b)(3) of this section). If a State is determined to be the best and the most improved in a category, it would be awarded a bonus only for being the most improved. This allows the ''next best'' State to receive an award as being among the best States.

(7) Where there is a tie to the fourth decimal point for the categories outlined in paragraphs (b)(1) through (b)(4) of this section, FNS will add the additional State(s) into the category and the money will be divided among all the States in accordance with paragraph (a)(5) of this section.

(b) *Performance measures.* FNS will measure performance by and base awards on the following categories of performance measures:

(1) *Payment accuracy.* FNS will divide $24 million among the 10 States with the lowest and the most improved combined payment error rates as specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) *Excellence in payment accuracy.* FNS will provide bonuses to the 7 States with the lowest combined payment error rates based on the validated quality control payment error rates for the performance measurement year as determined in accordance with this part.

(ii) *Most improved in payment accuracy.* FNS will provide bonuses to the 3 States with the largest percentage point decrease in their combined payment error rates based on the comparison of the validated quality control payment error rates for the performance measurement year and the previous fiscal year as determined in accordance with this part.

(2) *Negative error rate.* FNS will divide $6 million among the 6 States with the lowest and the most improved negative error rates as specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(i) *Lowest negative error rate.* FNS will provide bonuses to the 4 States with the lowest negative error rate based on the validated quality control negative error rate for the performance year as determined in accordance with this part.

(ii) *Most improved negative error rate.* FNS will provide bonuses to the 2 States with the largest percentage point decrease in their negative error rates based on the comparison of the performance measurement year's validated quality control negative error rates with those of the previous fiscal year as determined in accordance with this part.

(3) *Participant access rate (PAR).* FNS will divide $12 million among the 8 States with the highest and the most improved level of participation as specified in paragraphs (b)(3)(i) through (b)(3)(iii).

(i) *High Participant Access Rate.* FNS will provide bonuses to the 4 States with the highest PAR as determined in accordance with paragraph (b)(3)(iii) of this section.

(ii) *Most improved participant access rate.* FNS will provide bonuses to the 4 States with the most improved PAR as determined in accordance with paragraph (b)(3)(iii) of this section.

(iii) *Data.* For the number of participants (numerator), FNS will use the administrative counts of participants by State for the calendar year, increased by the administrative counts of participants in the Food Distribution Program on Indian Reservations (FDPIR) as reported by the States that operated FDPIR. For the number of people below 125 percent of poverty (denominator), FNS will use the Census Bureau's count of people below 125 percent of poverty for the same calendar year, reducing California's count by the number of people below 125 percent of poverty in California who received Supplemental Security Income in the previous year.

(4) *Application processing timeliness.* FNS will divide $6 million among the 6 States with the highest percentage of timely processed applications.

(i) *Data.* FNS will use quality control data for application processing timeliness.

(ii) *Timely processed applications.* A timely processed application is one that provides an eligible applicant the ''opportunity to participate'' as defined in 7 CFR 274.2, within thirty days for normal processing or 7 days for expedited processing. New applications that are processed outside of this standard are untimely for this measure, except for applications that are properly pended in accordance with § 273.2(h)(2) of this chapter because verification is incomplete and the State agency has taken all the actions described in § 273.2(h)(1)(i)(C) of this chapter. Such applications will not be included in this measure.

(iii) *Evaluation of applications.* Only applications that were filed on or after the beginning of the performance measurement (fiscal) year will be evaluated under this measure.

Dated: December 9, 2003.

Eric M. Bost,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 03–31031 Filed 12–16–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 810

Request for Public Comment on the United States Standards for Sorghum

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is initiating a review of the United States Standards for Sorghum. GIPSA invites comments and suggested changes to these standards.

DATES: Comments must be received on or before February 17, 2004.

ADDRESSES: Written comments must be submitted to Tess Butler at GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604; faxed to (202) 690–2755; or e-mailed to *comments.gipsa@usda.gov*. Please indicate your comment refers to United States Standards for Sorghum.

All comments received are available for public inspection at Room 1652, South Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: Marianne Plaus, telephone (202) 690–3460 at GIPSA, USDA, Room 2409 North/South Building, 1400 Independence Avenue, SW., Washington, DC 20250–3630; Fax Number (202) 720–1015.

SUPPLEMENTARY INFORMATION: On August 14, 1998, GIPSA published an Advance Notice of Proposed Rulemaking in the **Federal Register** (63 FR 43641) requesting views and comments on the sorghum standards. Based on comments received, GIPSA determined that the U.S. Standards for Sorghum were meeting the needs of producers, shippers, and others who handle and market sorghum and that no changes were needed at that time.

Recently, the National Grain Sorghum Producers (NGSP), an association representing U.S. grain sorghum farmers nationwide, has requested that GIPSA initiate a review of the sorghum standards. NGSP would welcome the opportunity to clarify several definitions in the current standards to more accurately reflect advancements in sorghum genetics and better reflect what is relevant to deriving value in the marketplace. GIPSA is seeking all comments that will assist the Agency in making the standards more relevant in the contemporary market. Accordingly, GIPSA is initiating a review of the United States Standards for Sorghum in Subpart I of 7 CFR part 810 at §§ 810.1401–810.1405.

During this review, GIPSA will assess the need for revisions on the various sections of the United States Standards for Sorghum, the potential for improvements, and language clarity.

GIPSA invites any comments and suggestions concerning these standards, and the benefits and costs of any changes including, but not limited to, those addressing sorghum classification, definitions, and grade limits.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71, *et seq.*)

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–31092 Filed 12–16–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS–03–08]

Pork Promotion, Research, and Consumer Information Order—Decrease in Importer Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 (Act) and the Pork Promotion, Research, and Consumer Information Order (Order) issued thereunder, this proposed rule would decrease by five-hundredths to seven-hundredths of a cent per pound the amount of the assessment per pound due on imported pork and pork products to reflect a decrease in the 2002 average price for domestic barrows and gilts. This proposed action would bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals. In addition, this rule deletes two live porcine animal Harmonized Tariff Schedule (HTS) numbers—0103.91.0000 and 0103.92.0000—and adds five new live porcine animal HTS numbers 0103.91.0010, 0103.91.0020, 0103.91.0030, 0103.92.0010, and 0103.92.0090—to the table in § 1230.110(a) in order to update the HTS numbers used for live porcine animals.

DATES: Comments must be received by January 16, 2004.

ADDRESSES: Send comments to Kenneth R. Payne, Chief; Marketing Programs Branch, Room 2638–S; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA; STOP 0251; 1400 Independence Avenue, SW., Washington, DC 20250–0251. Comments may also be submitted electonrically to *PorkComments@usda.gov* or by fax at (202) 720–1125. All comments should reference the document number (LS–03–08), the date, and the page number of this issue of the **Federal Register**. Comments will be available for public inspection via the Internet at *http://www.ams.usda.gov/lsg/mpb/rp-pork.htm* or during regular business hours, 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch, (202) 720–1115.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposal is not intended to have a retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1625 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, a provision of such order or an obligation imposed in connection with such order is not in accordance with the law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which a person resides or

does business has jurisdiction to review the Secretary's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

Regulatory Flexibility Act

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601 *et seq.*). The effect of the Order upon small entities initially was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898). It was determined at that time that the Order would not have a significant effect upon a substantial number of small entities. Many of the estimated 500 importers may be classified as small entities under the Small Business Administration definition (13 CFR 121.201).

This proposed rule would decrease the amount of assessments on imported pork and pork products subject to assessment by five-hundredths to seven-hundredths of a cent per pound, or as expressed in cents per kilogram, eleven-hundredths to fifteen-hundredths of a cent per kilogram. This decrease is consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 2002. The average annual market price decreased from $45.87 in 2001 to $37.09 in 2002, a decrease of about 20 percent. Adjusting the assessments on imported pork and pork products would result in an estimated decrease in assessments of approximately $562,000 over a 12-month period. Assessments collected on imported hogs, pork, and pork products for 2002 were $4,250,578. Accordingly, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and on imported porcine animals with an equivalent assessment on pork and pork products. However, that rate was increased to 0.35 percent in 1991 (56 FR 51635), to 0.45 percent effective September 3, 1995 (60 FR 29963), and then decreased to 0.40 percent effective September 30, 2002 (67 FR 58320). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, 56 FR 51635, 60 FR 29963, 61 FR 29002, 62 FR 26205, 63 FR 45936, 64 FR 44643, 66 FR 67071, and 67 FR 58320) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay U.S. Customs Service (USCS), upon importation, the assessment of 0.40 percent of the animal's declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.40 percent of the market value of the live porcine animals from which such pork and pork products were produced. This proposed rule would decrease the assessments on all imported pork and pork products subject to assessment as published in the **Federal Register** as a final rule September 16, 2002, and effective on September 30, 2002 (67 FR 58320). This decrease is consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 2002 as calculated by the Department of Agriculture's (Department), AMS, Livestock and Grain Market News (LGMN) Branch. This decrease in assessments would make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent decrease in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This proposed rule would not change the current assessment rate of 0.40 percent of the market value.

The methodology for determining the per pound amounts for imported pork and pork products was described in the Supplementary Information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors that are published in the Department's Agricultural Handbook No. 697 ''Conversion Factors and Weights and Measures.'' These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 74 percent, which is the average dressing percentage of porcine animals in the United States as recognized by the industry. Thirdly, the equivalent value of the live porcine animals is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts as calculated by LGMN Branch. Finally, the equivalent value is multiplied by the applicable assessment rate of 0.40 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent per pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

Since 2001, there has been a change in the way LGMN Branch reports hog prices. Due to the implementation of the Livestock Mandatory Price Reporting program, LGMN no longer report hogs on a live basis because most of the industry buys hogs on a carcass basis. Therefore, the annual average market price for barrows and gilts is now derived from the National Daily Direct Hog Price Report (Slaughtered). To convert this figure to a live basis it must be multiplied by 74 percent, the average dressing percentage of porcine animals.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the rate of assessment or changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic and porcine animals and imported pork and pork products.

The average annual market price decreased from $45.87 per hundredweight in 2001 to $37.09 per hundredweight in 2002, a decrease of about 20 percent. This decrease would result in a corresponding decrease in assessments for all HTS numbers listed in the table in § 1230.110(b), 67 FR 58320; September 16, 2002, of an amount equal to five-hundredths to seven-hundredths of a cent per pound, or as expressed in cents per kilogram, eleven-hundredths to fifteen-hundredths of a cent per kilogram. Based on the most recent available Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products imported during 2002, the proposed decrease in assessment amounts would result in an estimated $562,000 decrease in assessments over a 12-month period. The assessment rate for imported live hogs is not affected by the change in the cents per pound assessment rate for imported pork and pork products.

In addition, this rule deletes two live porcine animal Harmonized Tariff Schedule (HTS) numbers—0103.91.0000 and 0103.92.0000—and adds five new

live porcine animal HTS numbers 0103.91.0010, 0103.91.0020, 0103.91.0030, 0103.92.0010, and 0103.92.0090—to the table in § 1230.110(a) to reflect current USCS HTS numbers used for live porcine animals.

This proposed rule provides for a 30-day comment period. This comment period is deemed appropriate because the proposed rule simply provides for a decrease in the per pound assessment levels on imported pork and pork products to reflect changes in live hog prices which occurred during 2002. These live hog prices form the basis for the assessments. This adjustment, if adopted, should be made effective as soon as possible to bring the equivalent market value of live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals.

List of Subjects in 7 CFR part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1230 be amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

Subpart B—[Amended]

2. Section 1230.110 is revised to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

(a) The following Harmonized Tariff Schedule (HTS) categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Article description	Assessment
0103.10.0000	Purebred breeding animals	0.40 percent Customs Entered Value
0103.91.00	Other: Weighing less than 50 kg each.	
0103.91.0010	Weighing less than 7 kg each	0.40 percent Customs Entered Value
0103.91.0020	Weighing 7 kg or more but less than 23 kg each.	0.40 percent Customs Entered Value
0103.91.0030	Weighing 23 kg or more but less than 50 kg each.	0.40 percent each Customs Entered Value
0103.92.00	Weighing 50 kg or more each.	
0103.92.0010	Imported for immediate slaughter	0.40 percent Customs Entered Value
0103.92.0090	Other	0.40 percent Customs Entered Value

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Article description	Assessment	
		cents/lb	cents/kg
0203	Meat of swine, fresh, chilled, or frozen: Fresh or chilled:		
0203.11.0000	Carcasses and half-carcasses	.20	.440920
0203.12.1010	Processed hams and cuts thereof, with bone in	.20	.440920
0203.12.1020	Processed shoulders and cuts thereof, with bone in	.20	.440920
0203.12.9010	Other hams and cuts thereof, with bone in	.20	.440920
0203.12.9020	Other shoulders and cuts thereof, with bone in	.20	.440920
0203.19.2010	Processed spare ribs	.23	.507058
0203.19.2090	Processed other	.23	.507058
0203.19.4010	Bellies	.20	.440920
0203.19.4090	Other	.20	.440920
0203.21.0000	Frozen carcasses and half-carcasses	.20	.440920
0203.22.1000	Frozen-processed hams, shoulders, and cuts thereof, with bone in.	.20	.440920
0203.22.9000	Frozen-other hams, shoulders, and cuts thereof, with bone in.	.20	.440920
0203.29.2000	Frozen processed other	.23	.507058
0203.29.4000	Frozen other: Other	.20	.440920
0206	Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled, or frozen:		
0206.30.0000	Of swine, fresh or chilled	.20	.440920
0206.41.0000	Of swine, frozen: Livers	.20	.440920
0206.49.0000	Of swine, frozen: Other	.20	.440920
0210	Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal:		
0210.11.0010	Meat of swine: Hams and cuts thereof, with bone in	.20	.440920
0210.11.0020	Meat of swine: Shoulders and cuts thereof, with bone in	.20	.440920
0210.12.0020	Meat of swine: Bellies (streaky) and cuts thereof, Bacon	.20	.440920
0210.12.0040	Meat of swine: Bellies (streaky) and cuts thereof, Other	.20	.440920
0210.19.0010	Meat of swine: Canadian style bacon	.23	.507058
0210.19.0090	Meat of Swine: Other	.23	.507058

Pork and pork products	Article description	Assessment	
		cents/lb	cents/kg
1601	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products:		
1601.00.2010	Pork canned	.28	.617288
1601.00.2090	Pork other	.28	.617288
1602	Other prepared or preserved meat, meat offal or blood.		
1602.41.2020	Of swine: Boned and cooked and packed in airtight containers holding less than 1 kg.	.30	.661380
1602.41.2040	Of swine: Other boned and cooked and packed in airtight containers.	.30	.661380
1602.41.9000	Of swine: Other	.20	.440920
1602.42.2020	Of swine: Shoulders and cuts thereof: Boned and cooked and packed in airtight containers holding less than 1 kg.	.30	.661380
1602.42.2040	Of swine: Shoulders and cuts thereof: Other boned and cooked and packed in airtight containers.	.30	.661380
1602.42.4000	Of swine: Other shoulders and cuts thereof	.20	.440920
1602.49.2000	Of swine: Other, including mixtures: Not containing cereals or vegetables: Boned and cooked and packed in air-tight containers.	.28	.617288
1602.49.4000	Of swine: Other, including mixtures: Not containing cereals or vegetables: Other.	.23	.507058
1602.49.9000	Of swine: Other, including mixtures: Other	.23	.507058

Dated: December 9, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–31074 Filed 12–16–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–34–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135 and –145 series airplanes. This proposal would require modification of the of the mid, aft, and forward upper liners in the baggage compartment. The modification would involve replacing the plastic lens protection grids on all upper liners with new, light metal lens protection grids. This action is necessary to prevent the plastic lens protection grids from breaking away and exposing the lens as a source of fire, which could lead to fire damage to the aircraft systems and structure, and expose the passengers and crew to hazardous quantities of smoke. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 16, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–34–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. 2003–NM–34–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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–34–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. 2003–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and –145 series airplanes. The DAC advises that the plastic lamp/smoke detector covers and joints in the baggage compartment do not comply with Section 25.855 of the Federal Aviation Regulations (FARs). Section 25.855 (''Improved Flammability Standards for Thermal/Acoustic Insulation Materials Used in Transport Category Airplanes'') of the FAR (14 CFR 25.855) requires that materials used in the construction of cargo or baggage compartments meet prescribed flammability tests. This noncompliance with the flammability tests of the affected model airplanes has been determined to be an unsafe condition. This condition, if not corrected, could result in the plastic lens protection grids breaking away and exposing the lens as a source of fire, which could lead to fire damage to the aircraft systems and structure, and expose the passengers and crew to hazardous quantities of smoke.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–25–0168, Change 02, dated August 8, 2000, which describes procedures for modification of the mid, aft, and forward baggage compartment upper liners to replace the plastic lens protection grids on all upper liners with new, light metal lens protection grids. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 2000–06–01, dated July 3, 2000, to ensure the continued airworthiness of these airplanes in Brazil.

EMBRAER Service Bulletin 145–25–0168 references C&D Aerospace Service Bulletin 145–20216–25–03, Revision 2, dated June 9, 2000, as an additional source of service information for accomplishment of the modification. The C&D Aerospace service bulletin is included within the EMBRAER service bulletin.

FAA's Conclusions

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

Explanation of Requirements of 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.

Cost Impact

The FAA estimates that 160 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 7 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Parts will be provided by the manufacturer at no charge. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $72,800, or $455 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:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2003–NM–34–AD.

Applicability: Model EMB–135 and –145 series airplanes, having serial numbers (S/Ns) 145004 through 145187 inclusive, S/Ns 145191 through 145196 inclusive, S/N 145200, and S/N 145204; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the plastic lens protection grids in the baggage compartment from breaking away and exposing the lens as a source of fire, which could lead to fire damage to the aircraft systems and structure, and expose the passengers and crew to hazardous quantities of smoke, accomplish the following:

Note 1: EMBRAER Service Bulletin 145–25–0168, Change 02, dated August 8, 2000, references C&D Aerospace Service Bulletin 145–20216–25–03, Revision 2, dated June 9, 2000, as an additional source of service information for accomplishment of the modification. The C&D Aerospace Service Bulletin is included within the EMBRAER service bulletin.

Modification

(a) Within 2,000 flight hours after the effective date of this AD: Modify the mid, aft, and forward baggage compartment upper liners to replace the plastic lens protection grids on all upper liners with new, light metal lens protection grids, according to the Accomplishment Instructions of EMBRAER Service Bulletin 145–25–0168, Change 02, dated August 8, 2000.

Actions Accomplished Per Previous Issue of Service Bulletin

(b) Modifications accomplished before the effective date of this AD per EMBRAER Service Bulletin 145–25–0168, Change 01, dated April 13, 2000, are considered acceptable for compliance with the corresponding action specified in this AD.

Parts Installation

(c) As of the effective date of this AD, no person may install on any airplane a smoke detector cover having part number 7161119–507, or a ceiling panel having part number 7161011–507, 7161011–517, 7161011–519, 7161011–523, 7161011–525, 7161011–527, 7161011–529, 7161011–531, or 7161011–533.

Alternative Methods of Compliance

(d) 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 2: The subject of this AD is addressed in Brazilian airworthiness directive 2000–06–01, dated July 3, 2000.

Issued in Renton, Washington, on December 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31068 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–211–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4 Series Airplanes and Model A300 B4–600, A300 B4–600R, and A300 F4–600R (Collectively Called A300–600) Series 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 Airbus Model A300 B4 series airplanes and all Airbus Model A300–600 series airplanes. That AD currently requires a one-time high frequency eddy current inspection to detect cracking of the splice fitting at fuselage frame (FR) 47 between stringers 24 and 25; and corrective actions if necessary. This action would require new repetitive inspections of an expanded area, and would add airplanes to the applicability in the existing AD. The actions specified by the proposed AD are intended to detect and correct cracking of the splice fitting at fuselage FR 47, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 16, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–211–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–211–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–211–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–211–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On February 9, 2001, the FAA issued AD 2001–03–14, amendment 39–12118 (66 FR 10957, February 21, 2001), applicable to certain Airbus Model A300 series airplanes and all Airbus Model A300–600 series airplanes. That AD requires a one-time high frequency eddy current (HFEC) inspection to detect cracking of the splice fitting at fuselage frame (FR) 47 between stringers 24 and 25; and corrective actions if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign

civil airworthiness authority. The requirements of that AD are intended to detect and correct cracking of the splice fitting at fuselage FR 47, which could result in reduced structural integrity of the airplane.

Actions Since Issuance of Previous AD

Since the issuance of AD 2001–03–14, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B4 and all A300–600 series airplanes. The DGAC advises that cracks have been found on airplanes on which the modification specified in the existing AD has been done, and HFEC inspections of the modification performed. A laboratory investigation was done on a cracked splice fitting, and the analysis of crack growth rate shows that an inspection program is necessary for all airplanes affected by the existing AD. This program involves expanding the inspection area to fuselage frame (FR) 47 between stringers 24 and 26 (the existing AD specified stringers 24 and 25), and adding new repetitive inspections. Cracking of the splice fitting at fuselage FR 47 could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A300–53–0350 (for Model A300 series airplanes) and A300–53–6123 (for Model A300–600 series airplanes), both Revision 01, both dated December 18, 2001. The procedures specified in Revision 01 of the service bulletins are similar to those specified in the original issue of the service bulletins referenced in the existing AD for accomplishment of the inspections and corrective actions. However, Revision 01 defines a new inspection program for pre-mod and post-mod airplanes which expands the inspection area to fuselage frame (FR) 47 between stringers 24 and 26, and adds an HFEC rotating probe inspection after bolt removals. Revision 01 also adds airplanes to the applicability specified in the original issue. Revision 01 of the service bulletins also describes certain repair procedures. The DGAC classified the service bulletins as mandatory and issued French airworthiness directive 2002–184(B), dated April 3, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the 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 supersede AD 2001–03–14 to require new repetitive inspections of an expanded area and to add airplanes to the applicability in the existing AD. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Clarification of Compliance Times

The compliance times specified in the service bulletins for doing the high frequency eddy current inspections do not specify whether the inspections should be done at the earlier or later of the recommended flight cycles/flight hours. This proposed AD adds ''whichever is first'' to those compliance times. In addition, the compliance times specified do not give an effective date for when the inspections are to be accomplished; this proposed AD requires accomplishment of the inspections ''after the effective date of this AD.''

Interim Action

We consider this proposed AD interim action. The manufacturer is currently developing a modification that would address the unsafe condition identified in this proposed AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

Differences Between Proposed AD and Service Information

Although the service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, we have determined that, for the proposed AD, a repair approved by either us or the DGAC would be acceptable for compliance with this proposed AD.

Service Bulletin A300–53–0350 specifies doing the initial inspection at the next C-check, but not exceeding a certain number of flight cycles or flight hours, as the recommended compliance time. Because ''C-check'' schedules vary among operators, such a nonspecific interval would provide no assurance that operators would do the inspection within the prescribed schedule. This proposed AD would exclude the C-check and specify only flight cycles or flight hours. We find that such a compliance time is appropriate for affected airplanes to continue to operate without compromising safety.

The service bulletins referenced in this proposed AD specify to submit certain inspection findings to the manufacturer; however, this AD does not include such a requirement.

Cost Impact

There are approximately 83 airplanes of U.S. registry that would be affected by this proposed AD.

The inspection of an expanded area that is proposed in this AD action would take approximately 29 work hours 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 $156,455, or $1,885 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or 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 removing amendment 39–12118 (66 FR 10957, February 21, 2001), and by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2002–NM–211–AD. Supersedes AD 2001–03–14, Amendment 39–12118.

Applicability: All Model A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) series airplanes; and all Model A300 B4 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the splice fitting at fuselage frame (FR) 47, which could result in reduced structural integrity of the airplane, accomplish the following:

Repetitive Inspections

(a) For airplanes defined in Airbus Service Bulletin A300–53–0350, Revision 01, dated December 18, 2001: Do a high frequency eddy current (HFEC) inspection to detect cracking of the splice fitting at fuselage FR 47 between stringers 24 and 26 (left- and right-hand sides), at the applicable times specified in paragraph (a)(1) or (a)(2) of this AD. Repeat the inspection thereafter at the earlier of the flight-cycle/flight-hour intervals specified in the applicable column in Table 2 of Figure 1 and Sheet 1 of the Accomplishment Instructions of the service bulletin. Do the inspections per the service bulletin, excluding Appendix 01.

(1) For airplanes that have accumulated 20,000 or more total flight cycles as of the effective date of this AD: Do the initial inspection at the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD:

(i) At the earlier of the flight-cycle/flight-hour intervals after the effective date of this AD, as specified in the applicable column in Table 1 of Figure 1 and Sheet 1 of the Accomplishment Instructions of the service bulletin.

(ii) Within 750 flight cycles or 1,500 flight hours after the effective date of this AD, whichever is first.

(2) For airplanes that have accumulated fewer than 20,000 total flight cycles as of the effective date of this AD: Do the initial inspection at the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) At the earlier of the flight-cycle/flight-hour intervals after the effective date of this AD, as specified in the applicable column in Table 1 of Figure 1 and Sheet 1 of the Accomplishment Instructions of the service bulletin.

(ii) Within 1,800 flight cycles or 3,000 flight hours after the effective date of this AD, whichever is first.

(b) For airplanes defined in Airbus Service Bulletin A300–53–6123, Revision 01, dated December 18, 2001: Do the HFEC inspection required by paragraph (a) of this AD at the applicable times specified in paragraph (b)(1) or (b)(2) of this AD. Repeat the inspection thereafter at the earlier of the flight-cycle/flight-hour intervals specified in the applicable column in Table 2 of Figure 1 and Sheet 1 of the Accomplishment Instructions of the service bulletin. Do the inspections per the service bulletin, excluding Appendix 01.

(1) For airplanes that have accumulated 10,000 or more total flight cycles as of the effective date of this AD: Do the initial inspection within 750 flight cycles or 1,900 flight hours after the effective date of this AD, whichever is first.

(2) For airplanes that have accumulated fewer than 10,000 total flight cycles as of the effective date of this AD: Do the initial inspection at the later of the times specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) At the earlier of the flight-cycle/flight-hour intervals after the effective date of this AD, as specified in the applicable column in Table 1 of Figure 1 and Sheet 1 of the Accomplishment Instructions of the service bulletin.

(ii) Within 1,500 flight cycles or 3,800 flight hours after the effective date of this AD, whichever is first.

Repair

(c) Repair any cracking found during any inspection required by this AD before further flight, per Airbus Service Bulletin A300–53–0350 or A300–53–6123, both Revision 01, both excluding Appendix 01, both dated December 18, 2001; as applicable. Where the service bulletins specify to contact Airbus in case of certain crack findings, this AD requires that a repair be accomplished before further flight in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Gènèrale de l'Aviation Civile (DGAC) (or its delegated agent).

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–184(B), dated April 3, 2002.

Issued in Renton, Washington, on December 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31067 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–116–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42 and ATR72 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 Aerospatiale Model ATR42 and ATR72 series airplanes. This proposal would require replacement of the swinging lever spacers in the left and right leg assemblies of the main landing gear with new, improved spacers. This action is necessary to prevent propagation of fatigue cracking, which could result in failure of the spacer base and could affect the symmetrical functioning of the braking system. Asymmetrical braking could result in the airplane overrunning the runway during takeoff or landing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 16, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–116–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–116–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 Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tony Jopling, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2190; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–116–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–116–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42 and ATR72 series airplanes. The DGAC advises that several cases of fatigue cracking have been found on the swinging lever spacers in the main landing gear (MLG). The fatigue cracking is located at the intersection base of the spacer, and is due to a stress concentration. Propagation of such cracking could result in failure of the spacer base and could affect the symmetrical functioning of the braking system. Asymmetrical braking could result in the airplane overrunning the runway during takeoff or landing.

Explanation of Relevant Service Information

The manufacturer has issued Avions de Transport Regional Service Bulletins ATR42–32–0094 and ATR72–32–1042, both dated November 26, 2001. The Avions de Transport Regional Service Bulletins reference Messier-Dowty Service Bulletins 631–32–166, dated November 28, 2001 (for Model ATR42 series airplanes); and 631–32–165, dated November 27, 2001 (for Model ATR72 series airplanes) for accomplishment of the replacement of the swinging lever spacers of the MLG. The Messier-Dowty service bulletins describe procedures for replacement of the swinging lever spacers in the left and right leg assemblies of the MLG with new, improved spacers. The new spacers were manufactured using 7175 material, which is stronger than the 2024 and 7010 material used in the existing spacers. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified the Avions de Transport Regional service bulletins as mandatory and issued French airworthiness directives 2001–614–089(B) and 2001–615–062(B), both dated December 26, 2001, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the 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 information described previously, except as discussed below.

Differences Among French Airworthiness Directive, Service Information, and Proposed AD

The applicability specified in French airworthiness directive 2001–614–089(B) includes Aerospatiale Model ATR42–400; however, this proposed AD does not include that model because no U.S. type certificate has been issued for that airplane.

Paragraph 1.C.(4) of service bulletin ATR42–32–0094 references Messier-Dowty Service Bulletin No. 631–32–165 for the replacement of the swinging lever spacers of the MLG; however, the correct number for that service bulletin is No. 631–32–166. The manufacturer has been notified of this typographical error and will be issuing a revised service bulletin.

Cost Impact

The FAA estimates that 133 airplanes of U.S. registry would be affected by this proposed AD, that it would take about

16 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $65 per work hour. Required parts would cost between $921 and $4,272 per airplane. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be between $1,961 and $5,312 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 levers 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:

Aerospatiale: Docket 2002–NM–116–AD.

Applicability: Model ATR42–200, –300, –320, and –500 series airplanes on which ATR Modification 5338 has not been done; and Model ATR72–101, –102, –201, –202, –211, –212, and –212A series airplanes on which ATR Modification 5337 has not been done; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the spacer base of the swinging lever spacers in the left and right leg assemblies of the main landing gear (MLG) and consequent asymmetrical braking, which could result in the airplane overrunning the runway during takeoff or landing, accomplish the following:

Replacement

(a) Replace the swinging lever spacers in the left and right leg assemblies of the MLG with new, improved spacers, per Avions de Transport Regional Service Bulletins ATR42–32–0094 and ATR72–32–1042, both dated November 26, 2001. Do the replacement at the applicable time specified in paragraphs (a)(1) or (a)(2) of this AD.

(1) For Model ATR42–200, –300, and –320, and Model ATR72–101, –102, –201, –202, –211, –212, and –212A series airplanes: Do the replacement at the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Before the accumulation of 15,000 total landings or 8 years in-service on new or overhauled swinging lever spacers, whichever is first.

(ii) Within 3,000 landings after the effective date of this AD.

(2) For Model ATR42–500 series airplanes: Do the replacement before the accumulation of 18,000 total landings or 9 years in-service on new or overhauled swinging lever spacers, whichever is first.

(b) Messier-Dowty Service Bulletins 631–32–166, dated November 28, 2001 (for Model ATR42 series airplanes); and 631–32–165, dated November 27, 2001 (for Model ATR72 series airplanes), may be used for accomplishment of the replacement required by paragraph (a) of this AD.

Alternative Methods of Compliance

(c) 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 directives 2001–614–089(B) and 2001–615–062(B), both dated December 26, 2001.

Issued in Renton, Washington, on December 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31066 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–239–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 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), applicable to certain Airbus Model A319, A320, and A321 series airplanes. The proposed AD would require checking the identification plate on the ram air turbine (RAT) actuator and re-identifying the actuator or replacing the actuator with one which has been cleaned and tested by its manufacturer. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent jamming of the RAT actuator in an emergency which requires deployment of the RAT, and consequent loss of hydraulic and electrical power in the airplane.

DATES: Comments must be received by January 16, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–239–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–239–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must

be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

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 No. 2001–NM–239–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–239–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that, during a test of an ram air turbine (RAT) on the final assembly line, the RAT did not deploy due to contamination of the RAT actuator by machining chips. This condition, if not corrected, could result in jamming of the RAT actuator in an emergency which requires deployment of the RAT, and consequent loss of hydraulic and electrical power in the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–29–1098, Revision 02, dated February 20, 2003, which describes procedures for the following steps:

(1) Extending the RAT actuator to check the part number, the serial number, and the notations on the Amend Block of the identification plate;

(2) Re-identifying certain RAT actuators; and

(3) Sending certain RAT actuators back to their manufacturer (Arkwin Industries, Inc.) and replacing them with RAT actuators which have been cleaned and re-identified by the manufacturer.

Airbus Service Bulletin A320–29–1098, Revision 02, dated February 20, 2003, refers to Hamilton Sundstrand/Arkwin Industries Service Bulletin ERPS08A–29–2, dated February 22, 2001, as a secondary source of service information for these actions.

The DGAC classified Airbus Service Bulletin A320–29–1098, Revision 02, dated February 20, 2003, as mandatory. On December 24, 2002, the DGAC issued French airworthiness directive 2001–236(B) R1 in order to assure the continued airworthiness of these airplanes in France.

Related Rulemaking

For Airbus Models A319 and A321 series airplanes, Airbus Service Bulletin A320–29–1098, Revision 02, dated February 20, 2003, specifies that there is to be prior or concurrent accomplishment of Airbus Service Bulletin A320–29–1088. Accomplishment of that service bulletin is required by AD 2000–05–08, amendment 39–11617 (65 FR 12080, March 8, 2000).

FAA's Conclusions

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

Explanation of Requirements of 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 checking the identification plate on the RAT actuator and re-identifying the actuator or replacing it with one which has been cleaned, tested and re-identified by its manufacturer. The actions would be required to be accomplished in accordance with Airbus Service Bulletin A320–29–1098, Revision 02, dated February 20, 2003, and Hamilton Sundstrand/Arkwin Industries Service Bulletin ERPS08A–29–2, dated February 22, 2001.

Cost Impact

There are approximately 195 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are proposed in this AD action would take a maximum of 5 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. There would be no cost for required parts. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $63,375 or $325 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or 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 a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2001–NM–239–AD.

Applicability: Model A320 series airplanes which have received modification 27189, Model A319 series airplanes; and Model A321 series airplanes, provided that none has received modification 30978 or 28413; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the ram air turbine (RAT) actuator in an emergency which requires deployment of the RAT, and consequent loss of hydraulic and electrical power in the airplane, accomplish the following:

Extension of RAT Actuator

(a) Within 31 months after the effective date of this AD: Extend the existing RAT actuator, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–29–1098, Revision 02, dated February 20, 2003.

Determination of Identification of RAT Actuator

(b) Immediately after accomplishment of paragraph (a) of this AD: Check the identification plate on the RAT actuator to determine the part number (P/N), the serial number, and whether there is a notation in the Amend Block, in accordance with the Accomplishment Instructions of Hamilton Sundstrand/ Arkwin Industries Service Bulletin ERPS08A–29–2, dated February 22, 2001.

Retraction, Re-identification, or Replacement of RAT Actuator

(c) Depending upon the identification of the RAT actuator, accomplish the follow-on action indicated in Table 1 of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–29–1098, Revision No. 02, dated February 20, 2003.

TABLE–1.—FOLLOW-ON ACTIONS

If the P/N is—	And the Amend Block is marked with an ''A''—	And the serial number is—	Then—
764711A	N/A	N/A	No further action is required.
764711	No	N/A	Prior to further flight, remove the RAT actuator and replace it with one which has been cleaned, tested and re-identified by its manufacturer.
764711	Yes	0868–0889	Prior to further flight, remove the RAT actuator and replace it with one which has been cleaned, tested and re-identified by its manufacturer.
764711	Yes	Other than 0868–0889	Prior to further flight, re-identify the RAT actuator, in accordance with paragraph 2.G. of the Accomplishment Instructions of Hamilton Sundstrand/ Arkwin Industries Service Bulletin ERPS08A–29–2, dated February 22, 2001.

Parts Installation

(d) As of the effective date of this AD: No person may install an Arkwin Industries RAT actuator having P/N 764711 on any Airbus Model A319, A320, or A321 airplane, unless it is in compliance with this AD.

Note 1: The subject of this AD is addressed in French airworthiness directive 2001–236(B) R1, dated December 24, 2002.

Issued in Renton, Washington, on December 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certificiation Service.

[FR Doc. 03–31065 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–18–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 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 Airbus Model A319, A320, and A321 series airplanes. This proposal would require replacing the upper guide rod fittings at the rear passenger doors with improved fittings. This action is necessary to prevent failure of an upper guide rod fitting, which could cause a rear passenger door to jam during opening, delaying an emergency evacuation and resulting in injury to passengers or crew members. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 16, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–18–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–18–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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

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–18–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–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that there have been several reports of cracking and rupture of the upper guide rod fittings for the rear passenger doors on in-service airplanes. This condition, if not corrected, could cause a rear passenger door to jam during opening, delaying an emergency evacuation and resulting in injury to passengers or crew members.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–53–1154, Revision 2, dated March 7, 2003. That service bulletin describes procedures for replacing the upper guide rod fitting on each rear passenger door with an improved fitting. The improved fitting is stronger than the existing one due to an increase in thickness and different material.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified a previous revision of this service bulletin as mandatory and issued French airworthiness directive 2001–634(B), dated December 26, 2001, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

certificated for operation in the United States.

Explanation of Requirements of 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.

Cost Impact

The FAA estimates that 440 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $2,200 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,254,000, or $2,850 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. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 2002–NM–18–AD.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any category; on which Airbus Modification 30821 has not been accomplished.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of an upper guide rod fitting, which could cause a rear passenger door to jam during opening, delaying an emergency evacuation and resulting in injury to passengers or crew members, accomplish the following:

Replacement

(a) Within 22 months after the effective date of this AD, replace the upper guide rod fitting on each rear passenger door with an improved fitting by doing all actions in and per the Accomplishment Instructions of Airbus Service Bulletin A320–53–1154, Revision 2, dated March 7, 2003.

Replacements Accomplished Previously

(b) Replacements accomplished before the effective date of this AD per the Accomplishment Instructions of Airbus Service Bulletin A320–53–1154, dated July 12, 2001; or Revision 1, dated August 28, 2002; are acceptable for compliance with the corresponding action required by this AD.

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in French airworthiness directive 2001–634(B), dated December 26, 2001.

Issued in Renton, Washington, on December 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31064 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–146893–02, REG–115037–00]

RIN 1545–BB31, 1545–AY38

Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangibles; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing that was published in the **Federal Register** on Wednesday, September 10, 2003 (68 FR 53448). The proposed regulations provide guidance regarding the treatment of controlled services transactions under section 482 and the allocation of income from intangibles in particular when one controlled taxpayer performs activities that increase (or are expected to increase) the valve of an intangible owned by another controlled taxpayer.

FOR FURTHER INFORMATION CONTACT: J. Peter Luedtke or Helen Hong-George, (202) 435–5265 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing that is the subject of this correction is under section 482 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed regulations and

notice of public hearing (REG–146893–02, REG–115037–00), that was the subject of FR Doc. 03–22550, are corrected as follows:

1. On page 53448, column 1, in the preamble under the paragraph heading ''DATES'', second line of the paragraph, the language ''must be received December 9, 2003.'' is corrected to read ''must be received by December 9, 2003.''

2. On page 53449, column 2, in the preamble under the paragraph heading ''2. Income Attributable to Intangibles'', fifth line of the paragraph, the language, ''property. The Taxpayers and other'' is corrected to read ''property. Taxpayers and other''.

3. On page 53455, column 3, in the preamble under the paragraph heading ''10. Total Services Costs—§ 1.482–9(j)'', the last line of the paragraph, the language, ''analysis of the result expressed as ration'' is corrected to read ''analysis of the result expressed as the ratio''.

4. On page 53464, column 3, following § 1.482–6(c)(3)(i)(B)(*2*), paragraph (c)(3)(ii) is added to read as follows:

§ 1.482–6 Profit split method.

* * * * *

(c) * * *

(3) * * * (i) * * *

(ii) * * *

* * * * *

5. On page 53473, columns 2 and 3, § 1.482–9(f)(2)(iv)(A) through (C) introductory text are corrected to read as follows:

§ 1.482–9 Methods to determine taxable income in connection with a controlled services transaction.

* * * * *

(f) * * *

(2) * * *

(iv) Measurement of limitation on allocations: The rules of paragraphs (f)(2)(i) and (ii) of this section are expressed in this paragraph (f)(2)(iv) in equations and a table.

(A) The minimum arm's length markup necessary for an allocation by the Commissioner (Z) is the sum of the markup charged by the taxpayer (X) and the applicable number of percentage points determined under paragraph (f)(2)(ii) of this section (Y). Where the markup charged by the taxpayer is not less than zero, the minimum arm's length markup necessary for allocation by the Commissioner (Z) also equals the lesser of—

(*1*) The sum of six percentage points and half of the markup charged by the taxpayer (X); and

(*2*) Ten percentage points.

(B) The equations in paragraph (f)(2)(iv)(A) of this section may also be expressed as follows:

$Z = X + Y = \min((6\% + 0.5 \times X), 10\%)$ where $X \geq 0$.

(C) The following table illustrates the results of these calculations in representative cases:

* * * * *

6. On page 53480, column 1, § 1.482–9(l)(4), *Example 12*, the last line of the paragraph, the language, ''therefore Company Y is considered to obtain.'' is corrected to read ''therefore Company Y is considered to obtain a benefit from the activities.''

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–31034 Filed 12–16–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

RIN: 1512–AC62

[Notice No. 24]

Proposed Trinity Lakes Viticultural Area (2001R–32P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the ''Trinity Lakes'' viticultural area in Trinity County, California. The proposed viticultural area consists of approximately 96,000 acres surrounding Trinity and Lewiston lakes and a portion of the Trinity River basin below Lewiston Dam. We invite comments on this proposal.

DATES: We must receive written comments on or before February 17, 2004.

ADDRESSES: You may send comments to any of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, PO Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 24);
- 202–927–8525 (facsimile);
- *nprm@ttb.gov* (e-mail); or
- *http://www.ttb.gov* (An online comment form is posted with this notice on our Web site.)

You may view copies of this notice and any comments received at *http://www.ttb.gov/alcohol/rules/index.htm* or by appointment at our library, 1310 G Street, NW., Washington, DC 20005; phone 202–927–8210.

See the Public Participation section of this notice for specific instructions and requirements, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: Tim DeVanney, Specialist, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity, while prohibiting the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out the Act's provisions. The Secretary has delegated this authority to the Alcohol and Tobacco Tax and Trade Bureau (TTB).

Regulations in 27 CFR Part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Title 27 CFR Part 9, American Viticultural Areas, contains the list of approved viticultural areas.

Definition

Title 27 CFR 4.25(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features whose boundary has been delineated in subpart C of part 9. The establishment of viticultural areas allows the identification of regions where a given quality, reputation, or other characteristics of the wine is essentially attributable to its geographic origin. We believe that the establishment of viticultural areas allows wineries to describe more accurately the origin of their wines to consumers and helps consumers identify the wines they purchase. Establishment of a viticultural area is neither an approval nor endorsement by TTB of the wine produced there.

Requirements

Section 4.25(e)(2) outlines the procedure for proposing an American viticultural area. Anyone interested may

petition TTB to establish a grape-growing region as a viticultural area. The petition must include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that the boundaries of the proposed viticultural area are as specified in the petition;
- Evidence that the proposed area's growing conditions, such as climate, soils, elevation, physical features, etc., distinguish it from surrounding areas;
- A description of the proposed viticultural area's specific boundaries, based on features found on maps approved by the United States Geological Survey (USGS); and
- A copy of the appropriate USGS-approved map(s) with the boundaries prominently marked.

Impact on Current Wine Labels

Under our 27 CFR part 4 regulations, viticultural area names have geographic significance. The regulations prohibit the use of a brand name with geographic significance on a wine unless the wine meets the appellation of origin requirements for the named area. Our regulations also prohibit any other label references that suggest an origin other than the true place of origin of the wine.

If we establish this proposed viticultural area, bottlers who use brand names, including trademarks like Trinity Lakes, must ensure that their existing products are eligible to use the viticultural area's name as an appellation of origin. For a wine to be eligible, at least 85 percent of the grapes in the wine must have been grown within the viticultural area, and the wine must meet the other requirements of 27 CFR 4.25(e)(3). If a wine is not eligible for the appellation, the bottler must change the brand name or other label reference and obtain approval of a new label.

Different rules apply to wines in this category that have brand names traceable to labels approved prior to July 7, 1986. *See* 27 CFR 4.39(i) for details. In addition, if you use the viticultural area name on a wine label in a context other than an appellation of origin, the general prohibitions against misleading representation in 27 CFR part 4 apply.

Trinity Lakes Petition

TTB has received a petition from Keith Groves of Alpen Cellars proposing a new American viticultural area to be called ''Trinity Lakes.'' The proposed viticultural area is in Trinity County, in northwest California. It encompasses two man-made reservoirs, Trinity Lake and the adjoining but smaller Lewiston Lake to its south, and a portion of the Trinity River basin below Lewiston Dam. According to the petition, the proposed area covers about 96,000 acres, of which 18%, or 17,285 acres, is lake surface water, while 1.5%, or 1,440 acres, is land suitable for viticulture. Currently, 30 acres are planted vineyards. Rugged, steep, timbered ridges and narrow agricultural valleys characterize the proposed area. The lakes' daytime cooling and nighttime warming influences moderate the agricultural valleys' climate.

Name Evidence

The majority of the proposed Trinity Lakes viticultural area is located within the Trinity Lake unit of the Whiskeytown-Shasta-Trinity National Recreation Area. This unit includes both Trinity Lake and the smaller Lewiston Lake and, according to the petitioner, the region surrounding both lakes is commonly known as the Trinity Lakes area. The petitioner provided current photographs of road signs displaying the Trinity Lakes name as a reference for both Trinity and Lewiston Lakes. In Weaverville, Trinity Lakes Boulevard is the name used for California 3, a major highway.

A letter, dated December 13, 2002, from Mr. David Steinhauser, president of the Trinity County Chamber of Commerce, fully supports this viticultural proposal. He writes that the name ''Trinity Lakes'' is used to refer to the lake areas of Trinity and Lewiston Lakes.

Created in the early 1960s, the larger man-made lake was originally named Clair Engle Lake. The petitioner states, however, that area residents have historically referred to the lake as, and prefer the name of, Trinity Lake. The petitioner notes that a grassroots movement sought to change the lake's name and mentions that Clair Engle Lake road signs often disappeared shortly after being posted. A 1997 Trinity Journal news article, included in the petition, spoke of U.S. Senator Barbara Boxer's support for the effort to have the lake re-named. Congress and the President made the change official in September 1997, with the passage and approval of Public Law 105–44, which renamed the reservoir Trinity Lake. The current California AAA road map and USGS topographic maps use the Trinity Lakes name.

Boundary Evidence

The proposed Trinity Lakes viticultural area was viticulturally developed only after the completion of the two man-made lakes in the early 1960s as the climate-moderating lake effect on the surrounding valleys provided an opportunity to grow wine grapes. The petitioner states that in 1981 a small vineyard was planted at the north end of Trinity Lake. It became a bonded winery in 1984. There are currently four vineyards, encompassing 30 acres, producing wine grapes within the proposed viticultural area.

The proposed Trinity Lakes viticultural area is in Trinity County, California. The proposed area is irregular in shape, generally running from northeast to southwest, and surrounds Trinity Lake, the smaller Lewiston Lake to the south of Trinity Dam, and a portion of the Trinity River basin downstream of Lewiston Dam. The majority of the proposed area is within the Trinity Lake unit of the Whiskeytown-Shasta-Trinity National Recreation Area.

The boundary of the proposed viticultural area begins north of Carrville at Derrick Flat, runs east across the Trinity River, continues south and southwest past Trinity and Lewiston dams and the town of Lewiston, and crosses the Trinity River near the mouth of Neaman Gulch. The boundary then runs north and northeast back past the two dams and the town of Trinity Center, returning to the beginning point at Derrick Flat. A list of the approved U.S.G.S. maps, used for determining the boundary of the proposed area, is located in paragraph (b) of the proposed rule below.

The boundaries of the proposed Trinity Lakes viticultural area are discussed in detail in paragraph (c) of the proposed rule shown below in this notice.

Growing Conditions/Geographical Features

The petitioner indicates that rugged, steep, timbered ridges dropping into Trinity and Lewiston lakes and the Trinity River basin characterize the area's topography. The Bureau of Land Reclamation states that Trinity Lake's surface covers 16,535 acres while Lewiston Lake covers 750 acres, for a total of 17,285 acres of lake surface water. The filling of the lakes has left small, narrow valleys around the lakes, which are suitable for viticulture.

The large surface area of the two lakes moderates the proposed viticultural area's climate, bringing cooler days and warmer nights to the narrow valleys and the Trinity River basin. The petition cites a 70-year local resident's claim that there is less snow and sub-freezing weather and more fog than before the lakes' creation. This provides, according to the petitioner, a uniquely situated

and moderated grape-growing region. Other potential grape growing areas, located further from the lakes and outside the proposed area, have a similar mountainous climate, but no moderating lake influence.

The petition indicates the agricultural soils of the proposed viticultural area are on well-drained alluvial fans in narrow valleys on stream terraces. The petitioner states that this contrasts with surrounding Trinity County areas, which have wider valley floors and deeper soils with higher clay content.

Boundary Description

The proposed viticultural area is located in Trinity County in northwest California. The boundary encompasses Trinity Lake and Lewiston Lake, both within the Trinity Lake unit of the Whiskeytown-Shasta-Trinity National Recreation Area, and a portion of the Trinity River basin below Lewiston Dam.

Maps

The petitioner submitted the required United States Geological Survey (USGS)-approved required maps. See the list of maps in the proposed regulation below.

Public Participation

Comments Sought

We request comments from anyone interested. Please support your comments with specific information about the proposed area's name, growing conditions, or boundaries. All comments must include your name and mailing address, reference this notice number, and be legible and written in language acceptable for public disclosure.

Although we do not acknowledge receipt, we will consider your comments if we receive them on or before the closing date. We will consider comments received after the closing date if we can. We regard all comments as originals.

Confidentiality

We do not recognize any submitted material as confidential. All comments are part of the public record and subject to disclosure. Do not enclose in your comments any material you consider confidential or inappropriate for disclosure.

Submitting Comments

You may submit comments in any of four ways:

- *By mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *By facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—
  (1) Be on 8.5-by 11-inch paper;
  (2) Contain a legible, written signature; and
  (3) Be five or less pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.
- *By e-mail:* You may e-mail comments to *nprm@ttb.gov.* Comments transmitted by electronic-mail must—
  (1) Contain your e-mail address;
  (2) Reference this notice number on the subject line; and
  (3) Be legible when printed on 8.5-by 11-inch paper.
- *By online form:* We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm.* Select ''Send comments via e-mail'' under this notice number.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Disclosure

You may view copies of the petition, the proposed regulation, the appropriate maps, and any comments received by appointment at our library, 1310 G Street, NW., Washington, DC 20005. You may also obtain copies at 20 cents per 8.5-x 11-inch page. Contact our librarian at the above address or telephone 202–927–8210 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and the comments received on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Reference Library. To access the online copy of this notice, visit *http://www.ttb.gov/alcohol/rules/index.htm* and select the ''View Comments'' link under this notice number to view the posted comments.

Regulatory Analyses and Notices

Paperwork Reduction Act

We propose no requirement to collect information. Therefore, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, and its implementing regulations, 5 CFR part 1320, do not apply.

Regulatory Flexibility Act

We certify that this proposed regulation, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

The principal author of this document is Tim DeVanney, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

For the reasons discussed in the preamble, we propose to amend Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

2. Subpart C is amended by adding § 9.__ to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.__ Trinity Lakes.

(a) The name of the viticultural area described in this section is ''Trinity Lakes''.

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the Trinity Lakes viticultural area are eleven 1:24,000 Scale USGS topographic maps. They are titled:

(1) Carrville, Calif. Provisional Edition 1986;

(2) Whisky Bill Peak, Calif. Provisional Edition 1986;

(3) Damnation Peak, Calif. Provisional Edition 1982;

(4) Trinity Center, Calif. Provisional Edition 1982;

(5) Papoose Creek, Calif. Provisional Edition 1982;

(6) Trinity Dam, Calif. Provisional Edition 1982;

(7) Lewiston, Calif. Provisional Edition 1982;

(8) Weaverville, Calif. Provisional Edition 1982;

(9) Rush Creek Lakes, Calif. Provisional Edition 1982;

(10) Siligo Peak, Calif. Provisional Edition 1982; and

(11) Covington Mill, Calif. Provisional Edition 1982.

(c) *Boundaries.* The proposed viticultural area is located in Trinity County in northern California. The boundary encompasses Trinity Lake and Lewiston Lake, both within the Trinity Lake unit of the Whiskeytown-Shasta-Trinity National Recreation Area, and a portion of the Trinity River basin below Lewiston Dam.

(1) The beginning point is on the Carrville, California quadrangle map on township line T38N/T37N at the northwest corner of section 5, T37N/R7W, near the Trinity River at Derrick Flat;

(2) From the beginning point, follow township line T38N/T37N due east to the northeast corner of section 5, T37N/R7W;

(3) Proceed due south on the eastern boundary of sections 5, 8, 17, and 20 to the northwest corner of section 28, T37N/R7W, near Snow Gulch;

(4) Follow the northern boundary of section 28, T37N/R7W, due east to the section's northeast corner;

(5) Continue due south on the eastern boundary of sections 28 and 33, T37N/R7W, to township line T37N/T36N at the northeast corner of section 4, T36N/R7W;

(6) Proceed due east on township line T37N/T36N onto the Whisky Bill Peak, California quadrangle map to the R7W/R6W range line at the southwest corner of section 31, T37N/R6W, near the East Fork of the Trinity River;

(7) Follow the R7W/R6W range line due north to the northwest corner of section 30, T37N/R6W;

(8) Continue due east along the northern boundary of section 30, T37N/R6W, to the section's northeast corner;

(9) Proceed due south on the eastern boundary of sections 30 and 31, T37N/R6W, and sections 6 and 7, T36N/R6W, and continue onto the Damnation Peak, California quadrangle map to the southeast corner of section 7;

(10) Follow the southern boundary of section 7, T36N/R6W, and section 12, T36N/R7W, due west onto the Trinity Center, California quadrangle map to the northeast corner of section 14, T36N/R7W;

(11) Continue due south along the eastern boundary of sections 14, 23, 26, and 35, T36N/R7W, to the boundary's intersection with township line T36N/T35N at the southeast corner of section 35;

(12) Proceed due west along township line T36N/T35N approximately 0.5 miles to the township line's intersection with the 900-meter contour line;

(13) Follow the meandering 900-meter contour line generally west through sections 35 and 34, T36N/R7W; cross the T36N/T35N township line and continue generally southwest on the contour line around Linton Ridge, through Bridge Gulch, Bragdon Gulch, and around Feeny Ridge; cross onto the Papoose Creek, California quadrangle map and continue southwesterly to the contour line's first intersection with a line marked ''NAT RECREATION BDY INDEFINITE,'' approximately 2000 feet north of Feeny Gulch;

(14) Continue easterly on the 900-meter contour line over Feeny Gulch; then proceed southwesterly on the meandering contour line across Van Ness Creek, both Bear Gulches, Langdon Gulch, Digger Gulch, around Fairview Ridge, along the northern side of Papoose Arm, and over the North, East and South Forks of Papoose Creek; continue westerly on the contour line along the southern side of Papoose Arm to the contour line's intersection with Little Papoose Creek in section 24, T34N/R8W;

(15) Continue generally west along the meandering 900-meter contour line through sections 24, 23, 14, and 15, T34N/R8W; cross onto the Trinity Dam, California quadrangle map and continue on the contour line through sections 15 and 22; pass back onto the Papoose Creek map and follow the contour line through sections 22, 23, and 22 again; then cross back onto the Trinity Dam map and follow the contour line to its intersection with the southern boundary of section 22, T34N/R8W;

(16) Proceed due west along the southern boundary of section 22 to the northeast corner of section 28, T34N/R8W;

(17) Follow the eastern boundary of sections 28 and 33, T34W/R8W, and section 4, T33N/R8W, due south onto the Lewiston, California quadrangle map, and continue due south on the eastern boundary of sections 4, 9, 16, and 21 to the southeast corner of section 21, T33N/R8W;

(18) Then proceed due west along the southern boundary of sections 21 and 20 to the northeast corner of section 30, T33N/R8W;

(19) Follow the eastern boundary of section 30, T33N/R8W, due south to the section's southeast corner;

(20) Continue due west along the southern boundary of section 30, T33N/R8W, and sections 25 and 26, T33N/R9W, to the northeast corner of section 34, T33N/R9W;

(21) Proceed due south on the eastern boundary of section 34, T33N/R9W, and section 3, T32N/R9W, to the southeast corner of section 3 near Tom Lang Gulch;

(22) Follow the southern boundary of section 3, T32N/R9W, due west onto the Weaverville, California quadrangle map, and continue west along the southern boundary of sections 3, 4, and 5, T32N/R9W, to the southwest corner of section 5;

(23) Then proceed due north along the western boundary of section 5, T32N/R9W, for approximately 0.8 miles to its intersection with the 700-meter contour line;

(24) Follow the 700-meter contour line generally northwest through section 5, T32N/R9W, and then through sections 32, 31, 32 again, 29, and 28, T33N/R9W, to the contour line's intersection with the northern boundary of section 28;

(25) Proceed due east along the northern boundary of section 28 across Limekiln Gulch and China Gulch to the southwest corner of section 22, T33N/R9W;

(26) Follow the western boundary of section 22, T33N/R9W, due north to the section's northwest corner;

(27) Then continue due east along the northern boundary of section 22, T33N/R9W, onto the Lewiston map to the section's northeast corner;

(28) Proceed due north on the western boundary of section 14, T33N/R9W, to the section's northwest corner;

(29) Follow the northern boundary of sections 14 and 13, T33N/R9W, due east to the R9W/R8W range line at the northeast corner of section 13;

(30) Then proceed due north along the R9W/R8W range line onto the Trinity Dam map, and continue along the range line to the southeast corner of section 1, R9W/T34N, near Smith Gulch;

(31) Continue due west along the southern boundary of section 1, T34N/R9W, for approximately 0.3 miles to its intersection with the 900-meter contour line;

(32) Follow the meandering 900-meter contour line generally west over Tannery Gulch and around Tannery Ridge, cross onto the Rush Creek Lakes, California quadrangle map, and continue along the 900-meter contour line to its intersection with Slate Creek in section 4, T34N/R9W;

(33) Using the Rush Creek Lakes and Trinity Dam maps, follow the contour line generally northeast from Slate Creek, crossing Irish Gulch in section 3, T34N/R9W, (crossing back and forth between the two maps three times) to the contour line's intersection with township line T34N/T35N at the

northern boundary of section 3, T34N/R9W, on the Trinity Dam map;

(34) Continue generally northwest on the meandering 900-meter contour line and cross onto the Rush Creek Lakes map in section 34, T35N/R9W; continue northwesterly on the contour line over Cummings Creek, Bear Gulch, Snowslide Gulch, Sawmill Creek, and Van Matre Creek; cross onto the Siligo Peak, California quadrangle map and continue generally northwest on the 900-meter contour line over Middle Creek and Owens Creek to the contour line's intersection with Stuart Fork;

(35) Continue generally southeast on the 900-meter contour line over Fire Camp Creek, Lightning Creek, and Sunday Creek; cross onto the Rush Creek Lakes map and continue generally southeast on the contour line over Elk Gulch and Trinity Alps Creek; cross onto the Trinity Dam map in section 27, T35N/R9W, and proceed easterly along the contour line to its intersection with the eastern boundary of section 27, T35N/R9W;

(36) Continue generally north along the 900-meter contour line through sections 26 and 23, T35N/R9W, cross onto the Covington Mill, California quadrangle map in section 23, T35N/R9W, and continue northerly along the contour line to its intersection with Stoney Creek in the same section;

(37) From Stoney Creek, continue generally south on the 900-meter contour line, cross back onto the Trinity Dam map in section 23, T35N/R9W, and continue southerly on the contour line through sections 23, 26, and 35 to the contour line's intersection with the eastern boundary of section 35, T35N/R9W, near that section's northeast corner;

(38) Continue generally northeast on the meandering 900-meter contour line over Telephone Ridge, Buck Gulch, and Buck Ridge; cross onto the Covington Mill map in section 19, T35N/R8W, and continue northwesterly along the contour line across Mule Creek and Snowslide Gulch in section 13, T35N/R9W; continue on the contour line, cross Little Mule Creek in section 18, T35N/R8W, and continue southeasterly on the contour line to its intersection with a line marked ''TRANS LINE SINGLE WOOD POLES'' in section 20, T35N/R8W;

(39) Continue generally northeast along the 900-meter contour line through sections 20 and 17, T35N/R8W, and cross Strope Creek, Mosquito Gulch, Greenhorn Gulch, Taylor Gulch, Stuart Fork (in section 5, T35N/R8W), and Davis Creek; cross onto the Trinity Center map in section 35, T36/R8W, and continue on the contour line to its intersection with the northern boundary of that section;

(40) Proceed due east along the northern boundary of sections 35 and 36, T36N/R8W, to the R8W/R7W range line at the northeast corner of section 36;

(41) Follow the R8W/R7W range line due north onto the Carrville map and continue along the range line to its intersection with township line T38N/T37N at the northwest corner of section 6, T37N/R7W; and

(42) Proceed due east along township line T38N/T37N and return to the beginning point at the northwest corner of section 5, T37N/R7W.

Signed: December 3, 2003.

Arthur J. Libertucci,

Administrator.

[FR Doc. 03–31052 Filed 12–16–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No.031202301–3301–01; I.D. 111403C]

RIN 0648–AR53

Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes to prohibit shallow longline sets of the type normally targeting swordfish on the high seas in the Pacific Ocean east of 150° W. long. by vessels that are not already prohibited from making such sets under the current regulations for the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (WesPac FMP). This action is intended to protect endangered and threatened sea turtles from the adverse impacts of shallow longline fishing by U.S. longline fishing vessels in the Pacific Ocean and operating out of the west coast instead of Hawaii. This rule would supplement the regulations proposed to implement the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (FMP) that would prohibit shallow longline sets on the high seas in the Pacific Ocean west of 150° W. long. by vessels that would be managed under that FMP. The FMP is currently under review by NMFS and will be approved, disapproved or partially approved in early February 2004. Together, these two regulations are expected to conserve leatherback and loggerhead sea turtles as required under the Endangered Species Act (ESA).

DATES: Comments on the proposed rule must be received or transmitted by facsimile by 5 p.m., Pacific Standard Time, on January 16, 2004. Comments transmitted via e-mail or the Internet will not be accepted.

ADDRESSES: Comments should be sent to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, or by fax (562) 980–4027.

Copies of the FMP, which includes an environmental impact statement (EIS) accompanied by a regulatory impact review (RIR) and an initial regulatory flexibility analysis (IRFA) are available on the internet at *http://www.pcouncil.org/hms/hmsfmp.html* or may be obtained from Daniel Waldeck, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon, 97220–1384, *Daniel.Waldeck@noaa.gov*, (503) 820–2280. This proposed action corresponds to the High Seas Pelagic Longline Alternative 3 in the Council EIS, RIR, and IRFA.

FOR FURTHER INFORMATION CONTACT: Tim Price, NMFS, Southwest Region, Protected Resources Division, (562) 980–4029.

SUPPLEMENTARY INFORMATION: All species of sea turtles that are known to interact with U.S. longline vessels in the Pacific Ocean are listed as either endangered or threatened under the ESA. The leatherback (*Dermochelys coriacea*) sea turtle is listed as endangered. The loggerhead (*Caretta caretta*), olive ridley (*Lepidochelys olivacea*), and green (*Chelonia mydas*) sea turtles are listed as threatened, except for populations of olive ridleys on the Pacific coast of Mexico and green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered. Under the ESA and its implementing regulations (50 CFR 223.205), taking endangered and threatened sea turtles, even incidentally, is prohibited, with exceptions identified in 50 CFR 223.206. The incidental taking of an endangered species of wildlife within the United States, U.S. territorial sea, or high seas is prohibited by section 9(a)(1)(B) and (C) of the ESA. The incidental take of endangered species may be authorized only by an incidental take statement issued under

section 7 of the ESA or an incidental take permit issued under section 10 of the ESA. The incidental take of threatened species may be authorized only by an incidental take statement in a biological opinion issued pursuant to section 7 of the ESA, an incidental take permit issued pursuant to section 10 of the ESA, or regulations under section 4(d) of the ESA. Pursuant to section 11(f) of the ESA, the Secretary of Commerce is authorized to promulgate regulations to enforce the requirements of the ESA.

West Coast-Based Pelagic Longline Fishery

Since the early 1990s, a number of longline vessels targeting swordfish and, possibly, tuna, although no sets have been documented, have unloaded their catch and re-provisioned in California ports. Participation has declined from a peak of 43 vessels participating in the fishery in 2001 and 38 vessels in 2000, to approximately 28 vessels in 2002 and an estimated 20–25 vessels in 2003. Almost all of these vessels had some history of fishing in the Hawaii-based longline fishery. Participants in the West Coast-based pelagic longline fishery often fish more than 1,000 nautical miles (1,900 km) offshore and are generally prohibited by state regulations from fishing within 200 nautical miles (370 km) of the West Coast. Longline vessels registered in West Coast states are allowed to land longline caught fish into West Coast ports provided that fishing takes place outside the 200–mile Exclusive Economic Zone. All documented longline fishing by West Coast vessels in recent years has been out of California ports.

NMFS began placing observers aboard West Coast-based pelagic longline fishing vessels on a voluntary basis in October 2001 and began a mandatory observer program in August 2002 under the Marine Mammal Protection Act. From October 2001 through May 2003, 280 sets were observed on 13 trips, documenting a total of 27 sea turtle interactions, consisting of two leatherback sea turtles, 24 loggerhead sea turtles, and one olive ridley sea turtle. All of the observed sea turtles were released alive.

High Seas Fishing Compliance Act

On March 22, 1996, NMFS issued an interim final rule (61 FR 11751) to implement the High Seas Fishing Compliance Act of 1995 (HSFCA). The purpose of the HSFCA is to license U.S. vessels fishing on the high seas and to implement the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. The West Coast-based pelagic longline vessels are permitted under the HSFCA. In May 2001, the Center for Biological Diversity and Turtle Island Restoration Network filed a complaint with the U.S. District Court for the Northern District of California alleging that NMFS unlawfully failed to conduct an ESA section 7 consultation on the West Coast-based pelagic longline fishery when issuing the HSFCA permits for this fishery. On November 27, 2001, the court denied the plaintiffs' motion and ruled in favor of NMFS. In response, the plaintiffs appealed the decision to the Ninth Circuit Court of Appeals in December 2001. On August 21, 2003, the Ninth Circuit Court ruled that NMFS is required to engage in consultation under section 7 of the ESA regarding the effects on sea turtles and other listed species when issuing fishing permits under the HSFCA to West Coast-based pelagic longline fishing vessels. Consequently, the effects of issuing of HSFCA permits that authorize fishing by West Coast-based pelagic longline vessels will be considered during the section 7 consultation that is now being conducted. Furthermore, this proposed rule, if adopted, would be the vehicle by which NMFS imposes conditions and restrictions on the HSFCA permits (16 U.S.C. 5503(d)) held by West Coast-based pelagic longline vessels to ensure the fishery complies with the ESA.

Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species

On October 31, 2003, the Pacific Fishery Management Council (Council) submitted the FMP to NMFS for review. After a public comment process, NMFS will approve, disapprove, or partially approve the FMP, and then implement those portions that were approved (if any). The FMP includes management measures for the West Coast-based pelagic longline fishery that would prohibit shallow longline sets of the type normally used to target swordfish on the high seas in the Pacific Ocean west of 150° W. long. by vessels managed under the new FMP. The FMP would not prohibit West Coast-based pelagic longline vessels from targeting swordfish in waters east of 150° W. long. It should be noted that Hawaii-based longline vessels are currently prohibited from targeting swordfish in this area, pursuant to regulations under the WesPac FMP. Those regulations will be vacated on April 1, 2004, by Court Order. NMFS will propose regulations with any necessary restrictions or prohibitions for vessels operating under the WesPac FMP. The regulations that will be proposed under the WesPac FMP will be subject to NEPA review and ESA Section 7 consultation.

In addition, to conserve sea turtles, the FMP would require West Coast-based pelagic longline vessels to have on board and to use dip nets, line cutters, and wire or bolt cutters capable of cutting through the vessel's hooks to release sea turtles with the least harm possible to the sea turtles. NMFS issued a proposed rule to implement the FMP on December 10, 2003 (68 FR 68834).

Estimated Sea Turtle Take Levels

There are two sets of data from which rates of sea turtle interactions in the West Coast-based pelagic longline fishery could be derived: (1) Data from observers on Hawaii-based longline vessels operating in the same areas as the West Coast-based pelagic longline vessels; and (2) data from observers on West Coast-based pelagic longline vessels. Vessels in the West Coast-based pelagic longline fishery fish in the same manner, and frequently in the same area, as vessels that had been targeting swordfish in the Hawaii-based longline fishery. Because of the strong similarities between these two fisheries and the limited amount of observer data available for the West Coast-based pelagic longline fleet alone, NMFS concluded that using the combined observer data from the Hawaii-based and West Coast-based longline fleets for fishing east of 150° W. long. is more likely to be representative of the sea turtle interaction rates that can be expected to occur throughout the West Coast-based pelagic longline fishery.

Using the combined observer data, NMFS developed estimates of sea turtle take levels that would result from the West Coast-based pelagic longline fishery under different fishery scenarios. Assuming that the West Coast-based pelagic longline fleet deploys 1.55 million hooks east of 150° W. longitude (the estimated fleet effort in 2002 according to the FMP), NMFS estimates the fishery under the FMP would result in the annual take of 174 loggerhead and 52 leatherback sea turtles. For loggerhead sea turtles, NMFS estimates that 3 may be entangled and no hooking or injury will occur, 74 may be hooked externally or entangled with line left on the animal, 97 may be hooked in the mouth or ingested the hook, and 0 may be released dead. For leatherback sea turtles, NMFS estimates that 0 may be entangled and no hooking or injury will occur, 46 may be hooked externally or entangled with line left on the animal, 6 may be hooked in the mouth or

ingested the hook, and 0 may be released dead. Applying the 27 and 42 percent post-release mortality rates developed by NMFS for sea turtles that have been hooked externally or entangled with line left on the animal and for sea turtles that have been hooked in the mouth or ingested the hook, preliminary estimates indicate that the West Coast-based pelagic longline fishery under the management measures proposed by the Council would result in the annual mortality of 61 loggerhead sea turtles and 15 leatherback sea turtles.

Impacts to Loggerhead and Leatherback Sea Turtle Populations

The estimated takes and mortalities of loggerhead and leatherback sea turtles by the West Coast-based pelagic longline fishery under the proposed FMP exceed those authorized under the ESA in other Pacific fisheries. As an example, the agency's incidental take statement in the 2002 biological opinion on the western Pacific pelagic fisheries authorized takes in the Hawaii-based longline fishery of only 8 leatherback and 14 loggerhead turtles per year. In contrast, as calculated above, at the estimated fishing level of 2002, longline fishing for swordfish east of 150 W long. would be expected to result in the take of 52 leatherback turtles and 174 loggerhead turtles.

As required under the ESA, NMFS is now conducting a formal consultation under section 7 of the ESA on the Council's FMP in order to determine if fishing activities proposed under the FMP are likely to jeopardize the continued existence of endangered or threatened species under NMFS' jurisdiction. Based on the severe decline and lack of recovery in loggerhead and leatherback sea turtles populations, and the extensive analyses conducted by the agency on existing threats to these populations, NMFS is concerned that the take levels expected to occur in the West coast-based pelagic longline fishery under the Council's FMP might be likely to jeopardize the continued existence of these species. If the section 7 consultation on the Council's FMP concludes that the action is likely to jeopardize the continued existence of endangered or threatened sea turtle species, then NMFS will be unable to authorize the expected amount of incidental take by the West Coast-based pelagic longline fishery under the Council's FMP.

Until NMFS completes a full analysis of the impacts of the Council's FMP on endangered or threatened sea turtles, NMFS cannot determine what measures will be included in the final regulations of this fishery in order to conserve loggerhead and leatherback sea turtles. The consultation could conclude that the Council's FMP is not likely to jeopardize sea turtle populations. On the other hand, the consultation could conclude that the Council's FMP is likely to jeopardize the continued existence of sea turtle populations and include a reasonable and prudent alternative (RPA) that would mitigate sea turtle takes to avoid the likelihood of jeopardy. Mitigation measures may depend on the severity of the impact to sea turtle populations and could include effort reduction or a complete prohibition of swordfish fishing. The FMP contains framework procedures by which adjustments in conservation and management measures may be made through regulatory amendments if available information and conditions warrant it, and the RPA could provide a basis for such action. However, promulgation of regulations to implement the RPA could take several months to complete and leave fishers in a very difficult situation in the interim because they would lack an exemption from the take prohibition specified in section 9 of the ESA.

Given that NMFS anticipates an annual mortality of 61 loggerhead sea turtles and 15 leatherback sea turtles as a result of the West Coast-based pelagic fishery, NMFS is proposing to implement restrictions in the West Coast-based pelagic longline fishery in waters east of 150° W. long. to conserve leatherback and loggerhead sea turtles as required under the ESA. Under this rule, West Coast-based pelagic longline vessels would be prohibited from making shallow longline sets on the high seas in the Pacific Ocean east of 150° W. long. The prohibition of shallow longline sets west of 150° W. long. proposed under the FMP would also apply, if the FMP is approved and implemented by NMFS. The regulatory text of this proposed rule might be revised, as necessary, to comport with the RPA , if any, of the section 7 consultation on the FMP. As a result, NMFS is requesting comments on this rulemaking and any alternative management regime to conserve sea turtles.

There are several other factors that may ultimately affect the management of the West Coast-based pelagic longline fishery. As noted, the FMP contains framework procedures by which adjustments in conservation and management measures may be made through regulatory amendments if warranted by available information and conditions. Further, the FMP recognizes a potential for exempted fishing permits that allow testing of alternative gear and/or techniques that might demonstrate that longline fishing can be conducted in a manner that will not adversely affect protected species or that will result in lower levels of bycatch. NMFS is conducting research in the Atlantic Ocean into gear and techniques that might allow longline fishing for swordfish or other species with less risk to sea turtles. Preliminary results from this research indicate that the use of 18/0 circle hooks with no offset and squid bait may reduce loggerhead and leatherback sea turtle capture rates by more than 80 and 50 percent, respectively. The use of 18/0 circle hooks with a 10 percent offset and mackerel type bait may reduce loggerhead and leatherback sea turtle capture rates by more than 90 and 65 percent, respectively. Additional treatments are being tested using 20/0 circle hooks and mackerel which also show promise with possible significant reductions in sea turtle catch rates. Large circle hooks have also been shown to reduce the rate of swallowed hooks which may decrease post-hooking mortality resulting from internal injuries. The best treatments for reducing the capture of loggerhead and leatherback sea turtles cannot be identified until the researchers analyze the data and their significance. However, based on these promising results, NMFS is considering allowing the use of circle hooks and mackerel type bait to target swordfish and is soliciting public comment on this alternative.

A similar experiment is planned for the central Pacific Ocean, pending completion of an Environmental Impact Statement. The results of these experiments will be provided to the Council. NMFS anticipates that the Council will review information as it is generated to consider possible changes in longline fishing regulations and may propose changes. NMFS will consider any such proposals, which could result in lessening the burden to fishermen while maintaining adequate protection of sea turtles under these regulations. NMFS will fully support the Council in examination and selection of appropriate protective measures. However, the need for protection of sea turtles in the near term warrants the use of Secretarial authority under the ESA (as well as under the HSFCA, 16 U.S.C. 5503(d)) to promulgate regulations in this fishery to ensure the fishery complies with the ESA.

Classification

NMFS has determined that this proposed rule is consistent with the ESA and other applicable laws.

The impacts of this proposed action and alternatives are evaluated in accordance with the National Environmental Policy Act as the High Seas Pelagic Longline Alternative 3 in the EIS prepared by the Council (see **ADDRESSES**).

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

This proposed rule does not contain collection-of-information requirements subject to the Paperwork Reduction Act.

The Council prepared a combined RIR/IRFA that describes the economic impacts of the Council's FMP, which includes an analysis of this proposed action as High Seas Pelagic Longline Alternative 3. The RIR/IRFA is available from the Council (see **ADDRESSES**). A summary of the RIR/IRFA follows:

The **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this proposed rule provide a description of the action, why it is being considered, and the legal basis for this action. That information is not repeated here.

A fish-harvesting business is considered a ''small'' business by the Small Business Administration (SBA) if it has annual receipts not in excess of $3.5 million. For related fish-processing businesses, a small business is one that employs 500 or fewer persons. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $5.0 million.

This regulation imposes controls on the fleet of approximately 22–25 longline vessels that fish principally out of California ports for swordfish and associated species. A total of 28 vessels participated in the West-coast-based pelagic longline fishery during 2002, down from a peak of 43 vessels in 2001 and from 38 vessels in 2000. All of these vessels would be considered small businesses under the SBA standards. Therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action. For most of the longline vessels involved, swordfish caught by longline gear makes up more than half the total revenue from fish sales. Table 1 presents total ex-vessel revenue and dependence on swordfish landings for the 38 West coast-based vessels with high seas pelagic longline swordfish landings in 2001, broken down by the number of vessels with varying percent dependence on swordfish. NMFS believes these data are representative of 2002 as well.

TABLE 1: TOTAL EX-VESSEL REVENUE AND DEPENDENCE ON SWORDFISH FOR 38 WEST-COAST-BASED VESSELS WITH HIGH SEAS PELAGIC LONGLINE LANDINGS IN 2001.

Number of Vessels	Dependence on High Seas Longline Caught Swordfish (category of swordfish revenue/ total revenue)	Average Total Ex-vessel Revenue ($/vessel)	Average Percent Longline Swordfish (swordfish revenue/ total revenue)
4	< 50%	$228,951	32.57%
3	50 - 70%	$170,067	60.99%
3	> 70 - 80%	$222,089	76.66%
4	> 80 - 90%	$258,335	86.77%
13	> 90 - 95%	$182,211	93.26%
11	> 95%	$219,885	97.57%

The impacts of alternatives to this proposed action were evaluated in the Council's RIR/IRFA. The Council considered three alternatives for managing the high seas pelagic longline fishery. Under Alternative 1 (Status Quo), the FMP would not impose regulations on this fishery. The Council assumes that in the short-run, the fishery would continue to operate as it currently does, earning average annual profits of $6.7 million. However, in the long-run, the Council expected that regulations would be established under other authorities , such that over time the fishery would disappear, and long-run profits would become zero as the fishery was phased out.

Alternative 2 (Council Proposed Action) would maintain the fishery, allowing fishermen to continue targeting swordfish east of 150° W. long., but impose some additional costs on longliners targeting swordfish on the high seas. Short-run average annual profits would remain at $6.7 million, minus the cost of adopting turtle and sea bird mitigation measures, accommodating observers, and using monitoring equipment. NMFS is developing guidelines for the design and performance standards of equipment required for the handling of incidentally caught sea turtles. The required tools can be purchased, for an estimated maximum cost of $2,000 per vessel, but vessel owners may also be able use the guidelines to fabricate the equipment with lower cost materials. Vessel owners do not pay an observer's salary, but do bear costs associated with providing room and board for the observer. Additionally, carrying an observer may increase the cost of insurance that the vessel carries. Vessel monitoring equipment costs approximately $2,000 to purchase and $500 to install, and would require annual maintenance estimated to cost approximately 20 percent of the purchase price per year. However, despite the equipment costs, the fishery would be able to land swordfish, and so over 25 years, the present value of long-run profits relative to the status quo would range between $78 and $105 million, using 7 percent and 4 percent discount rates, respectively.

Alternative 3, which is the same as this proposed action, would prohibit fishermen from targeting swordfish east of 150° W. long. Swordfish are the target species of this fishery. This would effectively eliminate all but incidental swordfish landings and the short- and long-run profits currently associated with landing swordfish ($6.7 million, and $78 million to $105 million, respectively), at least until alternative fishing opportunities are identified. This loss assumes that all vessels in this fishery cease fishing, although longline fishing targeting tuna out of West Coast ports or Hawaii may be an alternative. However, current participants in the fishery indicate that without being able to target swordfish, the high seas longline fishery originating from West Coast ports would cease to exist.

Although no fishery interactions with the endangered short-tailed albatrosses (*Phoebastria albatrus*) have been recorded to date, on September 22, 2003, NMFS initiated section 7 consultation under the ESA with the U.S. Fish and Wildlife Service for this species. On September 24, 2003, formal

consultation with NMFS Protected Resources under the Endangered Species Act was initiated on the fisheries managed under the FMP, including the fisheries now permitted under the HSFCA.

Based on the conclusions of the consultation, NMFS will determine if fishing activities under the FMP are likely to jeopardize the continued existence of endangered or threatened species under NMFS' jurisdiction. The results of this consultation will determine whether NMFS needs to implement the regulations outlined in this proposed rule in order to meet the requirements of the ESA. Based on analyses conducted during previous biological opinions, NMFS is concerned that the amount of take estimated to occur if fishing were managed under the Council's FMP might be likely to jeopardize the continued existence of leatherback and loggerhead sea turtles. Therefore, NMFS is proposing to implement a prohibition on shallow sets by West Coast-based pelagic longline vessels that has proven effective at reducing sea turtle encounters in the Hawaii-based pelagic longline fishery and the Atlantic pelagic longline fishery.

In keeping with the intent of Executive Order 13132 to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, NMFS is conferring with the States of California, Oregon, and Washington regarding this proposed rule. NMFS intends to continue engaging in informal and formal contacts with these States during the implementation of this proposed rule and review of the FMP.

List of Subjects

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: December 11, 2003.

Rebecca Lent,

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

For the reasons set out in the preamble, 50 CFR parts 222 and 223 are proposed to be amended to read as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701; § 222.403 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 222.102, the following definitions are added alphabetically, to read as follows:

§ 222.102 Definitions.

* * * * *

Basket-style longline gear means a type of longline gear that is divided into units called *baskets*, each consisting of a segment of main line to which 10 or more branch lines with hooks are spliced. The mainline and all branch lines are made of multiple braided strands of cotton or of nylon or other synthetic fibers impregnated with tar or other heavy coatings that cause the lines to sink rapidly in seawater.

* * * * *

Pelagic longline gear means longline gear consisting of a main line that is suspended horizontally in the water column and not stationary or anchored, and from which dropper lines with hooks (gangions) are attached.

* * * * *

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

3. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9)

4. In § 223.206, a new paragraph (d)(9) is added to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(9) *Restrictions applicable to Pacific pelagic longline vessels.* In addition to the general prohibitions specified in § 600.725 of Chapter VI, it is unlawful for any person who is not operating under a western Pacific longline permit under § 660.21 to do any of the following:

(i) Direct fishing effort toward the harvest of swordfish (*Xiphias gladius*) using longline gear deployed on the high seas of the Pacific Ocean north of the equator (0° lat.).

(ii) Possess a light stick on board a longline vessel when fishing on the high seas of the Pacific Ocean north of the equator.

(iii) Possess a light stick on board a longline vessel on the high seas of the Pacific Ocean north of the equator. A light stick as used in this paragraph is any type of light emitting device, including any flourescent glow bead, chemical, or electrically powered light that is affixed underwater to the longline gear.

(iv) Possess more than 10 swordfish on board a longline vessel from a fishing trip where any part of the trip included fishing in the Pacific Ocean north of the equator (0° lat.).

(v) An operator of a longline vessel subject to this section may land or possess no more than 10 swordfish from a fishing trip where any part of the trip included fishing east of 150° W. long. and north of the equator (0° N. lat.).

(vi) Fail to employ basket-style longline gear such that the mainline is deployed slack when fishing on the high seas of the Pacific Ocean north of the equator.

(vii) When a conventional monofilament longline is deployed by a vessel subject to this section, no fewer than 15 branch lines may be set between any two floats. Vessel operators using basket-style longline gear must set a minimum of 10 branch lines between any 2 floats when fishing in waters north of the equator.

(viii) Longline gear deployed by a vessel subject to this section must be deployed such that the deepest point of the main longline between any two floats, i.e., the deepest point in each sag of the main line, is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface.

* * * * *

[FR Doc. 03–31140 Filed 12–16–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 242

Wednesday, December 17, 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

Natural Resources Conservation Service

Marrowbone Creek Watershed Dam No. 1, Henry County, VA

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Marrowbone Creek Watershed Structure No. 1, Henry County, Virginia.

FOR FURTHER INFORMATION CONTACT: M. Denise Doetzer, State Conservationist, Natural Resources Conservation Service, 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229. Telephone (804) 287–1691, E-mail *Denise.Doetzer@va.usda.gov.*

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, M. Denise Doetzer, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is continued flood prevention. The planned works of improvement include upgrading an existing floodwater retarding structure.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the U.S. Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting M. Denise Doetzer at the above number.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires inter-government consultation with State and local officials.)

M. Denise Doetzer,

State Conservationist.

[FR Doc. 03–31131 Filed 12–16–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

[Docket No. 031203305–3305–01]

Privacy Act New System of Records

AGENCY: Department of Commerce.

ACTION: Notice of a New Privacy Act System of Records, COMMERCE/ITA–7, ''Export.gov Community Registration''.

SUMMARY: This notice announces the Department's proposal for a new system of records under the Privacy Act. The system is entitled ''Export.gov Community Registration''. The International Trade Administration is creating a new system of records that would enable visitors to Export.gov to register for the site in order to access specific types of market research and counseling services, and to have this basic information automatically populate web forms and registrations across the Trade Promotion Coordination Committee web domains that comprise or directly link to Export.gov. The registration database (system of records) would be accessible by other partner agencies and would act as a common, multi-agency registration database. The registrants would have the ability to opt-in to receive e-mailed updates of upcoming trade leads, trade events, new market reports, foreign standards notifications, and/or whether they wanted to be contacted for exporter assistance. This system of records is designed to: (1) reduce the amount of time required for exporters to fill out numerous online forms and export documentation; and (2) enable exporters to opt to receive information of interest to better utilize the products and services available through the federal government.

DATES: *Comment Date:* To be considered, written comments must be submitted on or before January 16, 2004.

Effective Date: Unless comments are received, the new system of records will become effective as proposed on the date of publication of a subsequent notice in the **Federal Register**.

ADDRESSES: Comments may be mailed to Gordon Keller, U.S. Department of Commerce, International Trade Administration, Room 1850, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Gordon Keller at 202–482–3801.

SUPPLEMENTARY INFORMATION: Information collected in this system of records is basic, non-proprietary business and personal contact information. No private or proprietary data will be collected and/or stored by this system.

COMMERCE/ITA–7

SYSTEM NAME:

Export.gov Community Registration.

SYSTEM LOCATION:

System will be housed and hosted in the International Trade Administration, Room 1842 1401 Constitution Avenue, NW., Washington, DC 20230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. exporting companies and/or individuals involved in an ongoing exporting concern, U.S. private citizens, students and/or researchers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Company name, contact person's name, contact person's title, company address, company telephone number, company Web address, U.S. or non-U.S. organization, e-mail address, login name and password, fax number, company type, number of employees, product/service description, estimated annual sales, industry, the country(ies) of interest, yes/no option to be contacted with more information, and similar identifying information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 1512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) A record from this system of records may be disclosed to the Trade Promotion Coordination Committee (TPCC) partner agencies trade professionals.

(2) In the event that a system of records maintained by the Department to carry out its functions indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute or contract, or rule, regulation, or order issued pursuant thereto, or the necessity to protect an interest of the Department, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or contract, or rule, regulation or order issued pursuant thereto, or protecting the interest of the Department.

(3) A record from this system of records may be disclosed in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

(4) A record in this system of records may be disclosed to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

(5) A record in this system of records may be disclosed to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

(6) A record in this system of records may be disclosed to a contractor of the Department having need for the information in the performance of the contract, but not operating a system of records within the meaning of 5 U.S.C. 552a(m).

(7) A record from this system of records may be disclosed to the Administrator, General Services, or his designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.* GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in computer processible storage media, such as computer hard drives, magnetic disc, tape, in file folders, and on paper lists and forms.

RETRIEVABILITY:

Records are submitted to the system by registrants to *Export.gov*. Each registrant chooses a unique username and password that enables the registrant to retrieve and edit their record only. Registrant records are transferred (or retrieved) from the central database by participating Federal Trade Promotion Coordinating Committee Agencies (TPCC) via Simple Object Access Protocol (SOAP). The security of the data transmissions between agencies are protected through the use of an encryption key shared between the International Trade Administration and its partner agency(ies).

SAFEGUARDS:

Records and servers are located in a locked, climate controlled server room within the Department of Commerce. Access to this room and server is limited to those whose official duties require access.

RETENTION AND DISPOSAL:

All records shall be retained and disposed of in accordance with National Archives and Records Administration regulations (36 CFR Subchapter B—Records Retention); Departmental directives and comprehensive records schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Same as listed under **SYSTEM LOCATION.**

NOTIFICATION PROCEDURE:

Information may be obtained from: Chief Information Office, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4800, Washington, DC 20230.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR part 4b. Use address contained in the notification section.

RECORD SOURCE CATEGORIES:

Information in this system is provided by the individual on whom the record is maintained.

Dated: December 11, 2003.

Brenda Dolan,

Department of Commerce, , Freedom of Information/Privacy Act Officer.

[FR Doc. 03–31095 Filed 12–16–03; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Award for Excellence in Economic Development—Request for Comments

ACTION: Proposed Information Collection, comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 350(C)(2)(A)).

DATES: Written comments must be submitted on or before February 17, 2004.

ADDRESSES: Direct all written comments to Diana Hyneck, Departmental Forms Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Nat Wienecke, Deputy Assistant Secretary, Congressional Liaison, Program Research and Evaluation, Room 7824, Washington, DC 20230, telephone: (202) 482–5631.

SUPPLEMENTARY INFORMATION

I. Abstract

EDA provides a broad range of economic development assistance to help distressed communities design and implement effective economic development strategies. Part of this assistance includes disseminating

information about best practices and encouraging collegial learning among economic development practitioners. EDA has created the Award for Excellence in Economic Development to recognize outstanding economic development activities of national importance. In order to make Awards for Excellence in Economic Development, EDA must collect two kinds of information: (a) information identifying the nominee and contacts within the organization being nominated and (b) information explaining why the nominee should be given the award. The information will be used to determine those applicants best meeting the preannounced selection criteria. Use of a nomination form standardizes and limits the information collected as part of the nomination process. This makes the competition fair and eases any burden on applicants and reviewers alike. Participation in the competition is voluntary. The award is strictly honorary.

II. Method of Collection

As part of the development of the Award for Excellence in Economic Development, EDA has designed a short nomination form. Nominees will submit the form to EDA, where they will be screened for completeness and forwarded to the Selection Panel for review. The information will be used by the Selection Panel to determine those applicants best meeting the pre announced selection criteria. The Selection Panel will include: three representatives of the economic development practitioner community; one member from academe; three representatives of the Economic Development Administration; and up to two at-large members.

III. Data

OMB Number(s): 0610–0097.
Form Number: Not applicable.
Burden: 150 hours.
Type of Review: Reinstatement of previously-approved collection.
Affected Public: State, local, or tribal government and not-for-profit organizations.
Estimated Number of Respondents: 50.
Estimated Time Per Response: 3 hours.
Estimated Total Annual Burden Hours: 150.
Estimated Total Annual Cost: $11,180.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the equality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques of other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection, they also will become a matter of public record.

Dated: December 12, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–31143 Filed 12–16–03; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–803]

Heavy Forged Hand Tools from the People's Republic of China: Amended Final Results of Antidumping Duty Administration Review in Accordance with Court Decision

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

ACTION: Amended Final Results of Antidumping Duty Administration Review

SUMMARY: On July 28, 2003, the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department's) redetermination on remand of the final results of the seventh administrative review of the antidumping duty orders on heavy forged hand tools from the People's Republic of China. *See Fujian Machinery and Equipment Import & Export Corporation, et al.* v. *United States*, Slip Op. 03–92 (CIT July 28, 2003) (*Fujian II*). Because all litigation has concluded and the injunction has been lifted, we are amending our final results of review.

EFFECTIVE DATE: December 17, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230; telephone:(202) 482–3936.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1999, the Department published a notice of the final results of the seventh administrative review of the antidumping duty orders on heavy forged hand tools from the People's Republic of China. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Final Results and Partial Recission of Antidumping Duty Administrative Reviews*, 64 FR 43659 (August 11, 1999) (*Final Results*). Subsequent to the Department's *Final Results*, the respondent filed a lawsuit with the CIT challenging these results. Thereafter, the CIT issued an Order and Opinion dated September 28, 2001, in *Fujian Machinery and Equipment Import & Export Corporation, et al.* v. *United States*, 178 F. Supp. 2d 1305 (Ct. Int'l Trade 2001) (*Fujian I*), remanding several issues to the Department. Among the issues remanded in *Fujian I*, the CIT ordered the Department to issue separate rates for Fujian Machinery Import & Export Corporation (FMEC) and Shandong Machinery Import & Export Corporation (SMC). *See Fujian I*, 178 F. Supp. 2d at 1336. Pursuant to *Fujian I*, the Department filed its remand results on February 20, 2002, issuing separate rates for FMEC and SMC. The CIT reviewed and affirmed the Department's final results of redetermination in *Fujian Machinery and Equipment Import & Export Corporation, et al.* v. *United States*, Slip Op. 03–92 (CIT July 28, 2003) (*Fujian II*). On August 6, 2003, we published a notice of court decision. *See Notice of Decision of the Court of International Trade: Heavy Forged Hand Tools From the People's Republic of China*, 68 FR 46582 (August 6, 2003).

The time period for appealing the CIT's final decision has expired and no party has appealed this decision. Therefore, in accordance with *Fujian II*, and because all litigation has concluded and the injunction has been lifted, we are amending our final results in this matter and we will instruct the U.S. Customs and Border Protection (CBP) to liquidate entries, as appropriate, in accordance with our remand results.

Amendment to Final Results

Pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), there is now a final and conclusive court decision with respect to litigation

for FMEC and SMC, and we are amending the F*inal Results* to reflect the findings of *Fujian II*. We will instruct the CBP to liquidate entries, as appropriate. As a result of the remand determinations, we have assigned FMEC and SMC final weighted-average margins as follows:

Fujian Machinery Import & Export Corporation (FMEC)

hammers/sledges	27.71%
bars/wedges	47.88%
picks and mattocks	98.77%
axes/adzes	18.72%

Shandong Machinery Import & Export Corporation (SMC)

hammers/sledges	27.71%
bars/wedges	47.88%
picks and mattocks	98.77%
axes/adzes	18.72%

Assessment Rates

The Department will determine, and the CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to the CBP within 15 days of publication of these amended final results of review.

Notification

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled 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. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: December 9, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–31128 Filed 12–16–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–504]

Petroleum Wax Candles From the People's Republic of China: Notice of Extension of Time Limit of Final Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce is extending the time limit for the final results of the administrative review of petroleum wax candles from the People's Republic of China (PRC) until no later than March 8, 2004. The period of review is August 1, 2001 through July 31, 2002. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: December 17, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–3148.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1986, the Department of Commerce (the Department) published the antidumping duty order on petroleum wax candles from the PRC (51 FR 30686). On August 6, 2002, the Department published an opportunity to request an administrative review of the order (67 FR 50856) for the period August 1, 2001 through July 31, 2002. The Department received timely requests from Dongguan Fay Candle Co., Ltd. (Fay Candle), a PRC producer and exporter of subject merchandise, and its U.S. importers, TIJID, Inc. (TIJID) (d/b/a DIJIT Inc.), and Palm Beach Home Accents, Inc.(Palm Beach); Wal-Mart Stores, Inc. (Wal-Mart); Qingdao Kingking Applied Chemistry Co., Ltd. (Qingdao Kingking); and petitioner, the National Candle Association (NCA), to conduct an administrative review of the antidumping duty order on petroleum wax candles from the PRC for 108 companies. On September 25, 2002, the Department published its *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Review*, 67 FR 60210. On March 26, 2003, the Department extended the due date for the preliminary results of this review (68 FR 14578). On September 9, 2003, the Department published the preliminary results of this review (68 FR 53109).

Extension of Time Limit for Final Results

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of the final results of an administrative review if it determines that it is not practicable to complete the final results within the statutory time limit of 120 days from the date on which the preliminary results were published. The Department has determined that it is not practicable to complete the final results of this review within the statutory time limit. During the course of this review, numerous issues have been raised, including a possible affiliation between Fay Candle and its U.S. importers and a discrepancy between Qingdao Kingking's reported sales and Customs data, among others. Due to the complexity of the issues involved, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act and section 19 CFR 351.213(h)(1) of the Department's regulations.

Therefore, the Department is extending the time limit for the final results by 60 days (180 days from the date of publication of the preliminary results pursuant to section 19 CFR 351.213(h)(2)), until no later than March 8, 2004 (the calculated due date is March 7, 2004; however, since March 7, falls on a weekend, the due date will fall on the next business day, March 8). This notice is published in accordance with section 751(1)(3)(A) of the Act and section 19 CFR 351.213(h)(2) of the Department's regulations.

Dated: December 2, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–31130 Filed 12–16–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–890]

Initiation of Antidumping Duty Investigation: Wooden Bedroom Furniture from the People's Republic of China

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

EFFECTIVE DATE: December 17, 2003.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3208 and (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

INITIATION OF INVESTIGATION

The Petition

On October 31, 2003, the Department of Commerce (''Department'') received a Petition on imports of wooden bedroom furniture from the People's Republic of China (''China'') (''Petition'') filed in proper form by the American Furniture Manufacturers Committee for Legal Trade (''Committee'') and its individual members and the Cabinet Makers, Millmen, and Industrial Carpenters Local 721 (collectively, ''the Petitioners'') on behalf of the domestic industry and workers producing wooden bedroom furniture. On November 6, 2003 and November 10, 2003, the Department requested clarification of certain areas of the Petition and received responses to both requests on November 12, 2003. On November 12, 2003, Markor International Furniture (Tianjin) Manufacturing Co., (''Markor'') and Lacquer Craft Manufacturing Company, Ltd., (''Lacquer'') submitted comments regarding the industry support for the Petition. On November 13, 2003, the Department received comments from Furniture Brands International, Inc. (''FBI''). On November 20, 2003, the Petitioners amended the Petition to include an additional margin estimate for a product within the scope of the investigation. On November 24, 2003, the Department published a notice in the **Federal Register** extending the twenty-day initiation determination deadline and requesting information from domestic producers of wooden bedroom furniture *See Notice of Request for Information and Extension of Time: Wooden Bedroom Furniture from the People's Republic of China* (''*Extension Notice*'') 68 FR 65875 (November 24, 2003). On November 24, 2003, the Department requested from the Petitioners that certain business proprietary information be made public. On November 28, 2003, the Department received the public version of the business proprietary information requested on November 24, 2003. On December 2, 2003, the Department received additional comments regarding industry support from Markor and Lacquer. Additionally, on December 2, 2003, the Department received comments from the Petitioners regarding opposition to the Petition. On December 3, 2003, the Department received rebuttal comments to Markor's and Lacquer's December 2, 2003 comments from the Petitioners. On December 3, 2003, the Department received comments from the Petitioners regarding the calculation of industry support. On December 4, 2003, the Petitioners amended the Petition adding four certified labor unions as Petitioners. Additionally, on December 4, 2003, FBI submitted comments regarding the calculation of industry support. On December 5, 2003, the Department received comments from Markor and Lacquer. On December 8, 2003, the Department received comments from FBI and Markor and Lacquer. On December 9, 2003 the Department received comments from the Petitioners. Additionally, on December 9, 2003, the Department received a request from the Petitioners that the Department reject numerous submissions submitted earlier in this proceeding in accordance with Section 732(b)(3)(B) of the Tariff Act of 1930, as amended (''the Act''). On December 9, 2003, the Department returned FBI's comments of December 8, 2003. *See Memorandum to the File from Lisa Shishido, Case Analyst, Regarding Wooden Bedroom Furniture from the People's Republic of China*, dated December 9, 2003. We note that in FBI's November 13, 2003 comments and Markor and Lacquer's December 8, 2003 comments, both parties included comments on issues other than industry support, we did not reject those submission because they contained information regarding industry support. *See Memo to the File from Alex Villanueva, Senior Case Analyst, Regarding Wooden Bedroom Furniture from the People's Republic of China: FBI's November 13, 2003 Comments and Markor and Lacquer's December 8, 2003 Comments*, dated December 9, 2003. However, we did not consider FBI's December 8, 2003 comments and Markor and Lacquer's December 8, 2003 comments that were not on industry support. *See Import Administration: Antidumping Duty Investigation Initiation Checklist of Wooden Bedroom Furniture from China*(''*Initiation Checklist*''), dated December 10, 2003 at Attachment III. December 10, 2003, FBI revised their comments from December 8, 2003.

In accordance with section 732(b) of the Ac, the Petitioners allege that imports of wooden bedroom furniture from China are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring and threaten to injury and industry in the United States.

Scope of Investigation

For purposes of this investigation, the product covered is wooden bedroom furniture (*i.e.*, subject merchandise). Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise are made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard; with or without wood veneers, wood overlays, or laminates; with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins; and whether or not assembled, completed, or finished.

The subject merchandise includes (1) wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests[1], highboys[2],

[1] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[2] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

lowboys[3], chests of drawers[4], chests[5], door chests[6], chiffoniers[7], hutches[8], and armoires[9]; (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the Petition excludes (1) seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktails tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; and (8) bedroom furniture in which bentwood parts predominate.[10]

Imports of subject merchandise are classified under statistical category 9403.50.9040 of the Harmonized Tariff Schedule of the United States (''HTSUS'') as ''wooden * * * beds'' and under statistical category 9403.50.9080 of the HTSUS as ''other * * * wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under statistical category 9403.50.9040 of the HTSUS as ''parts of wood'' and framed glass mirrors may also be entered under statistical category 7009.92.5000 of the HTSUS as ''glass mirrors...framed.'' This investigation covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

During our review of the Petition, we discussed the scope with the Petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295, 27323 (1997). The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this notice.

Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with interested parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a Petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the Petition. A Petition meets this requirement if the domestic producers or workers who support the Petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the Petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the Petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether a Petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc.* v. *United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), citing *Algoma Steel Corp. Ltd.* v. *United States*, 688 F. Supp. 639, 642–44 (Ct. Int'l Trade 1988).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition.

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted in the Petition we have determined there is a single domestic like product, wooden bedroom furniture, which is defined further in the ''Scope of the Investigations'' section above, and we have analyzed industry support in terms of that domestic like product.

Based on information provided in the Petition, the share of total estimated U.S. production of the domestic like product in calendar year 2002

[3] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[4] A chest of drawers is typically a case containing drawers for storing clothing

[5] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[6] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[7] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[8] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[9] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[10] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency, and then set by cooling or drying. *See* Customs' Headquarters' Ruling Letter 043859, dated May 17, 1976.

represented by the Petitioners and the supporting domestic producers equal over 25 percent of total domestic production but less than 50 percent of production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. *See Extension Notice*. Therefore, in accordance with 732(c)(4)(D) of the Act, we polled the industry.

On November 13, 2003, November 17, 2003 and November 19, 2003, we issued polling questionnaires to all known producers of wooden bedroom furniture identified in the Petition, listed on the *Thomas Register* and found on the internet by the Department. The combined list contained 264 companies. *See Memorandum to the File from Michael Holton, Case Analyst, Regarding the Addresses for All Parties the Department of Commerce Sent the Polling Questionnaire to on November 13, 2003* (''*Addresses Memo*''), dated November 14, 2003. The addresses attached to the *Addresses Memo* were also used when sending the revised questionnaires dated November 17, 2003 and November 19, 2003. *See Memorandum to the File from Alex Villanueva, Case Analyst, Regarding the Addresses for All Parties the Department of Commerce Sent the Polling Questionnaire on November 17, 2003 and November 19, 2003*, dated December 3, 2003. The questionnaires are on file in the Central Records Unit (''CRU'') in room B-099 of the main Department of Commerce building. Additionally, the final questionnaire dated November 19, 2003 was available on the Import Administration website. As noted earlier, the Department also published a notice in the **Federal Register** extending the twenty-day initiation determination deadline and requesting information from domestic producers of wooden bedroom furniture. *See Extension Notice* at 65877, 65878. We requested that each company complete the polling questionnaire and certify their responses and requested that all companies respond no later than November 26, 2003 by faxing their responses to the Department at (202) 482–9089.

By the deadline of November 26, 2003, the Department received a total of 104 responses. *See Memorandum to the File from Alex Villanueva, Case Analysts through Robert A. Bolling, Program Manager and Edward C. Yang, Office Director, Regarding the Calculation of Industry Support* (''*Memo on Industry Support*''), dated December 10, 2003 at Attachment II of the *Initiation Checklist*. Any responses received after this date were not included in our analysis. *See Extension Notice* at 65876 and *Initiation Checklist* at Attachment II. The Department will be returning all polling questionnaire responses not received by November 26, 2003. Pursuant to section 351.104 of the Department's regulations, the Department has relied upon the responses to this questionnaire and follow-up phone calls to clarify certain responses to determine industry support. For a log of the phone calls made by the Department, please see the *Memorandum to the File from Lisa Shishido, Case Analyst, Regarding the Telephone Call Log Clarifying Information Received by the Department*, dated December 10, 2003. For a detailed discussion of the responses received please see the *Initiation Checklist* at Attachment II. For a discussion on the comments received from interested parties, please see the *Initiation Checklist* at Attachment III. For a detailed discussion of the comments received by workers, please see the *Initiation Checklist* at Attachment II. Our analysis of the data indicates that the domestic producers of wooden bedroom furniture who support the Petition account for more than 57 percent of the production (by U.S. dollar sales value) of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. *See Initiation Checklist* at Attachment II.

Accordingly, the Department determines that the industry support requirements of section 732(c)(4)(A) of the Act have been met.

Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value (''LTFV'') upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to the U.S. price and the factors of production are also discussed in the *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we may reexamine the information and revise the margin calculations, if appropriate.

Export Price

The Petitioners identified approximately one-hundred thirty five Chinese companies as major producers and exporters of wooden bedroom furniture in China. *See Petition* at Exhibit 6.

The Petitioners calculated an export price (''EP''). To calculate export prices for wooden bedroom furniture from China, Petitioners used invoices for wooden bedroom furniture produced by Chinese producers that were purchased during the period of investigation (''POI''). Given the sales terms on the invoice, the Petitioners have used free on board (''FOB'') prices as the basis for the U.S. price and, conservatively, have not deducted foreign inland freight from the factory to the port, brokerage and handling fees, or port charges at the port of exportation. However, to obtain ex-factory prices, the Petitioners deducted a percentage of the selling price (price listed on the invoice) to account for an agent markup for sales made from the agent to the U.S. customer in the United States. *See Initiation Checklist* for further information.

Normal Value

China is a non-market economy country and no determination to the contrary has yet been made by the Department. *See Initiation Checklist* at 4–5. Accordingly, the Petitioners provided a dumping margin calculation using the Department's NME methodology as required by 19 C.F.R. §351.202(b)(7)(i)(C) of the Department's regulations.

For the normal value (''NV'') calculation, the Petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor and energy), for wooden bedroom furniture using the factors of production used to make the wooden bedroom furniture on the invoices used in their calculation of export price above. In order to accurately calculate the usage of materials used in the production of the imported furniture, the Petitioners disassembled each piece of furniture and identified, weighed, and measured each component part. The items selected by the Petitioners for deconstruction and ultimately used for the normal value calculation, provide a broad selection of items within the wooden bedroom furniture like product category. According to the Petitioners, the dumping margins in the Petition represent ''each of the products in a standard bedroom suite because subject imports are typically sold in suites, collections, or groups'' and are ''representative of the prices for imports'' of wooden bedroom furniture from China during the POI. *See* Petitioners' November 12, 2003 Submission at 8. However, the amount of labor hours and energy needed to produce the wooden bedroom furniture items analyzed were based on the experience of the Petitioners. *See Initiation Checklist*.

The Petitioners selected India as their surrogate country. The Petitioners argued that pursuant to section 773(c)(4) of the Act, India is an appropriate surrogate because it is a market-economy country that is at a comparable level of economic development to the NME and is a significant producer of comparable merchandise. Based on the information provided by the Petitioners, we believe that the Petitioners' use of India as a surrogate country is appropriate for purposes of initiating this investigation. *See Initiation Checklist*.

In accordance with section 773(c)(4) of the Act, the Petitioners valued factors of production, where possible, on reasonably available, public surrogate country data. To value certain raw materials, the Petitioners used official Indian government import statistics, excluding those values from countries previously determined by the Department to be NME countries and imports into India from Indonesia, Korea and Thailand, in light of the prevalence of export subsidies in those countries. *See Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium from the People's Republic of China* 67 FR 71137, 71139 (November 20, 2002). For inputs valued in Indian Rupees and not contemporaneous with the POI (*i.e.*, April 2003-September 2003), the Petitioners used information from the wholesale price indices (''WPI'') in India as published in the *International Financial Statistics* of the International Monetary Fund to determine the appropriate adjustments for inflation. In addition, the Petitioners made currency conversions, where necessary, based on the average rupee/U.S. dollar exchange rate for the POI. *See Petition* at Exhibit 11.

To value the raw materials, (lumber (*e.g.*, ash, birch, maple, oak, pine, poplar tupelo), other wood items (*e.g.*, cherry wood veneer, fiberboard, hardboard, okoume plywood, lauan plywood, particle board, poplar veneer, oak veneer, wood pulls and okoume veneer), fasteners (*e.g.*, brad & nails, staples, dowels, screws, washers, brass hinges, nuts, brass bolts and hex key), paints and stains (non-water based stains, sealers and lacquers), other miscellaneous items (*e.g.*, printed labels, printed tags, printed paper, glues, plastic furniture fittings, metal drawer pulls & parts, drawer guide brackets, felt and mirrors), packing materials (*e.g.*, polyethylene foam, styrofoam, corrugated cardboard, tape, poly bags, poly straps, plywood, and shrink wrap)), the Petitioners calculated surrogate values from the Indian import statistics. *See Petition* at Exhibits 12 & 13.

To value electricity, the Petitioners calculated surrogate values using prices paid by industrial electrical users in India from *Key World Energy Statistics* published by the International Energy Agency in 2003. However, the price listed in Key World Energy Statistics is for electricity prices from 2000. Therefore, this price was adjusted for inflation using the WPI from the *International Financial Statistics*. *See Petition* at Exhibits 12 and 15.

Pursuant to 19 C.F.R. §351.408(c)(3) of the Department's regulations, the Department calculates and publishes the surrogate values for labor to be used in non-market economy cases. Therefore, the Petitioners used the labor rate of $0.83 per hour listed on the Department's website. *See Petition* at Exhibit 14.

The Petitioners calculated surrogate financial ratios (factory overhead, selling, general and administrative expenses (SG&A) and profit) using the publicly available financial statements from India Furniture Products, Ltd., an Indian producer of wooden bedroom furniture for the period (March 1, 2002-March 31, 2003), the most recently available financial period.

Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the estimated recalculated dumping margin for wooden bedroom furniture ranges from 158.74 percent to 440.96 percent.

Fair Value Comparisons

Based on the data provided by the Petitioners, there is reason to believe that imports of wooden bedroom furniture from China are being, or are likely to be, sold in the United States at less than fair value.

Allegations and Evidence of Material Injury and Causation

The Petition alleges that the U.S. industry producing the domestic like product is being materially injured and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The Petitioners contend that the industry's injured condition is evident in: (1) increasing imports' market share and apparent domestic consumption; (2) declining employment; (3) declining production and capacity utilization; (4) plant closures; and (5) lost sales and revenues. *See Initiation Checklist* at Attachment V (Injury).

The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation.

Initiation of Antidumping Investigation

Based upon our examination of the Petition on wooden bedroom furniture from China, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of wooden bedroom furniture from China are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the Petition has been provided to the government representatives of China.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than mid-January, whether there is a reasonable indication that imports of wooden bedroom furniture from China are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in this investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: December 10, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–31129 Filed 12–16–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application to amend an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, U.S. Department of Commerce, has

received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or by E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 1104H, Washington, DC 20230, or transmit by E-mail at *oetca@ita.doc.gov.* Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant, if necessary, for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 97–7A003.''

The Association for the Administration of Rice Quotas, Inc.'s (''AARQ'') original Certificate was issued on January 21, 1998 (63 FR 4220, January 28, 1998) and last amended on November 19, 2002 (68 FR 8739, February 25, 2003). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Association for the Administration of Rice Quotas, Inc. (''AARQ''), c/o David Van Oss of Riviana Foods Inc., 2777 Allen Parkway, Houston, Texas 77019.

Contact: M. Jean Anderson, Esq., Counsel to Applicant, Telephone: (202) 682–7217.

Application No.: 97–7A003.

Date Deemed Submitted: December 4, 2003.

Proposed Amendment: AARQ seeks to amend its Certificate to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of § 325.2(l) of the Regulations (15 CFR 325.2(l) (2003)): Itochu International Inc., New York, New York (a subsidiary of Itochu Corporation, Tokyo, Japan); and Veetee Rice Inc., Springfield, Virginia (a subsidiary of Veetee Investments, Nassau, Bahamas).

2. Change the listing of the following Members: ''California Commodity Traders, LLC, Robbins, California, and its affiliate American Commodity Company, LLC, Robbins, California'' should be amended to read ''American Commodity Company, LLC, Robbins, California''; ''Cargill Americas, Inc., Wayzata, Minnesota'' should be amended to read ''Cargill Americas, Inc., Coral Gables, Florida''; ''ConAgra Foods, Inc., Omaha, Nebraska, and its subsidiary, Alliance Grain, Inc., Voorhees, New Jersey'' should be amended to read ''ConAgra Foods, Inc., Omaha, Nebraska, and its subsidiary, Alliance Grain, Inc., Marlton, New Jersey''; ''Gulf Pacific, Inc., and its subsidiaries, Gulf Pacific Rice Co., Inc., and Gulf Rice Milling, Inc., Houston, Texas'' should be amended to read ''Gulf Pacific Rice Co., Inc., Gulf Rice Milling, Inc., Houston, Texas, and Harvest Rice, Inc., McGehee, Arkansas (each a subsidiary of Gulf Pacific, Inc., Houston, Texas)''; ''Rickmers Rice USA, Inc., St. Louis, Missouri'' should be amended to read ''Rickmers Rice USA, Inc., Knoxville, Tennessee''; ''Sunshine Rice, Inc., Stockton, California (a subsidiary of Sunshine Business Enterprise, Inc.)'' should be amended to read ''KD International Trading, Inc., Stockton, California (a subsidiary of Sunshine Business Enterprises, Inc.)''; and ''Uncle Ben's Inc., Greenville, Mississippi'' should be amended to read ''Masterfoods USA a Mars, Incorporated Company, Greenville, Mississippi.''

Dated: December 11, 2003.

Jeffrey. C. Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 03–31069 Filed 12–16–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121103A]

Proposed Information Collection; Comment Request; Management and Oversight of the National Estuarine Research Reserve System

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 17, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Doris Grimm at 301–713–3155, ext. 107, or to *Doris.Grimm@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Estuarine Research Reserve System consists of carefully-selected estuarine areas of the U.S. that are designated, preserved, and managed for research and educational purposes. The information to be collected is needed from states to review proposed designations. For sites selected, States must develop management plans and submit an annual report/work plan.

NOAA needs the information to ensure that the sites selected meet national standards.

II. Method of Collection

Much information can be submitted electronically via a Web site. Other information can be submitted in paper form.

III. Data

OMB Number: 0648–0121.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, Local, or Tribal Government.

Estimated Number of Respondents: 27.

Estimated Time Per Response: 2,000 for a management plan; 2,000 hours for a site nomination; 15 hours for an annual report/work plan; and 2 hours beyond basic application information for an application requiring a categorical exclusion checklist, state historical office comments, a preliminary engineering report for a construction project or restoration, or a Federal Consistency Certification.

Estimated Total Annual Burden Hours: 14,180.

Estimated Total Annual Cost to Public: $30,794.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 10, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–31136 Filed 12–16–03; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121103C]

Proposed Information Collection; Comment Request; Alaska Region Gear Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA) Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 17, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, 907–586–7008, or *Patsy.Bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Regulations at 50 CFR 679.24 require that all hook-and-line, longline pot, and pot-and-line marker buoys carried on board or used by any vessel regulated under 50 CFR part 679 shall be marked with the vessel name, Federal permit number, or registration number. The regulations also specify the size and color of markings. The marking of gear aids law enforcement and enables other fishermen to report on misplaced gear.

II. Method of Collection

No information is collected; this is a gear-marking requirement.

III. Data

OMB Number: 0648–0353.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 2,116.

Estimated Time Per Response: 15 minutes per buoy.

Estimated Total Annual Burden Hours: 3,750.

Estimated Total Annual Cost to Public: $4,332.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 10, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–31137 Filed 12–16–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121203A]

Proposed Information Collection; Comment Request; Socio-economic Assessment of Marine Protected Areas Management Preferences

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 17, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Juan Agar, Department of Commerce, NOAA, National Marine Fisheries Service, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149, (305 361 4218).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service proposes to conduct a survey to collect socio-economic data to strengthen the management, protection, and conservation of existing and proposed Marine Protected Areas (MPAs) in the U.S. Caribbean (Puerto Rico and U.S. Virgin Islands). MPAs are any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein. The survey intends to collect demographic, cultural, and economic information from communities that are dependent on the estuarine and marine resources for their livelihood. The proposed data collection is necessary to develop science-based criteria and protocols to identify and evaluate the economic impacts of management decisions. The information will be used to protect the sustainable use of estuarine and marine ecosystems for present and future generations. The information collected will also be used to satisfy legal mandates under Executive Order 13158, the Magnuson-Stevens Fishery Conservation Act, the National Marine Sanctuaries Act, the National Wildlife Refuge Administration Act, the Coastal Zone Management Act, the National Environmental Policy Act, and other pertinent statues.

II. Method of Collection

The socio-economic information will be collected via personal interviews and mail surveys.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business and other for-profit organizations.
Estimated Number of Respondents: 700.
Estimated Time Per Response: 1 hour.
Estimated Total Annual Burden Hours: 700.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 10, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–31139 Filed 12–16–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120903D]

Marine Mammals; File No. 881–1724

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that the Alaska SeaLife Center, 301 Railway Avenue, Seward, Alaska 99664, has applied in due form for a permit to import and export marine mammal parts for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before January 16, 2004.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is 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 part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant requests authorization to import and export an unlimited number of specimen samples (hard and soft parts) from the following species: Antarctic fur seal (*Arctocephalus gazella*), Australian fur seal (*Arctocephalus pusillus*), Australian sea lion (*Neophoca cinerea*), California sea lion (*Zalophus californianus*), harbor seal (*Phoca vitulina*), northern fur seal (*Callorhinus ursinus*), ribbon seal (*Phoca fasciata*), ringed seal (*Phoca hispida*), Southern fur seal (*Arctocephalus australis*), Southern sea lion (*Otaria flavescens*), Steller sea lion (*Eumetopias jubatus*), beluga whale (*Delphinapterus leucas*), bowhead whale (*Balaena mysticetus*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), killer whale (*Orcinus orca*), and sperm whale (*Physeter catodon*). Specimens would be collected from the following sources and then imported or exported: under existing permits in the country of origin; from legal subsistence hunts; from legal incidental bycatch; and from opportunistic collection of stranded carcasses. The purposes of this research are for a number of projects to study marine mammal population ecology, diet and nutrition, reproductive physiology, toxicology, and health. The applicant has requested a five-year permit.

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 activity proposed is categorically excluded from the requirement to

prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed 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 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 by other electronic media.

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.

Dated: December 11, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–31138 Filed 12–16–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–099]

ANR Pipeline Company; Notice Of Negotiated Rate

December 10, 2003.

Take notice that on December 1, 2003, ANR Pipeline Company, (ANR) tendered for filing two negotiated rate agreements between ANR and Callon Petroleum Operating Company pursuant to ANR's Rate Schedules ITS and ITS (Liquefiables), and a related Lease Dedication Agreement.

ANR states that it is also submitted the following tariff sheets to add the Callon Lease Dedication Agreement, as well as various other ANR Lease Dedication Agreements previously accepted by the Commission, to Section 31, Non-Conforming Agreements, of the General Terms and Conditions of ANR's FERC Gas Tariff:

Sixteenth Revised Sheet No. 190
Original Sheet No. 190A

ANR requests that the Commission accept and approve the subject negotiated rate agreements and revised tariff sheets to be effective December 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 e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00566 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–545–002]

Dominion Cove Point LNG, LP; Notice of Compliance Filing

December 10, 2003.

Take notice that on December 9, 2003, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of August 1, 2003:

Second Substitute Second Revised Sheet No. 240
Second Substitute First Revised Sheet No. 241
Substitute Second Revised Sheet No. 245

Cove Point states that the purpose of this filing is to comply with the Commission's ''Order On Compliance'' issued on November 18, 2003. Cove Point has filed to modify its capacity release provisions in Section 10 (Release and Assignment of Service Rights) of the General Terms and Conditions (GT & C) of its FERC Gas Tariff consistent with the Commission's November 18 Order.

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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00579 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–551–002]

Dominion Transmission, Inc.; Notice of Compliance Filing

December 10, 2003.

Take notice that on November 26, 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:

Ninth Revised Sheet No. 39
Original Sheet No. 1503
Sheet Nos. 1504–1999

DTI states that the purpose of this filing is to comply with the Commission's October 27 Order in Docket No. RP02–551–001.

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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00578 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–24–000]

Gulf South Pipeline Company, LP and Prism Gas Systems, Inc.; Notice of Application

December 10, 2003.

Take notice that on December 1, 2003, Gulf South Pipeline Company, LP (Gulf South) located at 20 East Greenway Plaza, Suite 900, Houston, Texas 77046 and Prism Gas Systems, Inc. (Prism) located at 2350 Airport Freeway, Suite 200, Bedford, Texas 76022, filed, in Docket No. CP04–24–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and Part 157 of the Commission regulations, for authorization to abandon certain Gulf South natural gas pipeline facilities (Panola County Facilities), located primarily in Panola and Harrison Counties, Texas, by sale to Prism and for authorization to abandon Gulf South's gathering and transportation services provided through such pipeline facilities. Gulf South and Prism also request that the Commission declare that the Panola County Facilities, once abandoned, will be gathering facilities and exempt from the Commission's regulation pursuant to Section 1(b) of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to J. Kyle Stephens, Director of Certificates, Gulf South Pipeline Company, LP, 20 East Greenway Plaza, Houston, Texas, 77046, or: phone (713) 544–7309, fax (713) 544–4818, e-mail *kyle.stephens@gulfsouthpl.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests, comments and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: December 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00570 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–097]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

December 10, 2003.

Take notice that on December 5, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective December 5, 2003.

Natural states that the purpose of this filing is to cancel Natural's tariff sheets setting forth certain expired negotiated rate transactions.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

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 § 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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00582 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–563–003]

Northern Border Pipeline Company; Notice of Compliance Filing

December 10, 2003.

Take notice that on December 4, 2003, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective January 5, 2004:

Substitute Fifth Revised Sheet No. 270
Original Sheet No. 270.01
Original Sheet No. 270.02

Northern Border states that this filing is made to comply with an order issued on September 10, 2003 in Docket No. RP03–563–000 wherein Northern Border was required to clarify its tariff with respect to procedures for bids and awards for available capacity.

Northern Border states that it is proposing to modify Subsections 26.2(a) and 26.2(b) of its tariff to clarify the criteria to be used for the bidding and awarding of capacity that will commence either (1) more than 90 days prior to the commencement of service date or (2) within 90 days or less prior to the commencement of service date.

Northern Border states that copies of this filing have been sent to all parties of record in this proceeding and to Northern Border's contracted shippers and interested state regulatory 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 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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00580 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–116–002]

Northwest Pipeline Corporation; Notice of Compliance Filing

December 10, 2003.

Take notice that on December 5, 2003, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective as indicated:

Effective January 1, 2002
Substitute Fourth Revised Sheet No. 303–A
Effective October 1, 2002
Substitute Fifth Revised Sheet No. 303–A

Northwest states that it has revised its tariff in compliance with the Commission's Order dated November 18, 2003, to provide that the value of any gas to which it takes title pursuant to Section 5.2 of Rate Schedule DEX–1 will be credited to shippers through its penalty crediting mechanism.

Northwest states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00577 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–21–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application for Abandonment of Service

December 10, 2003.

Take notice that on December 1, 2003, Transcontinental Gas Pipe Line Corporation (Transco), filed in Docket No. CP04–21–000, an application, in abbreviated form, pursuant to section 7(b) of the Natural Gas Act, as amended, and part 157 of the Rules and Regulations of the Federal Energy Regulatory Commission, for an order permitting and approving abandonment of certain firm sales service provided to Alabama Gas Corporation (Linden) (AGC Linden) under Transco's Rate Schedule FS.

Transco states that it entered into a firm sales agreement with AGC Linden on August 1, 1991, under which Transco sells gas to AGC Linden under Rate Schedule FS (FS Agreement). Transco further states that it is prepared to seek accelerated abandonment of any Rate Schedule FS services it provides to a similarly situated customer that requests such an accelerated abandonment.

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.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition is filed within the time required herein, and the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under this procedure, unless otherwise advised, it will be unnecessary for Transco to appear or to be represented at the hearing.

Comment Date: December 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00567 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–22–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application for Abandonment of Service

December 10, 2003.

Take notice that on December 1, 2003, Transcontinental Gas Pipe Line Corporation (Transco), filed in Docket No. CP04–22–000 an application, in abbreviated form, pursuant to Section 7(b) of the Natural Gas Act, as amended, and part 157 of the Rules and Regulations of the Federal Energy Regulatory Commission, for an order permitting and approving abandonment of certain firm sales service provided to Alabama Gas Corporation (Thomaston) (AGC Thomaston) under Transco's Rate Schedule FS.

Transco states that it entered into a firm sales agreement with AGC Thomaston on August 1, 1991, under which Transco sells gas to AGC Thomaston under Rate Schedule FS (FS Agreement). Transco further states that it is prepared to seek accelerated abandonment of any Rate Schedule FS services it provides to a similarly situated customer that requests such an accelerated abandonment.

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.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition is filed within the time required herein, and the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under this procedure, unless otherwise advised, it will be unnecessary for Transco to appear or to be represented at the hearing.

Comment Date: December 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00568 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–23–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application for Abandonment of Service

December 10, 2003.

Take notice that on December 1, 2003, Transcontinental Gas Pipe Line Corporation (Transco), filed in Docket No. CP04–23–000 an application, in abbreviated form, pursuant to Section 7(b) of the Natural Gas Act, as amended, and Part 157 of the Rules and Regulations of the Federal Energy Regulatory Commission, for an order permitting and approving abandonment of certain firm sales service provided to Fountain Inn Natural Gas Company (Fountain Inn) under Transco's Rate Schedule FS.

Transco states that it entered into a firm sales agreement with Fountain Inn on August 1, 1991, under which Transco sells gas to Fountain Inn under Rate Schedule FS (FS Agreement). Transco further states that it is prepared to seek accelerated abandonment of any Rate Schedule FS services it provides to a similarly situated customer that requests such an accelerated abandonment.

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.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition is filed within the time required herein, and the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under this procedure, unless otherwise advised, it will be unnecessary for Transco to appear or to be represented at the hearing.

Comment Date: December 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00569 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–20–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application for Abandonment for Service

December 10, 2003.

Take notice that on December 1, 2003, Transcontinental Gas Pipe Line Corporation (Transco), filed in Docket No. CP04–20–000 an application, in abbreviated form, pursuant to Section 7(b) of the Natural Gas Act, as amended, and part 157 of the Rules and Regulations of the Commission, for an order permitting and approving abandonment of certain firm sales service provided to Alabama Gas Corporation (Clanton) (AGC Clanton) under Transco's Rate Schedule FS.

Transco states that it entered into a firm sales agreement with AGC Clanton on August 1, 1991, under which Transco sells gas to AGC Clanton under Rate Schedule FS (FS Agreement). Transco further states that it is prepared to seek accelerated abandonment of any Rate Schedule FS services it provides to a similarly situated customer that requests such an accelerated abandonment.

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.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition is filed within the time required herein, and the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under this procedure, unless otherwise advised, it will be unnecessary for Transco to appear or to be represented at the hearing.

Comment Date: December 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00583 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–104–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

December 10, 2003.

Take notice that on December 4, 2003, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the tariff sheets listed in appendix A to the filing with an effective date of January 1, 2004.

WIC states that these tariff sheets remove the Columbia Exit Fee Surcharge Credits provisions that are due to terminate on December 31, 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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00581 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing With the Commission and Soliciting Motions To Intervene and Protests

December 9, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License Application.

b. *Project No.:* 12063–001.

c. *Date filed:* October 17, 2003.

d. *Applicant:* William Arkoosh.

e. *Name of Project:* Little Wood River Ranch II Hydroelectric Project.

f. *Location:* On the Little Wood River, near the Town of Shoshone, Lincoln County, Idaho. No lands of the United States would be affected.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: William Arkoosh, 2005 Highway 26, Gooding, Idaho 83330, (208) 934–5387.

i. *FERC Contact:* Gaylord W. Hoisington, (202) 502–6032, or e-mail at: *gaylord.hoisington@ferc.gov*.

j. *Cooperating agencies*: We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. *Deadline for filing motions to intervene and protest and requests for cooperating agency status:* 60 days from the issuance date of this notice (February 9, 2004).

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protest and requests for cooperating agency status 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. This application is not ready for environmental analysis at this time.

m. The proposed new construction run-of-river project would consist of: (1) A 10-foot-high, 220-foot-long rock rubble diversion dam; (2) a 2,800-foot-long open feeder canal; (3) a concrete intake structure having two parallel 5-foot-diameter, 250-foot-long steel penstocks; (4) a 60-foot-long, 20-foot-wide, 25-foot-high concrete and steel power house containing two hydraulic Francis turbines with a total installed capacity of 1,500 kilowatts; (5) a 3,500-foot-long tailrace channel; (6) a 10,500-foot-long, 12.5-kilovolt transmission line; (7) an access road and (8) appurtenant facilities.

n. 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. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' or ''COMPETING APPLICATION;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00572 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

December 10, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 12454–001.

c. *Date Filed:* November 26, 2003.

d. *Applicant:* Energie Group, LLC.

e. *Name of Project:* Williams Hydroelectric Project.

f. *Location:* On the East Fork of the White River, in the Town of Williams, Lawrence County, Indiana. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Andrew R. Blystra, A.R. Blystra, Ltd. 15 West Sixth Street, Holland, MI 49423, (616) 394–0606 or Stacy Harriott, 641 Monroe Street Suite 108, Sheboygan Falls, WI 53085, (920) 467–9048.

i. *FERC Contact:* Carolyn Holsopple at (202) 502–6407, or *carolyn.holsopple@ferc.gov.*

j. *Cooperating Agencies:* We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for Filing Additional Study Requests and Requests for Cooperating Agency Status:* 60 days from the filing date shown in paragraph (c), or January 25, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. 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. After logging into the e-Filing system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the filing process.

m. *Status:* This application is not ready for environmental analysis at this time.

n. *Description of Project:* The proposed Williams Project would be operated manually in a run-of-river mode by an operator living on site. The proposed project would consist of the following features: (1) A 295-foot-long, 32.5-foot-tall concrete spillway dam, with 2.5-foot buttresses on each side; (2) eight new intake gates (two to each flume), with new trashracks; (3) a 263-acre reservoir, with a normal reservoir elevation of 475.0 feet National Geodetic Vertical Datum and a storage capacity of 2,680 acre-feet; (4) four flumes, supplying water to the generating units; (5) stop-logs at the downstream end of each flume; (6) a 144-foot-long, 42-foot-wide concrete and steel powerhouse, containing five turbine and generating units (two Vertical Shaft Propeller—Nagler Type turbines, two Vertical shaft Double Runner Francis turbines and one new low-flow Vertical Shaft Francis turbine), having an installed capacity of 4,250 kilowatts; (7) a 12,470-volt transmission line; and (8) appurtenant facilities.

The applicant estimates that the average annual generation would be about 21,286,200 kilowatt-hours.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number, excluding the last three digits in the docket number field (P–2603), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

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.

p. With this notice, we are initiating consultation with the *INDIANA 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.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so:

Action	Tentative date
Issue Deficiency Letter	January 2004.
Issue Acceptance letter	April 2004.
Issue Scoping Document 1 for comments.	May 2004.
Request Additional Information	July 2004.
Issue Scoping Document 2	August 2004.
Notice of application is ready for environmental analysis.	November 2004.
Notice of the availability of the draft EA.	April 2005.
Notice of the availability of the final EA.	August 2005.
Ready for Commission's decision on the application.	November 2005.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00573 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing, and Soliciting Comments, Motions To Intervene, and Protests

December 10, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* License amendment for non-project use of project lands and waters.

b. *Project No.:* 1951–114.

c. *Date Filed:* September 3, 2003.

d. *Applicant:* Georgia Power.

e. *Name of Project:* Sinclair Project.

f. *Location:* Sinclair Project reservoir on the Oconee River, in Baldwin and Putnam Counties, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Scott Hendricks, Georgia Power, 241 Ralph McGill Blvd., NE., Atlanta, GA 30308–3374, (404) 506–2392.

i. *FERC Contact:* Ms. Monica Maynard, (202) 502–6013.

j. *Deadline for filing motions to intervene, protests and comments:* January 12, 2004.

k. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Proposed Action:* The Applicant seeks to allow the Sinclair Water Authority (SWA), a joint water authority created by Baldwin and Putnam Counties (both of which border the project), to withdraw up to 6 MGD from the Oconee River within the Sinclair Project boundary, for municipal water supply.

m. The filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

r. Comments, protests, and interventions may be filed electronically on the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* CFR 18 385.2001(a)(1)(iii) and the instructions on the Commission's Web site, *http://ferc.gov* under the ''e-filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00574 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

December 10, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No:* 2901–015.

c. *Date Filed:* October 31, supplemented November 18 and December 8, 2003.

d. *Applicants:* Nekoosa Packaging Corporation (Nekoosa, Transferor), Holcomb Rock Company (Holcomb, Transferee).

e. *Name and Location of Project:* The Holcomb Rock Hydroelectric Project is located on the James River in Amherst and Bedford Counties, Virginia.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicant Contacts:* For Nekoosa: George Cifelli, Georgia Pacific Corporation, 9363 Lee Jackson Highway, Big Island, VA 24526. For Holcomb: Byron Wenger, Shenandoah Hydro Company, 788 Brady Lane, Mount Jackson, VA 22842, (540) 477–3434.

h. *FERC Contact:* James Hunter, (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* January 12, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–2901–015) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* The Applicants request Commission approval to transfer the project license from Nekoosa to Holcomb.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the project number excluding the last three digits (P–2901) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g. above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the

Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00575 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Project No. 2984–052]

S.D. Warren Company; Notice of Meeting To Discuss the Eel Weir Project's Operation During the Spring of 2003

December 10, 2003.

On January 7, 2004, the Federal Energy Regulatory Commission (FERC) will hold a meeting at Sebago Lake State Park in Casco, Maine to discuss this past year's spring operation of the Eel Weir Hydroelectric Project (FERC No. 2984). The project is owned and operated by S.D. Warren Company (licensee) and located on the Presumpscot River in Cumberland County, Maine.

By Order Amending Lake Level Management Plan, the licensee is required, in part, to maintain the elevation of Sebago Lake within prescribed elevations between May 1 and November 1 each year. The lake level management plan states that the lake shall be managed during spring fill-up to reach a level of 266.65 feet, plus or minus six inches, no sooner than May 1 and no later than the second week in June.

At the January 7th meeting we will discuss this past year's spring operation under the required parameters and varying natural conditions. Also, we will discuss the upcoming year's operation (during the winter and spring of 2004) in order to achieve the required lake level. The January 7 Meeting will focus solely on spring 2003 and 2004 operation and not discuss any relicensing issues that are currently pending before the Commission.

The time and location of the meeting is as follows:

Date: Wednesday, January 7, 2004.

Time: 10 a.m.

Place: Sebago Lake State Park.

Address: 11 Park Access Road, Casco, Maine 04015.

Phone: (207) 693–6231.

If you have any questions regarding the meeting or this notice, please contact Mr. Thomas LoVullo at FERC at (202) 502–8900.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00576 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Sunshine Act Meeting

December 10, 2003.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: December 17, 2003, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* **Note**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400. For a recording listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

846th Meeting—December 17, 2003; Regular Meeting, 10 a.m.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters.

A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations; Follow-up to December 1, 2003, Reliability-Related Technical Conference.

Markets, Tariffs and Rates—Electric

E–1.
Docket# AD04–2, 000, MISO Business Plan Update: Implementation of Reliability Improvements and Market Design Steps.

E–2.
Docket# OA97–261, 006, Pennsylvania-New Jersey-Maryland Interconnection.
Other#s EC96–28, 007, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company and Public Service Electric and Gas Company.
EC96–29, 007, PECO Energy Company.
EL96–69, 007, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company and Public Service Electric and Gas Company.
ER96–2516, 007, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company and Public Service Electric and Gas Company.
ER96–2668, 007, PECO Energy Company.
EC97–38, 005, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Jersey Central Power & Light Company and Metropolitan Edison Company.
EL97–44, 005, Pennsylvania-New Jersey-Maryland Interconnection Restructuring.
ER97–1082, 008, Pennsylvania-New Jersey-Maryland Interconnection.
ER97–3189, 034, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light

Company and Metropolitan Edison Company.
ER97–3273, 005, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company and Pennsylvania-New Jersey-Maryland Interconnection Restructuring.
OA97–678, 005, PJM Interconnection, L.L.C.

E–3.
Docket# PA03–12, 000, Transmission Congestion on the Delmarva Peninsula.

E–4.
Docket# ER03–1141, 000, New England Power Pool and ISO New England, Inc.
Other#s EL03–222, 000, *Maine Public Utilities Commission, Maine Public Advocate, Rhode Island Public Utilities Commission, Pinpoint Power, NRG Energy, Inc. and GenPower, LLC.,* v. *New England Power Pool and ISO New England, Inc.*
ER03–1141, 001, New England Power Pool and ISO New England, Inc.
ER03–1141, 002, New England Power Pool and ISO New England, Inc.
EL03–222, 001, *Maine Public Utilities Commission, Maine Public Advocate, Rhode Island Public Utilities Commission, Pinpoint Power, NRG Energy, Inc. and GenPower, LLC.,* v. *New England Power Pool and ISO New England, Inc.*
EL03–222, 002, *Maine Public Utilities Commission, Maine Public Advocate, Rhode Island Public Utilities Commission, Pinpoint Power, NRG Energy, Inc. and GenPower, LLC.,* v. *New England Power Pool and ISO New England, Inc.*

E–5.
Docket# EC03–131, 000, Oklahoma Gas & Electric Company and NRG McClain LLC.

E–6.
Docket# ER04–55, 000, Maine Yankee Atomic Power Company.

E–7.
Omitted

E–8.
Omitted

E–9.
Omitted

E–10.
Docket# ER04–35, 000, Entergy Services, Inc.

E–11.
Docket# RT03–2, 000, Three Rivers Energy LLC.

E–12.
Docket# OA97–237, 012, New England Power Pool and New England Independent System Operator.
Other#s OA97–237, 013, New England Power Pool and New England Independent System Operator.
OA97–237, 014, New England Power Pool and New England Independent System Operator.

E–13.
Omitted

E–14.
Docket# ER01–2214, 002, Entergy Services, Inc.

E–15.
Omitted

E–16.
Docket# EL00–95, 077, *San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange.*
Other#s EL00–98, 065, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange.

E–17.
Docket# ER01–889, 014, California Independent System Operator Corporation.
Other#s EL00–95, 072, *San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange.*
ER01–889, 015, California Independent System Operator Corporation.
ER01–3013, 006, California Independent System Operator Corporation.

E–18.
Omitted

E–19.
Docket# EL03–27, 001, *Niagara Mohawk Power Corporation* v. *Huntley Power LLC, NRG Huntley Operations, Inc., Dunkirk Power LLC, NRG Dunkirk Operations, Inc., Oswego Harbor Power LLC and NRG Oswego Operations, Inc.*

E–20.
Docket# ER03–421, 002, PPL Wallingford Energy LLC.
Other#s ER03–421, 004, PPL Wallingford Energy LLC.
ER03–421, 006, PPL Wallingford Energy LLC.
ER03–563, 011, Devon Power LLC.
ER03–563, 013, Devon Power LLC.
ER03–563, 015, Devon Power LLC.
ER03–563, 017, Devon Power LLC.
ER03–563, 019, Devon Power LLC.
ER03–563, 022, Devon Power LLC.

E–21.
Docket# ER01–313, 003, *California Independent System Operator Corporation.*
Other#s ER01–424, 003, Pacific Gas and Electric Company.
EL03–131, 000, *San Diego Gas & Electric Company* v. *California Independent System Operator Corporation.*

E–22.
Omitted

E–23.
Omitted

E–24.
Docket# RT01–1, 003, RTO Informational Filings.
Other#s RT01–3, 001, Citizens Communications Company.
RT01–5, 001, Maine Public Service Company.
RT01–11, 001, Baconton Power LLC.
RT01–19, 001, Maine Electric Power Company.
RT01–30, 001, Florida Keys Electric Cooperative Association, Inc.
RT01–39, 001, Concord Electric Company and Exeter & Hampton Electric Light Company.
RT01–61, 001, Northern Maine Independent System Administrator Inc.
RT01–86, 004, Bangor Hydro-Electric Co., Central Maine Power Company, National Grid USA, Northeast Utilities Service Company, United Illuminating Company, Vermont Electric Power Company and ISO New England Inc.
RT01–90, 003, Fitchburg Gas & Electric Light Company, Concord Electric Company and Exeter & Hampton Electric Light Company.
RT01–94, 004, NSTAR Services Company.
RT01–95, 004, New York Independent System Operator Inc.
RT01–97, 001, Central Vermont Public Service Corporation, Citizens Communications Company, Green Mountain Power Corporation and Vermont Electric Power Company.
RT01–99, 001, Regional Transmission Organizations.
RT02–3, 001, ISO New England Inc., and New York Independent System Operator, Inc.

E–25.
Docket# ER02–1656, 014, California Independent System Operator Corporation.
Other#s EL01–68, 027, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Electricity Coordinating Council.
ER02–2576, 004, California Independent System Operator Corporation.
ER02–1656, 010, California Independent System Operator Corporation.
ER02–1656, 011, California Independent System Operator Corporation.
ER02–1656, 012, California Independent System Operator Corporation.

E–26.
Docket# ER00–1831, 005, CinCap VII, LLC.
Other#s ER00–1784, 006, CinCap Madison, LLC.
ER02–319, 003, CinCap VII, LLC.
ER02–322, 004, CinCap Madison, LLC.

E–27.
Docket# EL02–23, 002, *Consolidated Edison Company of New York, Inc.,* v. *Public Service Electric and Gas Company, PJM Interconnection, L.L.C. and New York Independent System Operator.*
Other#s EL02–23, 001, *Consolidated Edison Company of New York, Inc.,* v. *Public Service Electric and Gas Company, PJM Interconnection, L.L.C. and New York Independent System Operator.*

E–28.
Omitted

E–29.
Docket# ER03–690, 002, New York Independent System Operator, Inc.

E–30.
Docket# ER03–552, 004, New York Independent System Operator, Inc.
Other#s ER03–552, 005, *New York Independent System Operator, Inc.*
ER03–984, 002, New York Independent System Operator, Inc.
ER03–984, 003, New York Independent System Operator, Inc.

E–31.

Docket# EL02–121, 005, *Occidental Chemical Corporation* v. *PJM Interconnection, L.L.C. and Delmarva Power & Light Company.*

E–32.
Docket# EL03–197, 002, PPM Energy, Inc. (f/k/a PacifiCorp Power Marketing, Inc.)
Other#s EL03–138, 002, Aquila Merchant Services, Inc. (f/k/a Aquila, Inc.)
EL03–181, 002, Aquila Merchant Services, Inc. (f/k/a Aquila, Inc.)
EL03–188, 002, Eugene Water and Electric Board.

E–33.
Docket# ER03–1221, 001, California Independent System Operator Corporation.

E–34.
Omitted

E–35.
Omitted

E–36.
Docket# RM01–8, 000, Filing Requirements for Electric Utility Service Agreements.
Other#s ER02–2001, 000, Electric Quarterly Reports.

E–37.
Omitted

E–38.
Docket# EL03–14, 000, City of Azusa, California.
Other#s EL03–15, 000, City of Anaheim, California.
EL03–15, 002, City of Anaheim, California.
EL03–20, 002, City of Riverside, California.
EL03–20, 000, City of Riverside, California.
EL03–21, 000, City of Banning, California.

E–39.
Omitted

E–40.
Docket# EL04–16, 000, Devon Power, LLC, Middletown Power LLC, Montville Power LLC and Norwalk Power LLC.

E–41.
Docket# EL04–12, 000, Springerville Unit 3 Holding, LLC.

E–42.
Docket# EL03–123, 000, *Richard Blumenthal, Attorney General of the State of Connecticut, and the Connecticut Department of Public Utility Control* v. *NRG Power Marketing, Inc.*
Other#s EL03–134, 000, *Richard Blumenthal, Attorney General of the State of Connecticut, and the Connecticut Department of Public Utility Control* v. *NRG Power Marketing, Inc.*
EL03–129, 000, Connecticut Light and Power Company.
EL03–123, 001, *Richard Blumenthal, Attorney General of the State of Connecticut, and the Connecticut Department of Public Utility Control* v. *NRG Power Marketing, Inc.*

E–43.
Docket# EL03–56, 000, *American Municipal Power—Ohio, Inc.* v. *Dayton Power and Light Company and PJM Interconnection, L.L.C.*

E–44.
Omitted

E–45.
Docket# EL03–204, 000, *AES Somerset, LLC* v. *Niagara Mohawk Power Corporation.*

E–46.
Docket# EL04–2, 000, *Sacramento Municipal Utility District* v. *Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company.*

E–47.
Docket# EL03–234, 000, *Nine Mile Point Nuclear Station, LLC* v. *Niagara Mohawk Power Corporation.*

E–48.
Docket# EL01–93, 009, *Mirant Americas Energy Marketing, LP, Mirant New England, LLC, Mirant Kendall, LLC, and Mirant, LLC* v. *ISO New England Inc.*

E–49.
Omitted

E–50.
Omitted

E–51.
Omitted

E–52.
Docket# EL03–117, 000, Investigation of Certain Enron-Affiliated QF's.
Other#s QF86–972, 006, Cogen Technologies NJ Venture.
QF90–65, 008, Cogen Technologies Linden Venture, L.P.
QF90–87, 008, Camden Cogen, L.P.

E–53.
Omitted

E–54.
Omitted

E–55.
Docket# ER98–495, 000, Pacific Gas and Electric Company.
Other#s ER98–1614, 000, Pacific Gas and Electric Company.
ER98–2145, 000, Pacific Gas and Electric Company.
ER99–3603, 000, Pacific Gas and Electric Company.

E–56.
Omitted

E–57.
Docket# ER93–465, 000, Florida Power & Light Company.
Other#s ER96–417, 000, Florida Power & Light Company.
ER96–1375, 000, Florida Power & Light Company.
OA97–245, 000, Florida Power & Light Company.
OA96–39, 000, Florida Power & Light Company.

E–58.
Docket# TX96–4, 001, Suffolk County Electrical Agency.

E–59.
Docket# EL03–47, 003, Investigation of Certain Enron-Affiliated QF's.
Other#s QF83–278, 009, Lumberton Power, LLC.
QF83–316, 010, Elizabethtown Power, LLC.

E–60.
Docket# EL03–47, 002, Investigation of Certain Enron-Affiliated QF's.
Other#s QF95–328, 004, EcoElectrica, L.P.

E–61.
Omitted

E–62.
Docket# EC04–18, 000, Alfalfa Electric Cooperative, Inc., Choctaw Electric Cooperative, Inc., and People's Electric Cooperative.
Other#s EL04–18, 000, Alfalfa Electric Cooperative, Inc., Choctaw Electric Cooperative, Inc., and People's Electric Cooperative.

E–63.
Docket# EL02–114, 000, Portland General Electric Company.
Other#s EL02–114, 006, Portland General Electric Company.
EL02–115, 001, Enron Power Marketing, Inc.
EL02–115, 007, Enron Power Marketing, Inc.

E–64.
Docket# EL03–236, 000, PJM Interconnection L.L.C.

E–65.
Docket# ER03–668, 001, Southwest Power Pool, Inc.

E–66.
Docket# ER03–1081, 002, Midwest Independent Transmission System Operator, Inc.
Other#s ER03–1081, 001, Midwest Independent Transmission System Operator, Inc.

E–67.
Docket# PA02–2, 000, Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices.
Other#s PA03–1, 000, American Electric Power Company, Inc.
PA03–2, 000, Aquila Marketing Service.
PA03–3, 000, Coral Energy Resources, L.P.
PL03–3, 000, Price Discovery in Natural Gas and Electric Markets.
PA03–4, 000, CMS Marketing Services & Trading.
PA03–5, 000, Dynegy Inc.
PA03–6, 000, Duke Energy Trading and Marketing LLC.
AD03–7, 000, Natural Gas Price Formation.
PA03–7, 000, El Paso Merchant Energy, L.P.
PA03–8, 000, Mirant Americas Energy Marketing L.P.
PA03–9, 000, Reliant Resources, Inc.
IN03–10, 000, Investigation of Anomalous Bidding. Behavior and Practices in the Western Markets.
PA03–10, 000, Sempra Energy Trading Corp.
PA03–11, 000, Williams Energy Marketing & Trading Company.
EL03–59, 000, Reliant Energy Services, Inc.
EL03–60, 000, BP Energy Company.
EL03–77, 000, Enron Power Marketing, Inc., and Enron Energy Services Inc.
RP03–311, 000, Bridgeline Gas Marketing L.L.C., Citrus Trading Corporation, ENA Upstream Company, LLC, Enron Canada Corp., Enron Compression Services Company, Enron Energy Services, Inc., Enron MW, LLC, and Enron North America Corp.

E–68.
Docket# PA02–2, 000, Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices.

E–69.
Docket# EL03–55, 001, *AES Warrior Run, Inc.,* v. *Potomac Edison Company d/b/a Allegheny Power.*

E–70.
Docket# ER03–601, 000, San Diego Gas & Electric Company.

E–71.
Docket# ER98–3527, 004, PJM Interconnection L.L.C.

E–72.
Docket# ER04–64, 000, American Electric Power Service Corporation.
E–73.
Omitted
E–74.
Docket# ER04–61, 000, California Independent System Operator Corporation.
E–75.
Docket# ER04–111, 000, California Power Exchange Corporation.
E–76.
Docket# ER01–2658, 000, American Electric Power Service Corporation.
Other#s EL00–79, 000, *Mid-Tex G&T Electric Cooperative, Inc., Big Country Electric Cooperative, Inc., Coleman County Electric Cooperative, Inc., Concho Valley Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., Kimble Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., Rio Grande Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc., and Taylor Electric Cooperative, Inc.,* v. *West Texas Utilities Company.*
EL01–113, 000, *Mid-Tex G&T Electric Cooperative, Inc., Big Country Electric Cooperative, Inc., Coleman County Electric Cooperative, Inc., Concho Valley Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., Kimble Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., Rio Grande Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc., and Taylor Electric Cooperative, Inc.,* v. *West Texas Utilities Company.*
EC01–130, 000, American Electric Power Services Corporation.
ER01–2658, 001, American Electric Power Services Corporation.
ER01–2668, 000, American Electric Power Services Corporation.
ER01–2977, 000, American Electric Power Services Corporation.
ER01–2977, 001, American Electric Power Services Corporation.
ER01–2980, 000, American Electric Power Services Corporation.
ER01–2980, 001, American Electric Power Services Corporation.
EL02–24, 000, *Mid-Tex G&T Electric Cooperative, Inc., Big Country Electric Cooperative, Inc., Coleman County Electric Cooperative, Inc., Concho Valley Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., Kimble Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., Rio Grande Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc., and Taylor Electric Cooperative, Inc.,* v. *West Texas Utilities Company.*
ER02–371, 000, American Electric Power Services Corporation.
ER02–371, 001, American Electric Power Services Corporation.
ER02–371, 002, American Electric Power Services Corporation.
ER02–602, 000, American Electric Power Services Corporation.
ER02–602, 001, American Electric Power Services Corporation.
ER02–1216, 000, American Electric Power Services Corporation.
ER02–1410, 000, West Texas Utilities Company.
E–77.
Docket# EG04–16,000, Central Mississippi Generating Company, LLC.
E–78.
Docket# ER03–694, 000, PJM Interconnection L.L.C.
Other#s ER03–694, 001, PJM Interconnection L.L.C.
E–79.
Docket# EL02–111, 004, Midwest Independent Transmission System Operator, Inc.
Other#s EL02–111, 005, Midwest Independent Transmission System Operator, Inc.
EL02–111, 006, Midwest Independent Transmission System Operator, Inc.
EL02–111, 007, Midwest Independent Transmission System Operator, Inc.
EL02–111, 008, Midwest Independent Transmission System Operator, Inc.
EL03–212, 002, Midwest Independent Transmission System Operator, Inc.
EL04–5, 000, American Electric Power Service Corporation.

Markets, Tariffs and Rates—Gas

G–1.
Docket# RP00–152, 002, Northern Natural Gas Company.
G–2.
Docket# PL02–6, 001, Natural Gas Pipeline Negotiated Rate Policies and Practices.
G–3.
Docket# RP03–591, 001, CenterPoint Energy Gas Transmission Company.
G–4.
Docket# RP03–604, 000, *LSP-Cottage Grove, L.P. and LSP-Whitewater Limited Partnership* v. *Northern Natural Gas Company.*
G–5.
Docket# RP02–153, 004, Horizon Pipeline Company, L.L.C.
Other#s RP02–153, 005, Horizon Pipeline Company, L.L.C.
G–6.
Docket# RP04–57, 000, Transcontinental Gas Pipe Line Corporation.
G–7.
Docket# RP04–58, 000, Trunkline Gas Company, L.L.C.
G–8.
Docket# RP04–47, 000, High Island Offshore System, L.L.C.
G–9.
Docket# RP00–337, 006, Kern River Gas Transmission Company.
G–10.
Docket# RP00–533, 006, Algonquin Gas Transmission Company.
Other#s RP00–533, 008, Algonquin Gas Transmission Company.
G–11.
Docket# RP02–489, 003, Maritimes & Northeast Pipeline, L.L.C.
G–12.
Docket# RP02–493, 003, East Tennessee Natural Gas Company.
G–13.
Omitted
G–14.
Omitted
G–15.
Docket# RP03–13, 003, Transcontinental Gas Pipe Line Corporation.
Other#s RP01–236, 013, Transcontinental Gas Pipe Line Corporation.
G–16.
Docket# RP02–492, 003, Algonquin Gas Transmission Company.
G–17.
Docket# RP02–494, 003, Texas Eastern Transmission, LP.
G–18.
Omitted
G–19.
Docket# SA04–1, 000, CEC Technologies, Limited.
G–20.
Omitted
G–21.
Docket# RP02–114, 003, Tennessee Gas Pipeline Company.
Other#s RP02–114, 002, Tennessee Gas Pipeline Company.
G–22.
Omitted
G–23.
Docket# PR97–1, 001, Consumers Power Company.
G–24.
Docket# RP03–492, 002, Columbia Gulf Transmission Company.
G–25.
Docket# RP02–241, 003, Southern Star Central Gas Pipeline, Inc.
G–26.
Omitted
G–27.
Docket# RP03–243, 002, Nicole Gas Production, Ltd.
G–28.
Docket# RP03–70, 003, PG&E Gas Transmission, Northwest Corporation.
Other#s RP03–70, 002, PG&E Gas Transmission, Northwest Corporation.
G–29.
Docket# RP03–491, 002, Columbia Gas Transmission Corporation.
G–30.
Omitted
G–31.
Docket# RP02–363, 005, North Baja Pipeline LLC.
Other#s RP02–363, 002, North Baja Pipeline LLC.
RP02–363,006 North Baja Pipeline LLC.
G–32.
Omitted
G–33.
Omitted
G–34.
Docket# OR03–6, 000, *Sinclair Oil Corporation* v. *ChevronTexaco Pipeline Company.*
G–35.
Omitted
G–36.
Docket# RP04–103, 000, Northern Natural Gas Company.
G–37.
Docket# RP03–551, 000, *Wisconsin Gas Company* v. *Viking Gas Transmission Co.*

Energy Projects—Hydro

H–1.
Omitted
H–2.

Omitted
H–3.
Omitted
H–4.
Omitted
H–5.
Omitted
H–6.
Docket# P–2105, 090, Pacific Gas and Electric Company.
H–7.
Docket# P–2852, 015, New York State Electric & Gas Corporation.
H–8.
Omitted
H–9.
Docket# P–516, 319, South Carolina Electric & Gas Company.
Other#s P–516, 321, South Carolina Electric & Gas Company.
P–516, 326, South Carolina Electric & Gas Company.
P–516, 329, South Carolina Electric & Gas Company.
P–516, 330, South Carolina Electric & Gas Company.
P–516, 331, South Carolina Electric & Gas Company.
P–516, 332, South Carolina Electric & Gas Company.
P–516, 333, South Carolina Electric & Gas Company.
P–516, 354, South Carolina Electric & Gas Company.
P–516, 355, South Carolina Electric & Gas Company.
P–516, 356, South Carolina Electric & Gas Company.
P–516, 357, South Carolina Electric & Gas Company.
P–516, 358, South Carolina Electric & Gas Company.
P–516, 359, South Carolina Electric & Gas Company.
H–10.
Docket# P–1494, 260, Grand River Dam Authority.
H–11.
Docket# P–2299, 053, Turlock Irrigation District and Modesto Irrigation District.
H–12.
Docket# P–460, 028, City of Tacoma, Washington.

Energy Projects—Certificates

C–1.
Omitted
C–2.
Docket# CP03–338, 000, Panther Interstate Pipeline Energy, LLC.
Other#s CP03–337, 000, Natural Gas Pipeline Company of America.
CP03–339, 000, Panther Interstate Pipeline Energy, LLC.
CP03–340, 000, Panther Interstate Pipeline Energy, LLC.
C–3.
Docket# CP96–53, 011, NE Hub Partners, L.P.
C–4.
Omitted
C–5.
Docket# CP04–10, 000, EnCana Border Pipelines Limited and Omimex Canada, Ltd.
Other#s CP04–11, 000, Chinook Pipeline Company and Omimex Canada, Ltd.
C–6.
Docket# CP03–330, 000, Tennessee Gas Pipeline Company.
C–7.
Docket# CP03–41, 001, Dominion Transmission, Inc.
Other#s CP03–43, 001, Texas Eastern Transmission, L.P.
C–8.
Docket# CP02–233, 001, Equitrans, L.P. and Carnegie Interstate Pipeline Company.

Magalie R. Salas,
Secretary.

[FR Doc. 03–31171 Filed 12–12–03; 5:03 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act; Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

December 11, 2003.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: December 18, 2003, 9 a.m.

PLACE: Hearing Room 5 (2nd floor), 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-public investigations and inquiries and enforcement related matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Brownell, and Kelliher, voted to hold a closed meeting on December 18, 2003. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NW., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,
Secretary.

[FR Doc. 03–31172 Filed 12–12–03; 5:04 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

December 10, 2003.

Take notice that all Commissioners, members of the Federal Energy Regulatory Commission, will participate in a press conference immediately following the Commission's open meeting scheduled for December 17, 2003, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The press conference will be open to the public.

This Notice is issued pursuant to the Government in the Sunshine Act, 5 U.S.C. 552b.

For further information, please contact Bryan Lee at 202–502–8004.

Magalie R. Salas,
Secretary.

[FR Doc. E3–00571 Filed 12–15–03; 3:07 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0334; FRL–7338–8]

Exposure Modeling Work Group; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Exposure Modeling Work Group (EMWG) will hold a 1–day meeting on January 6, 2004. This notice announces the location and time for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on January 6, 2004, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Office of Pesticide Programs (OPP), Environmental Protection Agency, Crystal Mall #2, Room 1126 (Fishbowl), 1921 Jefferson Davis Hwy., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: James C. Lin, Environmental Fate and Effects Division (7507C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9591; fax number: (703) 305–6309; e-mail address: *lin.james@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal, Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this 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 OPP–2003–0334. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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 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.

II. Background

On a quarterly interval, the EMWG meets to discuss current issues in modeling pesticide fate, transport, and exposure to pesticides in support of risk assessment in a regulatory context.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**.

IV. Tentative Agenda

This section provides tentative agenda topics for the 1–day meeting:

1. Welcome and introductions.
2. Old action items.
3. Brief updates.
   - EPA's Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) model.
   - Perspective groundwater (PGW) guidance.
   - PE4 (Environmental Fate Effects Division (EFED)'s Shell).
   - Groundwater model.
   - Regional plate count agar (PCA).
   - Drinking water treatment workshop.
   - Proposal of soil dissipation meeting at the American Chemical Society (ACS) (spring 2004).
   - EFED water quality projects.
4. Major topics.

Morning session

- Use of foliar dissipation study for exposure purpose.
- Update on FOCUS kinetics group.

Afternoon session

- Use of Geographical Information System (GIS) for design of water monitoring study.
- A degree-day concept for estimating degradation time under field conditions.

List of Subjects

Environmental protection, Pesticides, Pests, Modeling.

Dated: December 10, 2003.

Steven Bradbury,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 03–31007 Filed 12–16–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0393; FRL–7338–1]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0393, must be received on or before January 16, 2004.

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: The Regulatory Action Leader, Registration Division (7505C), listed in this unit:

Regulatory Action Leader	Telephone number/e-mail address	Mailing address	File symbol
Joanne Miller	(703) 305–6224; e-mail address: *miller.joanne@epa.gov*.	Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001	62719–UOO 62719–LNE 62719–LNG 62719–LNR 62719–LNN 66330–UL 66330–UA
Jim Tompkins	(703) 305–5697; e-mail address:*tompkins.jim@epa.gov*	Do.	264–AOU 264–INE 264–INR

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture pesticides or apply pesticides to growing crops. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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 OPP–2003–0393. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket 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 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 OPP–2003–0393. 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 *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0393. 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: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0393.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0393. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

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 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 registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in Any Previously Registered Products

1. *File symbol*: 62719–UOO. *Applicant*: Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054. *Product name*: Penoxsulam Technical. *Active ingredient*: Penoxsulam (2-(2,2-difluoroethoxy)-6-trifluoromethyl-*N*-(5,8-dimethoxy[1,2,4]triazolo-[1,5c]pyrimidin-2-yl)benzenesulfonamide) at 98%. *Proposed classification/Use*: None. For formulation into herbicide end use products; for use in rice.

2. *File symbol*: 62719–LNE. *Applicant*: Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054. *Product name*: GF-881 Manufacturing Use Concentrate. *Active ingredient*: Penoxsulam at 50%. *Proposed classification/Use*: None. For formulation into herbicide end use products; for use in rice.

3. *File symbol*: 62719–LNG. *Applicant*: Dow AgroSciences LLC. *Product name*: GF-947 Granule SF. *Active ingredient*: Penoxsulam at 0.24%. *Proposed classification/Use*: None. For use in water seeded rice.

4. *File symbol*: 62719–LNR. *Applicant*: Dow AgroSciences LLC. *Product name*: GF-947 Granule CA. *Active ingredient*: Penoxsulam at 0.24%. *Proposed classification/Use*: None. For use in water seeded rice.

5. *File symbol*: 62719–LNN. *Applicant*: Dow AgroSciences LLC. *Product name*: GF-443 SC SF. *Active ingredient*: Penoxsulam at 21.7%. *Proposed classification/Use*: None. For use in rice.

6. *File symbol*: 264–AOU. *Applicant*: Bayer Crop Science, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name*: Mesosulfuron-methyl Technical. *Active ingredient*: Mesosulfuron-methyl at 96.8%. *Proposed classification/Use*: None. For formulation into herbicide end use products; for use in wheat.

7. *File symbol*: 264–INE. *Applicant*: Bayer Crop Science. *Product name*: Osprey Herbicide. *Active ingredient*: Mesosulfuron-methyl at 4.5%. *Proposed classification/Use*: None. For use in winter wheat.

8. *File symbol*: 264–INR. *Applicant*: Bayer Crop Science. *Product name*: Silverado Wild Oat Herbicide. *Active ingredient*: Mesosulfuron-methyl at 2.0%. *Proposed classification/Use*: None. For use in spring wheat including durum.

9. *File symbol*: 66330–UL. *Applicant*: Arvesta Corporation, 100 First Street, Suite 1700, San Francisco, CA 94105. *Product name*: Amicarbazone Technical Herbicide. *Active ingredient*: Amicarbazone at 98%. *Proposed classification/Use*: None. For formulation into herbicide end use products and for use in corn.

10. *File symbol*: 66330–UA. *Applicant*: Arvesta Corporation. *Product name*: Amicarbazone DF Herbicide. *Active ingredient*: Amicarbazone at 70%. *Proposed classification/Use*: None. For use in corn.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 4, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–31008 Filed 12–16–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0352; FRL–7336–4]

Cis-Isomer of 1-(3-Chloroallyl)-3,5,7-Triaza-1-Azoniaadamantane Chloride; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2003–0352, must be received on or before January 16, 2004.

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: James Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0371; e-mail address: *parker.james@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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 ID number OPP–2003–0352. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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.

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C. How and to Whom Do I Submit Comments?

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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 OPP–2003–0352. 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 *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0352. 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: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0352.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0352. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

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 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. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: Decembern 4, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Dow Chemical Company

PP 3E6656

EPA has received a pesticide petition (3E6656) from Dow Chemical Company, Building 1803, Midland, Michigan 48674, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride (CAS Reg. No. 51229–78–8), when used as an inert ingredient, a preservative in pesticide formulations applied to growing crops. EPA has determined that the petition contains data or information regarding the elements set forth in section

408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. Residue chemistry data are not generally required by EPA regarding tolerance exemption petitions. Consequently, no plant metabolism data have been generated.

2. *Analytical method*. Since this petition is for an exemption from the requirement of a tolerance, an enforcement analytical method for cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride is not needed.

3. *Magnitude of residues*. Based on the negligible amount of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride to be used in final product formulations (0.14% by weight (wt) or less), the recommended frequency and rates of application to growing crops, and the hydrolysis characteristics of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride with the rapid degradation action of formaldehyde, the Dow Chemical Company believes that residues are expected to be essentially undetectable and not toxicologically significant.

B. Toxicological Profile

In the Dowicil CTAC Reregistration Eligibility Document (RED), dated April 1995, EPA completed it's assessment of the potential human health and environmental risks associated with the active ingredient non-food uses of the cis and trans isomer mixture of 1-(3-chlorallyl)-3,5,7-triaza-1-azoniaadamantane chloride and the cis-isomer of 1-(3-chlorallyl)-3,5,7-triaza-1-azoniaadamantane chloride. Due to the similarities of the two active ingredients the Agency accepted toxicology studies conducted using either the cis and trans isomer mixture or the cis isomer only. Thus, the existing data base includes toxicity studies that were performed with the cis-isomer and the toxicity studies that were performed with a mixture of the cis and trans isomers.

1. *Acute toxicity*—i. *Acute oral*. Cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride was administered by single-dose gavage to 6 groups of 6 rats/sex/dose at dosages of 200, 400, 800, 1,600, 3,200, and 6,300 milligrams/kilogram (mg/kg). Clinical signs of lethargy, diarrhea, and lacrimation, were observed at the 800, 1,600, and 3,200 mg/kg dose groups. Body tremors and exudate staining of the nares were also seen in the 3,200 mg/kg group. Animals were observed for 7 days including the day of treatment. There were no mortalities in the 200, 400, 800, and 1,600 mg/kg dose groups. Five of six mortalities occurred in the 3,200 mg/kg dose group within 4 days of treatment, and 6/6 mortalities in the 6,300 mg/kg dose group on day–1 of treatment. All animals which survived gained weight during the observation period. There were no treatment-related changes on gross necropsy. The oral lethal dose $(LD)_{50}$ (95% confidence interval) was 2,664 mg/kg for males and females combined.

ii. *Acute dermal*. Cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride was administered to four rabbits per dose level. Each dose group was topically treated for 24 hours with 160, 320, 630, 1,300, 2,500, or 5,000 mg/kg of undiluted test material (moistened with 5 meters/Liter (m/L) of distilled water) and with 250, 500, 1,000, and 2,000 mg/kg of the material as a 50% aqueous solution. In the undiluted test group, mortality rates were as follows: 160 mg/kg (0/4); 320 mg/kg (1/4); 630 mg/kg (1/4); 1,300 mg/kg (4/4); 2,500 mg/kg (2/4); 5,000 mg/kg (3/4).

The acute dermal LD_{50} (95% confidence interval) was 923 mg/kg for males and females combined with undiluted test material. Lethargy and anorexia were reported in the surviving animals. Topical reactions ranging from slight erythema to marked swelling and necrosis were observed. Treatment-related necropsy lesions (decreased abdominal adipose tissue, serous atrophy of the remaining adipose tissue and thymic atrophy) were observed at the two highest dose levels. The lesions were judged to be the result of stress and decreased appetite.

The number of mortalities observed in the 50% aqueous preparation was as follows: 250 mg/kg (1/4); 500 (3/4); 1,000 (1/4); 2,000 (4/4).

The acute dermal LD_{50} (95% confidence interval) was 605 mg/kg for males and females combined. Lethargy and anorexia were observed in the three lowest dose groups; lethergy and rapid, shallow breathing were seen in the highest dose group. Topical reactions ranging from slight edema to marked necrosis were reported. There were no lesions on necropsy attributable to treatment.

iii. *Acute inhalation*. In an acute inhalation study 10 rats (5 males/5 females) were exposed to 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane cloride and cis-1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride. There were no mortalities during the exposure period nor during the post-exposure observation period. There was generalized soiling and test material stains on fur. All animals exhibited a significant weight loss (9–11%) in the first few days post-exposure. Weight gain resumed 4 days post-exposure to end of study. Normal activity throughout the test period continued to the end of the study. One animal had unilateral corneal opacity. All other tissues and organs examined were normal. The acute inhalation toxicity lethal dose $(LC)_{50}$ to 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride and cis-1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride was greater than 4.7 milligrams/Liter (mg/L).

iv. *Primary eye irritation*. In a primary eye irritation study, nine New Zealand white rabbits had a 1 gram dose of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride instilled into the conjunctival sac of the right eye of each of six rabbits (Groups A). The same procedure was followed with three other rabbits (Group B), however these eyes were washed with tap water after a 30–second exposure period. The left eye served as an untreated control in all of the animals. Twenty four hours prior to treatment, the eyes of all nine rabbits were examined using 5% fluoresein stain and found to be normal. The eyes were examined 1, 2, 3, 4, and 7 days after the instillation and scored for evidence of damage to the conjunctival (redness, chemosis, and discharge), cornea (degree of opacity and area of cornea involved), and iris (area involved). In Group A rabbits, there was slight (3/6) or moderate (1/6) conjunctival redness and slight (1/6) conjunctival discharge. In Group B rabbits, there was slight (2/3) conjunctival redness. No corneal opacity was observed with either group. Signs of irritation were absent 72 and 48 hours in Groups A and B, respectively. The test material was determined to be a slight primary eye irritant.

v. *Primary dermal irritation*. In a primary dermal irritation study, 0.5 grams of undiluted cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride was applied to the backs of six rabbits to an intact and an abraded site on each animal. The areas were covered with gauze patch and then a piece of heavy-gauge Saran® film. Elizabethan collars were placed on the rabbits to prevent ingestion. After 24 hours of exposure, the bandages were removed and each site was scored on a scale of 0 (normal) to 4 (severe) for dermal irritation (erythema and edema) then, and again at 72 hours from the

initial exposure. There was no evidence of erythema in the intact skin at either time point. The abraded skin on one animal showed a slight erythematous reaction at 24 hours; at 72 hours, two abraded areas were graded very slight and one moderate. The intact skin of one animal showed very slight edematous reaction at 24 hours. The abraded areas had either a very slight or slight edematous reaction at both time points. Cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride was considered to be only a slight irritant.

vi. *Dermal sensitization*. The dermal sensitization potential of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride was tested using the modified Maguire method. Ten male Hartley Albino guinea pigs received four induction doses of 0.1 milliliter (mL) of 10% solution of the cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride in 8 days. Freund's Adjuvant was injected intradermally adjacent to the site at the time of the third application. On challenge 2 weeks after the last induction application, the test material produced a positive response in one animal. The positive control, a 10% solution of DER 331 epoxy resin, confirmed that the test system was operating appropriately. The study demonstrated that a 0.1 mL dose of a 10% solution of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride is not a dermal sensitizer in guinea pigs.

2. *Genotoxicity*. Cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride was mutagenic in the *in vitro* Chinese hamster ovary (CHO) cell hypoxanthine guanine phophoribosyl transferase (HGPRT) forward mutation assay with activation but nonmutagenic without activation. Cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride was negative in the rat hepatocyte unscheduled deoxyribonucleic acid (DNA) synthesis assay. It was negative also in the mouse micronucleus test.

3. *Reproductive and developmental toxicity*. A dermal developmental toxicity study was conducted with Fischer 344 rats. Doses of 0, 250, or 500 mg/kg/day of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride as a 50% aqueous solution were applied to the dorsal skin daily on gestation days 6 through 15. No significant adverse effects from treatment with the test compound were found but the study was considered adequate because the doses were sufficiently high.

4. *Subchronic toxicity*—i. *Dermal subchronic study*. In a 13–week dermal subchronic study, New Zealand white rabbits were given dermal applications of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride for 13 weeks. The doses were 0, 50, 200, or 1,000 mg/kg/day. The only treatment related effect was a dose-dependent increase in ulcerative dermatitis, at the treatment site, that was correlated with the abrasions from clipping. The NOAEL for systemic toxicity was 1,000 mg/kg/day.

ii. *A 90–day oral subchronic study*. One study was conducted to determine the level of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride in the diet which would result in complete acceptance of the diet by rats. Ten rats/sex/group were administered the chemical in the diet at dosages of 0, 1, 2, or 4 mg/kg/day for 90 days. The only parameters evaluated were body weight, food consumption, and organ weight (absolute and relative). Male rats in the 4 mg/kg/day group had a significant decrease in body weight at approximately 36% of the weighing periods. This group also had a significant decrease in food consumption throughout the study. The absolute weight of the heart in the 4 mg/kg/day group males was significantly decreased. The relative weight of the brain and liver were increased in the 4 mg/kg/day group of females.

iii. *A 90–day oral subchronic study*. In another study, cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride was administered in the diet to groups of 10 rats/sex/group at dosages of 0, 7.5, 15, 30, and 60 mg/kg/day for 90 days. Mean body weight was significantly decreased in all the treated males and females throughout the study. Overall mean body weight gain was decreased in all the treated groups. Mean food consumption was significantly decreased in the treated males, especially at the beginning of the study. Although all of the treated female groups had significantly reduced intake at some time during the study, females were not as frequently affected as males. Calculation of feed efficiency values for the overall study and for the latter half of the study showed that the major effect of decreased food intake on body weight occurred at the beginning of the study. However, the decrease in food efficiency does indicate that the chemical had a toxic effect on body weight that cannot be accounted for solely by decreased food consumption. The only other possible effect of treatment was an increase in the incidence of minimal hepatocellular swelling in the 60 mg/kg/day group males (0/5 in the control vs. 3/5 in the 60 mg/kg/day group).

iv. *A 90–day oral subchronic study*. In a dog study, cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride was administered in gelatin capsules to four Beagle dogs/sex/group at dosages of 0, 7.5, 15, or 30 mg/kg/day for 90 days. One female in the 30 mg/kg/day was sacrificed due to general deterioration on the 84th day of the study; necropsy revealed ascites with evidence of liver toxicity. The only other toxicologically significant findings during the study included a significant decrease in the hematocrit (HCT), hemoglobin (Hgb), and white blood count (WBC) measurements in the 30 mg/kg/day group males and histopathological changes, especially in the liver, in the 30 mg/kg/day group males and females. The incidence and/or severity of several findings in the liver were increased in the 30 mg/kg/day group males and females during the following:

- Obliterative vasculitis and perivasculitis of the hepatic blood vessels.
- Perivascular and pericholangiolar infiltration of mononuclear cells.
- Hyperplasia of the reticuloendothelial cells lining the hepatic sinusoid.

5. *Endocrine disruption*. No specific tests have been conducted with cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride to determine whether the chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects. However, there are no significant findings in other relevant toxicity tests, *i.e.*, developmental toxicity, which would suggest cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride produces effects characteristic of the disruption of endocrine function.

C. Aggregate Exposure

Dietary exposure. The proposed use of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride as a preservative in end-use product formulations applied to growing crops is not expected to result in significant additional dietary exposure, due to the low concentration of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride employed in the formulation and the extremely low probability of contact by the general public following treatment.

Cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride,

when used according to good manufacturing practices, meets the requirements of food additive regulations in 21 CFR 175.105 for use as a preservative in adhesives; 21 CFR 176.1680 for preservation of polyurethane resins in contact with dry bulk foods; 21 CFR 176.170 for preservation of components of paper and paperboard intended for use in contact with aqueous and fatty foods; and 21 CFR 176.180 for preservation of components of paper and paperboard intended for use in contact with dry foods. These uses are not expected to result in quantifiable residues in the diet when used as a preservative, at low levels, in end-use agriculture pesticide formulations applied to growing crops.

D. Cumulative Effects

There is no reliable information that would indicate or suggest that cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride has any toxic effects on mammals that would be cumulative with those of any other chemical.

E. Safety Determination

1. *U.S. population.* The Dow Chemical Company believes that based on the following information it is not expected that a tolerance for cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride is required because:

- The cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride is practically nontoxic to slightly toxic to humans.
- It will not pose a significant risk to humans.
- The parent compound as well as formaldehyde formation dissipate fairly rapidly under hydrolysis.
- The level of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride to be included as a preservative in pesticide formulations applied to growing crops will be at low levels (0.14% by weight or less).

Therefore, it is not anticipated that a tolerance for the cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride would be necessary to protect the public health.

2. *Infants and children.* An exemption from a tolerance as proposed is expected to be negligible and not place infants and children at increased health risks.

F. International Tolerances

There are no known international tolerances for cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride.

[FR Doc. E3–00560 Filed 12–16–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7596–1]

Notice of Proposed Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act; In the Matter of American Woodcraft Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for public comment.

SUMMARY: Notice of Settlement: in accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), notice is hereby given of a settlement concerning past response costs at the American Woodcraft Superfund Site, in Union City, Michigan. This settlement requires Comerica Bank to pay $13,837.64 to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Superfund Records Center, located at 77 West Jackson Boulevard, Seventh Floor, Chicago, Illinois.

DATES: Comments must be provided on or before January 16, 2004.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the Superfund Records Center, located at 77 West Jackson Boulevard, Seventh Floor, Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from the Superfund Records Center. Comments should reference the American Woodcraft Superfund Site and EPA Docket No. V–W–04–C–765 and should be addressed to Karen L. Peaceman, Associate Regional Counsel, 77 West Jackson Boulevard (C–14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Karen L. Peaceman, 312–353–5751. Mail Code C–14J, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*

Thomas W. Mateer,

Acting Director, Superfund Division.

[FR Doc. 03–31119 Filed 12–16–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7596–2]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act; Polar Star Superfund Removal Site

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for public comments.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed CERCLE 122(H) Agreement for Recovery of Past Response Costs (''Agreement'') concerning the Polar Star Superfund Removal Site in Dutch Flat, California with Desert Star Group, Inc. (''DSGI'') and Tuli P. Haromy, the sole shareholder and sole officer of DSGI. The Agreement requires the settling parties to sell all the real property parcels owned by DSGI in Dutch Flat, and to pay 95% of the net proceeds from such sales to the U.S. Environmental Protection Agency (the ''Agency'' or ''USEPA'') Hazardous Substance Superfund. All property must be listed with a real estate listing agent for a period of one year from the effective date of the Agreement. If any property is not sold within that period, it must be offered for sale at a public auction. Upon performance of the Agreement by the settling parties, the settling parties shall have resolved any and all civil liability to USEPA under section 107(a) of CERCLA, 42 U.S.C. 9607 (a), for reimbursement of past response costs. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the Agreement. The Agency will

consider all comments received and may modify or withdraw its consent to the Agreement if comments received disclose facts or considerations which indicate that the Agreement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at USEPA Region IX, 75 Hawthorne Street, San Francisco, California.

DATES: Comments must be submitted on or before January 16, 2004.

ADDRESSES: The proposed Agreement may be obtained from Judith Winchell, Environmental Protection Specialist, telephone (415) 972–3124. Comments regarding the proposed Agreement should be addressed to Judith Winchell (SFD–7) at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105, and should reference the Polar Star Superfund Removal Site, Dutch Flat, California, and USEPA Docket No. 2003–16.

FOR FURTHER INFORMATION CONTACT: Joshua Wirtschafter, Office of Regional Counsel, telephone (415) 972–3912, USEPA Region IX, 75 Hawthorne Street, San Francisco, California 94105.

Dated: December 8, 2003.

Daniel A. Meer,

Chief, Response, Planning & Assessment Branch, Superfund Division (SFD–9).

[FR Doc. 03–31120 Filed 12–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0069; FRL–7338–7]

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 TSC, 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 October 1, 2003 to November 28, 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–2003–0069 and the specific PMN number or TME number, must be received on or before January 16, 2004.

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, 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–2003–0069. 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–2003–0069. 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–2003–0069 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 Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0069 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 October 1, 2003 to November 28, 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. 149 PREMANUFACTURE NOTICES RECEIVED FROM: 10/1/03 TO 11/28/03

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0001	10/01/03	12/29/03	Toyo Color America, LLC	(S) Ultraviolet curable additive for optical lens	(S) Poly(oxy-1,2-ethanediyl),.alpha.-(1-oxo-2-propenyl)-.omega.-([1,1′-biphenyl]-2-yloxy)-
P–04–0002	10/01/03	12/29/03	Toyo Color America, LLC	(S) Ultraviolet curable oligomer for optical lens	(S) Hexanedioic acid, polymer with 1,6-diisocyanatohexane, 1,6-diisocyanato-2,2,4-trimethylhexane, 1,6-diisocyanato-2,4,4-trimethylhexane, 1,1′-[(1-methylethylidene)bis(4,1-phenyleneoxy)]bis[2-propanol] and 3-methyl-1,5-pentanediol, 2-hyd roxyethyl acrylate-blocked
P–04–0003	10/01/03	12/29/03	Toyo Color America, LLC	(S) Light stabilizer additive for ultraviolet curable glue	(S) 2-propenoic acid, 2-methyl-, 1,2,2,6,6-pentamethyl-4-piperidinyl ester
P–04–0004	10/01/03	12/29/03	Toyo Color America, LLC	(S) Ultraviolet curable additive for optical lens	(S) Poly[oxy(methyl-1,2-ethanediyl)],.alpha.,.alpha′.-[(1-methylethylidine)di-4,1-phenylene]bis[.omega.-[(1-oxo-2-propenyl)oxy]-
P–04–0005	10/01/03	12/29/03	CBI	(S) Adhesion promoter in sealants; coupling agent for industrial coatings	(G) Aminosilane
P–04–0006	10/01/03	12/29/03	Brueggemann Chemical U.S., Inc.	(G) Additive	(G) Arylphosphine copper iodide
P–04–0007	10/01/03	12/29/03	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Intermediate used for sterol production	(G) Modified saponified tall oil distillates
P–04–0008	10/02/03	12/30/03	Vantico Inc.	(S) Epoxy curing agent	(G) Phenol, 4,4′-(1-methylethylidene)bis-, polymer with (chloromethyl)oxirane, reaction products with an epoxide and triethylenetetramine
P–04–0009	10/03/03	12/31/03	CBI	(G) Petroleum lubricant additive	(G) Alkylbenzene sulfonic acid
P–04–0010	10/02/03	12/30/03	CBI	(G) Developer for thermal sensitive paper	(G) Salicylic acid compound
P–04–0011	10/03/03	12/31/03	E. I. Dupont De Nemours and Company, Inc.	(G) Injection molded and extruded parts, films, ribbons, tubes and filaments for high heat applications	(G) Aromatic - aliphatic polyamides
P–04–0012	10/03/03	12/31/03	E. I. Dupont De Nemours and Company, Inc.	(G) Injection molded and extruded parts, films, ribbons, tubes and filaments for high heat applications	(G) Aromatic - aliphatic polyamides
P–04–0013	10/03/03	12/31/03	E. I. Dupont De Nemours and Company, Inc.	(G) Injection molded and extruded parts, films, ribbons, tubes and filaments for high heat applications	(G) Aromatic - aliphatic polyamides
P–04–0014	10/03/03	12/31/03	E. I. Dupont De Nemours and Company, Inc.	(G) Injection molded and extruded parts, films, ribbons, tubes and filaments for high heat applications	(G) Aromatic - aliphatic polyamides
P–04–0015	10/03/03	12/31/03	Gardere Wynne Sewell LLP	(S) Carrier for herbicides and pesticides; paint and ink formulations; indoor heating oil; solvent blend	(S) Alkanes, C_{8-12} - branched
P–04–0016	10/06/03	01/03/04	CBI	(G) Open, non-dispersive (dyestuff)	(G) Azo dyestuff
P–04–0017	10/03/03	12/31/03	CBI	(G) Low foaming cleanser additive	(G) Octyl-d-glucoside

I. 149 PREMANUFACTURE NOTICES RECEIVED FROM: 10/1/03 TO 11/28/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0018	10/03/03	12/31/03	E. I. Dupont De Nemours and Company, Inc.	(G) Intermediate	(G) Salts of aliphatic amine with aromatic acid or with mixed aromatic and aliphatic acids
P–04–0019	10/03/03	12/31/03	E. I. Dupont De Nemours and Company, Inc.	(G) Intermediate	(G) Salts of aliphatic amine with aromatic acid or with mixed aromatic and aliphatic acids
P–04–0020	10/03/03	12/31/03	E. I. Dupont De Nemours and Company, Inc.	(G) Intermediate	(G) Salts of aliphatic amine with aromatic acid or with mixed aromatic and aliphatic acids
P–04–0021	10/03/03	12/31/03	E. I. Dupont De Nemours and Company, Inc.	(G) Intermediate	(G) Salts of aliphatic amine with aromatic acid or with mixed aromatic and aliphatic acids
P–04–0022	10/07/03	01/04/04	Cognis Corporation	(G) Metal working fluid	(S) Fatty acids, $C_{14–18}$ and $C_{16–18}$ unsaturated-2-ethyl hexyl esters
P–04–0023	10/07/03	01/04/04	Petroferm Inc.	(S) Slip and leveling additive to ultra violet and eb-cured inks, paints and coatings; oligomer in the manufacture of polymeric materials	(G) Allyl alcohol ethoxylate urethane
P–04–0024	10/07/03	01/04/04	Petroferm Inc.	(S) Slip and leveling additive to ultra violet and eb-cured inks, paints and coatings; oligomer in the manufacture of polymeric materials	(G) Peg urethane
P–04–0025	10/07/03	01/04/04	CBI	(G) Industrial coatings binder	(G) Aminated styrenate acrylic salt
P–04–0026	10/07/03	01/04/04	Petroferm Inc.	(S) Slip and leveling additive to ultra violet and eb-cured inks, paints and coatings; oligomer in the manufacture of polymeric materials	(G) Combed silicone urethane
P–04–0027	10/07/03	01/04/04	Petroferm Inc.	(S) Slip and leveling additive to ultra violet and eb-cured inks, paints and coatings; oligomer in the manufacture of polymeric materials	(G) Linear silicone urethane
P–04–0028	10/07/03	01/04/04	CBI	(G) Intermediate for an electrical insulating coating	(G) Methylene di (phenylene isocyanate) polymer with substituted propanol and secondary butyl phenol
P–04–0029	10/08/03	01/05/04	CBI	(S) Binder in hot melt inks	(G) Cyclic diamine bisamide with monocarboxylic fatty acids
P–04–0030	10/08/03	01/05/04	CBI	(S) Binder in hot melt inks	(G) Cyclic diamine bisamide with monocarboxylic fatty acids
P–04–0031	10/08/03	01/05/04	BASF Corporation	(G) Component used in the manufacture of polyurethane parts	(G) Hexanedioic acid, polymer with aliphatic diols and diisocyanate
P–04–0032	10/09/03	01/06/04	CBI	(G) Papermaking Chemical, non-dispersive use	(G) Aminopolyamide resin
P–04–0033	10/09/03	01/06/04	CBI	(G) Destructive use	(G) Hindered phenolic ester
P–04–0034	10/09/03	01/06/04	Bp Amoco Chemical Company Inc.	(G) Grease thickener	(G) Lithium grease thickener
P–04–0035	10/09/03	01/06/04	CBI	(G) Paper making chemical	(G) Cross-linked aminopolyamide resin
P–04–0036	10/10/03	01/07/04	CBI	(G) Ingredients for use in consumer products: highly dispersive	(G) Heterocycle (oxa, thia, aza)
P–04–0037	10/10/03	01/07/04	CBI	(G) Moisture curing polyurethane adhesives	(G) Isocyanate terminated urethane polymer
P–04–0038	10/10/03	01/07/04	CBI	(G) Additive for plastics	(G) Acrylic polymer
P–04–0039	10/10/03	01/07/04	CBI	(G) Chemical intermediate	(G) Hydroxycycloalkanone
P–04–0040	10/14/03	01/11/04	CBI	(S) Surfactant for metal finishing baths	(G) Polyethylene glycol benzyl alkyl ether
P–04–0041	10/14/03	01/11/04	CBI	(G) Fixing agent	(G) Polymeric amine
P–04–0042	10/14/03	01/11/04	CBI	(G) Fixing agent	(G) Polymeric amine
P–04–0043	10/15/03	01/12/04	CBI	(G) A component of a pigmented epoxy resin for coating and surfacing	(G) Epoxy amine adduct
P–04–0044	10/15/03	01/12/04	CBI	(G) Lubricant base fluid	(G) Fatty acid esters with neopentyl glycol
P–04–0045	10/15/03	01/12/04	CBI	(G) Coating binder	(G) Epoxy-acrylic copolymer
P–04–0046	10/17/03	01/14/04	CBI	(G) Dispersant	(G) Polyether carboxylate
P–04–0047	10/17/03	01/14/04	CBI	(G) Dispersant	(G) Polyether carboxylate
P–04–0048	10/17/03	01/14/04	CBI	(G) Dispersant	(G) Polyether carboxylate

I. 149 PREMANUFACTURE NOTICES RECEIVED FROM: 10/1/03 TO 11/28/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0049	10/17/03	01/14/04	CBI	(G) Dispersant	(G) Polyether carboxylate
P–04–0050	10/17/03	01/14/04	CBI	(G) Laminating adhesive	(G) Polyurethane
P–04–0051	10/17/03	01/14/04	CBI	(G) Destructive use	(G) Substituted aluminoxane
P–04–0052	10/17/03	01/14/04	CBI	(G) Open, non-dispersive (resin)	(G) Cationic polyacrylamide
P–04–0053	10/17/03	01/14/04	Toyo Color America, LLC	(S) Ultra violet curable monomer for optical lens	(S) 2-propenoic acid, 1,9-nonanediyl ester
P–04–0054	10/22/03	01/19/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0055	10/22/03	01/19/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0056	10/22/03	01/19/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0057	10/22/03	01/19/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0058	10/22/03	01/19/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0059	10/22/03	01/19/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0060	10/21/03	01/18/04	CBI	(G) Coating component	(G) Substituted metal complex
P–04–0061	10/21/03	01/18/04	CBI	(G) Coating component	(G) Substituted metal complex
P–04–0062	10/21/03	01/18/04	CBI	(G) Coating component	(G) Modified metal complex
P–04–0063	10/21/03	01/18/04	CBI	(G) Adhesive-closed system	(G) Aromatic copolyamic acid
P–04–0064	10/21/03	01/18/04	CBI	(S) Inks; coatings	(G) Polyester acrylate
P–04–0065	10/21/03	01/18/04	CBI	(G) Surfactant	(G) Alkylammonium ether sulfate
P–04–0066	10/22/03	01/19/04	CBI	(G) Coatings, adhesives and printing plates	(G) Polybutadiene acrylate
P–04–0067	10/22/03	01/19/04	CBI	(G) Coatings, adhesives and printing plates	(G) Polybutadiene acrylate
P–04–0068	10/22/03	01/19/04	CBI	(S) Ingredient in fragrance compound	(S) 3-pentanol, 2,2,4-trimethyl-1-[(2-methyl-2-propenyl)oxy]-
P–04–0069	10/23/03	01/20/04	CBI	(G) Adhesion promoter for coatings	(G) Acid modified chlorinated polyolefin
P–04–0070	10/23/03	01/20/04	CBI	(G) Additive, open, non-dispersive	(G) Polyether fatty acid ester
P–04–0071	10/23/03	01/20/04	CBI	(G) Additive, open, non-dispersive	(G) Silicone containing acidic polyester
P–04–0072	10/23/03	01/20/04	CBI	(G) Additive, open, non-dispersive	(G) Acidic polyester
P–04–0073	10/23/03	01/20/04	The Dow Chemical Company	(S) Ultra violet curable resin for coatings	(G) Vinyl ester of epichlorohydrin/bisphenol-a polymer
P–04–0074	10/23/03	01/20/04	The Dow Chemical Company	(S) Ultra violet curable resin for coatings	(G) Vinyl ester of epichlorohydrin/bisphenol-a polymer
P–04–0075	10/24/03	01/21/04	CBI	(S) Viscosity modifier for the manufacture of ink vehicles	(G) Modified aluminum alkoxide
P–04–0076	10/27/03	01/24/04	CBI	(G) Resin coating	(G) Polyester acrylate
P–04–0077	10/27/03	01/24/04	CBI	(G) Polymer material for pigment	(G) Acrylic copolymer
P–04–0078	10/27/03	01/24/04	CBI	(G) Polymer material for pigment	(G) Acrylic copolymer
P–04–0079	10/27/03	01/24/04	CBI	(S) Monomer used in the production of reactive polymers for surface coating materials and other polymer intermediates [open / non-dispersive use]	(G) Halogen-substituted oxetane
P–04–0080	10/27/03	01/24/04	CBI	(S) Monomer used in the production of reactive polymers for surface coating materials and other polymer intermediates [open / non-dispersive use]	(G) Halogen-substituted oxetane
P–04–0081	10/27/03	01/24/04	CBI	(S) Thickness and rheology modifiers for emulsion paint	(G) Polyalkylene glycol, alkyl ether, reaction products with diisocyanatoalkane and polyalkylene glycol

I. 149 PREMANUFACTURE NOTICES RECEIVED FROM: 10/1/03 TO 11/28/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0082	10/27/03	01/24/04	CBI	(S) Thickness and rheology modifiers for emulsion paint	(G) Polyalkyene glycol, alkyl ether, reaction products with diisocyanatoalkane and polyalkylene glycol
P–04–0083	10/27/03	01/24/04	CBI	(S) Water proofing for fibersheets	(S) Amines, N-$C_{16–22}$-alkyltrimethylenedi-
P–04–0084	10/28/03	01/25/04	CBI	(G) Component of paper or plastic coating	(G) Substituted acrylate polymer
P–04–0085	10/28/03	01/25/04	CBI	(S) Thickener for coating Colors applied to paper and paperboard	(G) Acrylic-acrylonitrile copolymer
P–04–0086	10/28/03	01/25/04	CBI	(G) Industrial corrosion inhibitor	(G) $C_{16–18}$ fatty acid product with polyethylene, phosphonomethylated
P–04–0087	10/28/03	01/25/04	CBI	(S) Siloxane polymer used as a raw material in photoresist	(G) Blocked siloxane polymer
P–04–0088	10/29/03	01/26/04	Shin-Etsu silicones of America Inc.	(S) Sealant	(G) Silicone modified acrylic polymer
P–04–0089	10/29/03	01/26/04	CIBA Specialty Chemicals Corporation	(S) Photoinitiator for overprint varnishes and printing inks	(G) Aromatic compound-photoinitiator
P–04–0090	10/29/03	01/26/04	CBI	(G) Rust inhibition reagent	(G) Triazine derivative
P–04–0091	10/29/03	01/26/04	R. T. Vanderbilt Company, Inc.	(S) Anti-wear and antioxidant additive for lubricants, especially greases	(S) Carbamodithioic acid, dipentyl-, compound with n-pentyl-1-pentanamine (1:1)
P–04–0092	10/29/03	01/26/04	R. T. Vanderbilt Company, Inc.	(S) Anti-wear and antioxidant additive for lubricants, especially greases	(S) Carbamodithioic acid, bis(2-ethylhexyl)-, compound with 2-ethyl-n-(2-ethylhexyl)-1-hexanamine (1:1)
P–04–0093	10/29/03	01/26/04	R. T. Vanderbilt Company, Inc.	(S) Anti-wear and antioxidant additive for lubricants, especially greases	(G) Dialkylamine dialkyldithiocarbamate
P–04–0094	10/29/03	01/26/04	R. T. Vanderbilt Company, Inc.	(S) Anti-wear and antioxidant additive for lubricants, especially greases	(S) Carbamodithioic acid, ditridecyl-, branched, compounds with branched n-tridecyl-1-tridecanamine
P–04–0095	10/29/03	01/26/04	CBI	(G) Open, non-dispersive (resin)	(G) Polyurethane dispersion
P–04–0096	10/30/03	01/27/04	CBI	(G) Reactive additive for a coating formulation	(G) Functionalized diether
P–04–0097	10/31/03	01/28/04	Zeon Chemicals L.P.	(S) Polymerization monomer	(G) Cycloaliphatic ester
P–04–0098	10/31/03	01/28/04	CBI	(G) Resin coating	(G) Urethane acrylate
P–04–0099	10/31/03	01/28/04	Engelhard Corporation	(G) Intermediate	(G) Intermediate for diazo yellow pigment
P–04–0100	11/03/03	01/31/04	CBI	(G) Open, non-dispersive (bulking agent)	(G) Fatty acid amide amine
P–04–0101	11/03/03	01/31/04	CBI	(G) Emulsifier	(G) Polyolefin aminoester
P–04–0102	11/03/03	01/31/04	Degussa Corporation	(S) Coating systems and printing inks	(G) Aqueous ketone-aldehyde resin
P–04–0103	11/03/03	01/31/04	CBI	(S) Automotive industry	(G) Cycloaliphaticdiisocyanate, homopolymer, compound with alkanedioic acid ester
P–04–0104	10/31/03	01/28/04	Johnson Polymer	(G) Polymeric coating vehicle	(G) Acrylic copolymer
P–04–0105	11/04/03	02/01/04	CBI	(G) Water removal and drag reduction for transport of liquids and gases	(G) Alkyl oxirane - epichlorohydrin - alkyl bis(phenol) - polyhydroxy polyol
P–04–0106	11/04/03	02/01/04	Transmare Houston Inc.	(S) Carrier for herbicides and pesticides; paint and ink formulations; indoor heating oil; solvent blend for cleaning	(S) Alkanes, $C_{8–12}$-branched and linear
P–04–0107	11/05/03	02/02/04	Eastman Kodak Company	(G) Contained use in digital and imaging products	(G) Substituted amino ethane sulfonic acid salt
P–04–0108	11/05/03	02/02/04	Conocophillips Company	(S) Olefin manufacturing feedstock; Specialty solvents; alcohol denaturant; fuel blendstock	(G) Naphtha
P–04–0109	11/06/03	02/03/04	CBI	(G) Reactant in thermoset coating or adhesive formulation; degree of containment --- (c) open, non-dispersive use	(G) Amine prepolymer
P–04–0110	11/06/03	02/03/04	Archer Daniels Midland Company	(S) Co-adhesive for composite panel products	(S) Linseed oil, conjugated
P–04–0111	11/06/03	02/03/04	CBI	(S) Plasticizer for concrete and cement	(G) Polycarboxylated ether
P–04–0112	11/10/03	02/07/04	CBI	(G) Open non-dispersive (resin)	(G) Polyester polyurethane resin
P–04–0113	11/10/03	02/07/04	CBI	(G) Open non-dispersive (acrylate resin)	(G) Acrylic acid ester

I. 149 PREMANUFACTURE NOTICES RECEIVED FROM: 10/1/03 TO 11/28/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0114	11/10/03	02/07/04	International flavors and; Fragrances Inc.	(S) Raw material for use in fragrances for soaps, detergents, cleaners and other household products	(S) 94–98%indeno[4,4-d]-1,3-dioxin, 4, 4a, 5, 6, 7, 8, 9, 9b-octahydro-7,7,8,9,9-pentamethyl
P–04–0115	11/07/03	02/04/04	Zeon Chemicals L.P.	(S) Electron beam resist in the manufacture of ic chips and masks via microlithography processes	(S) 2-propenoic acid, 2-chloro-, methyl ester, polymer with (1-methylethenyl)benzene
P–04–0116	11/12/03	02/09/04	CBI	(G) Coating resin for open, no-dispersive use	(G) Amino alkyl alcohol modified fluoropolymer
P–04–0117	11/12/03	02/09/04	BASF Corporation	(S) Additive for ink jet printing inks	(S) 1,2-pentanediol
P–04–0118	11/12/03	02/09/04	Invista Inc.	(S) Intermediate for polymer manufacture	(G) Triamine adipate salt
P–04–0119	11/12/03	02/09/04	Invista Inc.	(G) Polymer for fiber	(G) Aliphatic polyamide
P–04–0120	11/12/03	02/09/04	Forbo Adhesives, LLC	(G) Hot melt polyurethane adhesive	(G) Isocyanate functional polyester polyether urethane polymer
P–04–0121	11/10/03	02/07/04	CBI	(G) Laminating adhesive	(G) Polyurethane
P–04–0122	11/13/03	02/10/04	CBI	(G) Rubber elastomer for tires, wheels, rolls and other Specialty urethane applications	(G) Mdi/carbonate prepolymer
P–04–0123	11/13/03	02/10/04	CBI	(G) Rubber elastomer for tires, wheels, rolls and other Specialty urethane applications	(G) Ppdi/carbonate/caprolactone/ether prepolymer
P–04–0124	11/14/03	02/11/04	CBI	(G) Controlled release of catalyst	(G) Polymethylene polyphenylene polyurea polymer
P–04–0125	11/17/03	02/14/04	CIBA Specialty Chemicals Corporation, Textile Effects	(S) Exhaust dyeing of cellulosic fibers	(G) Reaction products of substituted benzenesulfonic acid azo substituted phenyl amino compound and substituted amino phenyl compound
P–04–0126	11/17/03	02/14/04	CBI	(S) Flame retardant for plastic articles	(G) Diphosphoric acid, amine salt
P–04–0127	11/18/03	02/15/04	CBI	(G) Fuel additive	(G) Polyether/allylphenol modified siloxane
P–04–0128	11/19/03	02/16/04	Eastman Kodak Company	(G) Contained use in an article	(G) Heterocyclic substituted butanoic acid ester
P–04–0129	11/18/03	02/15/04	Ashland Inc., Environmental Health and; Safety	(G) Raw material in higher molecular weight polymer product	(G) Multifunctional acrylate oligomer resin
P–04–0130	11/17/03	02/14/04	CBI	(G) Viscosity index improver	(G) Alkyl methacrylates copolymer
P–04–0131	11/20/03	02/17/04	CBI	(G) Open, non-dispersive use	(G) Blocked isocyanate resin
P–04–0132	11/20/03	02/17/04	CBI	(G) Additive for industrial applications	(G) Ethylhexyl oxetane
P–04–0133	11/19/03	02/16/04	CBI	(S) Dispersing and wetting agent	(G) Polyester polyamide
P–04–0134	11/20/03	02/17/04	CIBA Specialty Chemicals Corporation, Textile effects	(S) Continuous dyeing of nylon carpet	(G) Reaction products of substituted amino anthracenesulfonic acid and substituted triazine amino phenyl compound
P–04–0135	11/21/03	02/18/04	CBI	(G) Open non-dispersive (polyurethane lacquer)	(G) Polyester urethane
P–04–0136	11/21/03	02/18/04	CBI	(S) Production of molded or extruded articles or as component of other industrial products	(G) Polyetherimide polymer
P–04–0137	11/21/03	02/18/04	CBI	(G) Emulsifier for emulsion polymerization	(G) Polyalkylene glycol alkyl ether sulfate, reaction products with allyl glycidyl ether, ammonium salt
P–04–0138	11/21/03	02/18/04	CBI	(G) Component of paper or plastic coating	(G) Substituted acrylate polymer
P–04–0139	11/24/03	02/21/04	CBI	(G) Additive for various cleaners	(G) Modified amidoamine
P–04–0140	11/24/03	02/21/04	CBI	(G) Additive for cleaning products	(G) Fatty acid ester salt
P–04–0141	11/24/03	02/21/04	CBI	(G) Additive for various cleaners	(G) Modified aminoamine
P–04–0142	11/24/03	02/21/04	CBI	(G) Additive for various cleaners	(G) Modified amidoamine
P–04–0143	11/24/03	02/21/04	CBI	(G) Additive for various cleaners	(G) Modified amidoamine
P–04–0144	11/24/03	02/21/04	CBI	(G) Chemical intermediate; destructive use	(G) Modified amidoamine
P–04–0145	11/24/03	02/21/04	CBI	(G) Open non-dispersive (coating material)	(G) Polyisocyanate
P–04–0146	11/25/03	02/22/04	Solvay Fluorides, Inc.	(S) Flux for brazing aluminum	(S) Potassium zinc fluoride
P–04–0147	11/25/03	02/22/04	CBI	(G) Chemical intermediate	(S) Hydroxylamine, o-[(2e)-3-chloro-2-propyl]-

I. 149 PREMANUFACTURE NOTICES RECEIVED FROM: 10/1/03 TO 11/28/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0148	11/25/03	02/22/04	CBI	(G) Paraffin inhibitor	(G) Olefin - maleic anhydride esterified polymer
P–04–0149	11/25/03	02/22/04	Invista Inc.	(G) Polymer for fiber	(G) Aliphatic polyamide
P–04–0150	11/25/03	02/22/04	CBI	(S) Fertilizer for turf and crops	(S) Seaweed extract (saragassum thumbergii)
P–04–0151	11/25/03	02/22/04	CBI	(S) Bicyclic tertiary amine salt used as a photoresist component	(G) Bicylic tertiary amine salt
P–04–0152	11/28/03	02/25/04	CBI	(G) Resin coating	(G) Polyester acrylate

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. 80 NOTICES OF COMMENCEMENT FROM: 10/01/03 TO 11/28/03

Case No.	Received Date	Commencement Notice End Date	Chemical
P–00–0119	11/12/03	10/10/03	(G) Polyol ester
P–00–0157	11/17/03	10/17/03	(G) Organo silane ester
P–00–0406	10/08/03	03/26/01	(G) Calcium fatty acid complex
P–00–0900	10/06/03	09/12/03	(G) Polyalkene, sulfonated
P–00–0901	10/06/03	09/17/03	(G) Polyalkylene sulfonate, salts
P–01–0292	10/20/03	10/10/03	(S) Silane, trimethoxyoctyl-
P–01–0527	10/29/03	10/09/03	(G) Polyester polyol
P–01–0637	11/20/03	11/10/03	(G) Polyurethane resin
P–01–0728	11/03/03	10/14/03	(G) Oligomeric ester, capped with iso-alcohols
P–01–0790	11/04/03	10/10/03	(G) Aluminum alkoxide complex
P–02–0587	10/23/03	10/08/03	(G) Polyester polyether isocyanate
P–02–0693	10/01/03	09/15/03	(G) Saturated hydrocarbon
P–02–0795	11/17/03	10/26/03	(G) Copolymer
P–02–0797	11/17/03	10/26/03	(G) Copolymer
P–02–0873	10/28/03	10/01/03	(G) Polyurethane prepolymer
P–02–1013	11/05/03	07/24/03	(G) Modified polyvinyl butyral
P–03–0007	11/18/03	09/04/03	(G) Alkyl cinnamic aldehyde
P–03–0035	11/25/03	10/27/03	(G) Alkene acrylate copolymer
P–03–0045	11/05/03	09/30/03	(S) Glycerides, soya mono- and di-, phosphates, sodium salts
P–03–0047	11/26/03	11/11/03	(S) Benzenemethanaminium, n-(3-aminopropyl)-n,n-dimethyl-, n-soya acyl derivs., chlorides
P–03–0176	10/10/03	09/11/03	(G) Urethane acrylate
P–03–0181	11/25/03	10/27/03	(G) Amino resin modified polyether polyurethane
P–03–0182	10/29/03	10/03/03	(G) Polysulfonated dpo/diphone
P–03–0194	10/21/03	09/30/03	(G) Bis[phenyl, 2h-1,3-benzoxazine] derivative
P–03–0227	10/07/03	09/09/03	(G) Substituted phenolic resin
P–03–0258	10/07/03	09/26/03	(S) 2,5-furandione, dihydro-3-[3-(triethoxysilyl)propyl]-
P–03–0276	10/31/03	10/16/03	(G) Polyalkylenecarbonate diol
P–03–0277	10/31/03	10/16/03	(G) Polyalkylenecarbonate diol
P–03–0301	10/07/03	09/29/03	(G) Vinyl acrylic emulsion polymer
P–03–0329	11/06/03	10/21/03	(G) Trialkylamine salt of substituted alkyarylpolyurethane
P–03–0343	10/17/03	09/12/03	(G) Acrylic polymer
P–03–0344	10/17/03	09/30/03	(G) Acrylic polymer
P–03–0362	10/28/03	10/23/03	(G) Thionocarbamate derivative or modified thionocarbamate
P–03–0423	10/17/03	10/01/03	(G) Modified polyol
P–03–0438	11/21/03	11/09/03	(G) Polyether modified polyurethane urea
P–03–0439	10/07/03	10/01/03	(G) Polyether modified polyurethane urea
P–03–0451	11/14/03	10/27/03	(G) Silicone polyether
P–03–0478	10/08/03	09/29/03	(G) Substituted -9,10-dihydro-9,10-dioxo-anthracentyl-phenylhalo compound
P–03–0479	10/08/03	09/29/03	(G) Substituted -9,10-dihydro-9,10-dioxo-anthracentyl-phenylhalo compound
P–03–0480	10/08/03	09/29/03	(G) Substituted -9,10-dihydro-9,10-dioxo-anthracentyl-phenylhalo compound
P–03–0484	11/12/03	10/24/03	(G) Fatty ester
P–03–0502	11/18/03	10/31/03	(S) Benzene, ethenyl-, polymer with cyclopentene and 1,3-pentadiene
P–03–0518	11/20/03	11/06/03	(G) Acrylic polymer
P–03–0528	11/12/03	10/19/03	(G) 2-propenoic acid, 2-methyl-, polymer with 1,2-ethanediyl bis(2-methyl-2-propenoate), 2-ethyl-2-[[(2-methyl-1-oxo-2-propenyl)oxy]methyl]-1,3-propanediyl bis(2-methyl-2-propenoate) and methyl 2-methyl-2-propenoate, compound with-imidazole
P–03–0530	10/10/03	09/11/03	(G) Salt of a polyalkylenepolyamine derivative
P–03–0531	10/10/03	09/11/03	(G) Salt of mixed fatty amidoamines

II. 80 NOTICES OF COMMENCEMENT FROM: 10/01/03 TO 11/28/03—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P–03–0536	11/06/03	10/21/03	(G) Polymer of substituted allylamine
P–03–0554	10/08/03	09/10/03	(G) Polyurethane
P–03–0555	10/15/03	10/03/03	(G) Isocyanate functional polyester polyether urethane polymer
P–03–0563	11/25/03	10/29/03	(S) 2-propenoic acid, 2-methyl-, 2-ethyltricyclo[3.3.1.13,7]dec-2-yl ester
P–03–0565	11/25/03	11/20/03	(S) 2-propenoic acid, 2-methyltricyclo[3.3.1.13,7]dec-2-yl ester
P–03–0573	10/28/03	10/24/03	(G) Polyester resin
P–03–0581	10/08/03	09/24/03	(G) Telechelic polyacrylate
P–03–0583	10/10/03	09/11/03	(G) Polyurethane
P–03–0584	11/18/03	11/05/03	(G) Urethane acrylate
P–03–0585	10/07/03	09/27/03	(S) 1,3-benzenedisulfonic acid, 4-[bis[4-(diethylamino)phenyl]methyl]-6-hydroxy-
P–03–0588	11/26/03	11/02/03	(G) Polycarboxylate polymer with alkenyloxyalkylol modified poly(oxyalkylenediyl), calcium sodium salt
P–03–0590	10/16/03	10/08/03	(S) 1-hexanol, 3-mercapto-
P–03–0609	11/17/03	11/04/03	(G) Oligomer of aromatic, alkyl amines and alkyl epoxide
P–03–0613	11/12/03	10/07/03	(G) Modified diaryliodoniumhexafluoroantimonate
P–03–0623	11/21/03	10/29/03	(G) Amino epoxy silane
P–03–0635	11/04/03	10/09/03	(G) Acrylate, acrylonitrile, butadiene rubber-extended epoxy resin polymer
P–03–0636	10/15/03	10/02/03	(G) Epoxy acrylate oligomer
P–03–0644	10/10/03	10/02/03	(G) Acrylate ester
P–03–0646	10/15/03	09/23/03	(G) Cationic amine salt epoxy resin
P–03–0648	10/30/03	10/10/03	(S) 2-propenoic acid, 2-methyl-, 1,2-ethanediyl ester, polymer with butyl 2-methyl-2-propenoate
P–03–0651	10/15/03	10/03/03	(G) Polyurethane
P–03–0656	10/06/03	09/24/03	(S) Fatty acids, sunflower-oil, esters with propylene glycol
P–03–0666	11/04/03	10/27/03	(G) Distillation residue from glycol production
P–03–0678	11/17/03	10/21/03	(G) Styrene-acrylic copolymer
P–03–0714	11/25/03	11/13/03	(G) Aluminum alkoxide complex
P–03–0722	10/30/03	10/22/03	(G) Pyrazolone derivative
P–03–0729	11/18/03	11/10/03	(G) Alkyleneoxide derivatives
P–03–0731	11/24/03	10/23/03	(G) Polypropylene glycol, polymer with a carbomonocyclic diisocyanate, substituted-trialkoxysilane-blocked
P–03–0733	11/12/03	11/04/03	(G) Aspartic ester
P–92–0353	10/28/03	10/01/03	(G) Substituted polyhydroxy aromatic compound
P–98–0777	11/05/03	10/13/03	(S) Mixture of: alpha-d-glucopyranoside, ,1-6-bis-o-(1-oxooctyl)-b-d-fructofuranosyl and alpha-d-glucopyranoside, 6-o-(1-oxooctyl)-b-d-fructofuranosyl
P–98–0943	11/12/03	10/27/03	(G) Substituted-[(1,2,3,4-tetrahydro-5,8-dihydroxy-1,4-methanonaphthalene -6,7-diyl)bis(methylene)]bis
P–99–0916	10/15/03	09/30/03	(G) Telogen, telomer with alkenes and alkenyl acetate

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: December 4, 2003.

Anthony Cheatham,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E3–00565 Filed 12–16–03; 8:45 am]

BILLING CODE 6560–50–S

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application to finance the export of $328 million of U.S. goods and services for a mining project in Argentina. According to the applicant, the U.S. exports will enable the buyer to produce an additional 14.74 metric tons of gold and 17.86 metric tons of silver per year. Available information indicates that virtually all of this new production will be exported from Argentina and sold on the world market. Interested parties may submit comments on this transaction by e-mail to *economic.impact@exim.gov* or by mail to 81 Vermont Avenue, NW., Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

Helene S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. 03–31124 Filed 12–16–03; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011637–009.

Title: Ampac Cooperative Working Agreement.

Parties: Compania Chilena de Navegacion Interoceanica, S.A.; Hamburg-Südamerikanische Dampfschifffahrtsgesellschaft KG; Maruba S.C.A.; TMM Lines Limited, LLC.

Synopsis: The proposed modification deletes the ''Columbus Line'' trade name of Hamburg-Süd and indicates that TMM will resign from the agreement on or about March 11, 2004.

Agreement No.: 011637–010.

Title: Ampac Cooperative Working Agreement.

Parties: Compania Chilena de Navegacion Interoceanica, S.A.; Hamburg-Südamerikanische Dampfschifffahrtsgesellschaft KG; Maruba S.C.A.

Synopsis: The proposed agreement modification adds Japan to the geographic scope of the agreement, reflects changes in the provision of vessels due to TMM's departure, deletes certain restrictions on the use of space, adds restrictions on competing services, establishes a new minimum duration for the revised agreement, and restates the agreement. The parties request expedited review.

Agreement No.: 011649–004.

Title: Joint Operating Agreement Between Interocean Lines, Inc. and Trinity Shipping Line, S.A.

Parties: Interocean Lines, Inc. and Trinity Shipping Line, S.A.

Synopsis: The proposed amendment deletes the understanding between the parties that terminal services will be provided by specific companies in Ecuador.

Dated: December 12, 2003.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–31142 Filed 12–16–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Request for public comment on draft Fiscal Year 2004 Program Guidelines/Application Solicitation for Labor-Management Committees.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing the draft Fiscal Year 2004 Program Guidelines/Application Solicitation for the Labor-Management Cooperation Program to inform the public. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations. The Solicitation contains changes in the eligibility requirement, specifically, that applicants who have not received funding under this program within the past 6 years are eligible to re-apply.

DATES: Comments must be submitted on or before January 16, 2004.

ADDRESSES: Send Comments to: Jane A. Lorber, Director, Labor Management Grants Program, FMCS 2100 K Street, NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Jane A. Lorber, 202–271–8868.

Labor-Management Cooperation Program Application Solicitation for Labor-Management Committees FY 2004

A. Introduction

The following is the final solicitation for the Fiscal Year (FY) 2004 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978, which was initially implemented in FY81. The Act authorizes FMCS to provide assistance in the establishment and operation of company/plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that company/plant, area, government agency, or industry; and

(b) Are established for the purpose of improving labor-management relationships, job security, and organization effectiveness; enhancing economic development; or involving workers in decisions affecting their working lives, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a company/plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in Section H. A copy of the Labor-Management Cooperation Act of 1978, included in the application kit, should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the company/plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria. The term ''labor'' refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (company), area, industry, or public sector levels.

A plant or company committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon a particular city, county, contiguous multicounty, or statewide jurisdiction. An industry committee generally consists of a collection of agencies or enterprises and related labor union(s) producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists of government employees and managers and employees of public institutions of higher education, or of employees and managers of public elementary and secondary schools. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be

given to the above definitions as well as to the focus of the committee.

In FY 2004, competition will be open to company/plant, area, private industry, and public sector committees. Special consideration will be given to committee applications involving innovative or unique efforts. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (*e.g.,* job training, mediation of contract disputes, *etc.*)

Required Program Elements

1. *Problem Statement*—The application should have numbered pages and discuss in detail what specific problem(s) face the company/plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the company/plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses *why* the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail *what* the labor-management committee will accomplish during the life of the grant. Applications that promise to provide objectives *after* a grant is awarded will receive little or no credit in this area. While a goal of ''improving communication between employers and employees'' may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in *specific* and *measurable* terms. Applicants should focus on the outcome, impacts or changes that the committee's efforts will have. Existing committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts of the grantee, as well as the FMCS grants program.

3. *Approach*—This section of the application specifies how the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g., members represent 70% of the area or company/plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board; noting, that grant funds may not be used to pay for existing employees

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet (we require meetings at least every other month) as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees, a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for *when* they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using October 1, 2004, as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives. An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. We encourage the use of individual letters submitted on company or union letterhead represented by the individual. The letters should match the names provided under Section 3(b).

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committees;

b. From existing committees, a copy of the existing staffing levels, a copy of the by-laws (if any), a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problem and justified the needs that the proposed project will address.

(2) The degree to which appropriate and *measurable* goals and objectives have been developed to address the problems/needs of the applicant.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. This section will also address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and

(8) The value to the government of the application in light of the overall

objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-managment concept.

C. Eligibility

Eligible grantees include state and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third-party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities that can document that a major purpose or function of their organization is the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applications from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible, nor will applications signed by entities such as law firms or other third-parties failing to meet the above criteria.

Successful grantees *will* be bound by OMB Circular 110, *i.e.*, ''contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be *excluded*'' (emphasis added from competing for such procurements).

Applicants who received funding under this program within the past 6 years for committee operations are not eligible to re-apply. The only exception will be made for grantees that seek funds on behalf of an entirely different committee whose efforts are totally outside of the scope of the original grant.

D. Allocations

The FY2004 appropriation for this program *anticipated* to be $1,490,250 of which at least $1,000,000–$1,050,000 will be available competitively for new applicants. Specific funding levels will not be established for each type of committee. The review process will be conducted in such a manner that at least two awards will be made in each category (company/plant, industry, public sector, and area), provided that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be considered according to merit without regard to category.

In addition to the competitive process identified in the preceding paragraph, FMCS will set aside a sum not to exceed thirty percent of its non-reserved appropriation to be awarded on a non-competitive basis. These funds will be used only to support applications that have been solicited by the Director of the Service and are not subject to the dollar range noted in Section E. All funds returned to FMCS from a competitive grant award may be awarded on a non-competitive basis in accordance with budgetary requirements.

FMCS reserves the right to retain up to five percent of the FY2004 appropriation to contract for program support purposes (such as evaluation) other than administration.

E. Dollar Range and Length of Grants

Awards to expand existing or establish new labor-management committees will be for a period of up to 18 months. If successful progress is made during this initial budget period and all grants funds are not obligated within the specified period, these grants may be extended for up to six months. Continuation awards may be made.

The dollar range of awards is as follows:

—Up to $65,000 over a period of up to 18 months for company/plant committees or single department public sector applicants;
—Up to $125,000 per 18-month period for area, industry, and multi-department public sector committee applicants.

Applicants are reminded that these figures *represent maximum Federal funds only.* If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources. Applicants are also strongly encouraged to consult with their local or regional FMCS field office to determine what kinds of training may be available at no cost before budgeting for such training in their applications. A list of our field leadership team and their phone numbers is included in the application kit.

F. Cash Match Requirements and Cost Allowability

All applicants must provide at least 10 percent of the total allowable project costs in cash. Matching funds may come from state or local government sources or private sector contributions, but many generally not include other Federal funds. Funds generated by grant-supported efforts are considered ''project income,'' and may not be used for matching purposes.

It is the policy of this program to reject all requests for indirect or overhead costs as well as ''in-kind'' match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for committee purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for *time* spent at committee meetings or *time* spent in committee training sessions. Applicants generally will not be allowed to claim all or a portion of *existing* full-time staff as an expense or match contribution. For a more complete discussion of cost allowability, applicants are encouraged to consult the FY2004 FMCS Financial and Administrative Grants Manual, which will be included in the application kit.

G. Application Submission and Review Process

The Application for Federal Assistance (SF–424) form must be signed by *both* a labor and management representative. In lieu of signing the SF–424 form representatives may type their name, title, and organization on plain bond paper with a signature line signed and dated, in accordance with block 18 of the SF–424 form. Applications must be postmarked no later than June 30, 2004. No applications or supplementary materials will be accepted after the deadline. It is the responsibility of the applicant to ensure that the U.S. Postal Service or other carrier correctly postmarks the application. An original application containing numbered pages, plus *three* copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW., Washington, DC 20427. FMCS will not consider videotaped submissions or video attachments to submissions.

After the deadline has passed, all eligible applications will be reviewed

and scored preliminarily by one or more Grant Review Boards. The Board(s) will recommend selected applications for rejection or further funding consideration. The Director, Labor-Management Grants Program, will finalize the scoring and selection process. The individual listed as contact person in Item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process. Please be sure that person is available between June and September of 2004.

All FY2004 grant applicants will be notified of results and all grant awards will be made before October 1, 2003. Applications submitted after the June 30 deadline date or fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Grants Program.

H. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. Please consult the FMCS Web site (*www.fmcs.gov*) to download forms and information.

These kits and additional information or clarification can be obtained free of charge by contacting the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW., Washington, DC 20427; or by calling 202–606–8181.

John J. Toner,

Chief of Staff, Federal Mediation and Conciliation Service.

[FR Doc. 03–31032 Filed 12–16–03; 8:45 am]

BILLING CODE 6732–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 31, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. The Edwards Family Holdings, LLLP, The Edwards Family Management Trust, J. Joseph Edwards and Patricia C. Edwards, all of Barnesville, Georgia; James J. Edwards, Jr., Thomaston, Georgia; and Christopher C. Edwards, Griffin, Georgia; to retain voting shares of United Bank Corporation, Barnesville, Georgia, and thereby indirectly retain voting shares of United Bank, Zebulon, Georgia.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Arnold Clair Benton and Neva Clair Benton, Reno, Nevada; to acquire additional shares of Heritage Bancorp, Reno, Nevada, and thereby indirectly acquire additional voting shares of Heritage Bank of Nevada, Reno, Nevada.

Board of Governors of the Federal Reserve System, December 11, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00564 Filed 12–16–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site 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 January 9, 2004.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Fentura Financial, Inc., Fenton, Michigan; to merge with West Michigan Financial Corporation, Hudsonville, Michigan, and thereby indirectly acquire West Michigan Community Bank, Hudsonville, Michigan.

Board of Governors of the Federal Reserve System, December 11, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00563 Filed 12–16–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on January 15–16, 2004

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics (Leon R. Kass, M.D., chairman) will hold its fifteenth meeting, at which, among other things, it will continue discussion of its stem cell research, ''beyond therapy'' (enhancement), and ''biotechnology and public policy'' (regulation) projects. Subjects discussed at past Council meetings (and potentially touched on at this meeting) include: human cloning; embryo research; aging retardation and lifespan-extension; organ procurement for transplantation; and assisted reproduction and reproductive genetics (including IVF, ICSI, PGD; sex selection, inheritable genetic modification; and the patentability of human genes, tissues, and organisms).

DATES: The meeting will take place Thursday, January 15, 2004, from 9 a.m. to 5:15 p.m. et; and Friday, January 16, 2004, from 8:30 a.m. to 12:30 p.m. et.

ADDRESSES: Hotel Wyndham Washington DC, 1400 M Street, NW., Washington, DC 20005.

Public Comments: The meeting agenda will be posted at http://www.bioethics.gov. Interested members of the public are encouraged to offer comments, either in person or in writing. A period of time will be set aside during the meeting to receive comments from the public, beginning at 11:30 a.m., on Friday, January 16. Comments will be limited to no more than five minutes per speaker or organization. As a courtesy, please inform Ms. Diane Gianelli, Director of Communications, in advance of your intention to make a public statement, and please give her your name, affiliation, and a brief description of the topic or nature of your comments. To submit a written statement, mail or e-mail it to Ms. Gianelli at one of the addresses given below.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Gianelli, Director of Communications, The President's Council on Bioethics, Suite 700, 1801 Pennsylvania Avenue, Washington, DC 20006. Telephone: 202/296–4669. E-mail: *info@bioethics.gov.* Web site: *http://www.bioethics.gov.*

Dated: December 10, 2003.

Dean Clancy,

Executive Director, The President's Council on Bioethics.

[FR Doc. 03–31046 Filed 12–16–03; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: ''Medical Expenditure Panel Survey Household Component and Medical Provider Component (MEPS–HC and MEPS–MPC)—2004 and 2005''. In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on October 16, 2003 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by January 16, 2004.

ADDRESSES: Written comments should be submitted to: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ, Reports Clearance Officer, (301) 427–1651.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Medical Expenditure Panel Survey Household Component and Medical Provider Component (MEPS–HC and MPC)—2004 and 2005''.

The AHRQ intends to conduct an annual panel survey of U.S. households and medical providers to collect information on a variety of measures related to health status, health insurance coverage, health care use and expenditures, and sources of payment for health services. This collection project consists of two parts: the MEPS Household Component (HC) and the MEPS Medical Provider component (MPC).

Each panel of the MEPS–HC consists of a nationally representative sample of U.S. households with a data collection period covering 2½ years.

This time frame allows for the collection of annual data from the MEPS sample that covers their health care experiences over two consecutive calendar years. The first panel of MEPS began in 1996 and a new panel has been initiated annually thereafter. The MEPS–HC is jointly sponsored by the AHRQ and the National Center for Health Statistics (NCHS).

The MEPS–HC will be conducted using a sample of households selected from households which responded to the previous year's National Health Interview Survey (NHIS) sponsored by NCHS. The NHIS is a household survey which collects health data from approximately 50,000 households and 110,000 individuals. The NHIS is used as the sampling frame for the MEPS and several other surveys as part of efforts by the Department of Health and Human Services (DHHS) to integrate survey data collection activities.

Data to be collected from each household include detailed information on demographics, health conditions, current health status, utilization of health care providers, charges and payments for health care services, quality of care received, medications, employment and health insurance.

The purpose of the MEPS–MPC is to supplement the information provided by household respondents in the MEPS–HC about the use of medical services in the United States based on a nationally representative sample. The MEPS–MPC will be conducted with the permission of members of the households surveyed in the MEPS–HC. The AHRQ contractor will contact the medical providers of the HC Survey respondents to determine the actual dates of service, the diagnoses, the services provided, the amount that was charged, the amount that was paid and the sources of payment. Thus, the MPC is derived from or is based upon the survey, (MEPS–HC). The MPC confirms and/or improves the quality of the core survey data.

Data from household respondents in the MEPS Household Component for calendar year 2004, will be collected, beginning in 2004, and continuing into the year 2005, data for calendar year 2005 will be collected, beginning in 2005, and continuing into the year 2006.

Data from medical providers linked to household respondents in the MEPS Household Component for calendar year 2004, will be collected, beginning in 2005, and continuing into the year 2006, provider data for calendar year 2005 will be collected, beginning in 2006, and continuing into the year 2007.

Data Confidentiality Provisions

MEPS data confidentiality is protected under the AHRQ and NCHS Confidentiality statutes, section 308(d) and section 924(c) of the Public Health Service Act (42 U.S.C. 242m(d) and 42 U.S.C. 299c–(c), respectively).

In accordance with SHRQ and NCHS confidentiality statutes, statistical and non-identifying data will be made available through publications, articles in major journals as well as public use data files. The statistical and analytic data are intended to be used for purposes such as:

- Generating national estimates of individual and family health care use and expenditures, private and public health insurance coverage, and the availability, costs and scope of private health insurance benefits among Americans;
- Examining the effects of changes in how chronic care and disability are managed and finances;
- Evaluating the growing impact of managed care and of enrollment in different types of managed care plans; and,

• Examining access to and costs of health care for common diseases and conditions, health care quality, prescription drug use, and other health issues.

Statisticians and researchers will use these data to make important generalizations about the health care of civilian non-institutionalized population of the United States, as well as to conduct research in which the household is the unit of analysis.

Methods of Collection

Data from the MEPS–HC will be collected using a combination of modes. For example, the AHRQ intends to introduce study participants to the survey through advance mailings. The first contact will provide the household with information regarding the importance and uses of the information obtained. The AHRQ will then conduct five (in-person) interviews with each household to obtain health care use and expense data for 2 calendar years. Data will be collected using a computer-assisted personal interviewing method (CAPI). In certain cases, AHRQ will conduct interviews over the telephone, if necessary respondents may be asked to respond to 1 or more short self-administered questionnaires over the course of the survey.

The medical provider survey will be conducted predominantly by telephone, but may include self-administered mail surveys, if requested by the respondent.

Estimated Annual Respondent Burden Per Year for the MEPS HC: Each MEPS participated is asked to complete 5 interviews over two and one half years. Each interview averages 1.8 hours in length. Total burden is estimated in the following chart:

MEPS HOUSEHOLD COMPONENT ESTIMATED BURDEN FOR 2004 AND 2005

Survey period	Number of completes	Burden per complete (hours)	Total burden (hours)
Jan–Jul '04	22,037	1.8	39,667
Aug–Dec '04	14,746	1.8	26,543
Jan–Jul '05	22,418	1.8	40,352
Aug–Dec '05	15,003	1.8	27,005
Jan–Jul '06	14,838	1.8	26,708
Total			160,275

Estimated Annual Respondent Burden per year for the MEPS MPC: The MPC for Calendar Year 2004 and 2005 estimated annual hour burden is as follows:

Type of provider	Number of respondents	Average number of patients/provider	Number of patient/provider pairs	Average number of events/patient	Average burden/event (in minutes)	Total hours of burden
MPC 2004:						
Hospital Office-based	5,502	2.2	12,105	3.2	5	3,227
Doctor	23,077	1.3	30,000	3.5	5	8,750
Separately Billing Doctor	17,143	1.4	24,000	1.3	5	2,600
Home Health	545	1.1	600	5.8	5	290
Pharmacy	8,077	2.6	21,000	10.3	3	10,815
Total	54,344		87,705			25,682
MPC 2005:						
Hospital Office-based	5,310	2.2	11,681	3.2	5	3,115
Doctor	22,269	1.3	28,950	3.5	5	8,444
Separately Billing Doctor	16,543	1.4	23,160	1.3	5	2,509
Home Health	526	1.1	579	5.8	5	280
Pharmacy	7,794	2.6	20,265	10.3	3	10,436
Total	52,442		84,635			24,784

Request for Comments

In accordance with the above cited legislation, comments on the AHRQ information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of the AHRQ's estimate of burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: November 26, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–31197 Filed 12–16–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: ''Medical Expenditure Panel Survey—Medical Provider Component (MEPS–MPC) for 2003''. In accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on October 15, 2003 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by January 16, 2004.

ADDRESSES: Written comments should be submitted to: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ, Reports Clearance Officer, (301) 427–1651.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Medical Expenditure Panel Survey—Medical Provider Component (MEPS–MPC) for 2003''.

The MEPS–MPC is a survey of hospitals, physicians and other medical providers. The purpose of this survey is to supplement and verify the information provided by respondent households participating in the household component of the MEPS (MEPS–HC) about their use of medical services in the United States.

With the permission of members of the households surveyed in the MEPS–HC, AHRQ contractor will contact the medical providers of the HC survey respondents to determine the actual dates of service, the diagnoses, the services provided, the amount that was charged, the amount that was paid and the sources of payment. Thus, the MPC is derived from or is based upon the core survey, MEPS–HC, and will improve the qualify of the core survey data.

The Medical Expenditure Panel Survey Household Component (MEPS–HC) conducted in 2003, will provide annual estimates, based upon a national representative sample, of health care use, expenditures, sources of payment and insurance coverage, for the U.S. civilian non-institutionalized population for 2003. Data from medical providers linked to household respondents in the MEPS Household component for calendar year 2003, will be collected beginning 2004 and continuing into the year 2005. MEPS is co-sponsored by the Agency for Healthcare Research and Quality (AHRQ) and the National Center for Health Statistics (NCHS).

Data Confidentiality Provisions

MEPS data confidentiality is protected under the AHRQ and NCHS Confidentiality statutes, section 308(d) and section 924(c) of the Public Health Service Act (42 U.S.C. 242m(d) and 42 U.S.C. 299c–3(c),respectively).

Methods of Collection

The Medical Provider Survey will be conducted predominantly by telephone, but may include self-administered mail surveys,if requested by the respondent. The MPC for Calendar year 2003 estimated annual burden is as follows:

Type of provider	Number of respondents	Average number of patients/provider	Number of patients/provider pairs	Average Number of events/patient	Average burden/event (in minutes)	Total hours of burden
MPC 2003:						
Hospital Office-based	5,095	2.2	11,210	3.2	5	2,977
Doctor	16,031	1.3	20,840	3.5	5	6,054
Separately Billing doctor	15,879	1.4	22,230	1.3	5	2,399
Home Health	505	1.1	555	5.8	5	267
Pharmacy	7,481	2.6	19,450	10.3	3	10,017
Total	44,991		74,285			21,714

Request for Comments

In accordance with the above cited legislation, comments on the AHRQ information collection are requested with regard to any of the following:

(a) Whether the proposed collection of information is necessary for the proper performance of functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of the AHRQ's estimate of burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: November 26, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–31198 Filed 12–16–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04004]

Agency for Toxic Substances and Disease Registry; Public Health Conference Support Grant Program; Notice of Availability of Funds—Amendment

A notice announcing the availability of fiscal year 2004 funds for grants to support public health conferences was published in the **Federal Register** on August 28, 2003, Volume 68, Number

167, pages 51781–51785. The notice is amended as follows:

Page 51781, third column, under Application Deadline: delete ''Cycle C: June 1, 2004.''

Page 51784, first column, Section H. ''Submission and Deadline,'' paragraph 2, delete the first sentence. Replace with, ''There will be two conference support reviews this year.''

Paragraph 4, should be changed to read, ''* * * between August 1, 2004 and September 30, 2005 * * *''

Delete Paragraph 5.

Under subtitle ''Letter of Intent Due Dates'', lines 5 and 6, Cycle B: January 6, 2004 should be changed to read, ''For conferences August 1, 2004–September 30, 2005.''

Delete lines 7, 8, and 9.

Lines 10–12 should be changed to read, ''Letter of Intent (LOI) Submission: On or before October 1, 2003, and January 6, 2004 submit an original and two signed copies * * *''

Page 51784, second column, under paragraph 1, in block 1, ''Application due dates,'' delete ''Cycle C: June 1, 2004''; in block 2, ''Earliest possible award dates,'' delete ''September 1, 2004.''

In paragraph 2, under Application Submission, line 2, should be changed to read, ''On or before November 19, 2003 and March 8, 2004 submit an original and two * * *''

Dated: December 11, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31077 Filed 12–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–06–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Domestic Violence Prevention Enhancement and Leadership through Alliances (DELTA)—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Domestic violence is a large, potentially preventable source of physical and emotional harm for women, children, and families. One promising approach to domestic violence prevention is the coordinated community response (CCR) model wherein multiple agencies within a community come together to work collectively on domestic violence issues. However, many CCRs formed to date focus on responding to, rather than preventing acts of violence. CDC is launching the *Domestic Violence Prevention Enhancement and Leadership through Alliances* (*DELTA*) demonstration program to stimulate the development of prevention-focused programs and diffuse current programs into the existing operations of CCRs, using fourteen state domestic violence coalitions as intermediaries.

This project will be conducted through a policy research contract. First there will be an identification and description of each state's CCR structures and operations, then an evaluation of the DELTA Program's success in developing and disseminating prevention enhancements to CCRs. The contractor will use an environmental scan to identify the full population of CCRs in each state, as well as profile the organizational, political, and economic landscape in which the CCRs operate. This information will assist CDC and the state coalitions in developing prevention enhancements that are responsive to the capacities and circumstances of local CCRs while at the same time providing baseline measures to facilitate and evaluate the DELTA program. The DELTA program evaluation will then use these baseline measures, together with additional data collected each year throughout program implementation to assess how well the program performs in strengthening collaborative activity across domestic violence programs, developing prevention enhancements and incorporating them into current CCR operations, and institutionalizing organizational changes that will sustain primary prevention as part of the everyday workings of state coalitions and CCRs.

The fourteen state coalitions that are DELTA grantees will be interviewed every six months by the contractor, and an annual survey of all local CCRs in the fourteen DELTA states will also be conducted. Once the initial data collection is completed, the contractor will also conduct a one-time survey of state domestic violence coalitions and up to ten other organizations in each of the 36 non-DELTA states. A separate OMB submission will be prepared for this phase. The estimated annualized burden is 400 hours for this data collection.

Information collection instrument	Number of respondents	Number of response/respondent	Average burden/response (in hours)
Mail Survey of CCRs in DELTA States	448	1	35/60
Telephone Interviews of DELTA Grantees	28	2	2

Dated: December 5, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31056 Filed 12–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Efficacy Trials of Parenting Programs for Fathers

Announcement Type: New.

Funding Opportunity Number: 04055.

Catalog of Federal Domestic Assistance Number: 93.136.

Key Dates: Letter of Intent Deadline: January 16, 2004.

Application Deadline: February 18, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under section 391(a)(1) of the Public Health Service Act, [42 U.S.C. section 280b(a)(1), as amended].

Purpose: The purpose of the program is to examine the efficacy of parenting programs for high-risk fathers, expectant fathers, or father surrogates of children age birth to two and/or age three to five for the prevention of child maltreatment and the promotion of positive parenting behaviors. This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control: Conduct a targeted program of research to reduce injury-related death and disability.

Outcomes to be assessed include:

- Knowledge and attitudes towards parenting, including perceptions of self-reported parenting competence;
- Changes in daily parental behavior and parenting style;
- Mothers' perceptions of fathers' support;
- Mothers' and fathers' reports of fathers' involvement in care giving;
- Incidence of neglect, and physical, sexual, and emotional abuse; and
- Incidence of unintentional injuries.

Research Objectives: Research suggests that most cases of serious child physical abuse and fatality are caused by fathers or father figures (Anderson, Ambrosino, Valentine, & Lauderdale, 1983; Bergman, Larsen, & Mueller, 1986; Brewster *et al.*, 1998; Daley & Piliavin, 1982; Hicks & Gaughan, 1995; Jason & Andereck, 1983; Rosenthal, 1988). Although there is little research on the determinants of abuse among fathers or father figures, it appears that they may have similar characteristics to those of physically abusive mothers: greater perceived stress and distress, greater physiological reactivity, lack of social support, negative perceptions of their children, and inaccurate knowledge or expectations of developmentally appropriate complex child behaviors (Milner, 1998).

Recruiting fathers in prevention programs is a major challenge. However, some prevention and awareness programs have been developed to teach experienced and new fathers the basics in caring for infants and young children. Such programs provide men with a safe environment to discuss their concerns about fatherhood and learn basic childcare skills. Participants report high rates of satisfaction and show low levels of attrition. However, more rigorous evaluation of such programs is needed to establish their potential impact.

Research funded under this announcement is expected to address this important gap in the prevention literature (*i.e.*, efficacy studies of interventions that are designed to reduce the above types of parenting characteristics). The ultimate aim of such an approach is to assess whether interventions designed to teach expectant, new, experienced, and surrogate fathers the basics in caring for infants and young children, can reduce risk factors for child maltreatment.

At a minimum, competitive applicants will provide theoretical rationale and empirical evidence in support of a specific extant parenting course directed toward fathers whose intimate partners are currently expecting or have children under the age of five, and conduct a rigorous efficacy study.

Priority will be given to efficacy studies of primary prevention parenting programs that focus on the determinants of abuse among expectant, new, experienced or surrogate fathers, over those that focus on criminal justice responses (*e.g.*, arrest strategies).

Priority will also be given to proposals that:

- Propose more stringent and rigorous evaluation designs, including: Experimental and quasi-experimental designs with appropriate baseline/pre-intervention data, post-intervention data, and at least one follow-up collection point; data from at least one comparison or control group; and data from multiple sources.
- Propose data analytic plans that are appropriate to the intervention, research design and hypotheses, data collection measures, and project period, and that anticipate and evaluate the effect of threats to the internal and external validity of the specified research design.
- Target traditionally underserved communities.

Activities: Awardee activities for this program are as follows:

1. Design and conduct research, including formative research and pilot testing to address the described goals of this cooperative agreement.
2. Collaborate with CDC scientists in the development of the human subjects protocol for the CDC Institutional Review Board (IRB) by all cooperating institutions participating in the research project.
3. Obtain approval of the study protocol by the recipient's local IRB.
4. Implement and evaluate project delivery.
5. Write and disseminate reports of research activities to regional, state, and local partners.
6. Conduct one reverse site visit to meet with CDC staff in Atlanta on an annual basis.
7. Complete all required reports as specified under ''Reporting''.
8. Analyze data and publish findings in peer-reviewed journals.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

(1) Provide scientific and programmatic consultation. CDC will collaborate with project staff on decision-analyses, programmatic issues, and dissemination of the study results in publications and presentations.

(2) Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research.

(3) The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

(4) CDC staff will monitor and review scientific and operational accomplishments of the project through conference calls, site visits, and review of technical reports.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above. Fiscal Year Funds: 2004 Approximate Total Funding: $500,000.

Approximate Number of Awards: One.

Approximate Average Award: N/A.

Floor of Award Range: $250,000.

Ceiling of Award Range: $500,000.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Four years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies, such as:

- Public nonprofit organizations;
- Private nonprofit organizations;
- For profit organizations;
- Small, minority, women-owned businesses;
- Universities;
- Colleges;
- Research institutions;
- Hospitals;
- Community-based organizations;
- Faith-based organizations;
- Federally recognized Indian tribal governments;
- Indian tribes;
- Indian tribal organizations;
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States).

A Bona Fide Agent is an agency/organization identified by the State as eligible to submit an application under the State eligibility in lieu of a State application. If you are applying as a bona fide agent of a State or local government, you must provide a letter from the State or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching: Matching funds are not required for this program.

III.3. Other Eligibility Requirements: If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet submission requirements. The following applicant requirements are:

- A principal investigator who has documented prior training and experience in conducting efficacy and effectiveness trials.
- A principal investigator who has conducted research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.
- Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing violence prevention and related research in peer-reviewed journals.
- Effective and well-defined working relationships within the performing organization and with outside entities, which will ensure implementation of the proposed activities.
- The overall match between the applicant's proposed research objectives and the program priorities as described under the heading, ''Research Objectives''.
- The requested funding amount should not be greater than the ceiling of the award range.
- It is especially important to include an abstract that reflects the study's focus, because the abstract will be used to help determine the responsiveness of the application.
- Principal investigators (PI's) are encouraged to submit only one proposal in response to this program announcement. With few exceptions (*e.g.*, research issues needing immediate public health attention), only one application per PI will be funded under this announcement.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address to Request Application Package: To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*.

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission: Letter of Intent (LOI): CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, your LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review. Your LOI must be written in the following format:

- Maximum number of pages: Two;
- Single spaced;
- Font size: 12-point unreduced;
- Paper size: 8.5 by 11 inches;
- Page margin size: One inch;
- Printed only on one side of page;
- Written in English, avoid jargon.

Your LOI must contain the following information:

- Descriptive title of the proposed research;
- Name, address, e-mail address and telephone number of the Principal Investigator;
- Names of other key personnel;
- Participating institutions;
- Number and title of this Program Announcement (PA).

Application: Follow the PHS 398 application instructions for content and formatting of your application. See Attachment 1 of this announcement for guidance on how to complete Form 398 for this Program Announcement.

You must include a research plan with your application. The research plan should be no more than 25 pages (8.5 inches by 11 inches), single-spaced, printed on one side only, with one-inch margins on all sides, and unreduced 12 point font.

Your application will be evaluated on the criteria listed under Section V. Application Review Information, so it is important to follow them, as well as the Research Objectives and the Administrative and National Policy Requirements (AR's), in laying out your research plan.

Your research plan should address activities to be conducted over the entire project period. The research plan should consist of the following information: 1. Abstract. It is especially important to include an abstract that reflects the study's focus, because the abstract will be used to help determine the responsiveness of the application.

2. Program Goals and Objectives. Describe the goals and objectives the proposal is designed to achieve in the short and long term. Specific research

questions and hypotheses should also be included.

3. Program Participants. Describe the population from which the sample will be drawn and the method by which they will be selected. In addition, the proposal should provide evidence that the recipient (or collaborating partner) has access to the target population, and that participation in the fathering program will be adequate.

4. Intervention. Describe the proposed strategies or components of the intervention and the plan for implementing the efficacy study. Proposals should explicate the theoretical and empirical justification for the potential effectiveness of the intervention for reducing child maltreatment. The proposal should describe incidence, prevalence, morbidity, and/or mortality rates associated with child maltreatment within the location or setting in which the intervention component(s) will occur, and describe the relevance of this setting to the strategy and desired outcomes.

5. Evaluation Design. Describe the proposed design, methods and analysis plan for assessing the efficacy of the intervention. The specific type of evaluation method chosen should reflect the nature of the intervention, feasibility, and ethical considerations. Potential threats to the validity of the study should be described along with how such threats will be recognized and addressed. The status of all necessary measurement instruments should be described. If any materials are not extant, the methods and time frame for measure development, pilot testing, and validation should be given. For data collected from archival records (*e.g.*, hospital records, police records, etc.) the proposal should discuss issues of accessibility, reliability, and validity of those data.

6. Project Management. Provide evidence of the expertise, capacity, and community support necessary to successfully implement the efficacy study of programs for fathers or father surrogates. Each existing or proposed position for the project should be described by job title, function, general duties, level of effort and allocation of time. Management operation principles, structure, and organization should also be noted.

7. Collaborative Efforts. List and describe the current and proposed collaborations with government, health, or children's agencies, community- or faith-based organizations, minority organizations, and other researchers. Include letters of support and memoranda of understanding that specify the nature of past, present, and proposed collaborations, and the products/services/activities that will be provided by and to the applicant.

8. Data sharing and release: Describe plans for the sharing and release of data (See AR–25 for additional information).

9. Project Budget. Provide a detailed budget for each activity undertaken, with accompanying justification of all operating expenses that is consistent with the stated objectives and planned activities of the project. This program announcement does not use the modular budget format.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered in item 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*.

IV.3. Submission Dates and Times: LOI Deadline Date: January 16, 2004. *Application:* February 18, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

4. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

5. Funding Restrictions: Restrictions, which must be taken into account while writing your budget, are as follows: None.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement must be less than 12 months of age.

6. Other Submission Requirements: LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Robin Forbes, CDC, NCIPC, 4770 Buford Hwy, NE, Mailstop K–62, Atlanta, GA 30341, Phone: 770–488–4037, Fax: 770–488–1662, Email: *CIPERT@cdc.gov.*

Application Submission Address: Submit the signed original and five copies of your application by mail or express delivery service to: Technical Information Management—PA# 04055, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria: You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria in assigning the application's overall score, weighting

them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, scientifically rigorous, well integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

Intervention: Is the potential effectiveness of the proposed intervention within the target community theoretically justified and supported with epidemiologic, methodological, and behavioral research? How feasible is the implementation of the intervention as proposed? Can the intervention reasonably be predicted to produce the expected reductions in risk factors for child maltreatment? Is the setting of implementation appropriate?

Protection of Human Subjects From Research Risks: Does the application adequately address the requirements of title 45 CFR part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of woman, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Inclusion of Children as Participants in Research Involving Human Subjects: The NIH maintains a policy that children (*i.e.*, individuals under the age of 21) must be included in all human subjects research, conducted or supported by the NIH, unless there are scientific and ethical reasons not to include them. This policy applies to all initial (Type 1) applications submitted for receipt dates after October 1, 1998.

All investigators proposing research involving human subjects should read the ''NIH Policy and Guidelines'' on the inclusion of children as participants in research involving human subjects that is available at: *http://grants.nih.gov/grants/funding/children/children.htm.*

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process: Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness of eligibility information by the National Center for Injury Prevention and Control (NCIPC). Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. You will be notified that your application did not meet submission requirements.

Applications that are complete and responsive to the PA will be subjected to a preliminary evaluation (streamline review) by a peer review committee, the Initial Review Group (IRG), convened by NCIPC to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRG. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator or program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process:

1. The primary review will be a peer review conducted by the IRG. All applications will be reviewed for scientific merit in accordance with the review criteria listed above. Applications will be assigned a priority score based on the National Institutes of Health (NIH) scoring system of 100–500 points.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of NCIPC's Advisory Committee for Injury Prevention and Control (ACIPC). The ACIPC Federal agency experts will be invited to attend the secondary review, and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest, so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research.

3. All applicants will receive a written critique. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in ''Healthy People 2010,'' the Institute of Medicine report, ''Reducing the Burden of Injury,'' and the ''CDC Injury Research Agenda.''

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the IRG, recommendations by the secondary review committee, *e.g.*, NCIPC's Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

VI. Award Administration Information

VI.1. Award Notices: If your application is to be funded, you will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

VI.2. Administrative and National Policy Requirements: 45 CFR Part 74 and 92. For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*.

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–8 Public Health System Reporting Requirements
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status
- AR–16 Security Clearance Requirement
- AR–21 Small, Minority, and Women-Owned Business
- AR–22 Research Integrity
- AR–23 States and Faith-Based Organizations
- AR–24 Health Insurance Portability and Accountability Act Requirements
- AR–25 Release and Sharing of Data

Starting with the December 1, 2003 receipt date, all NCIPC funded investigators seeking more than $500,000 in total costs in a single year are expected to include a plan describing how the final research data will be shared/released or explain why data sharing is not possible. Details on data sharing/release, including the timeliness and name of the project data steward, should be included in a brief paragraph immediately following the Research Plan Section of the PHS 398 form. References to data sharing/release may also be appropriate in other sections of the application (*e.g.*, background and significance, human subjects requirements, etc.) The content of the data sharing/release plan will vary, depending on the data being collected and how the investigator is planning to share the data. The data sharing/release plan will not count towards the application page limit and will not factor into the determination scientific merit or priority scores. Investigators should seek guidance from their institutions, on issues related to institutional policies, local IRB rules, as well as local, State and Federal laws and regulations, including the Privacy Rule.

Further detail on the requirements for addressing data sharing in applications for NCIPC funding may be obtained by contacting NCIPC program staff or visiting the NCIPC internet web site: at *http://www.cdc.gov/ncipc/osp/sharing_policy.htm*.

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting: You must provide CDC with an original, two copies, and a disk of the following reports:

1. Interim progress report, (PHS 2590, OMB Number 0925–0001, rev. 5/2001) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2700.

For scientific/research program technical assistance, contact: Joanne Klevens, PhD., Epidemiologist, Prevention Development and Evaluation Branch, Division of Violence Prevention, National Center for Injury Prevention and Control, 4770 Buford Highway, NE., M/S: K–60, Atlanta, GA 30341, Telephone: (770) 488–1386, E-mail: *DZK8@cdc.gov*.

For questions about peer review, contact: Gwen Cattledge, Scientific Review Administrator, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4770 Buford Highway, NE., Mailstop: K–02, Atlanta, GA 30341, Telephone: (770) 488–1430, E-mail: *gxc8@cdc.gov*.

For budget assistance, contact: Van King, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2751, E-mail: *vbk5@cdc.gov*.

VIII. Other Information

Attachment 1

Errata Sheet:

Special Instructions for PHS–398, Rev. 11/2002

ANNOUNCEMENT #04055

SECTION I—PREPARING YOUR APPLICATION

B. GENERAL INSTRUCTIONS (Page 3)

Use English only and avoid jargon and unusual abbreviations. Type the application.

FORMAT SPECIFICATIONS

The content section of the Program Announcement refers to ''the Research Plan.'' The research plan should consist of items listed in the program announcement. Use only standard size fonts in black print that can be photocopied and easily read, do not use photo reduction or compressed print. Draw all graphs, diagrams, tables, and charts in black ink. Do not include photographs, oversized documents, or materials that cannot be photocopied in the body of the application.

The ONLY item that should be used to keep the application together is a rubber band. Please do not use spiral binders, 3-ring notebooks, envelopes, binder clips, etc.

Do not submit an incomplete application. An application will be considered incomplete and returned if it is illegible, if it fails to follow the instructions, or if the material presented is insufficient to permit an adequate review. Unless specifically required by these instructions (*e.g.*, human subjects certification, changes in other support), do not send supplementary or corrective material pertinent to the application after the receipt date without its

being specifically solicited or agreed to by prior discussion with the Grants Management Specialist.

PAGE LIMITATIONS AND CONTENT REQUIREMENTS (Page 4)

Disregard Page Limits under Research Plan, Sections a–d and adhere to the prescribed guidance in the Program Announcement.

C. SPECIFIC INSTRUCTIONS BUDGET INSTRUCTIONS (Page 11)

This Announcement does not use the modular budget format. Disregard instructions regarding the dollar limitations. PHS 398 Form Page 4 and Form Page 5 are required to be submitted by all applications regardless of the dollar amount requested.

Human Subject Research (Section 8.e, Pages 18–19)

Ensure that the application addresses the issue of Inclusion of Women and Ethnic and Racial Minorities in Research Involving Human Subjects. The application could be determined as non-responsive if this issue is not covered within the research plan.

SECTION II—SUBMITTING YOUR APPLICATION

Send the Application to the following address: Technical Information Management—PA# 04055 CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, Georgia 30341–4146.

PLEASE DO NOT SEND THE APPLICATION TO THE NATIONAL INSTITUTES OF HEALTH

Disregard all instructions under Section A. INSTRUCTIONS (Page 31)

Disregard Sections B–D (Pages 34–35). Please refer to the Program Announcement Application Review Information (Section V) for the applicable CDC review process.

Disregard Section M, First Paragraph (Pages 53–54); Section N (Pages 54–55) and Section O (Pages 55–56); and all pages following Page 56.

Dated: December 10, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31083 Filed 12–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0092]

Food and Cosmetic Security Guidances; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document related to food security entitled ''Retail Food Stores and Food Service Establishments: Food Security Preventive Measures Guidance'' (food security guidance) and a guidance document related to cosmetics security entitled ''Cosmetics Processors and Transporters: Cosmetics Security Preventive Measures Guidance'' (cosmetics security guidance). The food security preventive Measures Guidance'' is designed as an aid to operators of retail food stores and food service establishments (e.g., bakeries, bars, bed-and-breakfast operations, cafeterias, camps, child and adult day care providers, church kitchens, commissaries, community fund raisers, convenience stores, fairs, food banks, grocery stores, interstate conveyances, meal services for homebound persons, mobile food carts, restaurants, and vending machine operators). It identifies the kinds of preventive measures that operators may take to minimize the risk that food under their control will be subject to tampering or other malicious, criminal, or terrorist actions. The cosmetics security guidance is designed as an aid to operators of cosmetics establishments (e.g., firms that process, store, repack, relabel, distribute, or transport cosmetics or cosmetics ingredients). It identifies the kinds of preventive measures that operators may take to minimize the risk that cosmetics under their control will be subject to tampering or other malicious, criminal, or terrorist actions.

DATES: You may submit written or electronic comments on the guidance documents at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Retail Food Stores and Food Service Establishments: Food Security Preventive Measures Guidance,'' or ''Cosmetics Processors and Transporters: Cosmetics Security Preventive Measures Guidance'' to John Kvenberg, Center for Food Safety and Applied Nutrition (HFS–600), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Include a self-addressed adhesive label to assist that office in processing your request.

Submit written comments on the documents to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance documents.

FOR FURTHER INFORMATION CONTACT: John Kvenberg, Center for Food Safety and Applied Nutrition (HFS–600), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2359, e-mail: *jkvenberg@cfsan.fda.gov* or Donald W. Kraemer, Center for Food Safety and Applied Nutrition (HFS–400), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2300, e-mail: *dkraemer@cfsan.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Operators of retail food store, food service, and cosmetics establishments are encouraged to review their current security procedures and controls in light of the potential for tampering or other malicious, criminal, or terrorist actions and make appropriate improvements.

FDA announced the availability of two guidance documents related to food security in the **Federal Register** of January 9, 2002 (67 FR 1224). They were entitled ''Food Producers, Processors, Transporters, and Retailers: Food Security Preventive Measures Guidance'' and ''Importers and Filers: Food Security Preventive Measures Guidance.'' The agency solicited public comment, but indicated that the two guidance documents would be implemented immediately in accordance with § 10.115(g)(2) (21 CFR 10.115(g)(2)). The two guidance documents were prompted by the tragedies of September 11, 2001, and the resulting scrutiny of, and interest in, food safety and security that followed.

A number of the comments on the two guidance documents urged FDA to issue guidance that was specifically tailored for the retail food store and food service sector. In response to these comments, the agency announced in the **Federal Register** of March 21, 2003 (68 FR 13932), the availability of a draft guidance document entitled ''Retail Food Store and Food Service Establishments: Food Security Preventive Measures Guidance.'' This draft guidance document identified the kinds of preventive measures that operators of retail food store and food service establishments (e.g., bakeries, bars, bed-and-breakfast operations, cafeterias, camps, child and adult day care providers, church kitchens, commissaries, community fund raisers, convenience stores, fairs, food banks, grocery stores, interstate conveyances, meal services for homebound persons, mobile food carts, restaurants, and vending machine operators) can take to minimize the risk that food under their control will be subject to tampering or other malicious, criminal, or terrorist actions.

In that same March 21, 2003, **Federal Register** notice, the agency also requested comment on whether the agency's package of food security guidance documents should be expanded to include coverage of cosmetics, in addition to foods. To facilitate such comments, the agency announced the availability of a draft guidance document entitled ''Cosmetics Processors and Transporters: Cosmetics Security Preventive Measures Guidance'' (68 FR 13932). This draft guidance identified the kinds of preventive measures that operators of cosmetics establishments can take to minimize the risk that cosmetics under their control will be subject to tampering or other malicious, criminal, or terrorist actions. It takes the operator through each segment of the cosmetics production system that is within their control, in order to minimize the risk of tampering or other malicious, criminal, or terrorist action at each segment. Implementation of these measures requires commitment from both management and employees to be successful and, therefore, both should participate in their development and review.

The agency solicited public comment on the draft guidance documents. FDA received three letters and three electronic responses, each containing one or more comments, from industry, consumer groups, and consumers in response to the draft guidance documents. The agency has reviewed and evaluated the comments and has determined that further modification of the guidance documents is unnecessary. The agency is therefore finalizing the draft guidances without revision.

The guidance documents are level 1 guidances issued consistent with FDA's good guidance practices regulation (§ 10.115) relating to the development, issuance, and use of guidance documents.

The guidance documents represent the agency's current thinking on appropriate measures that retail food store, food service, and cosmetics establishments may take to minimize the risk that foods or cosmetics under their control will be subjected to tampering or other malicious, criminal, or terrorist actions. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding these guidance documents. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance documents and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Copies of these guidance documents also are available on the Internet at *http://www.cfsan.fda.gov/guidance.html*. The guidance documents also can be viewed at: *http://www.fda.gov/ohrms/dockets*.

Dated: December 3, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–31048 Filed 12–16–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office at (301) 443–1129.

Proposed Project: Children's Hospitals Graduate Medical Education Payment Program (CHGME PP) (OMB No. 0915–0247)—Revision

The CHGME PP was enacted by Pub. L. 106–129 to provide Federal support for graduate medical education (GME) to freestanding children's hospitals. This legislation attempts to provide support for GME comparable to the level of Medicare GME support received by other, non-children's hospitals. The legislation indicates that eligible children's hospitals will receive payments for both direct and indirect medical education. Direct payments are designed to offset the expenses associated with operating approved graduate medical residency training programs and indirect payments are designed to compensate hospitals for expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs.

Technical assistance workshops and consultation with applicant hospitals resulted in an opportunity for hospital representatives to raise issues and provide suggestions resulting in proposed revisions in the CHGME application forms and instructions.

Data is collected on the number of full-time equivalent residents in applicant children's hospitals' training programs to determine the amount of direct and indirect medical education payments to be distributed to participating children's hospitals. Indirect medical education payments will also be derived from a formula that requires the reporting of discharges, beds, and case mix index information from participating children's hospitals. Hospitals will be requested to submit such information in an annual application. Hospitals will also be requested to submit data on the number of full-time equivalent residents a second time during the Federal fiscal year to participate in the reconciliation payment process.

The estimated average annual reporting for this data collection is approximately 150 hours per hospital. The estimated annual burden is as follows:

Form	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
HRSA 99–1 (Initial)	60	1	60	24	1,440
HRSA 99–1 (Reconciliation)	60	1	60	8	480
HRSA 99–2 (Initial)	60	1	60	14	840
HRSA 99–2 (Reconciliation)	60	1	60	4	240

Form	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
HRSA 99–4 (Reconciliation)	60	1	60	14	840
Total	60		60		3,840

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 10, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–31049 Filed 12–16–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for the opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Bullying Benchmark Study—New

The Bullying Benchmark Study is designed to gather information from 9- to 13-year-olds and parents of 9- to 13-year-olds (parents and children from the same household will not be interviewed) that will help establish measures to evaluate the ongoing effectiveness of a Maternal and Family Health funded bullying prevention campaign.

The overall goal of the Benchmark Bullying Poll is to establish measurable benchmarks which will be used to evaluate the effectiveness of the Bullying Prevention Campaign. These include: (1) Assessment of underlying attitudes and perceptions about bullying among 9- to 13-year-olds and parents that the campaign is designed to alter; (2) level of concern about bullying among 9- to 13-year-olds and parents; (3) perceived seriousness of bullying among 9- to 13-year-old and parents; (4) level of communications about bullying between 9- to 13-year-olds and their parents, caregivers and other adults; (5) incidence of bullying and bullying prevention behavior in and out of school; and (6) prevalence of anti-bullying procedures and programs in middle schools and their impact on bullying behavior and attitudes and perceptions about bullying.

The methodology used to administer the survey will be by telephone. All prospective respondents will be contacted by phone, using random digit dialing. Respondents meeting the screening criteria will be asked to participate in a short (15 to 20 minutes) telephone interview about this issue and its affects on children in school. Permission for participation of 9- to 13-year-olds will be obtained from their parents. A total of 700 telephone interviews; 350 with children ages 9 to 13 and parents of children ages 9 to 13 will be completed.

Form	Number of respondents	Responses per respondent	Total responses	Minutes per response	Total burden hours
Telephone interviews	700	1	700	15	175

Send comments to Susan G. Queen, PhD, HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 10, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–31050 Filed 12–16–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Health Care Infrastructure Application Forms for Funding Opportunities—New

HRSA Safety Net programs, including the Consolidated Health Center (CHC) Program and the Healthy Communities Access Program (HCAP), are administered by HRSA's Bureau of Primary Health Care (BPHC). HRSA/BPHC is committed to assisting communities in the development of integrated and comprehensive health care delivery systems which will improve the effectiveness, efficiency, and coordination of services for uninsured and underinsured individuals, resulting in higher quality care for these populations at less cost.

Grant funding opportunities are provided to Health Centers to support: The integration and coordination of primary, hospital and specialty care; the enhancement of the network and the health centers ability to compete in the marketplace; and the strategic alignment of health center information systems and technology infrastructures to integrate uniform clinical information with business systems.

BPHC will assist in achieving this new health center infrastructure through various funding opportunities. Application forms are used by new and current Health Centers through, (1) Health Center Network Planning and Development (HCNPD) which includes, Integrated Service Development Initiative (ISDI), Shared Integrated Management Information System (SIMIS), Integrated Information and Communication Technology (ICT), (2) Healthy Communities Access Program (HCAP), and (3) Operational Health Center Networks (OHCN) which include the ISDI and Pharmacy Networks.

Estimates of annualized reporting burden are as follows:

Type of application form	Number of respondents	Hours per response	Total burden hours
HCNPD	35		1575
ISDI	7	45	315
SIMIS	7	45	315
ICT	9	45	405
Pharmacy Networks	12	45	540
HCAP	242		10,890
OHCN	37		1,665
Pharmacy Networks	20	45	900
ISDI	17	45	765
Total	314		14,130

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 10, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–31051 Filed 12–16–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; United States-Caribbean Basin Trade Partnership Act

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the United States-Caribbean Basin Trade Partnership Act. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Ave., NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: United States—Caribbean Basin Trade Partnership Act.

OMB Number: 1651–0083.

Form Number: CBP–450.

Abstract: The collection of information is required to implement the duty preference provisions of the United States-Caribbean Basin Trade Partnership Act.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, businesses.

Estimated Number of Respondents: 440.

Estimated Time Per Respondent: 42.5 hours.

Estimated Total Annual Burden Hours: 18,720.

Estimated Total Annualized Cost on the Public: $430,560.

Dated: December 10, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 03–31144 Filed 12–16–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Procedures. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Ave., NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C., 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers.

OMB Number: 1651–0086.

Form Number: N/A.

Abstract: The collection of information is required to implement the duty preference provisions of the Continued Dumping and Subsidy Offset Act of 2000, by prescribing the administrative procedures under which anti-dumping and countervailing duties are assessed on imported products.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Businesses.

Estimated Number of Respondents: 1.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1.

Estimated Total Annualized Cost on the Public: N/A.

Dated: December 10, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 03–31146 Filed 12–16–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Land Border Carrier Initiative Program

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Land Border Carrier Initiative Program. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB)

approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Land Border Carrier Initiative Program.

OMB Number: 1651–0077.

Form Number: N/A.

Abstract: The Land Border Carrier Initiative Program is designed to prevent smugglers of illicit drugs from utilizing commercial conveyances for their commodities, and to make participation in this program at certain, high-risk locations a condition for use of the Line Release method of processing repetitive entries of merchandise.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 1,050.

Estimated Time Per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 5,250.

Estimated Total Annualized Cost on the Public: $78,750.

Dated: December 10, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–31147 Filed 12–16–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Drawback Process Regulations and Entry Collection Documents

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Drawback Process Regulations and Entry Collection Documents. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Drawback Process Regulations and Entry Collection Documents.

OMB Number: 1651–0075.

Form Number: Forms CBP–7551, 7552, 7553.

Abstract: The information is to be used by CBP officers to expedite the filing and processing of drawback claims, while maintaining necessary enforcement information to maintain effective administrative oversight over the drawback program.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 8,150.

Estimated Time per Respondent: 11 hours.

Estimated Total Annual Burden Hours: 90,000.

Estimated Total Annualized Cost on the Public: $3,098,405.86.

Dated: December 10, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–31148 Filed 12–16–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Accreditation of Commercial Testing Laboratories; Approval of Commercial Gaugers

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Ave., NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments

should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Accreditation of Commercial Testing Laboratories; Approval of Commercial Gaugers.

OMB Number: 1651–0053.

Form Number: None.

Abstract: The Accreditation of Commercial Testing Laboratories; Approval of Commercial Gaugers are used by individuals or businesses desiring CBP approval to measure bulk products or to analyze importations. This recognition is required of businesses wishing to perform such work on imported merchandise.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 250.

Estimated Time per Respondent: 60 minutes.

Estimated Total Annual Burden Hours: 250.

Estimated Total Annualized Cost on the Public: $2,500.

Dated: December 10, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 03–31149 Filed 12–16–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; African Growth and Opportunity Act Certificate of Origin

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the African Growth and Opportunity Act Certificate of Origin. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Ave., NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C., 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: African Growth and Opportunity Act Certificate of Origin.

OMB Number: 1651–0082.

Form Number: None.

Abstract: The collection of information is required to implement the duty preference provisions of the African Growth and Opportunity Act (AGOA) to provide extension of duty-free treatment under the Generalized System of Preferences (GSP) to sensitive articles normally excluded from GSP duty treatment. It also provides for the entry of specific textile and apparel articles free of duty and free of any quantitative limits to the countries of sub-Saharan Africa.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, businesses.

Estimated Number of Respondents: 440.

Estimated Time Per Respondent: 23 hours.

Estimated Total Annual Burden Hours: 10,400.

Estimated Total Annualized Cost on the Public: $239,269.

Dated: December 10, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 03–31150 Filed 12–16–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4818–N–15]

Notice of Proposed Information Collection for Public Comment: Telephone Surveys of Nonprofit Sponsors of HUD-Assisted Properties for the Elderly Regarding Knowledge of or Experience With HUD's Assisted Living Conversion Program

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is

soliciting public comments on the subject proposal.

DATES: Comment Due Date February 17, 2004.

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: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Levine, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8140, Washington, DC 20410; telephone (202) 708–0614, x3928. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Levine.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed information collection package to OMB for review as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including 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: Telephone Surveys of Nonprofit Sponsors of HUD-assisted Properties for the Elderly Regarding Knowledge of or Experience with HUD's Assisted Living Conversion Program.

Description of the need for the information and proposed use: The information to be collected is part of a larger study, conducted by Econometrica Inc. and Abt Associates Inc., of the early implementation and outcomes of the Assisted Living Conversion Program. Specifically, the study will look at the characteristics of projects eligible to apply for the ALCP; the characteristics of funded projects and the experience of funded grantees with the conversion process; and for eligible project sponsors who have not applied for funding, the reasons they have not applied. Two telephone surveys of sponsors will be administered. The first survey will be administered to a sample of 50 eligible non-applicant sponsors. This survey will focus on the respondents' level of familiarity with the ALCP and, for those who knew about the program, the reasons they decided not to apply. The second survey will be administered to all of the ALCP grantees that have not yet completed their conversions (approximately 35 respondents.) This survey will focus on the grantees' experience with applying for and implementing the ALCP grant. (Site visits will be conducted to up to eight completed projects; completed projects will not be included in the telephone surveys.) The information sought in both surveys is not currently available from any other source. The data will be compiled in a database for analysis for the study's final report. This research is intended to help HUD document strategies of successful grantees, identify barriers to full utilization of the program, and assess future needs that can be met by the program.

Members of affected public: Nonprofit sponsors of HUD-assisted projects built primarily for elderly occupancy.

Estimation of the total number of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of response:

Types of respondents	Number of respondents	Number of responses	Minutes per respondent	Total burden hours
ALCP grantees that have not completed conversion	35	35	60	35
Eligible non-applicants for the ALCP	50	50	45	37.5

Status of the proposed information collection: Pending OMB approval.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended; and section 8(C)(1) of the United States Housing Act of 1937.

Dated: December 9, 2003.

Darlene F. Williams,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 03–31041 Filed 12–16–03; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–076–1430–ES—IDI–34292]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: Jerome County, Idaho has applied for an R&PP lease on public lands along the north rim of the Snake River Canyon for recreation purposes, including kiosks, staging areas, equestrian, motorized and non-motorized, and pedestrian trails. The land would be developed through partnerships with recreation groups and organizations.

FOR FURTHER INFORMATION CONTACT: Bill Baker, at (208) 732–7200.

SUPPLEMENTARY INFORMATION: The following public lands near the community of Jerome, Jerome County, Idaho have been examined and found suitable for classification for lease to Jerome County, Idaho under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*):

Boise Meridian

(Those portions south of Interstate 84.)

T. 9 S., R. 17 E.,
Sec. 14: S1/2SW;
Sec. 15: SW, SWNW;
Sec. 19: Lots 2, 8, 9, SENW;
Sec. 20: N1/2SE;
Sec. 21: E1/2, E1/2W1/2, SWNW, SW;
Sec. 22: W1/2, W1/2SWSE, W1/2E1/2SWSE, NWSE, SWNE, W1/2W1/2SENE, N1/2NE;
Sec. 23: All;

Sec. 24: S1/2SE, N1/2SE;
Sec. 25: All;
Sec. 26: All;
Sec. 28: NENW, N1/2NE, SENE;
Sec. 36: Lot 15.
T. 9 S., R. 18 E.,
Sec. 19: Lots 3, 4, E1/2SW, S1/2SE;
Sec. 28: SW, SWSE;
Sec. 29: S1/2, S1/2NE, NW;
Sec. 30: Lots 1–4, E1/2W1/2, E1/2;
Sec. 31: Lots 1, 4, 5, N1/2NE, NENW;
Sec. 32: Lot 5, N1/2N1/2;
Sec. 33: Lot 1, N1/2, N1/2S1/2, S1/2SE, SESW;
Sec. 34: N1/2SW, SWNW.
T. 10 S., R. 18 E.,
Sec. 3: Lots 4, 5, 8;
Sec. 4: Lots 1, 2;
Sec. 10: Lots 1, 2;
Sec. 11: Lots 1, 2, 5, 6;
Sec. 12: Lot 3.
Containing approximately 6,590 acres.

An R&PP lease is consistent with current BLM land use planning and would be in the public interest. The lease, when issued, will be subject to the following terms and conditions:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. Any other conditions that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

3. All authorized uses and designations will continue to be administered by the Bureau. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Upper Snake River District, Shoshone Field Office, and 400 West F Street, Shoshone, Idaho 83352.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act. For a period until February 2, 2004, interested persons may submit comments regarding the proposed classification of the lands to the Field Manager; Shoshone Field Office, 400 West F Street, Shoshone, Idaho 83352.

Classification Comments: Interested parties may submit comments involving the suitability of the land for recreation use. 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 land for recreation.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective February 17, 2004.

Dated: October 20, 2003.

Joe Kraayenbrink,

Acting District Manager.

[FR Doc. 03–31122 Filed 12–16–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: GP04–0044]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plat of survey of the following described lands was officially filed in the Oregon State Office, Portland, Oregon, on September 25, 2003.

Willamette Meridian

Washington

T. 36 N., R. 33 E., accepted September 5, 2003.

The plats of survey of the following described lands were officially filed in the Oregon State Office, Portland, Oregon, July 23, 2003.

Oregon

T. 32 S., R. 6W., accepted July 18, 2003.
T. 18 S., R. 32 E., accepted October 17, 2003.
T. 19 S., R. 32 E., accepted October 17, 2003.
T. 5 S., R. 4 E., accepted October 17, 2003.
T. 29 S., R. 5 W., accepted October 31, 2003.

Washington

T. 31 N., R. 31 E., accepted October 7, 2003.
T. 18 N., R. 1 E., accepted October 7, 2003.

A copy of the plats may be obtained from the Public Room at the Oregon State Office, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Cadastral Survey, Bureau of Land Management, (333 SW 1st Avenue) PO Box 2965, Portland, Oregon 97208.

Dated: December 3, 2003.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 03–31047 Filed 12–16–03; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–498]

Reissued Notice; In the Matter of Certain Insect Traps; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 8, 2003, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of American Biophysics Corporation of East Greenwich, Rhode Island. A supplement to the complaint was filed on August 27, 2003. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain insect traps by reason of infringement of claims 1–3, 5–7, 9, 13, 28, 31–33, 35–37, 39–41, and 43–45 of U.S. Patent No. 6,286,249 B1 and claims 1–4, 7, 15–19, and 21–39 of U.S. Patent No. 6,145,243. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

Due to typographical errors the agency is reissuing the notice in its entirety.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons

with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket imaging system (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2579.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2003).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 8, 2003, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain insect traps by reason of infringement of claims 1–3, 5–7, 9, 13, 28, 31–33, 35–37, 39–41, or 43–45 of U.S. Patent No. 6,286,249 B1 or claims 1–4, 7, 15–19, or 21–39 of U.S. Patent No. 6,145,243 and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—American Biophysics Corporation, 2240 South County Trail, East Greenwich, RI 02818–1536.

(b) The respondent is the following company alleged to be in violation of section 337, and is a party upon which the complaint is to be served: Blue Rhino Corporation, 104 Cambridge Plaza Drive, Winston-Salem, NC 27104.

(c) Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondent in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such response will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting the response to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against such respondent.

Issued: December 12, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–31104 Filed 12–16–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Alcan Inc., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC; Complaint, Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Alcan, Inc., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC,* No. 1:03 CV 02012 (GK).

On September 29, 2003, the United States filed a Complaint alleging that Alcan's proposed acquisition of Pechiney would violate section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in development, production, and sale of brazing sheet in North America. Brazing sheet is an aluminum alloy used to make heat exchangers (*e.g.,* radiators, heaters, and air conditioners) for motor vehicles. The proposed Final Judgment, filed simultaneously with the Complaint, requires the defendants to divest Pechiney's brazing sheet business to a person acceptable to the United States within 120 days after Alcan receives preliminary notice from the responsible French stock market regulatory authority that the firm's tender offer for Pechiney has been successful. Copies of the Complaint, the proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement are available for inspection at the U.S. Department of Justice, Antitrust Division, Suite 215 North, 325 7th Street, NW., Washington, DC 20004 (telephone: (202) 514–2692), and at the Clerk's Office of the U.S. Court for the District of Columbia, 333 Constitution Avenue NW., Washington, DC 20001.

Public comment is invited within 60-days of the date of this notice. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: (202) 307–0924).

J. Robert Kramer II,

Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

United States of America, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 20530, *Plaintiff,* v. *Alcan Inc.,* 1188 Sherbrooke Street West, Montreal, Quebec, Canada, H3A 3G2; Alcan Aluminum Corp., 6060 Parkland Boulevard, Cleveland, OH 44124–4185; Pechiney, S.A., 7, Place Du Chancelier Adenauer, CEDEX 16—75218—Paris, France; and Pechiney Rolled Products, LLC, Rural Route 2 Ravenswood, WV 26164–9802, Defendants.

Case No.
Judge:
Deck Type: Antitrust
Date:

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable relief against defendants, and alleges as follows:

1. In early July 2003, Alcan Inc. (''Alcan'') launched a $4.6 billion tender offer for Pechiney, S.A. (''Pechiney''), which was later endorsed by Pechiney's board of directors. The United States seeks to enjoin this proposed acquisition, which, if consummated, would result in consumers

paying higher prices for brazing sheet, an aluminum alloy used in making heat exchangers for motor vehicles.

2. Alcan, through its United States subsidiary (Alcan Aluminum Corp.), and Pechiney, through its United States subsidiary (Pechiney Rolled Products, LLC), are, respectively, the second and fourth largest producers of brazing sheet in North America. Brazing sheet consists of a class of layered aluminum alloys, each of which has a unique ability to form a uniform, durable, leak-proof bond with other aluminum surfaces. Brazing sheet is widely used in fabricating the major components of heat exchanges for motor vehicles, including engine cooling (*e.g.,* radiators and oil coolers) and climate control (*e.g.,* heaters and air conditioners) systems. A combination of Alcan and Pechiney would command over 40 percent of brazing sheets sales in North America. The combined firm and one other competitor would account for over 80 percent of all brazing sheet sold in North America.

3. The proposed acquisition, if consummated, would combine Alcan, a low cost new entrant and price maverick, with Pechiney, a large industry incumbent, compromising Alcan's incentive to quickly expand its sales by reducing brazing sheet prices, and ending the intense competitive rivalry that currently exists between Alcan and Pechiney in developing, producing, and selling brazing sheet. This competition, which will intensify in the next few years as Alcan completes qualifying its brazing sheet with more customers, already has produced significant improvements in brazing sheet quality, durability, and reliability, and highly competitive prices and terms for this material. By reducing the number of major North American producers of brazing sheet from four to three, this acquisition would substantially increase the likelihood that the combined firm will unilaterally increase, or that it and the other major competitor will tacitly or explicitly cooperate to increase, prices of brazing sheet to the detriment of consumers.

4. Unless this proposed acquisition is blocked, Alcan's acquisition of Pechiney will substantially lessen competition in the development, production, and sale of brazing sheet and likely result in an increase in prices and a reduction in quality and innovation for brazing sheet in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

I. Jurisdiction and Venue

5. This Complaint is filed by the United States under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

6. Alcan and Pechiney develop, produce, and sell brazing sheet in the flow of interstate commerce. Alcan's and Pechiney's activities in developing, producing, and selling brazing sheet substantially affect interstate commerce. This Court has jurisdiction over the subject matter of this action pursuant to Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1331, 1337(a) and 1345.

7. Alcan, Alcan Aluminum Corp., Pechiney, and Pechiney Rolled products LLP have consented to personal jurisdiction and venue in this judicial district.

II. Defendants

8. Alcan is a Canadian corporation with its headquarters in Montreal, Quebec. Alcan Aluminum, an Alcan subsidiary, is a Delaware corporation with its principal place of business in Cleveland, OH. Alcan is one of the world's largest fully integrated aluminum producers. Alcan mines ore from which primary aluminum is produced, and produces a very wide range of rolled aluminum products, including brazing sheet. In 2002, Alcan reported sales of about $12.5 billion. Alcan projects that its sales of brazing sheet in North American in excess of $30 million in 2003.

9. Pechiney is a French corporation with its main office in Paris, France. A subsidiary, Pechiney Rolled Products, is a Delaware corporation with its principal place of business in Ravenswood, WV. Pechiney is also a leading integrated aluminum producer that makes a wide range of rolled aluminum products. In 2002, Pechiney reported total sales of about $11.3 billion. Its United States operations generate over $100 million in North American sales of brazing sheet.

III. The Proposed Transaction

10. In early July 2003, Alcan publicly announced a tender offer for shares of Pechiney, a transaction now valued at over $4.6 billion. The tender offer, recently endorsed by Pechiney's board of directors, is expected to be completed on November 30, 2003, and soon after, Alcan is expected to acquire a majority of the voting shares in Pechiney.

IV. Trade and Commerce

A. The Relevant Product Market

11. Brazing sheet comprises a class of custom-engineered aluminum alloys, each of which is composed of a solid metal ''core'' clad on one or both sides with an alloy whose melting temperature is lower than that of the core material. When brazing sheet is baked at the appropriate temperature, the cladding alloy will melt and form a durable, uniform leak-proof bond between the core and any adjoining aluminum surface, effectively welding the two materials together.

12. Brazing sheet is ideally suited for fabricating the major components of heat exchange systems used in motor vehicles. Heat exchanges include engine cooling systems such as radiators and oil coolers and climate control systems such as heater cores and air conditioning units (*i.e.,* evaporator and condenser cores). By making the basic components of heat exchanges with brazing sheet, a parts maker can avoid the physically tedious and costly task of welding or soldering individual components, many of which have unusually intricate surfaces that form joints deep within the heat exchange unit. A parts maker instead can loosely assemble the brazed components and bake the assembly in a brazing oven. The surfaces of the components will melt, converting the entire loose assembly into a solid, leak-proof heat exchange unit.

13. Today, the major components of all heat exchangers used in motor vehicles are made of brazing sheet. Less expensive, lighter, more durable and formable than materials it replaced, brazing sheet enables vehicle makers simultaneously to reduce vehicle cost, size, and weight; improve gas mileage; and extend engine, climate control system, and drive train life. In heat exchange applications, no other material matches the combination of strength, light weight, durability, formability, and corrosion resistance of brazing sheet. Because of the unique attributes, brazing sheet is the preferred material for making heat exchangers for motor vehicles.

14. A small but significant and nontransitory increase in prices for brazing sheet would not cause parts makers to switch to other materials for heat exchanger components in volumes sufficient to make such a price increase unprofitable and unsustainable. Accordingly, the development, production, and sale of brazing sheet is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

B. The Relevant Geographic Market

15. Alcan produces brazing sheet in an aluminum hot rolling mill in Oswego, NY, and ''slits'' or cuts finished roll stock at a cold rolling mill in Fairmont, WV. Pechiney makes brazing sheet in an aluminum hot rolling mill in Ravenswood, WV. The only other large competitor produces brazing sheet in a hot rolling mill in the United States. A much smaller rival produces brazing sheet in hot rolling mills in Canada and in Europe. Additional volumes of brazing sheet are exported to the United States from Europe. Brazing sheet exports to North America, however, account for less than eight percent of total sales. The Canadian and foreign firms, moreover, operate at or near their full production capacity.

16. Domestic parts makers prefer to purchase brazing sheet from North American sources. Foreign brazing sheet typically costs much more than, but does not outperform, brazing sheet produced in North America. Reliance on overseas sources for brazing sheet can be especially risky for domestic parts makers since foreign brazing sheet is more prone to supply interruptions and delays than brazing sheet procured from local, North American sources. Typically, when overseas demand has surged, foreign producers of brazing sheet have cut shipments to North American customers, resulting in production bottlenecks that have jeopardized North American parts makers' relationships with their customers.

17. For these reasons, North American parts makers generally restrict purchases of foreign brazing sheet imports to unique circumstances, *e.g.,* as an interim measure until one or more domestic producers have been qualified to make brazing sheet for use in an auto maker's vehicle, or for low volume heat exchanger parts for which a foreign auto maker has designated a single foreign supplier as the only qualified source for that brazing sheet material.

18. A small but significant and nontransitory increase in prices for brazing sheet in North America would not cause parts makers to buy so much brazing sheet from sources outside North America that

such a price increase would be unprofitable and unsustainable. Accordingly, North America is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects

19. There are only four significant competitors in the sale of brazing sheet in North America. Pechiney is the second largest producer with over 30 percent of sales; Alcan is the fourth largest with over 10 percent of sales. After the proposed acquisition, the combined firm and the largest U.S. producer of brazing sheet would command over 80 percent of all brazing sheet sales. Total North American sales of brazing sheet exceed $360 million annually.

20. The brazing sheet market would become substantially more concentrated if Alcan acquires Pechiney. Using a measure of market concentration called the Herfindahl-Hirschman Index (''HHI'') (defined and explained in Appendix A), the post-acquisition HHI would increase by at least 600 points, resulting in a post-merger HHI of about 3600, well in excess of levels that ordinarily would raise significant antitrust concerns.

21. The proposed transaction would combine Alcan with Pechiney, and remove a low cost, aggressive, and disruptive competitor in the North American brazing sheet market. Before the announced acquisition, Alcan recently had undertaken to significantly increase its sales of brazing sheet in North America. In 2001, Alcan moved its brazing sheet operations from England to Oswego, NY, then developed new, highly proprietary aluminum rolling technology that would make a low cost producer of brazing sheet in North America. Alcan also recently has completed qualifying to provide brazing sheet to several major domestic parts makers.

22. The proposed transaction will make it more likely that the few remaining brazing sheet producers will engage in anticompetitive coordination to increase prices, reduce quality and innovation, and decrease production of brazing sheet. After the acquisition, the combined firm and its largest North American rival would share market leadership and a common incentive to pursue strategies that emphasize accommodation and do the risk provocation. The acquisition also would substantially increase the likelihood that the combined firm will unilaterally increase prices of brazing sheet to the detriment of customs for whom Pechiney and Alcan are the only firms now qualified to provide brazing sheet for those customers' requirements. The other competitors in brazing sheet sales in North America do not have the incentive or ability, individually or collectively, to effectively constrain a unilateral or cooperative exercise of market power after the acquisition.

23. Purchasers of brazing sheet have benefited from competition between Alcan and Pechiney through lower prices and improved products. Alcan's acquisition of Pechiney would eliminate substantial competition and lead to an increase in prices and reduction in innovation and quality of brazing sheet.

24. The proposed transaction, if consummated, would eliminate a significant competitor and facilitate unilateral or coordinated increases in prices, or a reduction in levels of quality and innovation, for brazing sheet.

D. Entry Unlikely To Deter a Post Acquisition Exercise of Market Power

25. Successful entry into the brazing sheet market would not be timely, likely or sufficient to deter any unilateral or coordinated exercise of market power as a result of the transaction.

26. Significant barriers prevent do novo or lateral entry into the development, production, and sale of brazing sheet in North America. To produce this material, not only must a firm possess an aluminum hot rolling mill (which costs a least $80 million to construct), but also the technology and expertise to create custom-engineered aluminum alloys that perform well in the demanding operating conditions prevalent in the small heat exchangers used in motor vehicles. Even firms with the physical and technological assets to produce brazing sheet must, in order to have a significant impact, ''qualify'' with customers, *i.e.,* demonstrate that it would be a reliable producer of consistently high quality brazing sheet material. Qualification can be acquired only after the new firm has made a substantial investment in expensive alloy technology, successfully completed a series of time-consuming tests of its materials and components, and acquired actual experience producing brazing sheet that meets the exacting specifications of risk-averse parts markers. It took Alcan over two years from when it moved its brazing sheet operations to Oswego, New York to qualify with enough customers to make a significant sales impact.

V. Violations Alleged

27. The effect of Alcan's proposed acquisition of Pechiney may be to substantially lessen competition and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

28. The transaction will likely have the following anticompetive effects, among others:

a. Competition generally in the development, production, and sale of brazing sheet in North America would be substantially lessened;

b. Actual and potential competition between Alcan and Pechiney in the development, production, and sale of brazing sheet in North America would be eliminated; and

c. Prices for brazing sheet sold in North America would likely increase and the levels of quality and innovation would likely decline.

29. Unless prevented, the acquisition of Pechiney by Alcan would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

VI. Requested Relief

30. Plaintiff requests:

a. That the proposed acquisition of Pechiney by Alcan be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18;

b. That defendants and all persons acting on their behalf be permanently enjoined and restrained from carrying out any contract, agreement, understanding or plan, the effect of which would be to combine Pechiney with the operations of Alcan;

c. That plaintiff recover the costs of this action; and

d. That plaintiff receive such other and further relief as the case requires and this Court may deem proper.

Dated: September 29, 2003.

Respectfully submitted,

For Plaintiff United States of America:

R. Hewitt Pate,
Assistant Attorney General, DC Bar # 473598.

Deborah P. Majoras,
Deputy Assistant Attorney General, DC Bar # 474239.

J. Robert Kramer II,
Director of Operations & Civil Enforcement, PA Bar # 23963.

Maribeth Petrizzi,
Chief, Litigation II Section, DC Bar # 435204.

Anthony E. Harris,
IL Bar # 1133713.

Joseph M. Miller,
DC Bar # 439965.

Carolyn L. Davis

John B. Arnett, Sr.,
DC Bar # 439122.

Trial Attorneys, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 3000, Washington, DC 20530, Telephone: (202) 307–6583.

Appendix A—Herfindahl-Hirschman Index Calculations

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, HHI is 2600 ($30^3 + 30^2 + 20^2 = 2600$). The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Market in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. *See Merger Guidelines* § 1.51.

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on September 29, 2003, and plaintiff and defendants, Alcan Inc., Alcan Aluminum Corp., Pechiney, S.A.,

and Pechiney Rolled Products, LLC, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law:

And whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

And whereas, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint:

And whereas, defendants have represented to the United States that the divestiture required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means the entity or entities to whom defendants divest Pechiney's Brazing Sheet Business.

B. ''Alcan'' means defendant Alcan Inc., a Canadian corporation with its headquarters in Montreal, Canada, its successors and assigns, and its subsidiaries (including defendant Alcan Aluminum Corp.), divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Pechiney'' means Pechiney, S.A., a French corporation with its headquarters in Paris, France, and its successors and assigns, its subsidiaries, divisions (including Pechiney Rolled Products, LLC), groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Brazing sheet'' means a layered aluminum alloy that consists of a core clad on one or both sides with aluminum alloy whose melting temperature is lower than that of the core material. Brazing sheet is used primarily in making components of heat exchange systems (*e.g.,* radiators, oil coolers, and air conditioning units) for motor vehicles.

E. ''Pechiney's Brazing Sheet Business'' means all assets, interests, and rights in Pechiney Rolled Products, LLC's aluminum product rolling mill located in or near Ravenswood, West Virginia 26164 (''Ravenswood Facility''), including:

1. All tangible assets of the Ravenswood Facility and the real property on which the Ravenswood Facility is situated; any facilities used for research, development, and engineering support to the Ravenswood Facility (''the Engineering Facilities''), and any real property associated with those facilities; manufacturing and sales assets relating to the Ravenswood Facility and to the Engineering Facilities, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on- or off-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations issued by and governmental organization relating to the Ravenswood Facility and to the Engineering Facilities; all contracts, agreements, leases, commitments, and understandings pertaining to the operations of the Ravenswood Facility and to the Engineering Facilities; supply agreements all customer lists, accounts, and credit records; and other records maintained by Pechiney Rolled Products in connection with the operations of the Ravenswood Facility and of the Engineering Facilities;

2. All intangible assets, including but not limited to all patents, licenses and sublicenses, intellectual property, trademarks, trade names, service marks, service names (except to the extent such trademarks, trade names, service marks, or service names contain the trademark or names ''Pechiney'' or any variation thereof), technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information Pechiney Rolled Products, LLC provides to its employees, customers, suppliers, agent or licensees in connection with the operations of the Ravenswood Facility; provided, however, that defendants may require the Acquirer, in the United States's sole discretion, to license defendants to make, have made, use, or sell outside of North America any Pechiney product or process made by or used in connection with the Ravenswood Facility; and

3. All research data concerning historic and current research and development efforts relating to the operations of the Ravenswood Facility and of the Engineering Facilities, including designs of experiments, and the results of unsuccessful designs and experiments.

F. ''Date that Alcan's tender offer for Pechiney ends'' means the date Alcan receives a preliminary indication from the Conseil deś Marches Financiers of Paris, France, that Alcan's tender offer has been successful.

III. Applicability

A. This Final Judgment applies to Alcan and Pechiney, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lessor business units that include Pechiney's Brazing Sheet Business, that the purchaser agrees to be bound by the provisions of this Final Judgment, provided, however, that defendants need not obtain such an agreement from the Acquirer.

IV. Divestiture

A. Defendants are ordered and directed, within one hundred twenty (120) calendar days after the date that Alcan's tender offer for Pechiney ends, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest Pechiney's Brazing Sheet Business in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed in total sixty (60) calendar days, and shall notify the Court in each such circumstance. Defendants agree to use their best efforts to divest Pechiney's Brazing Sheet Business as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of Pechiney's Brazing Sheet Business. Defendants shall inform any person making inquiry regarding a possible purchase of Pechiney's Brazing Sheet Business that it will be divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to Pechiney's Brazing Sheet Business customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privilege. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide prospective Acquirers of Pechiney's Brazing Sheet Business and the United States information relating to the personnel involved in the production, operation, development, and sale of Pechiney's Brazing Sheet Business to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any of the defendants' employees whose responsibilities includes the production, operation, development, or sale of the products of Pechiney's Brazing Sheet Business.

D. Defendants shall permit prospective Acquirers of Pechiney's Brazing Sheet Business to have reasonable access to personnel and to make inspections of the physical facilities of Pechiney's Brazing Sheet Business; access to any and all environment, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer of Pechiney's Brazing Sheet Business that each asset that was operational as of the date

of filing of the Complaint in this matter will be operational on the date of divestiture.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of Pechiney's Brazing Sheet Business.

G. Defendants shall not take any action, direct or indirect, that would prevent or discourage in any way any dealer from distributing the products of Pechiney's Brazing Sheet Business for a period of two years after such divestiture. Nothing in this provision, however, shall prevent defendants from promoting and selling in the ordinary course of business products that compete with those of Pechiney's Brazing Sheet Business.

H. Defendants shall warrant to the Acquirer of Pechiney's Brazing Sheet Business that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of Pechiney's Brazing Sheet Business, and that following the sale of Pechiney's Brazing Sheet Business, defendants will not undertake, directly or indirectly, any challenge to the environmental, zoning, or other permits relating to the operation of Pechiney's Brazing Sheet Business.

I. Nothing in this Final Judgment shall be construed to require the Acquirer as a condition of any license granted by or to defendants pursuant to section II (E) and IV to extend to defendants the right to use the Acquirer's improvements to any of Pechiney's Brazing Sheet Business.

J. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Pechiney's Brazing Sheet Business, and shall be accomplish in such a way as to satisfy the United States, in its sole discretion, that Pechiney's Brazing Sheet Business can and will be used by the Acquirer as part of a viable, ongoing business, engaged in developing, manufacturing, and selling brazing sheet in North America. Divestiture of Pechiney's Brazing Sheet Business may be made to an Acquirer, provided that it is demonstrated to the sole satisfaction of the United States that Pechiney's Brazing Sheet Business will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

1. Shall be made to an Acquirer that, in the United States's sole judgment, has the managerial, operational and financial capability to compete effectively in the development, manufacture, and sale of brazing sheet in North America; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to complete effectively.

V. Appointment of Trustee to Effect Divestiture

A. If defendants have not divested Pechiney's Brazing Sheet Business within the time period specified in Section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of Pechiney's Brazing Sheet Business.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell Pechiney's Brazing Sheet Business. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of sections IV, V and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonable necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as plaintiff approves, and shall account for all monies derived from the sale of Pechiney's Brazing Sheet Business and all costs and expenses to incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of Pechiney's Brazing Sheet Business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to customary confidentiality protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, and interest in Pechiney's Brazing Sheet Business and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest Pechiney's Brazing Sheet Business.

G. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in Pechiney's Brazing Sheet Business, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee if applicable additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed

Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under section V(D) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under section IV or V shall not be consummated. Upon objection by defendants under section V(D), a divestiture proposed under section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture order by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in Pechiney's Brazing Sheet Business, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for Pechiney's Brazing Sheet Business, and to provide required information to any prospective Acquirer, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on the information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section IX of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve Pechiney's Brazing Sheet Business and to divest Pechiney's Brazing Sheet Business until one year after such divestiture has been completed.

X. Compliance Inspection

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. Access during defendants' office hours to inspect and copy, or at plaintiff's option, to require defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of Pechiney's Brazing Sheet Business during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

In early July 2003, Alcan Inc., (''Alcan'') Publicly announced that it would soon begin a tender offer for shares of Pechiney, S.A. (''Pechiney''), a transaction formally endorsed by Pechiney's board of directors on August 30, 2003. On September 29, 2003, the United States filed a civil antitrust suit alleging that Alcan's proposed acquisition of Pechiney would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that a combination of Alcan and Pechiney would substantially lessen competition in the development, production, and sale of brazing sheet in North America. Pechiney and Alcan are, respectively, the second and fourth largest competitors in the sale of brazing sheet in North America. The acquisition would result in a single firm—Alcan—with a market share of over 40 percent, and the industry's two largest firms having a combined share of over 80 percent, of North American sales of brazing sheet. The attendant reduction in competition in this highly concentrated market would lead to an increase in brazing sheet prices and a reduction in product quality and innovation to the detriment of North American consumers. Accordingly, the prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act, and (2) a permanent injunction that would prevent Alcan from acquiring control of, or otherwise combining its assets with, Pechiney.

At the same time the Complaint was filed, the United States filed a proposed settlement that would allow Alcan to acquire Pechiney but require defendants to divest Pechiney's entire North American brazing sheet business in such a way as to preserve competition in North America. The settlement consists of a Hold Separate Stipulation and Order and a

proposed Final Judgment. According to the terms of the settlement, defendants must divest Pechiney's brazing sheet business [1] to a person acceptable to the United States, in its sole discretion, within 120 calendar days after Alcan receives preliminary notification from the responsible French stock market regulatory agency, Conseil des Marches Financiers, that the firm's tender offer for shares of Pechiney has been successful, or within five (5) days after notice of entry of the Final Judgment, whichever is later. The United States, in its sole discretion, may extend the time period for this divestiture one or more times, not to exceed a total of 60 days past the initial divestiture deadline. If defendants do not complete the ordered divestiture within the prescribed time period, then the United States may nominate, and the Court will appoint, a trustee who will have sole authority to divest Pechiney's brazing sheet assets.

The parties have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the Tunney Act. Entry of the proposed Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violations of the Antitrust Laws

A. The Defendants and the Proposed Transaction

Alcan is a Canadian corporation based in Montreal, Quebec. One of the world's largest fully integrated aluminum producers, Alcan producers primary aluminum ingot and a wide range of rolled aluminum products, including brazing sheet. Its annual revenues exceed $12.5 billion, including over $30 million in North American sales of brazing sheet. This business operation is managed by a domestic subsidiary of Alcan, Alcan Aluminum Corporation.

Pechiney is a French corporation based in Paris, France. Pechiney is also a major fully integrated aluminum producer, with annual revenues exceeding $11.3 billion. Its U.S. subsidiary, Pechiney Rolled Products, LLC, produces a wide variety of rolled aluminum products (including brazing sheet) in an aluminum rolling mill in Ravenswood, West Virginia. Pechiney's total North American sales of brazing sheet exceed $100 million annually.

Alcan has launched a teder offer for shares of Pechiney, a transaction now valued at over $4.6 billion. The tender offer, publicly announced in early July and approved in August by Pechiney's board of directors, is expected to be completed in early December 2003. If the tender offer is successful, Alcan's acquisition of Pechiney would combine, respectively, the fourth and second largest competitiors in the sale of brazing sheet in North America, and substantially lessen competition in this already highly concentrated market.

The acquisition would combine Alcan, a low-cost new entrant and pricing maverick, with Pechiney, a large industry incumbent. The deal would eliminate Alcan's incentive to expand its sales quickly by reducing its brazing sheet prices and increase its sales at the expense of larger rivals such as Pechiney, and end the current intense competitive rivalry in developing, producing, and selling brazing sheet in North America. This competition, which promises to intensify in the next few years as Alcan finishes qualifying its brazing sheet for more applications with other North American customers, has already produced significant improvements in brazing sheet quality, durability, and reliability, and highly competitive prices and contractual terms for this material. The transaction would reduce the number of significant competitors in the sale of brazing sheet in North America from four to three, and substantially increase the prospect of future tacit or explicit post-merger coordination between these firms to increase prices of brazing sheet to the detriment of consumers. Other North American competitors in the sale of brazing sheet have neither the production capacity nor competitive incentive, individually or collectively, to discipline a small but significant post-merger unilateral or cooperative price increase in brazing sheet.

B. The Effects of the Transaction on Competition in the Sale of Brazing Sheet

1. Relevant market: the sale of brazing sheet in North America. The Complaint alleges that development, production, and sale of brazing sheet is a relevant product market within the meaning of Section 7 of the Clayton Act. Brazing sheet describes a class of custom-engineered aluminum alloys made of a solid metal core clad on one or both sides with an alloy whose melting temperature is lower than that of the core material. When heated to the appropriate termperature, the cladding alloy melts and forms a durable, uniform leak-proof bond between the core and any adjoining aluminum surface, effectively welding the two materials together. Brazing sheet is ideally suited, and virtually all of it is used, for fabircating the major components of heat exchange systems for motor vehicles. These heat exchangers include engine cooling systems, such as radiators and oil coolers, and climate control systems, such as heater cores and air conditioning units (*i.e.,* evaporator and condenser cores).

By constructing the basic components of motor vehicle heat exchangers with brazing sheet, a parts maker can avoid the tedious and costly task of welding or soldering individual components, many of which have usually intricate surfaces that form joints deep within the heat exchange unit. A parts maker can instead loosely assemble brazed components and bake the entire assembly in a brazing oven. The surfaces of the components will met, converting the assembly into a solid, leak-proof heat exchange unit.

The major components of all heat exchangers used in motor vehicles are made of brazing sheet, a mterial that enables vehicle makers simultaneously to reduce vehicle cost, size, and weight; improve gas mileage; and extend engine, cllimate control system, and drive train life. In heat exchange applications, no other material can match the combination of low cost, strength, light weight, durability, formability, and corrosion resistance provided by brazing sheet.

A small but significant and nontransitory increase in prices for brazing sheet would be profitable and sustainable because it would not cause parts makers to begin using significant amounts of other materials to make heat exchangers for motor vehicles. The development, production, and sale of brazing sheet is a line of commerce and a relevant product market within the meaning of section 7 of the Clayton Act.[2]

The Complaint alleges that the sale of brazing sheet in North America is a relevant geographic market within the meaning of Section 7 of the Clayton Act. Over ninety percent of brazing sheet sold in North America is produced by firms located in either the United States or Canada. Some customers import brazing sheet into North America from overseas sources. Foreign brazing sheet, however, is significantly more expensive and more prone to unpredictable and costly delivery delays than brazing sheet produced in North America. North American customers are reluctant to rely on it for general production requirements. A small but significant aand nontransitory increase in prices of brazinag sheet sold in North America would be profitable and sustainable because it would not be undermined by increased customer imports of brazing sheet from overseas sources. North America is a relevant geographic market in which to assess the competitive effects of Alcan's proposed acquisition of Pechiney on sales of brazing sheet.

2. Anticompetitive effects of the acquisition. The Complaint alleges that in this highly concentrated market for brazing sheet, a combination of Alcan and Pehiney likely would: (i) Substantially lessen competition in the development, production, and sale of brazing sheet in North America; (ii) eliminate actual and potential competition between Alcan's and Pechiney's brazing sheet businesses; and (iii) increase prices and reduce current levels of quality and innovation for brazing sheet in North America.

Specifically, the Complaint alleges that Pechiney and Alcan are, respectively, the second and fourth largest producers of brazing sheet in North America. The

[1] Pechiney's brazing sheet business, as defined in Section II(E) of the proposed Final Judgment, includes all tangible and intangible assets of Pechiney's Ravenswood, West Virginia aluminum rolling mill and the engineering facilities, wherever located, that provide research and development support for any product produced at the Ravenswood plant.

[2] Brazing sheet is designed for and sold to motor vehilcle parts makers (and others) on an application-specific basis. Thus, it may be possible to delineate relevant markets smaller than the ''all brazing sheet'' market alleged in the Complaint. A producer of brazing sheet for use in one type of heat exchange component, however, generally has the ability to make and market brazing sheet suitable for use in producing other types of components for heat exchange units. According to the Merger Guidelines, if such production substitutability is ''nearly universal'' among the firms that make and sell brazing sheet, then it is appropriate, as a matter of convenience, to describe the relevant product market as ''all brazing sheet.'' *See* Horizontal Merger Guidelines, n. 14 (1997 rev.).

combined firm and one other producer command over 80 percent of brazing sheet sales in North America. Two smaller firms also sell brazing sheet in North America. However, these small firms do not have sufficient excess production capacity or capability to attract significant sales away from the larger market incumbents, and thereby effectively constrain a post-merger exercise of market power by those firms.

Alcan's acquisition of Pechiney is likely to diminish competition substantially. First, the remaining competitors would be more likely to successfully engage in tacit or explicit coordinated pricing to the detriment of consumers, because they would not need to worry about the loss of sales to Alcan, currently a small, ''hungry,'' low-cost new entrant. Second, Alcan could unilaterally increase its prices for brazing sheet for which it and Pechiney are the only qualified suppliers.

New entry into the development, production, and sale of brazing sheet in North America is difficult. To produce brazing sheet, a firm must have an aluminum hot rolling mill (which costs at least $80 million and takes three years to construct). Even after acquiring an aluminum hot rolling mill, a new firm can begin selling brazing sheet to customers only after it has made an additional substantial investment in developing and mastering allow-making technology, successfully ''qualified'' its products with prospective customers by completing a series of time-consuming tests of brazing sheet materials and sample heat exchange components, and finally, acquired some actual experience producing brazing sheet that meets the exacting specifications of risk-averse parts makers.[3] These so-called ''sunk'' entry costs[4] are very large relative to the size of the North American market for brazing sheet, and there is a very high risk that a new entrant may not receive any profits from its entry. In these circumstances, it is unlikely that, after a combination of Alcan and Pechiney, new entry into the brazing sheet market in North America would occur so rapidly and be of such magnitude that it would effectively constrain a cooperative or unilateral post-merger exercise of market power by incumbent producers of brazing sheet.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will preserve competition in the sale of brazing sheet in North America. The Judgment requires that defendants sell Pechiney's brazing sheet business to an acquirer acceptable to the United States within 120 calendar days after Alcan has received a preliminary indication from Conseil des Marches Financiers, a French stock market regulatory agency, that Alcan's tender offer for shares of Pechiney has been successful, or within five (5) days after notice of entry of the Final Judgment, whichever is later. The United States may extend this time period for divestiture one or more times, for a total time not to exceed 60 days. Defendants must use their best efforts to divest Pechiney's brazing sheet business as expeditiously as possible, and until the ordered divestiture takes place, defendants must cooperate with any prospective purchasers.

If Alcan and Pechiney do not accomplish the ordered divestiture within the prescribed time period, the United States will nominate, and the Court will appoint, a trustee to assume sole power and authority to complete the divestiture. Defendants must cooperate fully with the trustee's efforts to divest Pechiney's brazing sheet business to an acquirer acceptable to the United States and periodically report to the United States on their divestiture efforts.

If the trustee is appointed, the defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is completed. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate to carry out the purpose of the trust, including extending the trust and the term of the trustee's appointment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Tunney Act, provided that the United States has not withdrawn its consent. The Tunney Act conditions entry of the decree upon the Court's determination that the proposed Final Judgment is in the public interest.

The Tunney Act provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the Proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Alan and Pechiney. The United States could have continued the litigation to seek preliminary and permanent injunctions against Alcan's acquisition of Pechiney. The United States is satisfied, however, that the divestiture of the assets as proposed in the Final Judgment will establish, preserve, and ensure competition in the relevant market. To this end, the United States is convinced that the proposed relief, once implemented by the Court, will prevent Alcan's acquisition of Pechiney from having adverse competition effects.

VII. Standard of Review Under the Tunney Act for the Proposed Final Judgment

The Tunney Act requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the Court may consider:

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the United States Court of Appeals for the District of Columbia Circuit held, the Tunney Act permits a court to consider, among other things, the relationship between the remedy secured and

[3] It took Alcan over two years from when it moved its brazing sheet operations to Oswego, New York, to qualify with enough customers to make a significant sales impact.

[4] The term ''sunk costs'' as used in this context includes the costs of acquiring tangible and intangible assets that cannot be recovered through the redeployment of these assets outside the relevant market, *i.e.,* costs that were uniquely incurred to enter the production and sale of brazing sheet in North America and cannot be recovered upon exit from that industry.

the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney).[5] Rather:

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–I Trade Cas. (CCH) ¶61,508, at 71,980 (W.D. Mo. May 17, 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bachtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62. Case law requires that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[6]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Telephone & Telegraph Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette,* 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. *Id.* at 1459–60.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the Tunney Act that were considered by the United States in formulating the proposed Final Judgment.

Dated: November 13, 2003.

Respectfully submitted,

Anthony E. Harris,
Illinois Bar No. 1133713, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 3000, Washington, DC 20530, Telephone: (202) 307–6583.

Certificate of Service

I, Anthony E. Harris, hereby certify that on November 14, 2003, I caused the foregoing Competitive Impact Statement to be served on defendants by sending a facsimile and by mailing a copy first-class, postage prepaid, to duly authorized legal representatives of those parties, as follows:

Counsel for Defendants Alcan Inc. and Alcan Aluminum Corp.

D. Stuart Meiklejohn, Esquire, Michael B. Miller, Esquire, Sullivan & Cromwell, 125 Broad Street, New York, NY 10004–2498

Counsel for Defendants Pechiney, S.A., and Pechiney Rolled Products, LLC

W. Dale Collins, Esquire, Shearman & Sterling LLP, 599 Lexington Avenue, New York, NY 10022–6069

Anthony E. Harris, Esquire,
Illinois Bar #1133713, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 20530, Telephone No.: (202) 307–6583.

[FR Doc. 03–31055 Filed 12–16–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States and the State of Florida v. *Waste Management, Inc.*, and *Allied Waste Industries, Inc.;* Complaint, Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement were filed with the U.S. District Court for the District of Columbia in *United States and State of Florida* v. *Waste Management, Inc., and Allied Waste Industries, Inc., Civ. Action No. 1:03CV02076.* On October 14, 2003, the United States and the State of Florida filed a Complaint, which sought to enjoin Waste Management, Inc. (''Waste Management'') from acquiring certain small container commercial hauling assets in Broward County, Florida from Allied Waste Industries, Inc. (''Allied''). The Complaint alleged that Waste Management's acquisition of these small container commercial hauling assets from Allied would substantially lessen competition resulting in higher prices for small container commercial hauling services in Broward County, Florida in violation of the Clayton Act, as amended, 15 U.S.C. 18. The proposed Final Judgment, also filed on October 14, 2003, requires defendants to divest contracts and accounts on selected Allied small container commercial hauling routes, to preserve competition in the provision of small container commercial hauling services. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and the remedies available to

[5] *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 715–16 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer ''whether the settlement achieved [was] within the reaches of the public interest''). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the Tunney Act. Although the Tunney Act authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. No. 93–1463, 93rd Cong., 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.N. 6535, 6538.

[6] Cf. BNS, 858 F.2d at 463 (holding that the court's ''ultimate authority under the [Tunney Act] is limited to approving or disapproving the consent decree''); *Gillette,* 406 F. Supp. at 716 (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F. 3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'''').

private litigants who may have been injured by the alleged violations.

Copies of the Complaint, proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement are available for inspection at the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 215, Washington, DC 20530 (telephone: 202–514–2481), and at the Clerk's Office of the United States District Court for the District of Columbia, Washington, DC. Copies of these materials may be obtained upon request and payment of a copying fee.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: 202–307–0924).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

In the matter of: UNITED STATES OF AMERICA, Department of Justice, Antitrust Division, 1401 H Street, NW, Suite 3000, Washington, DC 20530, and STATE OF FLORIDA, Office of the Attorney General, Plaza 1—The Capitol, Tallahassee, Florida 32399–1050, Plaintiffs, v. WASTE MANAGEMENT, INC., 1001 Fannin Street, Suite 4000 Houston, Texas 7702, and ALLIED WASTE INDUSTRIES, INC., 15880 Greenway-Hayden Loop, Suite 100, Scottsdale, Arizona 85260, Defendants.

Case No. 1:03CV02076
JUDGE: James Robertson
DECK TYPE: ANTITRUST
DATE STAMP: October 14, 2003

Complaint for Injunctive Relief

Plaintiff United States of America (''United States''), acting under the direction of the Attorney General of the United States, and Plaintiff State of Florida (''Florida''), acting under the direction of its Attorney General, bring this civil antitrust action to enjoin the acquisition by Defendant Waste Management, Inc. (''Waste Management'') of certain commercial waste collection and hauling assets (hereinafter referred to as ''small container commercial hauling assets'') from Defendant Allied Waste Industries, Inc. (''Allied'') and to obtain equitable and other relief as is appropriate. Plaintiffs complain and allege as follows:

1. Pursuant to an asset purchase agreement and a stock agreement, both dated August 15, 2003, Waste Management plans to acquire from Allied certain small container commercial hauling assets. The proposed transaction would lessen competition substantially as a result of Waste Management's acquisition of small container commercial hauling assets in Broward County, Florida.

2. Defendants Waste Management and Allied are two of only three significant providers of small container commercial hauling services in Broward County. Unless the acquisition is enjoined, consumers of small container commercial hauling services in Broward County will likely pay higher prices and receive fewer services as a consequence of the elimination of the vigorous competition between Waste Management and Allied.

I. Jurisdiction and Venue

3. The United State brings this action under section 15 of the Clayton Act, 15 U.S.C. 25, to prevent and restrain the violation by Defendants of section 7 of the Clayton Act, 15 U.S.C. 18. Florida brings this action under Section 16 of the Clayton Act, 15 U.S.C. 26, to prevent and restrain the violation by Defendants of Section 7 of the Clayton Act, 15 U.S.C. 18.

4. Defendants Waste Management and Allied are located in and transact business in the District of Columbia. Venue is therefore proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22 and 28 U.S.C. 1391(c).

5. Defendants Waste Management and Allied collect municipal solid waste from residential, commercial, and industrial customers. In their waste collection businesses, Waste Management and Allied make sales and purchases in interstate commerce, ship waste in the flow of interstate commerce, and engage in activities that substantially affect interstate commerce. The Court has jurisdiction over this action and over the parties pursuant to 15 U.S.C. 22 and 28 U.S.C. 1331 and 1337.

II. Definitions

6. ''Broward County'' means Broward County, Florida.

7. ''MSW'' means municipal solid waste, a term of art used to describe solid putrescible waste generated by households and commercial establishments such as retail stores, offices, restaurants, warehouses, and non-manufacturing activities in industrial facilities. MSW does not include special handling waste (*e.g.*, waste from manufacturing processes, regulated medical waste, sewage, and sludge), hazardous waste, or waste generated by construction or demolition sites.

8. ''Small container hauling'' means the business of collection MSW from commercial and industrial accounts, usually in ''dumpsters'' (*i.e.*, a small container with one to ten cubic yards of storage capacity), and transporting or ''hauling'' such waste to a disposal site by use of a front-end or rear-end load truck. Typical commercial waste collection customers include office and apartment buildings and retail establishments (*e.g.*, stores and restaurants). Small container commercial hauling, as used herein, does not include collection of roll-off containers.

III. Defendants and the Transaction

9. Waste Management is a Delaware corporation with its principal office in Houston, Texas. Waste Management is the nation's largest waste hauling company. It is engaged in providing waste collection and disposal services throughout the United States. In 2002, Waste Management reported total revenues of approximately $11.1 billion.

10. Allied is a Delaware corporation with its principal office in Scottsdale, Arizona. Allied is the nation's second largest waste hauling company. It is engaged in providing waste collection and disposal services throughout the United States. In 2002, Allied reported total revenues of approximately $5.5 billion.

11. On August 15, 2003, Defendants Waste Management and Allied entered into an asset purchase agreement and a stock purchase agreement purchase to which Waste Management would acquire from Allied, *inter alia,* small container commercial hauling assets in Broward County, Florida.

IV. Trade and Commerce

A. The Relevant Service Market

12. Waste collection firms, or haulers, collect MSW from residential, commercial, and industrial establishments and transport the waste to a disposal site, such as a transfer station, landfill, or incinerator, for processing and disposal. Private waste haulers typically contract directly with customers for the collection of waste generated by commercial accounts. MSW generated by residential customers, on the other hand, is often collected either by local governments or by private haulers pursuant to contracts bid by, or franchises granted by, municipal authorities.

13. Small container commercial hauling differs in many important respects from the collection of residential or other types of waste. An individual commercial customer typically generates substantially more MSW than a residential customer. To handle this high volume of MSW efficiently, haulers provide commercial customers with dumpsters for storing the waste. Haulers organize their commercial accounts into routes, and collect and transport the MSW generated by these accounts in vehicles uniquely well suited for commercial waste collection—primarily front-end load trucks. Less frequently, haulers may use more maneuverable, but less efficient, rear-end load trucks, especially in those areas in which a collection route includes narrow alleyways or streets. Front-end load trucks are unable to navigate narrow passageways easily and cannot efficiently collect the waste located in them.

14. On a typical small container commercial hauling route, an operator drives a front-end load truck to the customer's container, engages a mechanism that grasps and lifts the container over the front of the truck, and empties the container into the vehicle's storage section where the waste is compacted and stored. The operator continues along the route, collecting MSW from each of the commercial accounts, until the vehicle is full. The operator then drives the front-end load truck to a disposal facility, such as a transfer station, landfill, or incinerator, and empties the contents of the vehicle. Often, the operator returns to the route and repeats the process.

15. In contrast to a commercial collection route, a residential waste collection route is

significantly more labor intensive. The customer's MSW is stored in much smaller containers (*e.g.,* garbage bags or trash cans) and instead of front-end load trucks, waste collection firms routinely use rear-end load or side-load trucks manned by larger crews (usually, two-person or three-person teams). On residential routes, crew generally hand-load the customer's MSW, typically by tossing garbage bags and emptying trash cans into the vehicle's storage section. Because of the differences in the collection processes, residential customers and commercial customers usually are organized into separate routes. Likewise, other types of collection activities, such as the use of roll-off containers (typically used for construction debris) and the collection of liquid or hazardous waste, are rarely combined with commercial waste collection. This separation of routes is due to differences in the hauling equipment required, the volume of waste collected, health and safety concerns, and the ultimate disposal option used.

16. The differences in the types and volume of MSW collected and in the equipment used in collection services distinguish small container commercial hauling from all other types of waste collection activities. These differences mean that small container commercial building firms can profitably increase their charges for small container commercial hauling services without losing significant sales or revenues to firms engaged in the provision of other types of waste collection services. Thus, small container commercial hauling is a line of commerce, or relevant service, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

B. The Relevant Geographic Market

17. Small container commercial hauling services are generally provided in highly localized areas because to operate efficiently and profitably, a hauler must have sufficient density in its commercial waste collection operations (*i.e.,* a large number of commercial accounts that are reasonably close together). In addition, a front-end load or rear-end load vehicle cannot be efficiently driven long distances without collecting significant amounts of MSW, which makes it economically impractical for a small container commercial hauling firm to service metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served.

18. Generally, haulers compete for small container commercial hauling customers in ''open'' competition or through competition for municipal franchises. In open competition work, a hauler competes for individual customers, whereas in franchise work, the hauler is awarded a municipal contract that permits the hauler to provide service to all of the small container commercial customers in that municipality. The municipality decides whether it will grant a franchise or allow haulers to compete for customers in open competition.

19. Local small container commercial hauling firms in Broward County can profitably increase prices to customers in the open areas of Broward County—that is, those not covered by a municipal franchise—without losing sales to a municipal franchise, or to more distant competitors. The open areas of Broward County is a section of the county, or relevant geographic market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

C. Reduction in Competition as a Consequence of the Acquisition

20. Defendants Waste Management and Allied directly compete to provide small container commercial hauling services for open competition in open areas of Broward County, Florida. Waste Management and Allied each account for a substantial share of total revenues from commercial waste collection services in Broward County.

21. The proposed acquisition would reduce from three to two the number of significant firms that compete to provide small container commercial hauling services in open areas of Broward County, Florida. After the acquisition, Waste Management would control over 68 percent of total market revenues, which exceed $40 million annually. Using a standard measure of market concentration called the ''HHI'' (defined and explained in Appendix A), the post-merger HHI for small container commercial hauling would be approximately 5490, an increase of 2063 points over the pre-merger HHI of 3428.

D. Entry Into Commercial Waste Collection of MSW

22. Significant new entry into small container commercial hauling business is difficult and time-consuming. A new entrant into small container commercial hauling cannot provide a significant competitive constraint on the prices charged by market incumbents until it achieves minimum efficient scale and operating efficiencies comparable to existing firms. In order to obtain a comparable operating efficiency, a new firm must achieve route density similar to existing firms. However, an incumbent's use of price discrimination and long-term contracts prevents new entrants from winning a large enough base of customers to achieve efficient routes in sufficient time to constrain the post-acquisition firm from significantly raising prices. Differences in the service provided by an incumbent hauler to each customer permit the incumbent to meet competition easily from new entrants by pricing its services lower to any individual customer that wants to switch to the new entrant. An incumbent's use of three-to-five year contracts, which may contain large liquidated damage provisions for contract termination, automatically renew, or permit specified price increases, make it more difficult for a customer to switch to a new hauler and obtain lower prices for its collection service. These contracts increase the cost and time required by an entrant to form an efficient route, reducing the likelihood that the entrant will ultimately be successful.

E. Harm to Competition

23. The acquisition of Allied's small container commercial hauling assets by Waste Management would remove a significant competitor in the small container commercial hauling business in a market that is already highly concentrated and difficult to enter. In this market, the resulting substantial increase in concentration, loss of competition, and absence of any reasonable prospect of significant new entry or expansion by market incumbents likely will result in higher prices for small container commercial hauling services.

V. Violation Alleged

24. Waste Management's proposed acquisition of Allied's small container commercial hauling assets in Broward County, Florida will lessen competition substantially and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

25. The transaction likely will have the following effects, among others:

a. Competition for small container commercial hauling services in open areas of Broward County, Florida will be lessened substantially; and

b. Prices charged by small container commercial hauling firms in open areas of Broward County, Florida will likely increase.

VI. Requested Relief

Plaintiffs request:

1. That Waste Management's proposed acquisition of Allied's small container commercial hauling assets in Broward County, Florida be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act;

2. That Defendants be permanently enjoined from carrying out the acquisition of small container commercial hauling assets in the asset purchase and stock purchase agreements dated August 15, 2003, or from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to exchange those assets between the Defendants;

3. That Plaintiffs receive such other and further relief as the case requires and the Court deems proper; and

4. That Plaintiffs recover the costs of this action.

Dated: October 14, 2003.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

/s/_____

R. Hewitt Pate

Assistant Attorney General.

/s/_____

J. Bruce McDonald

Deputy Assistant Attorney General.

/s/_____

Dorothy B. Fountain

Deputy Director of Operations.

/s/_____

Maribeth Petrizzi

Chief Litigation II Section.

/s/_____

Paul A. Moore III

Maryland Bar.

Karen Y. Douglas

Trial Attorneys, United States Department of Justice, Antitrust Division, Litigation II

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FOR PLAINTIFF STATE OF FLORIDA:

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By:
/s/_____

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Appendix A—Herfindahl-Hirschman Index Calculations

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. *See Merger Guidelines* § 1.51.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, and STATE OF FLORIDA, Plaintiffs, v. WASTE MANAGEMENT, INC., and ALLIED WASTE INDUSTRIES, INC., Defendants.

Civil No: 1:03CV02076.
JUDGE: James Robertson.
DECK TYPE: Antitrust.
FILED: October 14, 2003.

Final Judgment

Whereas, Plaintiffs, the United States of America (''United States'') and the State of Florida (''Florida''), filed their Complaint on October 14, 2003, and Plaintiffs and Defendants, Waste Management, Inc. (''Waste Management'') and Allied Waste Industries, Inc. (''Allied''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain assets by Defendant Waste Management to ensure that competition is not substantially lessened;

And whereas, Plaintiffs require Defendant Waste Management to make certain divestitures in order to remedy the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to Plaintiffs that the divestitures required below can and will be made and that Defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestitures or other injunctive provisions contained below;

And whereas, Defendant Waste Management shall be enjoined from acquiring the assets to be divested, except as provided in this Final Judgment;

Now, therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. *Acquirer* means the entity or entities to whom Waste Management divests the Relevant Hauling Assets.

B. *Allied* means Defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, its successors and assigns, and its subsidiaries, division, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

C. *MSW* means municipal solid waste, a term of art used to describe solid putrescible waste generated by households and commercial establishments such as retail stores, offices, restaurants, warehouses, and non-manufacturing activities in industrial facilities. MSW does not include special handling waste (*e.g.*, waste from manufacturing processes, regulated medical waste, sewage, and sludge), hazardous waste, or waste generated by construction or demolition sites.

D. *Relevant Hauling Assets* means Allied's small container commercial hauling routes 501, 901, 902, 903, 904, 906, 907, 909, 912, 914, and 915 that operate out of Allied's Broward County, Florida division located at 2380 College Avenue, Davie, Florida 33317 including:

(1) All tangible assets, including capital equipment, trucks and other vehicles, containers, interests, supplies, and if requested by the purchaser, real property and improvements to real property (*i.e.*, buildings and garages);

(2) All intangible assets, including hauling-related customer lists, leasehold interests, permits, and contracts and accounts related to each small container commercial hauling route, and any contract or account serviced in whole or in part on any of the routes listed above; and

(3) Relevant Hauling Assets does not include accounts and contracts serviced in unincorporated Broward County, accounts serviced through a franchise agreement, and accounts and contracts serviced in the City of Margate.

E. *Small container commercial hauling* means the business of collecting MSW from commercial and industrial accounts, usually in ''dumpsters'' (*i.e.*, a small container with one to ten cubic yards of storage capacity), and transporting or ''hauling'' such waste to a disposal site by use of a front- or rear-end loader truck. Typical small container commercial hauling customers include office and apartment buildings and retail establishments (*e.g.,* stores and restaurants). Small container commercial hauling, as used herein, does not include collection of roll-off containers.

F. *Waste Management* means Defendant Waste Management, Inc., a Delaware corporation with its headquarter in Houston, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

III. Applicability

A. This Final Judgment applies to Waste Management and Allied, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets, or of lesser business units that include the Relevant Hauling Assets, that the Acquirer agree to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. Defendant Waste Management is ordered and directed, within ninety calendar days after the filing of the Complaint in this matter, or five days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Relevant Hauling Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion, after consultation with Florida. The United States, in its sole discretion, after consultation with Florida, may agree to an extension of this time period of up to sixty calendar days, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Relevant Hauling Assets as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, Defendant Waste Management promptly shall make known, by

usual and customary means, the availability of the Relevant Hauling Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Relevant Hauling Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Relevant Hauling Assets, whichever is then available for sale, customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-produce privileges.

C. Defendants shall provide the United States and Florida, and each prospective Acquirer of the Relevant Hauling Assets, information relating to the personnel involved in the operation and management of the Relevant Hauling Assets to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any of Defendants' employees whose primary responsibility is the operation or management of the Relevant Hauling Assets.

D. Defendants shall permit each prospective Acquirer of the Relevant Hauling Assets to have reasonable access to personnel and to make inspections of the physical facilities; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of the a due diligence process.

E. Defendant Waste Management shall warrant to the Acquirer of the Relevant Hauling Assets that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Relevant Hauling Assets.

G. Defendant Waste Management shall warrant to the Acquirer of the Relevant Hauling Assets that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that following the sale of the Relevant Hauling Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Relevant Hauling Assets.

H. Unless the United States, in its sole discretion, after consultation with Florida, otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment shall include the entire Relevant Hauling Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with Florida, that the divested assets will be used by the Acquirer, as part of a viable, ongoing small container commercial hauling business. Divestiture of the Relevant Hauling Assets may be made to an Acquirer, provided that it is demonstrated to the sole satisfaction of the United States, after consultation with Florida, that the Relevant Hauling Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment.

1. Shall be made to an Acquirer that, in the United States' sole judgment, after consultation with Florida, has the intent and capability, including managerial, operational, and financial capability, to compete effectively in the small container commercial hauling business; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, after consultation with Florida, that none of the terms of any agreement between an Acquirer and Defendant Waste Management gives Defendant Waste Management the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If Defendant Waste Management has not divested the Relevant Hauling Assets within the time period specified in Section IV.A., Defendant Waste Management shall notify the United States of that fact in writing. Upon application of the United States, in its sole discretion, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Relevant Hauling Assets.

B. After the appointment of the trustee becomes effective, only the trustee shall have the right to sell the Relevant Hauling Assets.

C. The trustee shall have the power and authority to accomplished the divestiture to an Acquirer acceptable to the United States, in its sole discretion, after consultation with Florida, at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V.E. of this Final Judgment, the trustee may hire at the cost and expense of Defendant Waste Management any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

D. Defendant Waste Management shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendant Waste Management must be conveyed in writing to the United States, Florida, and the trustee within ten calendar days after the trustee has provided the notice required under Section VI.

E. The trustee shall serve at the cost and expense of Defendant Waste Management, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the Relevant Hauling Assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendant Waste Management and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Relevant Hauling Assets, and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

F. Defendants shall use their best efforts to assist the trust in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to customary confidentiality protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

G. After its appointment, the trustee shall file monthly reports with the United States, Florida, and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Hauling Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts of all efforts made to divest the Relevant Hauling Assets.

H. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall, at the same time, furnish such report to the United States and Florida. The United States, in its sole discretion, after consultation with Florida, shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, including extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two business days following execution of a definitive divestiture agreement, Defendant Waste Management or the trustee, whichever is then responsible for

effecting the divestiture required herein, shall notify the United States and Florida of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendant Waste Management. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Relevant Hauling Assets together with full details of the same.

B. Within fifteen calendar days of receipt by the United States and Florida of such notice, the United States, in its sole discretion, after consultation with Florida, may request from Defendants, the proposed Acquirer or Acquirers, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish the United States and Florida any additional information requested within fifteen calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty calendar days after receipt of the notice or within twenty calendar days after the United States and Florida have been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States, after consultation with Florida, shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendant Waste Management's limited right to object to the sale under Section V.D. of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendant Waste Management under Section V.D., a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty calendar days of the filing of the Complaint in this matter, and every thirty calendar days thereafter until the divestiture has been completed under Section IV or V, Defendants shall deliver to the United States and to Florida an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Hauling Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Relevant Hauling Assets, and to provide required information to each prospective Acquirer, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States, in its sole discretion, after consultation with Florida, to information provided by Defendants, including limitations on information, shall be made within fourteen days of receipt of such affidavit.

B. Within twenty calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States and Florida an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States and Florida an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve the Relevant Hauling Assets, and to divest the Relevant Hauling Assets, until one year after such divestiture has been completed.

X. Compliance Inspection

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, or a duly authorized representative of the Florida Attorney General's Office, and on reasonable notice to Defendants, be permitted:

1. Access during Defendants' office hours to inspect and copy, or at the United States' or Florida's option, to require Defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody or control of Defendants, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, or a duly authorized representative of the Florida Attorney General's Office, Defendants shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section and sections IV and VI above shall be divulged by the Plaintiffs to any person other than an authorized representative of the executive branch of the United States, or the Florida Attorney General's Office, except in the course of legal proceedings to which the United States or Florida is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to Plaintiffs, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then Plaintiffs shall give Defendants ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Notice

A. Defendant Waste Management shall provide written advance notification to representatives of the Antitrust Division of the United States Department of Justice and the Florida Attorney General's Office during the period ending four years after the Final Judgment is entered before acquiring, directly or indirectly, any interest in any assets (other than in the ordinary course of business), capital stock, or voting securities of any small container commercial hauling business that, at any time during the twelve months immediately preceding such acquisition, were used to provide small container commercial hauling services in Broward County, Florida, where that business's small container commercial hauling assets generated in excess of $500,000 in revenues per year or where total revenues were in excess of $1 million per year.

B. Such written notification shall be provided to representatives of the Antitrust Division and the Florida Attorney General's Office at least thirty days prior to acquiring any such interest, which period may be shortened by permission of the Antitrust Division and the Florida Attorney General's Office.

XII. No Reacquisition

Defendant Waste Management may not reacquire, lease, or control any part of the Relevant Hauling Assets during the term of this Final Judgment.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and

directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years form the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, and STATE OF FLORIDA, Plaintiffs, v. WASTE MANAGEMENT, INC., and ALLIED WASTE INDUSTRIES, INC., Defendants.

Cast No.: 1:03CV02076.

JUDGE: James Robertson.

DECK TYPE: Antitrust.

Competitive Impacts Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendant Waste Management, Inc. (''Waste Management'') and Defendant Allied Waste Industries, Inc. (''Allied'') entered into an asset purchase agreement and a stock purchase agreement, both dated August 15, 2003, pursuant to which Waste Management would acquire from Allied, *inter alia*, certain small container commercial hauling assets in Broward County, Florida. The United States and the State of Florida (''Florida'') filed a civil antitrust Complaint on October 14, 2003, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially for small container commercial hauling services in Broward County, Florida in violation of Section 7 of the Clayton Act. This loss of competition would result in consumers paying higher prices and receiving fewer services for the collection of small container commercial waste.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Waste Management is required within 90 days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment by the Court, Whichever is later, to divest, as a viable business operation, specified small container commercial hauling assets located in Broward County, Florida. Under the terms of the Hold Separate Stipulation and Order, Waste Management is required to take certain steps to ensure that the assets to be divested are fully maintained in operable condition at no less than the state they were in at the time the United States, Florida, and Defendants agreed to the divestitures outlined below and held separate from its other assets and businesses.

The United States, Florida, and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Waste Management, with 2002 revenues of approximately $11.1 billion, is the nation's largest waste collection and disposal company, operating throughout the United States. Allied, with 2002 revenues of approximately $5.5 billion, is the nation's second largest waste collection and disposal company. The proposed transaction, as initially agreed to by Defendants on August 15, 2003, would lessen competition substantially as a result of Waste Management's acquisition of Allied's small container commercial hauling assets in Broward County, Florida. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States and Florida on October 14, 2003.

B. The Competitive Effects of the Transaction on Competition in Small Container Commercial Hauling

Municipal solid waste (''MSW'') is solid, putrescible waste generated by households and commercial establishments. Waste collection firms, or haulers, contract to collect MSW from residential and commercial customers and transport the waste to private and public disposal facilities (*e.g.*, transfer stations, incinerators, and landfills), which, for a fee, process and legally dispose of the waste. Small container commercial hauling is one component of MSW collection, which also includes residential and other waste collection. Waste Management and Allied compete in the collection of small container commercial waste in Broward County, Florida.

Small container commercial hauling is the collection of MSW in one to ten cubic yard containers, usually from commercial businesses such as office and apartment buildings and retail establishments (*e.g.*, stores and restaurants) for shipments to, and disposal at, an approved disposal facility. Because of the type and volume of waste generated by commercial accounts and the frequency of service required, haulers organize small container commercial accounts into their own special routes, and generally use specialized equipment to store, collect, and transport waste from these accounts to approved disposal sites. This equipment (*e.g.*, one- to ten-cubic-yard containers for waste storage, and front-end load vehicles commonly used for collection and transportation) is uniquely well-suited for small container commercial hauling. Providers of other types of waste collection services (*e.g.*, residential and roll-off services) are not good substitutes for small container commercial hauling firms. In their waste collection efforts, these firms use different waste storage equipment (*e.g.*, garbage cans or semi-stationary roll-off containers) and different vehicles (*e.g.*, rear-load, side-load, or roll-off trucks), which, for a variety of reasons, cannot be conveniently or efficiently used to store, collect, or transport waste generated by commercial customers, and hence, are rarely used on small container commercial hauling routes. In the event of a small but significant and nontransitory increase in price for small container commercial hauling, customers would not switch to any other alternative. Thus the Complaint alleges that the provision of small container commercial hauling constitutes a line of commerce, or relevant service, for purposes of analyzing the effects of the transaction.

The Complaint alleges that the provision of small container commercial hauling service takes place in compact, highly localized geographic markets. The geographic markets are compact and highly localized because it is expensive to ship waste long distances in either collection or disposal operations. To minimize transportations costs and maximize the scale, density, and efficiency of their waste collection operations, small container commercial hauling firms concentrate their customers and collection routes in small areas. Firms with operations concentrated in a distant area cannot easily compete against firms whose routes and customers are locally based. Distance may significantly limit a remote firm's ability to provide commercial waste hauling service as frequently or conveniently as that offered by local firms with nearby routes. Also, local small container commercial hauling firms have significant cost advantages over other firms and can profitably increase their charges to local small container commercial hauling customers without losing significant sales to firms outside the area.

Small container commercial haulers in Broward County, Florida compete for customers either in ''open'' competition or through competition for municipal franchises. In open competition areas, haulers compete to service individual customers. In areas where commercial hauling is controlled by the respective municipality, small container commercial haulers compete to be awarded a municipal contract, or franchise, that permits the hauler to provide service to all of the small container commercial customers in that municipality. The municipality decides whether to grant a franchise or to allow haulers to compete for customers in open competition. Local small container commercial hauling firms in Broward County can profitably increase prices to customers in the open areas of Broward County—that is, those customers not covered by a municipal

franchise—without losing sales to a municipal franchise, or to more distant competitors.

Applying this analysis, the Complaint alleges that the open competition areas of Broward County, Florida constitute a section of the country, or relevant geographic market, for the purpose of assessing the competitive effects of a combination of Waste Management and Allied in the provision of small container commercial hauling services.

There are significant entry barriers into the provision of small container commercial hauling services. A new entrant in the small container commercial hauling business must achieve a minimum efficient scale and operating efficiencies comparable to those of existing firms in order to provide a significant competitive constraint on the prices charged by market incumbents. In order to obtain comparable operating efficiencies, a new firm must achieve route density similar to existing firms. An efficient route usually handles eighty or more customers or containers each day. Because most customers have their waste collected once of twice a week, a new entrant must have several hundred customers in close proximity to construct an efficient route. However, the common use of price discrimination and long-term contracts by existing small container commercial hauling firms can leave too few customers available to the entrant in a sufficiently confined geographic area to create an efficient route. The incumbent firm can selectively and temporarily charge an unbeateably low price to specified customers targeted by new entrants. Long-term contracts often run for three to five years and may automatically renew or contain large liquidated damage provisions for contract termination. Such terms make it more costly or difficult for a customer to switch to a new hauler and obtain lower prices for its collection service. Because of these factors, a new entrant may find it difficult to compete by offering its services at pre-entry price levels comparable to the incumbent's prices. Also, a new entrant may face an increase in the cost and time required to form an efficient route, which may limit the entrant's ability to build an efficient route and reduce the likelihood that the entrant ultimately will be successful.

The need for route density, the use of long-term contracts with restrictive terms, and the ability of existing firms to price discriminate raise significant barriers to entry by new firms, which will likely be forced to compete at lower than entry price levels. Such barriers in the market for small container commercial hauling services have allowed incumbent firms to raise prices successfully.

In Broward County, Florida, Waste Management's acquisition of Allied's small container commercial hauling assets would reduce from three to two the number of significant firms that compete to provide small container commercial hauling. After the acquisition, Waste Management would control over 68 percent of total market revenues, which exceed $40 million annually. There is only one other significant small container commercial hauling competitor in this market.

The Complaint alleges that a combination of Waste Management and Allied in Broward County would remove a significant competitor in small container commercial hauling. In this market the resulting increase in concentration, loss of competition, loss of competition, and absence of any reasonable prospect of entry or expansion by market incumbents likely will result in higher prices for small container commercial hauling.

III. Explanation of the Proposed Final Judgment

The divestiture requirement of the proposal Final Judgment will eliminate the anticompetitive effects of the acquisition in small container commercial hauling in Broward County, Florida by establishing a new, independent, and economically viable competitor. The proposed Final Judgment requires Waste Management, within ninety days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest, as a viable ongoing business, small container commercial hauling assets (*e.g.*, routes, trucks, containers, and customer lists) in Broward County, Florida. The assets must be divested in such a way as to satisfy the United States in its sole discretion, after consultation with Florida, that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

In the event that Defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that Waste Management will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court, the United States, and Florida, setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee, the United States, and Florida, will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the provision of small container commercial hauling services in Broward County, Florida. Under the proposed Final Judgment, Waste Management is required to divest customers and contracts on eleven of Allied's routes (routes 901, 902, 903, 904, 906, 907, 909, 912, 914, 915, and 501, except for specific portions of these routes that did not raise significant competitive concerns, including accounts and contracts serviced in parts unincorporated Broward County, accounts serviced through franchise agreements, and accounts and contracts serviced in the City of Margate) to a new, independent, and economically viable competitor in Broward County, Florida. In addition, Waste Management agrees that, if an Allied customer has a single contract with accounts and service locations that are on both a route to be divested and a route Waste Management will acquire, Waste Management will divest the entire contract. The divested assets produce annual revenues of over $8 million from small container commercial hauling service in the open competition areas of Broward County, which represents over 80 percent of Allied's revenues generated in the open competition areas.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States, Florida, and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written commends regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Waste Management's acquisition of certain assets from Allied. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the provision of small container commercial hauling services in the relevant market identified by the United States and Florida.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the Court may consider:

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the United States Court of Appeals for the District of Columbia Circuit held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney).[1] Rather:

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶61,508, at 71,980 (W.D. Mo. May 17, 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS,* Inc., 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62. Case law requires that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requires might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2]

The proposed final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting Gillette, 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 f. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Compliant, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. *Id.* at 1459–60.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: November 19, 2003.

Respectfully submitted,

Paul A. Moore III, Maryland Bar, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 514–8380.

Certificate of Service

I hereby certify that a copy of the foregoing has been served upon Waste Management, Inc., Allied Waste Industries, Inc., and the State of Florida by placing a copy of this Competitive Impact Statement in the U.S. mail, first class and postage prepaid, directed to each of the above-named parties at the addresses given below, this 19th day of November, 2003.

Counsel for Defendant Waste Management, Inc., Melanie Sabo, Esquire, Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue, NW, Suite 500, Washington, DC 20006; (202) 628–1700.

Counsel for Defendant Allied Waste Industries, Inc., Mia F. Cohen, Esquire, Jones Day Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113, (202) 879–3971.

Counsel for Plaintiff State of Florida, Lizabeth A. Leeds, Esquire, Senior Assistant Attorney General, Office of the Attorney General, Antitrust Division, PL–01, The Capitol, Tallahassee, Florida 32399–1050, Phone: (850) 414–3600, Fax: (850) 488–9134.

Paul A. Moore III, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–0938

[FR Doc. 03–31053 Filed 12–16–03; 8:45 am]

BILLING CODE 4410–11–M

[1] *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer ''whether the settlement achieved (was) within the reaches of the public interest''). A ''public interest'' determination can be made properly on the basis of the competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. No. 93–1463, 93rd Cong., 2d Sess. 8–9 (1974), *reprinted* in 1974 U.S.C.C.A.N. 6535, 6538.

[2] *Cf. BNS,* 858 F.2d at 463 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *gillette,* 406 F. Supp. at 716 (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F. 3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

DEPARTMENT OF JUSTICE

Antitrust Division

United States and New Jersey v. Waste Management, Inc. and Allied Waste Industries, Inc.; Public Comments and Plaintiff's Response

Notice is hereby given pursuant to section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), that the Public Comments and Plaintiff's Response thereto have been filed with the United States District Court for the District of Columbia in *United States and New Jersey* v. *Waste Management, Inc. and Allied Waste Industries, Inc.,* Civil No. 1:03CV01409 (GK).

On June 27, 2003, the United States and the State of New Jersey filed a civil antitrust Complaint alleging that Waste Management's acquisition of certain voting securities and waste-hauling and disposal assets of Allied would lessen competition substantially in the provision of small container commercial waste collection services in the areas of Pitkin County, Colorado; Garfield County, Colorado; Augusta, Georgia; Myrtle Beach, South Carolina; Morris County, New Jersey; and Bergen and Passaic Counties, New Jersey, and in the provision of municipal solid waste disposal services in the Bergen and Passaic Counties, New Jersey and Tulsa and Muskogee, Oklahoma disposal areas, in violation of section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires, among other things, that defendant Waste Management (1) divest small container commercial waste collection assets in the areas of Pitkin County, Colorado; Garfield County, Colorado; Augusta, Georgia; Myrtle Beach, South Carolina; Morris County, New Jersey; and Bergen and Passaic Counties, New Jersey; (2) alter the contracts it uses with its existing and new small container commercial waste customers in the areas of Augusta, Georgia and Myrtle Beach, South Carolina; (3) divest transfer station facilities serving Bergen and Passaic Counties, New Jersey; and (4) sell throughput disposal rights at a facility serving Bergen and Passaic Counties, New Jersey.

Public comment was invited within the statutory 60-day comment period. The two comments received, and the response thereto, are hereby published in the **Federal Register** and filed with the Court. Copies of these are available for inspection at the U.S. Department of Justice, Antitrust Division, Suite 215 North, 325 7th Street, NW., Washington, DC 20530 (telephone: 202–514–2481) and at the Clerk's Office, United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

In the matter of: United States of America, and State of New Jersey, Plaintiffs, v. Waste Management, Inc., and Allied Waste Industries, Inc., Defendants.

Case No: 1:03CV01409; Judge: Gladys Kessler, Deck Type: Antitrust.

Response of the United States to Public Comments on the Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) (''APPA'' or ''Tunney Act''), Plaintiffs United States of America (''United States'') hereby files comments received from members of the public concerning the proposed Final Judgment in this civil antitrust suit and the Response of the United States to those comments.

I. Background

On January 29, 2003, Defendants Waste Management, Inc. (''Waste Management'') and Allied Waste Industries, Inc. (''Allied'') entered into stock and asset purchase agreements pursuant to which Waste Management would acquire certain voting securities and waste-hauling and disposal assets of Allied in a number of areas throughout the United States. The United States and the State of New Jersey (''New Jersey'') filed a civil antitrust Complaint on June 27, 2003, seeking to enjoin the proposed acquisition. The Complaint alleged that the likely effect of the acquisition would be to lessen competition substantially for waste collection and disposal services in several markets in violation of section 7 of the Clayton Act. This loss of competition would result in consumers paying higher prices and receiving fewer services for the collection and disposal of waste.

At the same time the Complaint was filed, the parties also filed a Hold Separate Stipulation and Order and a proposed Final Judgment. Under the proposed Final Judgment, Waste Management is required within 90 days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest, as viable business operations, specified waste-hauling and disposal assets. The proposed Final Judgment also requires Defendants, within 90 days after approval by the New Jersey Department of Environmental Protection of Waste Management's request to acquire assets in New Jersey, to divest, as viable business operations, certain waste-hauling and disposal assets located in New Jersey and New York. In addition to the divestitures, the proposed Final Judgment also requires Waste Management to comply with certain conditions relating to its customer contracts in two identified areas. Under the terms of the Hold Separate Stipulation and Order, Waste Management is required to take certain steps to ensure that the assets to be divested will be preserved and held separate from its other assets and businesses pending their divestiture.

The United States, New Jersey, and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. In compliance with the APPA, the United States filed a Competitive Impact Statement (''CIS'') on July 22, 2003. Waste Management and Allied filed statements pursuant to 15 U.S.C. 16(g) on August 4, 2003. A summary of the terms of the proposed Final Judgment and CIS were published in the *Washington Post*, a newspaper of general circulation in the District of Columbia, for seven days during the period of August 9, 2003, through August 15, 2003. The Hold Separate Stipulation and Order, proposed Final Judgment, and CIS were published in the **Federal Register** on August 12, 2003, 68 FR 47930 (2003). The 60-day comment period commenced on August 15, 2003, and terminated on October 14, 2003. During the 60-day comment period, the United States received two public comments (attached as Appendix A).

II. Response to Public Comments

A. Legal Standard Governing the Court's Public Interest Determination

Upon the publication of the public comments and this Response, the United States will have fully complied with the Tunney Act. After receiving the motion of the United States for entry of the proposed Final Judgment, the Tunney Act directs the Court to determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e). In making that determination, the ''court's function is not to determine whether the resulting array of rights and liabilities is one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest.'' *United States* v. *Western Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir.), *cert. denied*, 510 U.S. 984 (1993). The Court should evaluate the relief set forth in the proposed Final Judgment and should enter the Judgment if it falls within the government's ''rather broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995)*; accord United States* v. *Associated Milk Producers,* 534 F.2d 113, 117–18 (8th Cir.), *cert. denied,* 429 U.S. 940 (1976). The Court should review the proposed Final Judgment ''in light of the violations charged in the complaint and * * * withhold approval only (a) if any of the terms appear ambiguous, (b) if the enforcement mechanism is inadequate, (c) if third parties will be positively injured, or (d) if the decree otherwise makes a 'mockery of judicial power.' '' *Mass Sch. of Law at Andover, Inc.* v. *United States,* 118 F.3d 776, 783 (D.C. Cir. 1997) (quoting *Microsoft,* 56 F. 3d at 1462). The Tunney Act does not empower the Court to reject the remedies in the proposed Final Judgment based on the belief that ''other remedies were preferable, '' *Microsoft,* 56 F.3d at 1460, nor does it give the Court authority to impose different terms on the parties. *See, e.g., United States* v.

American Tel. & Tel. Co., 552 F. Supp. 131, 153 n.95 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983) (mem.); *accord* H.R. Rep. No. 93–1463, at 8 (1974).

B. Summary of Public Comments and the United States' Responses

Two individuals expressed their views on the proposed Final Judgment. Copies of this response, without the Appendix, are being mailed to them. A summary of their comments and the responses of the United States are below.

1. *Peter Anderson*

Peter Anderson, writing on behalf of the Center for a Competitive Waste Industry, requests data discovered by the United States concerning local disposal markets, including the size of the municipal solid waste firms in each market, and the ownership and maximum daily throughput for transfer stations. Mr. Anderson also states that the CIS correctly notes the critical importance of free access to disposal capacity on non-discriminatory terms and notes that the proposed Final Judgment requires the partial divestiture of transfer and disposal assets in New Jersey and Oklahoma.

The United States appreciates Mr. Anderson's comment on the proposed Final Judgment. However, the United States is unable to make public the data that it collected on local disposal markets. Disclosing such data would require that the United States reveal information that was received pursuant to a statute that limits its disclosure[1] or, alternatively, produce sensitive information that the United States will not disclose unless required by law or necessary to further a legitimate public purpose. The United States believes, however, that some of the information requested by Mr. Anderson may be available through various public sources, including the New Jersey Department of Environmental Protection Web site.

Mr. Anderson is mistaken in stating that the decree requires Waste Management to divest transfer or disposal assets in Oklahoma. Rather, the Defendants agreed to exclude from the transaction the sale of Allied's waste-hauling and disposal assets located in the Tulsa and Muskogee, Oklahoma area and, as specified in section XI of the proposed Final Judgment, Waste Management further agreed to provide the United States with notice of any future acquisition of disposal assets in the Tulsa and Muskogee, Oklahoma area.

2. *Gregory Neppl*

Gregory Neppl filed a comment setting forth his understanding of the purpose and effect of Section XIII of the proposed Final Judgment relating to ''Revisions to Contracts.'' Mr. Neppl states that he understands proposed Final Judgment precludes Waste Management, effective June 27, 2003, from enforcing any contract term inconsistent with those set forth in section XIII.B. and affecting its commercial waste collection customers in the Augusta, Georgia and Myrtle Beach, South Carolina areas. Mr. Neppl further notes that he understands that Waste Management must also offer new contracts that conform with the terms set forth in the proposed Final Judgment to its new and existing customers subject to the deadlines set forth in Section XIII.

The United States concurs with Mr. Neppl's interpretation of section XIII of the proposed Final Judgment as stated in his letter of October 9, 2003.

III. Conclusion

The United States hereby files the comments of the members of the public together with the Response of the United States to the comments, pursuant to 15 U.S.C. 16(d). The Competitive Impact Statement and this Response to Comments demonstrate that the proposed Final Judgment serves the public interest. Accordingly, the United States will move this Court for entry of the proposed Final Judgment after the comments and the Response are published in the **Federal Register** pursuant to 15 U.S.C. 16(d).

Dated this 9th day of December, 2003.

Respectfully submitted,

Michael K. Hammaker, Esquire,
D.C. Bar No. 233684, United States Department of Justice, Antitrust Division, 1401 H Street, NW., Room 3000, Washington, DC 20530; (202) 307–0938.

Certificate of Service

I hereby certify that on this 9th day of November, 2003, I caused a copy of the foregoing Response of the United States to Public Comments on the Proposed Final Judgment and the attached Appendix to be served by electronic filing on Waste Management and Allied Waste Industries, and by first class mail, postage prepaid, on the State of New Jersey at the addresses given below:

Counsel for Defendant Waste Management, Inc.,
James R. Weiss, Esquire, Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue, NW., Suite 500, Washington, DC 20006; *jimwe@prestongates.com*; (202) 628–1700.

Counsel for Defendant Allied Waste Industries, Inc.,
Tom D. Smith, Esquire, Jones Day, 51 Louisiana Avenue, NW., Washington, DC 20001–2113; *tdsmith@jonesday.com*; (202) 879–3971.

Counsel for Plaintiff State of New Jersey,
Andrew L. Rossner, Esquire, Assistant Attorney General—Deputy Director, New Jersey Attorney General's Office, Division of Criminal Justice, 25 Market Street, Trenton, NJ 08625–0085; (609) 984–0028.

Stacy R. Procter, Esquire,
CA Bar No. 221078, United States Department of Justice, Antitrust Division, 1401 H Street, NW., Room 3000, Washington, DC 20530. Telephone: (202) 514–8666.

To: Hammaker, Michael
Subject: Re: Waste Management: 4/28/03 Sale of $1 Billion of Allied Waste Assets to Waste Management

We have the Competitive Impact Statement for the Waste Management/Allied swap.

The CIS correctly notes the critical importance to the maintenance of competition of free access to disposal capacity on non-discriminate terms, and goes onto to note the partial divestitures of transfer and disposal assets in New Jersey and Oklahoma.

In order to comment intelligently on the proposed settlement, we would like to ask if DOJ would share its discovery data on local conditions in the market for disposal in those areas. Specifically, the ownership and maximum daily throughputs for transfer stations, and the ownership, maximum daily tonnages and remaining life and locations for landfills. Also, the names and, if possible, very general indices of the size/share (that does impinge on trade secrets) of the municipal solid waste firms in each market.

Thank you.

Peter Anderson,
Center for a Competitive Waste Industry.

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[1] *See* Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a(h); Antitrust Civil Process Act, 15 U.S.C. 1311 *et seq.*

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October 9, 2003

BY HAND DELIVERY

Ms. Stacy R. Procter
Trial Attorney
Antitrust Division
United States Department of Justice
1401 H Street, N.W., Suite 3000
Washington, DC 20530

Re: U.S. v. Waste Management, Inc. and Allied Waste Industries, Inc.
Civil Case No: 1:03CV01409

Dear Ms. Procter:

Thank you for your recent comments as to the purpose and effect of the language contained in Section XIII of the Final Judgment, entitled "Revisions to Contracts," regarding the obligation of Waste Management not to "attempt to enforce any contract term affecting commercial waste collection customers in the specified areas [Myrtle Beach, SC and Augusta, GA] that conflicts with or is inconsistent with the above terms [reflecting five contract prohibitions], even if those customers choose not to sign a contract with the new terms."

Pursuant to the Final Judgment, these five contract prohibitions provide that "[n]o contract shall:"

1. Have an initial term longer than two (2) years;

2. Have any renewal term longer than one (1) year;

3. Require that the customer give Waste Management notice of termination more than thirty (30) days prior to the end of any initial term or renewal term;

4. Require that the customer pay liquidated damages in excess of three times its average monthly charge during the first year the customer has had service with Waste Management; and

5. Require that the customer pay liquidated damages in excess of two (2) times its average monthly charge after the first year the customer has had service with Waste Management.

FOLEY & LARDNER
ATTORNEYS AT LAW

Ms. Stacy R. Procter
October 9, 2003
Page 2

As you have advised, the language quoted above became effective as of June 27, 2003. At that time,Waste Management became immediately obligated not to enforce any contract provision(s) inconsistent with the five contract prohibitions listed above, although other contract terms may remain enforceable by Waste Management. As a result, contracts in place as of June 27, 2003 must conform to these five contract prohibitions. Moreover, Waste Management is also obligated to offer new contracts to new and existing customers in accordance with these five contract prohibitions, subject to the deadlines set forth in Section XIII the Final Judgment.

In short, the obligation upon Waste Management not to enforce any contract provision(s) inconsistent with the five contract prohibitions currently applies, whether or not the contracts in place physically incorporate the language in question. On that basis, we have no objection to or other comment on the proposed Final Judgment pending before Judge Gladys Kessler.

Sincerely,

Gregory E. Neppl

[FR Doc. 03–31054 Filed 12–16–03; 8:45 am]
BILLING CODE 4410–11–C

DEPARTMENT OF JUSTICE

Parole Commission

Record of Vote of Meeting Closure (Public Law 94–409) (5 U.S.C. Sec. 552b)

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 10:45 a.m. on Thursday, December 11, 2003, at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide one petition for reconsideration pursuant to 28 CFR 2.27. Three Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., John R. Simpson, and Cranston J. Mitchell.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: December 11, 2003.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 03–31188 Filed 12–15–03; 9:58 am]
BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11198, et al.]

Proposed Exemptions; Bangs, McCullen, Butler, Foye & Simmons, L.L.P. Employees Profit Sharing Plan (the Plan)

AGENCY: Employee Benefits Security Administration, Labor

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *''moffitt.betty@dol.gov''*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Bangs, McCullen, Butler, Foye & Simmons, L.L.P. Employees Profit Sharing Plan (the Plan) Located in Rapid City, South Dakota

[Application No. D–11198]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective January 1, 2004, to the proposed lease by the Plan (the New Lease) of certain improved real property (the Property) located in Rapid City, South Dakota, to Bangs, McCullen, Butler, Foye & Simmons, L.L.P. (the Employer), the sponsor of the Plan, and a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(A) All terms and conditions of the New Lease are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The New Lease is a triple net lease under which the Employer is obligated to pay for all costs of maintenance, repair, and taxes related to the Property;

(C) The interests of the Plan for all purposes under the New Lease are represented by an independent fiduciary, Wells Fargo Bank, N.A., Rapid City, South Dakota (the Trustee);

(D) The rent paid by the Employer under the New Lease is no less than the fair market rental value of the Property; and

(E) If the summary appraisal of the Property (the Summary Appraisal), due in mid-December 2003, contains a fair market rental value that is higher than the current fair market rental value set forth in the New Lease, the Employer will amend the New Lease to pay the Plan the higher amount, retroactive to January 1, 2004.

Effective Date: This exemption, if granted, will be effective as of January 1, 2004.

Summary of Facts and Representations

1. The Plan is a profit sharing retirement plan which was established December 31, 1964. As of July 31, 2003, the Plan had 42 participants and $9,693,762.89 in assets. The Plan is maintained by the Employer, which is a South Dakota general partnership engaged in the practice of law. Investment discretion over the Plan's assets is exercised by Thomas H. Foye, Charles Riter and John H. Raford. Mr. Riter and Mr. Raford are partners of the Employer, and Mr. Foye is an employee of the Employer. The Plan's assets are held in trust by Wells Fargo Bank, N.A., Rapid City, South Dakota (*i.e.*, the Trustee), which will also be serving as the independent fiduciary for purposes of the New Lease. The Trustee was formerly named Norwest Bank South Dakota, N.A. (Norwest Bank). Norwest Bank was acquired by Wells Fargo Bank, N.A., effective November 2, 1998. The Trustee represents that it is independent of the Employer and its affiliates. In this regard, the applicant represents that while the Employer has deposits with the Trustee, those deposits constitute less than one percent (1%) of the Trustee's total deposits. It is represented that the Trustee does not have common officers or directors with the Employer. While the Employer may have occasional loans with the Trustee, such loans would be less than 1% of the Trustee's total outstanding loans. The Trustee and its predecessors have served as trustees for the Plan since the time it was adopted in 1964.

2. Among the assets of the Plan is the Property, a parcel of improved real estate which constitutes the Employer's principal place of business. The Property is located in downtown Rapid City, South Dakota, and is a two-story brick office building containing approximately 9,600 square feet of office space. The Employer has leased the Property from the Plan under a triple net lease (the Prior Lease) with a ten year term commencing January 1, 1994 and ending December 31, 2003. The Prior Lease was exempt from the prohibitions of section 406 of the Act and section 4975(c) of the Code by virtue of an individual administrative exemption, Prohibited Transaction Exemption 94–25 (PTE 94–25, 59 FR 12355, March 16, 1994), granted by the Department. The interests of the Plan under the Prior Lease were represented by the Trustee's predecessor, Norwest Bank.

Under PTE 94–25, Norwest Bank monitored the Employer's performance and represented the Plan in enforcing the terms and the conditions of the Prior Lease. The Trustee represents that the Employer occupied the Property in compliance with all terms and conditions of the Prior Lease for its duration. The Prior Lease expires on December 31, 2003.

3. The Trustee states that the Plan's lease of the Property to the Employer

continues to be a favorable Plan investment because, among other things, it provides the Plan with an annual rate of return which is better than annual returns produced by other Plan investments at this time.

Therefore, the Trustee concludes that, effective January 1, 2004, the continued leasing of the Property by the Plan to the Employer for approximately a three (3) year period would be in the best interest of the Plan. The Trustee is attempting to sell the Property and has listed the Property for sale with the real estate firm of Coldwell Banker Kirkeby-Hall. The Property has been listed for sale since May 20, 2003. However, no offers have been received to date. The Trustee states that a shorter term lease is preferable because a long-term lease may dissuade a potential buyer from purchasing the Property, especially if the buyer desires to occupy the Property. Therefore, the Trustee and the Employer have agreed to a new leasing arrangement (*i.e.*, the New Lease), effective January 1, 2004, which will provide for the Plan's continued leasing of the Property to the Employer for at least three (3) years (as discussed below). Accordingly, the Employer and the Trustee are requesting an exemption for the New Lease under the terms and conditions described herein.

4. The New lease is a triple net lease for a term of three (3) years commencing January 1, 2004 and terminating December 31, 2006, both dates inclusive. The New Lease may be renewed by the Employer as the tenant for an additional period of one (1) year (the Option). The Option may be exercised upon giving sixty (60) days written notice to the Plan, as the landlord.

The interests of the Plan under the New Lease will be represented by the Trustee. In this regard, the Trustee states that it knows of no capital repairs or improvements that are required to the Property at this time, and does not anticipate any such repairs in the foreseeable future. The annual rental under the New Lease is payable in equal monthly installments. Initial rental under the New Lease will be $7,200 per month, or $86,400 annually.

5. The fair market rental value of the Property has been established periodically (pursuant to the terms of the Prior Lease and PTE 94–25) by Richard S. Kahler, CCIM, GAA, CFP (Mr. K), a professional real estate appraiser with Kahler Appraisal Services, located in Rapid City, South Dakota. Mr. K discusses the current fair market rental value of the Property in letters dated March 31, 2003 and August 6, 2003 (the Updates). In the Updates, Mr. K refers to an appraisal prepared during the Prior Lease, as required under PTE 94–25. Mr. K states, among other things, that in 2002, the fair market rent for the Property was increased to $9.00 per square foot. Furthermore, Mr. K also states that his market review prepared in March, 2003, did not evidence an additional increase in the fair market rental value for the Property at that time.

In anticipation of the New Lease or a possible sale of the Property to a third-party buyer, the applicant had Mr. K prepare an immediate restricted appraisal report (the Report) of the Property on October 15, 2003. In the Report, Mr. K relied on the sales comparison approach (SC Approach) and the income approach (Inc. Approach) in appraising the fair market value of the Property. Mr. K states that the current fair market value of the Property under the SC Approach is between $748,000 and $770,000. Under the Inc. Approach, Mr. K used an appropriate capitalization rate (*i.e.*, 9.0%),[1] to determine an estimated market value of between $760,000 and $785,000 for the Property. Therefore, as of October 15, 2003, Mr. K determined that the fair market value of a fee simple interest in the Property would be in the range of $750,000 to $800,000.

6. Furthermore, Mr. K has represented to the applicant and the Department that he will provide a full updated summary appraisal (Summary Appraisal) of the fair market value and fair rental value of the Property by middle of December, 2003. The New Lease has a provision stating that if the Summary Appraisal contains a fair market rental value for the Property that is higher than the current fair market rental value set forth in the New Lease (*i.e.*, $7,200 per month, or $86,400 annually), the Employer will amend the New Lease to pay the Plan the higher amount. Any new rental amount will be adjusted retroactive to January 1, 2004, to provide for the higher rental value as of that date. In addition, commencing January 1, 2004, any appropriate higher amount of rent will be paid to the Plan by the Employer within 30 days of the receipt of the Summary Appraisal.

Furthermore, the Trustee states that it will monitor the New Lease and its fair market rent provisions annually. The Trustee will obtain annual independent determinations of the fair market rental value of the Property. The Trustee will ensure that the Plan receives annual increases in rents that reflect the fair market rental value of the Property.

Under the New Lease, the Employer will indemnify and hold the Plan harmless from all penalties, claims, demands, liabilities, expenses and losses of any nature arising from the Employer's use of the Property.

7. The Trustee will monitor the Employer's performance under the New Lease, on behalf of the Plan, and will enforce its terms and conditions. As the Plan's independent fiduciary, the Trustee will take whatever actions are necessary to protect the interests of the Plan and its participants and beneficiaries.

The Trustee has reviewed and evaluated the Plan's continued leasing of the Property to the Employer under the New Lease and has determined that the transaction would be in the best interests of the Plan's participants and beneficiaries. Specifically, the Trustee states that the Employer has proven to be a successful, reliable tenant of the Property, and that the Property constitutes a productive Plan asset.

8. In summary, the applicant represents that the subject transaction satisfies the criteria of section 408(a) of the Act because:

(A) The New Lease is a triple net lease requiring the Employer to pay all costs for repair, maintenance, taxes and insurance on the Property;

(B) The interests of the Plan under the New Lease are represented by the Trustee, an independent fiduciary which will monitor and enforce the Employer's performance under the terms and conditions of the New Lease;

(C) The New Lease ensures that the rental payments will remain no less than the fair market rental value of the Property for the duration of the transaction;

(D) The New Lease contains a provision stating that if the Summary Appraisal, due in mid-December 2003, contains a fair market rental value for the Property that is higher that the current fair market rental value set forth in the New Lease, the Employer will amend the New Lease to pay the Plan the higher amount, retroactive to January 1, 2004; and

(E) The Trustee has reviewed the Plan's continued leasing of the Property under the New Lease and has determined that the transaction would be in the best interests of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 693–8540. (This is not a toll-free number.)

[1] A capitalization rate is a rate of interest used to convert a series of future payments into a single present value.

Painters District Council No. 4 Apprenticeship, Upgrading & Retraining Trust Fund (the Plan) Located in Cheektowaga, New York

[Application No. L–11190]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act shall not apply to a lease (the Lease) of certain space (the Leased Premises) in a building (the Building) owned by the Plan to Lipsitz, Green, Fahringer, Roll, Salisbury & Cambria, LLP (the Applicant), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) All terms and conditions of the Lease are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(b) The decision by the Plan to enter into the Lease will be made by the trustees of the Plan (the Trustees); and

(c) The fair market rental amount for the Lease will be determined by an independent, qualified appraiser as of the date of the commencement of the Lease; and

(d) After commencement of the Lease, an additional fair market rental appraisal of the Leased Premises will be performed by an independent, qualified appraiser every thirty months with the rental rate being adjusted accordingly.

Summary of Facts and Representations

1. The Plan is a defined contribution plan, covering members of the Painters District Council No. 4 whose employers contribute to the Plan under the terms of Collective Bargaining Agreements with the Painters District Council. The Plan is subject to the provisions of ERISA, and became effective on September 25, 1966. The Plan provides apprenticeship training and journeyman upgrading to participants. In addition, the Plan offers training and certification in the following Health and Safety Disciplines: OSHA Hazard Awareness, Scaffolding, Welding, Fall Protection, Ergonomics, Confined Space, Respirator Fit Testing, Hazwoper, Lead Abatement, Asbestos and CPR-First Aid for the Painting and Glazing Industry. The Plan currently has approximately 500 active participants. The Applicant provides legal services to the Plan and to other multi-employer pension and welfare plans.

The Applicant is a law firm that practices in a broad range of legal concentrations. The Applicant has an employment law practice that represents a number of jointly administered employee benefit funds. One of the Applicant's clients is the Plan.

2. The Leased Premises and the Building are located at 585 Aero Drive, Cheektowaga, New York. The Building is a one-story office and warehouse facility containing 11,922 square feet. The Leased Premises has 1,500 square feet of office area. On December 11, 2002, the Plan purchased the Building for $450,000 from the Niagara Frontier Transportation Authority, an unrelated third party. The Plan continues to lease the other office space to the same parties to whom it was previously subleased including multi-employer funds (the Funds) who are parties in interest to the Plan. The Applicant represents that the lease agreements with the Funds operate pursuant to the guidelines established by Prohibited Transaction Exemption 76–1 (41 FR 12740, 12744, March 26, 1976) (PTE 76–1).[2]

Due to the Applicant's hiring of a new attorney who now seeks to rent the Leased Premises, the Applicants will become parties in interest with respect to the Plan upon the inception of the Lease. The Applicants seek to enter into a five-year lease agreement for the Leased Premises. The decision by the Plan to enter into the Lease will be made by the Trustees who are independent of the Applicant. The fair market rental amount for the Lease will be determined by an independent, qualified appraiser. Additionally, fair market rental appraisals will be performed at the commencement of the Lease and at thirty month intervals thereafter by an independent, qualified appraiser. Rental rates will be adjusted in accordance with each subsequent appraisal.

3. The fair market rent of the Leased Premises has been established by an appraisal dated February 25, 2003 and will be updated prior to the commencement of the Lease. The appraisal was prepared by Howard P. Schultz & Associates. The appraisal relied on the market sales comparison approach to determine the fair market rental value of the Leased Premises. The appraisal states that the fair market rent for the Leased Premises is $15/square foot, which equates to $22,500 annually. The rental rate includes real estate taxes, insurance, utilities, cleaning and janitorial service all of which will be paid by the Applicant. The Lease will be on the terms no less favorable to the Applicant than an arm's length transaction with an unrelated party.

4. The Applicant states that the Lease will be protective of the Plan and consistent with the Plan's investment needs and objectives. The exemption would be protective of the rights of the Plan participants and their beneficiaries because the Lease will provide rental income to the Plan as owners of the Building. Moreover, the Applicant will pay rent in an amount determined to be commercially identical to an arm's length business transaction. Not only would the Lease constitute an arm's length business transaction, but having legal counsel close to the Plan would be beneficial for the Plan fiduciaries. Legal issues typically arise with some of the Plan participants that require immediate legal attention or advice. Having the Applicant located next to the office for the Plan's employees would reduce telephone costs and the time needed to get answers for legal questions that require immediate assistance.

The location of the office is also extremely beneficial for trustee meetings, and meetings with other Plan officials who normally would have to assume the cost for travel for the Applicant's employees. In addition, many of the apprenticeship standards and procedures for Plan operations are changed on a regular basis. These changes are not made effective until legal counsel has reviewed the changes to all of the corresponding documents. Having the Applicant within the same Building as the Plan's employees would decrease the expenses and time associated with multiple mailings. Documents can be reviewed instantly without redlined copies having to be mailed back and forth.

5. In summary, the Applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act because:

(a) All terms and conditions of the Lease are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(b) The decision by the Plan to enter into the Lease will be made by the Trustees;

(c) The fair market rental value for the Lease will be determined by an independent, qualified appraiser as of the date of the commencement of the Lease; and

(d) Thirty months after commencement of the five year lease an additional fair market rental appraisal of the Leased Premises will be performed

[2] The Department expresses no opinion herein as to whether the lease agreements between the Funds and the Plan satisfy the provisions of PTE 76–1.

by an independent, qualified appraiser every thirty months with the rental rate being adjusted accordingly.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments are due forty-five (45) days after publication of the notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of December, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–31102 Filed 12–16–03; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2003–36; Exemption Application No. D–11086 et al.]

Grant of Individual Exemptions; Deutsche Bank AG

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Deutsche Bank AG

[Prohibited Transaction Exemption No. 2003–36; Application Nos. D–11086; D–11087; D–11088; D–11089; and D–11090]

Exemption

Section I: Basic Exemption

The restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of 4975(c)(1)(A) through (D) of the Code, shall not apply to a transaction between a party in interest with respect to a plan (as defined in section (v(h)) and such plan, provided that the Deutsche Bank In-house Manager (DBIM) (as defined in section IV(a)) has discretionary authority or control with respect to the plan assets involved in the transaction and the following conditions are satisfied:

(a) The terms of the transaction are negotiated on behalf of the plan by, or under the authority and general direction of, the DBIM, and either the DBIM, or (so long as the DBIM retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by the DBIM, makes the decision on behalf of the plan to enter into the transaction.

Notwithstanding the foregoing, a transaction involving an amount of $5,000,000 or more, which has been negotiated on behalf of the plan by the DBIM will nor fail to meet the requirements of this section I(a) solely because the plan sponsor or its designee retains the right to veto or approve such transaction;

(b) The transaction is not described in—

(1) Prohibited Transaction Exemption 81–6 [1] (relating to securities lending arrangements),

(2) Prohibited Transaction Exemption 83–1 [2] (relating to acquisitions by plans of interests in mortgage pools), or

(2) Prohibited Transaction Exemption 88–59 [3] (relating to certain mortgage financing arrangements);

(c) The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest;

(d) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the DBIM, the terms of the transaction are at least as favorable to the plan as the terms generally available in arm's length transactions between unrelated parties;

(e) The party in interest dealing with the plan: (1) Is a party in interest with respect to the plan (including a fiduciary) solely by reason of providing services to the plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H), or (I) of the Act; and (2) does not have discretionary authority or control with respect to the investment of the plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(f) The party in interest realign with the plan is neither the DBIM nor a person related to the DBIM (within the meaning of section IV(d)):

(g) The DBIM adopts written policies and procedures that are designed to assure compliance with the conditions of the exemption;

(h) An independent auditor, who has appropriate technical training or experience and proficiency with ERISA's fiduciary responsibility provisions and so represents in writing, conducts an exemption audit (as defined in section IV(f)) on an annual basis. Following completion of the exemption audit, the auditor shall issue a written report to the plan presenting its specific findings regarding the level of compliance with the policies and procedure adopted by the DBIM in accordance with section I(g); and

(i) In addition to the above:

(1) The DBIM is a bank that has the power to manage, acquire or dispose of assets of a plan, which bank has, as of the last day of its most recent fiscal year, equity capital in excess of $1,000,000 and is either supervised by a state or federal agency, or by the German Federal Banking Supervisory Authority, Bundesanstalt fur Finanzdienstleistungsaufsicht (BAFin) in cooperation with the Deutsche Bundesbank (Bundesbank);

(2) Prior to entering into any transaction described in the exemption, the DBIM agrees in writing:

(A) To submit to the jurisdiction of the United States;

(B) To appoint an agent for service of process in the United States, which maybe an affiliate (the Process Agent);

(C) To consent to service of process on the Process Agent;

(D) That it may be sued in the United States courts in connection with the transactions described in this proposed exemption;

(E) To comply with, and be subject to, all relevant provisions of the Act; and

(F) That enforcement of any claim arising between a plan(s) and the DBIM, resulting from a transaction described in the exemption, will occur in the United States courts.

Section II: Leasing of Office Space

The restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to:

(a) The leasing of office or commercial space owned by a plan managed by a DBIM to an employer any of whose employees are covered by the plan or an affiliate of such an employer (as defined in section 407(d)(7) of the Act), if—

(1) The plan acquires the office or commercial space subject to an existing lease with an employer, or its affiliate as a result of foreclosure on a mortgage or deed of trust;

(2) the DBIM makes the decision on behalf of the plan to foreclose on the mortgage or deed of trust as part of the exercise of its discretionary authority:

(3) The exemption provided for transactions engaged in with a plan pursuant to section II(a) is effective until the later of the expiration of the lease term or any renewal thereof which does not require the consent of the plan lessor;

(4) The amount of space covered by the lease does not exceed fifteen (15) percent of the rentable space of the office building or the commercial center; and

(5) The requirements of sections I(c), I(g), and I(h) are satisfied with respect to the transaction.

(b) The leasing of residential space by a plan to a party in interest if—

(1) The party in interest leasing space from the plan is an employee of an employer any of whose employees are covered by the plan or an employee of an affiliate of such employer (as defined in section 407(d)(7) of the Act);

(2) The employee who is leasing space does not have any discretionary authority or control with respect to the investment of the assets involved in the lease transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(3) The employee who is leasing space is not an officer, director, or a ten percent (10%) or more shareholder of the employer or an affiliate of such employer;

(4) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the DBIM, the terms of the transaction are not less favorable to the plan than the terms afforded by the plan to other, unrelated lessees in comparable arm's length transactions;

(5) The amount of space covered by the lease does not exceed five percent (5%) of the rentable space of the apartment building or multi-unit residential subdivision, and the aggregate amount of space leased to all employees of the employer or an affiliate of such employer does not exceed ten percent (10%) of such rentable space; and

(6) The requirements of section I(a), I(c), I(d), I(g), and I(h) are satisfied with respect to the transaction.

Section III: Places of Public Accommodation

The restrictions of sections 406(a)(1)(A) through (D) and 406(b) (1) and (2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by a plan and managed by a DBIM to a party in interest with respect to the plan, if the services and facilities (and incidental goods) are furnished on a comparable basis to the general public.

Section IV: Definitions

For the purposes of this exemption:

(a) The term ''Deutsche Bank In-house Manager'' or ''DBIM'' means an organization which is—

(1) Deutsche Bank, or a direct or indirect wholly-owned bank or trust company subsidiary of Deutsche Bank, supervised under the laws of the United States, a State, or Germany, that (A) Has the power to manage, acquire, or dispose of assets of a plan, (B) has, as of the last day of its most recent fiscal

[1] 46 FR 7527; January 23, 1981.

[2] 48 FR 895; January 7, 1983.

[3] 53 FR 24811; June 30, 1998.

year, equity capital (*i.e.,* common and preferred stock, surplus, undivided profits, contingency reserves, group contingency reserves, and other capital reserves) in excess of $1,000,000,[4] and (C) has as of the last day of its most recent fiscal year under its management and control total assets attributable to plans maintained by affiliates of the DBIM (as defined in section IV(b)) in excess of $50 million; provided that if it has no prior fiscal year as a separate legal entity as a result of it constituting a division or group within the employer's organizational structure, then this requirement will be deemed met as of the date during its initial fiscal year as a separate legal entity that responsibility for the management of such assets in excess of $50 million was transferred to it from the employer.

In addition, plans maintained by affiliates of the DBIM and/or the DBIM, must have, as of the last day of each plan's reporting year, aggregate assets of at least $250 million.

(b) For purposes of section IV(a) and section IV(h), an ''affiliate'' of a DBIM means a member of either: (1) A controlled group of corporations (as defined in section 414(b)) of the Code of which the DBIM is a member; or (2) a group of trades or businesses under common control (as defined in section 414(c)) of the Code of which the DBIM is a member; provided that ''50 percent'' shall be substituted for ''80 percent'' wherever ''80 percent'' appears in section 414(b) or 414(c) of the Code or the rules thereunder.

(c) The term ''party in interest'' means a person described in section 3(14) of the Act and includes a ''disqualified person'' as defined in section 4975(e)(2) of the Code.

(d) A DBIM is ''related'' to a party in interest for purposes of section I(f) of this exemption if the party in interest (or a person controlling, or controlled by, the party in interest) owns a five percent (5%) or more interest in the DBIM or if the DBIM (or a person controlling, or controlled by, the DBIM) owns a five percent (5%) or more interest in the party in interest. For purposes of this definition:

(1) The term ''interest'' means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation.

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) The beneficial interest of the entity if the entity is a trust or unicorporated enterprise;

(2) A person is considered to own an interest held in any capacity is the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest; and

(3) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) For purposes of this exemption, the time as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after April 8, 2002, or any renewal that requires the consent of the DBIM occurs on or after April 8, 2002, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, the requirements will continue to be satisfied thereafter with respect to the transaction. Nothing in this paragraph shall be construed as exempting a transaction entered into by a plan which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption. In determining compliance with the conditions of the exemption at the time that the transaction was entered into for purposes of the preceding sentence, section I(e) will be deemed satisfied if the transaction was entered into between a plan and a person who was not then a parety in interest.

(f) Exemption Audit. An ''exemption audit'' of a plan must consist of the following:

(1) A review of the written policies and procedures adopted by the DBIM pursuant to Section I(g) for consistency with each of the objective requirements of this exemption (as described in Section IV(g)).

(2) A test of a representative sample of the plan's transactions in order to make findings regarding whether the DBIM is in compliance with (i) the written policies and procedures adopted by the DBIM pursuant to section I(g) of the exemption and (ii) the objective requirements of the exemption.

(3) A determination as to whether the DBIM has satisfied the definition of a DBIM under the exemption; and

(4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor's findings.

(g) For purposes of section IV(f), the written policies and procedures must describe the following objective requirements of the exemption and the steps adopted by the DBIM to assure compliance with each of these requirements:

(1) The definition of a DBIM in section IV(a).

(2) The requirements of Part I and section I(a) regarding the discretionary authority or control of the DBIM with respect to the plan assets involved in the transaction, in negotiating the terms of the plan to enter into the transaction, and with regard to the decision on behalf of the plan to enter into the transaction.

(3) That any procedure for approval or veto of the transaction meets the requirements of section I(a).

(4) For a transaction described in section I:

(A) that the transaction is not entered into with any person who is excluded from relief under section I(e)(1), section I(e)(2), to the extent such person has discretionary authority or control over the plan assets involved in the transaction, or section I(f), and

(B) that the transaction is not described in any of the class exemptions listed in section I(b).

(5) For a transaction described in Part III:

(A) If the transaction is described in section II(a).

(i) that the transaction is with a party described in section II(a);

(ii) that the transaction occurs under the circumstances described in section II(a)(1) and (2);

(iii) that the transaction does not extend beyond the period of time described in section II(a)(3); and

(iv) that the percentage test in section II(a)(4) has been satisfied or

(B) If the transaction is described in section II(b),

(i) that the transaction is with a party described in section II(b)(1);

(ii) that the transaction is not entered into with any person excluded from relief under section II(b)(2) to the extent such person has discretionary authority or control over the plan assets involved in the lease transaction or section II(b)(3); and

(iii) that the percentage test in section II(b)(5) has been satisfied.

[4] The condition in Part IV(a) of the proposed exemption that the INHAM have in excess of $1 million in equity capital mirrors the parallel requirement in Part IV(a) of QPAM, PTE 84–14.

(h) the term ''plan'' means a plan maintained by the DBIM or an affiliate of the DBIM.

Effective Date of Exemption: The effective date of this exemption is April 8, 2002.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption (the Notice) published on March 21, 2003 at 68 FR 13960.

Written Comments

The Department received thirty one written comments and three requests for a public hearing from interested persons in response to the Notice. The Department forwarded copies of the comments to Deutsche Bank and requested that Deutsche Bank address in writing the various concerns raised by the commentators. Many of the comments fell into broad categories to which Deutsche Bank responded collectively. Where a single commentator raised a unique issue, such issue was responded to individually. The comments and Deutsche Bank's responses are summarized below.

Several commentators questioned whether the proposed exemption reduces or eliminates their benefits under their Deutsche Bank plans. Deutsche Bank responded that the proposed exemptions does not address, much less reduce or eliminate, benefits under the plans.

One commentator asked what safeguards are in place under the proposed exemption. Deutsche Bank responded that protective conditions for the proposed exemption are described in the Notice. Those conditions are essentially the same as the protective conditions found in PTE 96–23, 61 Fed. Reg. 15975 (Apr. 10, 1996), which provides relief with respect to in-house asset managers that is substantially similar to the relief provided in the proposed exemption. Deutsche Bank represented that it will comply with all such conditions.

One commentator expressed concern about the proposed exemption to the extent it allows a bank supervised under the laws of Germany to act as an in-house investment manager, asserting that current economic pressures will distract German authorities from adequately regulating such banks. Deutsche Bank responded that the Department has implicitly recognized the present capability of Germany authorities to adequately supervise banks subject to German law by recently granting exemptive relief (in many different contexts) where the affected bank or other person is subject to supervision under German law. *See, e.g.,* PTE 2003–20, 68 Fed. Reg. 40689 (July 8, 2003); PTE 2003–12, 68 Fed. Reg. 34648 (June 10, 2003); PTE 2003–11, 68 Fed. Reg. 34646 (June 10, 2003); PTE 2002–48, 67 Fed. Reg. 62827 (Oct. 8, 2002); PTE 2002–31, 67 Fed. Reg. 42072 (June 20, 2002). Additionally, Deutsche Bank responded that the German authorities are actively focused on banking regulation. Last year, Germany adopted its Law on Integrated Financial Services Supervision (Gesetz ueber die integrierte Finanzaufsicht—FinDAG), pursuant to which the Federal Authority for Financial Services Supervision (Bundesanstalt fuer Finanzdiensteleistungsaufsicht—BAFin) was established. The functions of the former offices for banking supervision (Gundesaufsichtsamt fuer das Kreditwesen—BAKred), insurance supervision (Bundesaufsichtsamt fuer das Versicherungswesen—BAV), and securities supervision (Bundesaufsichtsamt fuer den Wertpapierhandel—BAWe) have been combined in this single state regulator that supervises banks, financial services institutions, and insurance undertakings across the entire financial market and comprises all the key functions of consumer protection and solvency supervision. The BAFin was created to ensure a consistent regulation and supervision of the financial services and markets in Germany through one single authority.

Several commentators asked whether ERISA will continue to govern the plans and their in-house investment managers if the proposed exemption is granted. Deutsche Bank responded that ERISA will continue to govern its plans, that the in-house investment managers to which the proposed exemption applies will be subject to the same rules and regulations under ERISA that govern the plan currently, and that any foreign in-house managers can be sued in the United States. Deutsche Bank represented that it will fully comply with all laws respecting its plans.

Some commentators questioned whether the exemption is in the interest of plan participants. Deutsche Bank responded that, as reflected in the Notice, the exemption allows plans to take greater advantage of the investment management expertise and experience of Deutsche Bank, the world's largest bank in terms of assets and one of the world's largest asset managers, which will provide investment management services to the plans without a fee.

Several commentators requested general clarification of the proposed exemption, and others expressed concern about conflicts of interest arising from in-house investment management. In response, Deutsche Bank stated that, under PTE 96–23, the Department has essentially granted the relief with respect to in-house asset managers that is provided in the proposed exemption. The only substantial difference between PTE 96–23 and the proposed exemption is that the proposed exemption allows the in-house adviser to be a bank supervised under the laws of the United States, a State, or Germany, rather than a registered investment adviser. Although such banks are not subject to registration under the Investment Advisers Act of 1940, they are experienced investment advisers and subject to adequate regulations by competent government authorities. Deutsche Bank also responded that the proposed exemption does not negate the legal protections of ERISA, including the requirement that investment managers discharge their duties with respect to the plans solely in the interest of the participants and beneficiaries.

Several commentators expressed concern, asked questions, or made recommendations with respect to their benefits, plan administration, or plan design. While these comments do not relate to the terms of the proposed exemption, Deutsche Bank represents that it will contact those commentators and attempt to address their issues.

One commentator requested that the exemption not be granted, but provided no basis for his position. Since the commentator provided no basis for his position, the Department believes that no response is necessary.

With respect to the requests for a hearing, the Department has determined that a public hearing is not necessary in this case because none of the interested persons requesting a hearing provided any substantive information justifying such request. In addition, the Department is satisfied that the exemption contains adequate independent safeguards to protect the interests of the plans and their participants and beneficiaries.

The Department has determined to modify section IV(h) of the final exemption as follows in order to provide consistency with PTE 96–23:

(h) the term ''plan'' means a plan maintained by the DBIM or an affiliate of the DBIM.

Accordingly, after giving full consideration to the entire record, including the comments by the commentators, and the responses of Deutsche Bank, the Department has determined to grant the exemption as

modified herein. In this regard, the comments submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Ave. NW, Washington DC 20210.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

The National Electrical Benefit Fund (the Plan) Located in Rockville, Maryland

[Prohibited Transaction Exemption No. 2003–37; Application No. D–11136]

Exemption

The restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply effective October 17, 2002 to Bank of America, N.A. (the Bank) providing a guaranty of repayment for the benefit of the bondholders in the form of an Irrevocable Direct Draw Letter of Credit No. 3051512 (Letter of Credit) and the Partnership's subsequent reimbursement to the Bank of amounts advanced by the Bank pursuant to the Letter of Credit in connection with the investment by the Plan in Colma Apartment Associates, L.P. (the Partnership). This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) The Plan's investment in the Partnership is on terms no less favorable to the Plan than those which the Plan could obtain in arm's length transactions with unrelated parties;

(b) The decisions on behalf of the Plan to invest in the Partnership and consent to the terms of the reimbursement agreement in favor of the Bank are made by fiduciaries, which are not included among, and are independent of and unaffiliated with; the Bank;

(c) The investment in the Partnership represents no more than .5% of the total assets of the Plan; and

(d) The general partners of the Partnership are independent of the Plan and of the Bank of America.

(e) The Plan shall have no obligation to fund its capital contribution unless and until (i) all conditions imposed by the construction lender regarding disbursement to the Partnership of $25,950,000 of the tax-exempt bond construction financing proceeds have been satisfied by the Partnership; and (ii) the Department grants the proposed exemption; and

(f) The Plan's capital contribution will be used solely for the purpose of reimbursing Bank of America for the draw on the Letter of Credit.

EFFECTIVE DATE OF EXEMPTION: The effective date of this exemption is October 17, 2002.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on September 29, 2003 at 68 FR 56008.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

Aetna Life Insurance Company (Aetna) and UBS Realty Investors LLC UBS Realty) Located in Hartford, Connecticut

[Prohibited Transaction Exemption 2003–; Exemption Application No. D–11167]

Exemption

Section I—Exemption for Certain Transactions Involving the Management of Investments Shared by Two or More Accounts

The restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions if the conditions set forth in Section IV are met:

(a) *Transfers Between Accounts*—The restrictions of section 406(b)(2) of the Act shall not apply to the sale or transfer of an interest in a shared investment (including a shared partnership interest) between two or more Accounts (except the General Account), provided that each ERISA-Covered Account pays no more, or receives no less, than fair market value for its interested in a shared investment.

(b) *Joint Sales of Property*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale to a third party of the entire interest in a shared investment (including a shared partnership interest) by two or more Accounts, provided that each ERISA-Covered Account receives no less than fair market value for its interest in the shared investment.

(c) *Additional Capital Contributions*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(b)(1)(A) through (E) of the Code, shall not apply either to the making of a proportionate equity capital contribution by one or more of the Accounts to a shared investment; or to the making of a Disproportionate [as defined in Section V(e)] equity capital contribution (or the failure to make such additional contribution) by the one or more of such Accounts which results in an adjustment in the equity ownership interests of the Accounts in the shared investment on the basis of the fair market value of such interests subsequent to such contribution, provided that each ERISA-Covered Account is given an opportunity to make a proportionate contribution.

(d) *Lending of Funds*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(a)(1)(A) through (E) of the Code, shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional proportionate contribution, provided that such loan—

(A) Is unsecured and non-recourse plans;

(B) Bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills;

(C) Is not callable at any time by the General Account; and

(D) Is prepayable at any time without penalty.

(e) *Shared Debt Investments*—In the case of a debt investment that is shared between two or more Accounts, including one or more of the ERISA-Covered Accounts:

(1) The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to any material modification in the terms of the loan agreement resulting from a request by the borrower or any decision regarding the action to be taken, if any, on behalf of the Accounts in the event of a loan default by the borrower;

(2) the restrictions of section 406(b)(2) of the Act shall not apply to any decision by Aetna or UBS Realty on behalf of one or more ERISA-Covered

Accounts: (A) Not to modify a loan agreement as requested by the borrower; or (B) to exercise any rights provided in the loan agreement in the event of a loan default by the borrower, even though the independent fiduciary for one of such Accounts has approved such modification or has not approved the exercise of such rights; and

(3) the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply either to the proportionate acquisition of additional debt by one or more of the Accounts to a shared debt investment, or to the acquisition of Disproportionate additional debt (or the failure to acquire such additional debt) by one or more of such Accounts which results in an adjustment in the amount of debt held by the Accounts in the shared investment provided that each ERISA-Covered Account is given an opportunity to acquire additional debt on a proportionate basis.

Section II—Exemption for Certain Transactions Involving the Management of Partnership Interests Shared by Two or More Accounts

The restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions resulting from the sharing of an investment in a real estate partnership between two or more Accounts, if the conditions set forth in Section IV are met:

(a) *Additional Capital Contributions*—(1) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(a)(1)(A) through (E) of the Code, shall not apply either to the making of additional proportionate equity capital contributions by one or more Accounts participating in the partnership; or to the making of Disproportionate (as defined Section V(e)) equity capital contributions by one or more of such Accounts which results in an adjustment in the equity ownership interest of the Accounts in the shared partnership investment on the bases of the fair market value of such interests subsequent to such contributions; provided that each ERISA-Covered Account is given an opportunity to make a proportionate contribution.

(2) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional proportionate capital contribution, provided that such loan—

(A) Is unsecured and non-recourse with respect to the participating plans,

(B) bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(C) is not callable at any time by the General Account, and

(D) is prepayable at any time without penalty.

(3) The restrictions of section 406(b)(2) of the Act shall not apply to the making of Disproportionate additional equity capital contributions (or the failure to make such additional contributions) to the partnership by Accounts other than the General Account which result in an adjustment in the equity ownership interests of the ERISA-Covered Accounts in the partnership on the basis of the fair market value of such partnership interests subsequent to such contributions, provided that each ERISA-Covered Account is given an opportunity to provide its proportionate share of the additional equity capital contributions; and

(4) In the event a co-partner fails to provide all or any part of its proportionate share of an additional equity capital contribution, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the making of Disproportionate additional equity capital contributions to the partnership by an Account up to the amount of such contribution not provided by the co-partner which result in an adjustment in the equity ownership interests of the Accounts in the partnership on the basis provided in the partnership agreement, provided that such ERISA-Covered Account is given an opportunity to participate in all additional equity capital contributions on a proportionate basis.

(b) *Third Party Purchase Offers*—(1) In the case of an offer by a third party to purchase any property owned by the partnership, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the acquisition by the Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-partner's interest in the partnership in connection with a decision on behalf of such Accounts to reject such purchase offer, provided that each ERISA-Covered Account is first given an opportunity to participate in the acquisition on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any acceptance by Aetna or UBS Realty on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], of an offer by a third party to purchase a property owned by the partnership even though the independent fiduciary for one or more of such ERISA-Covered Account[s] has not approved the acceptance of the offer where all of the Accounts (other than the General Account) participating in such investment are not in agreement on how to proceed with respect to such offer, provided that the declining Account[s] are first afforded the opportunity to buy out both the co-partner and ''selling'' Account's interests in the partnership.

(c) *Rights of First Refusal*—(1) In the case of the right to exercise a right of first refusal described in a partnership agreement to purchase a co-partner's interest in the partnership at the price offered for such interest by a third party, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the acquisition by such Account, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-partner's interest in the partnership in connection with the exercise of such a right of first refusal, provided that each ERISA-Covered Account is first given an opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Aetna or UBS Realty on behalf of the ERISA-Covered Accounts not to exercise such a right of first refusal even though the independent fiduciary for one or more of such ERISA-Covered Accounts has approved the exercise of the right of first refusal where all of the Accounts participating in such investment (other than the General Account) are not in agreement on how to proceed with respect to such right of first refusal, provided that the Accounts that approved the exercise of the right of first refusal are offered the opportunity to buy-out the co-partner on their own.

(d) *Buy-Sell Options*—(1) In the case of the exercise of a buy-sell option set forth in the partnership agreement, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by one or more of the Accounts on either a proportionate or Disproportionate basis of a co-partner's interest in the partnership in connection with the exercise of such a buy-sell option, provided that each ERISA-Covered Account is first given the opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Aetna or UBS Realty on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], to sell the interest of such Accounts in the partnership to a co-partner even though the independent fiduciary for one or more of such ERISA-Covered Account[s] has not approved such sale where all of the Accounts participating in such investment (other than the General Account) are not in agreement on how to proceed with respect to the buy-sell option, provided that such disapproving Account is first afforded the opportunity to purchase the entire interest of the co-partner.

Section III—Exemption for Transactions Involving a Partnership or Persons Related to a Partnership

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, if the conditions in Section IV are met, to any additional equity or debt capital contributions to a partnership, or any transaction with the co-partner which arises in connection with the operation of the partnership, by an ERISA-Covered Account that is participating in an interest in the partnership, or to any material modification in the terms of, or action taken upon default with respect to, a loan to the partnership in which the ERISA-Covered Account has an interest as a lender, where the partnership is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture.

Section IV—General Conditions

(a) The decision to participate in any ERISA-Covered Account that shares real estate investments must be made by plan fiduciaries who are totally unrelated to Aetna, UBS Realty and their respective affiliates. This condition shall not apply to plans covering employees of Aetna, UBS Realty or any of their respective affiliates.

(b) Each contractholder or prospective contractholder in an ERISA-Covered Account which shares or proposes to share real estate investments is provided with a written description of potential conflicts of interest that may result from the sharing, a copy of the notice of pendency, and a copy of the exemption as granted.

(c) An independent fiduciary must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary shall be either:

(1) A business organization which has at least five years of experience with respect to commercial real estate investments,

(2) A committee comprised of one or more individuals who each have at least five years of experience with respect to commercial real estate investments, or

(3) The plan sponsor (or its designee) of a plan (or plans) that is the sole participant in an ERISA-Covered Account.

(d) The independent fiduciary or independent fiduciary committee member shall not be or consist of Aetna, UBS Realty or any of their respective affiliates.

(e) No organization or individual may serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (other than fixed, non-discretionary retirement income and any cost of living increases thereon) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from Aetna, UBS Realty, any of their respective affiliates, and the ERISA-Covered Accounts for that fiscal year exceeds five percent of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation will include income for services rendered to the Accounts as independent fiduciary under any prohibited transaction exemption(s) granted by the Department. However, such income limitation shall not include any income for services rendered to Single Customer ERISA-Covered Account by an independent fiduciary selected by the Plan Sponsor to the extent determined by the Department in any subsequent prohibited transaction proceeding.

In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from, Aetna, UBS Realty, any of their respective affiliates, or any Account managed by Aetna, UBS Realty or any of their respective affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or negotiate any such transaction during the period that such organization or individual serves as independent fiduciary.

(f) The independent fiduciary acting on behalf of an ERISA-Covered Account shall have the responsibility and authority to approve or reject recommendations made by Aetna, UBS Realty or any of their respective affiliates for each of the transactions in this exemption. Aetna, UBS Realty and any of their respective affiliates shall involve the independent fiduciary in the consideration of contemplated transactions prior to the making of any decisions, and shall provide the independent fiduciary with whatever information may be necessary in making its determinations.

In addition, the independent fiduciary shall review on an as-needed basis, but not less than twice annually the shared real estate investments in the ERISA-Covered Account to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.

(g) Neither UBS Realty nor any of its affiliates is a co-investor in the shared investment or partnership to which an exemption provided by Sections I, II or III above is being applied; provided, however, that this condition shall not preclude an employee benefit plan maintained by Aetna, UBS Realty or any of their affiliates from participating in an ERISA-Covered Account that is such a co-investor.

(h) Aetna or UBS Realty maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (i) of this Section to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of

Aetna, UBS Realty or any of their respective affiliates, the records are lost or destroyed prior to the end of the six-year period.

(i) Except as provided in paragraph (2) of this subsection (i) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (h) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an ERISA-Covered Account who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an ERISA-Covered Account or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an ERISA-Covered Account, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this subsection (i) shall be authorized to examine trade secrets of Aetna, UBS Realty or any of their respective affiliates, or commercial or financial information which is privileged or confidential.

(j) Given that this exemption is a replacement to a previous prohibited transaction exemption (see PTE 91–10, 56 FR 3273, January 29, 1991) any approvals, appointments, disclosures, and decisions made or given pursuant to PTE 91–10 shall remain in full force and effect with respect to this replacement exemption.

Section V—Definitions

For the purposes of this exemption:

(a) An ''affiliate'' of Aetna or UBS Realty, respectively includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Aetna or UBS Realty, respectively.

(2) Any officer, director or employee or Aetna, UBS Realty or any person described in section V(a)(1), and

(3) Any partnership in which Aetna or UBS Realty is a partner.

(b) An ''Account'' means any account maintained by Aetna and, except in the case of the General Account, managed by UBS Realty. The term ''Account'' includes the General Account, ERISA-Covered Accounts, Pooled Accounts and Single Customer Accounts, as well as combinations of accounts other than the General Account which are consolidated for investment management purposes as if they were a single account.

(c) The ''General Account'' means the general asset account of Aetna and any of its affiliates which are insurance companies licensed to do business in at least one State as defined in section 3(10) of the Act.

(d) An ''ERISA-Covered Account'' means any Account (other than the General Account) in which employee benefit plans subject to Title I or Title II of the Act participate.

(e) ''Disproportionate'' means not in proportion to an Account's existing equity ownership interest in an investment, partnership or partnership interest in a debt.

(f) The ''Transition Effective Date'' is the effective date of the delegation by Aetna to UBS Realty of the management of the Accounts, which has been designated as October 1, 2003.

Effective Date: This exemption is effective as of October 1, 2003, the Transition Effective Date.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 29, 2003, at 68 FR 55993.

Comments and Modification: In response to a request made by the applicant, the Department has added a condition to the exemption (see Section IV (j)) stating that any approvals, appointments, disclosures, and decisions made or given pursuant to the prior exemption for Aetna (*i.e.,* PTE 91–10) shall remain in full force and effect with respect to this exemption. In this regard, the applicant represents that the appropriate plan fiduciaries for ERISA-Covered Accounts were informed that any approvals, appointments, disclosures and decisions made or given pursuant to PTE 91–10 shall remain in full force and effect after the date that this exemption is published in the **Federal Register**. In addition, as noted in the notice of proposed exemption (see 68 FR at 55994, column one, last sentence of paragraph 1 of the Summary of Facts and Representations), PTE 91–10 shall be superseded and replaced by this exemption for all transactions entered into after the Transition Effective Date.

No other written comments, and no requests for a public hearing, were received by the Department. Accordingly, the Department has decided to grant the exemption as modified.

FOR FURTHER INFORMATION CONTACT: Brian J. Buyniski of the Department, at telephone (202) 693–8545. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of December, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–31103 Filed 12–16–03; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIMES AND DATES: 8:30 a.m.–5 p.m., February 8–February 9, 2004.

PLACE: Wyndham Bonaventure Resort & Spa, 250 Racquet Club Road, Fort Lauderdale, Florida.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Reports from the Chairperson and the Executive Director, Committee Meetings and Committee Reports, Executive Session, Unfinished Business, New Business, Announcements, Adjournment.

PORTIONS OPEN TO THE PUBLIC: Reports from the Chairperson and the Executive Director, Committee Meetings and Committee Reports, Unfinished Business, New Business, Announcements, Adjournment.

PORTIONS CLOSED TO THE PUBLIC: Executive Session.

CONTACT PERSON FOR MORE INFORMATION: Mark S. Quigley, Director of Communications, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), *mquigley@ncd.gov* (E-mail).

AGENCY MISSION: The National Council on Disability (NCD) is an independent federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, including people from culturally diverse backgrounds, regardless of the nature or significance of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing sign language interpreters or other disability accommodations should notify NCD at least one week before this meeting.

LANGUAGE TRANSLATION: In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for this meeting should notify NCD at least one week before this meeting.

MULTIPLE CHEMICAL SENSITIVITY/ ENVIRONMENTAL ILLNESS: People with multiple chemical sensitivity/ environmental illness must reduce their exposure to volatile chemical substances to attend this meeting. To reduce such exposure, NCD requests that attendees not wear perfumes or scented products at this meeting. Smoking is prohibited in meeting rooms and surrounding areas.

Dated: December 9, 2003.

Ethel D. Briggs,

Executive Director.

[FR Doc. 03–31224 Filed 12–15–03; 1:05 pm]

BILLING CODE 6820–MA–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Fellowships Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Fellowships Advisory Panel, Folk & Traditional Arts section (National Heritage Fellowships category) to the National Council on the Arts will be held on January 27–30, 2004 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. The panel will meet from 9 a.m. to 6:30 p.m. on January 27th–29th, and from 9 a.m. to 3 p.m. on January 30th.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on nominations for recognition under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by nominators and nominees. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to (c)(6) of title 5, United States Code, section 552b.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: December 11, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–31108 Filed 12–16–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Leadership Initiatives Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows:

Media Arts: January 7–9, 2004, Room 716 (Arts on Radio and Television category). This meeting will be closed.

Folk & Traditional Arts: January 12–13, 2004, Room 714 (Infrastructure Initiative category). A portion of this meeting, from 10 a.m. to 11 a.m. on January 13th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on January 12th, and from 9 a.m. to 10 a.m. and 11 a.m. to 12 p.m. on January 13th, will be closed.

Closed meetings and portions of meetings are for the purpose of panel review, discussion, evaluation, and recommendations on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to subsection (c)(6) of 5 U.S.C. 552b.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: December 11, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–31106 Filed 12–16–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Partnerships Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Partnerships Advisory Panel (State Partnership Agreements), to the National Council on

the Arts will be held on January 22–23, 2004. The panel will meet from 9:30 a.m. to 6 p.m on January 22nd and from 8:30 a.m. to 3 p.m. on January 23rd in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. Topics will include review of the State Partnership Agreement applications, discussion of guidelines and policy issues, and other business as necessary.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: December 11, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–31107 Filed 12–16–03; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company, Inc., Alabama Power Company, Joseph M. Farley Nuclear Plant, Units 1 and 2; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Duke Energy Corporation (the licensee) to withdraw its December 3, 2003, application for proposed amendment to Facility Operating License Nos. NPF–2 and NPF–8 for the Joseph M. Farley Nuclear Plant, Units 1 and 2, located in Houston County, Alabama.

The proposed amendments would have revised the Technical Specifications to extend the completion time for the 1C Emergency Diesel Generator from 10 days to 13 days. This change would have allowed the continued operation of Farley Nuclear Plant, Units 1 and 2 with the inoperable diesel generator until December 13, 2003.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the *Dothan Eagle* newspaper on December 5 and 6, 2003. However, by letter dated December 9, 2003, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 3, 2003, and the licensee's letter dated December 9, 2003, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 12th day of December 2003.

For the Nuclear Regulatory Commission.

Sean E. Peters,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–31091 Filed 12–16–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Rule 3 and Form U–3A3–1, SEC File No. 270–77, OMB Control No. 3235–0160.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form U–3A3–1, Part 259.403 [17 CFR 259.403] under the Public Utility Holding Company Act of 1935, as amended (''Act''), 15 U.S.C. 79, *et seq.*, is an application for exemption from regulation, under Rule 3 of the Act, filed annually by banks that are incidentally public utility holding companies by virtue of holding utility securities in their capacity as a bank.

Rule 3 requires the information collection prescribed by Form U–3A3–1. The Commission estimates that the total annual reporting and record keeping burden of collections for Form U–3A3–1 is 10 hours (5 responses × 2 hours = 10 hours).

The estimate of average burden hours are made for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or representative survey or study of the costs of complying with the requirements of Commission rules and forms.

Written 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 collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: December 10, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31112 Filed 12–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, NW., Washington, DC 20549.

Extension

Rules 1(a) and (b) and Forms U5A and U5B, SEC File No. 270–168, OMB Control No. 3235–0170.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form U5A, Part 259.5a [17 CFR 259.5a] under the Public Utility Holding Company Act of 1935, as amended (''Act''), 15 U.S.C. 79, *et seq.*, is a registration notification required to be filed under Rule 1(a) of the Act by any person proposing to become a registered holding company to notify the Commission of that fact. Form U5B, Part 259.5b [17 CFR 259.5b] under the Act is a registration statement required to be filed under Rule 1(b) by every registered holding company within 90 days of registration.

Rules 1(a) and (b) require the information collection prescribed by Forms U5A and U5B. The Commission estimates that the total annual reporting and record keeping burden of collections for Forms U5A and U5B is 320 hours (4 combined responses × 80 hours = 320 hours).

The estimate of average burden hours are made for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or representative survey or study of the costs of complying with the requirements of Commission rules and forms.

Written 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 collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: December 10, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31113 Filed 12–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Rule 95 and Form U–13E–1, SEC File No. 270–74, OMB Control No. 3235–0162.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form U–13E–1, Part 259.213 [17 CFR 259.213] under the Public Utility Holding Company Act of 1935, as amended (''Act''), 15 U.S.C. 79, *et seq.*, is required to be filed under Rule 95 of the Act by certain companies providing services and selling goods to registered public utility holding companies and their subsidiaries.

Rule 95 under the Act, which implements sections 12(e) and (f) of the Act, requires the information collection prescribed by Form U–13E–1. The Commission estimates that the total annual reporting and recordkeeping burden of collections for Form U–13E–1 is 2 hours (1 response × 2 hours = 2 hours).

The estimate of average burden hours are made for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or representative survey or study of the costs of complying with the requirements of Commission rules and forms.

Written 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 collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: December 10, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31114 Filed 12–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Rule 83, SEC File No. 270–82, OMB Control No. 3235–0181.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension and approval.

Rule 83, Exemption in the Case of Transactions with Foreign Associates, authorizes an exemption from the ''at cost'' standard of section 13(b) of the Public Utility Holding Company Act of 1935 (the ''Act'') for services provided to associated foreign utility companies.

Rule 83 requires a registered holding company system that wishes to avail itself of this exemption from section 13(b) of the Act to submit an application, in the form of a declaration, to the Commission. The Commission

will grant the application if, by reason of the lack of any major interest of holders of securities offered in the United States in servicing arrangements affecting such serviced subsidiaries, such an application for exemption is necessary or appropriate in the public interest or for the protection of investors.

Rule 83 does not create a record-keeping burden or retention burden on respondents. The rule does, however, contain reporting and filing requirements. The Commission has not received any applications specifically under rule 83 in the past 3 years. The only rule 83 related filings were made within the context of larger filings concerning other matters. Therefore, we estimate the burden of rule 83 as zero.

The estimate of average burden hours is made solely for the purpose of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have a practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: December 10, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31115 Filed 12–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Rule 206(3)–2, SEC File No. 270–216, OMB Control No. 3235–0243.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 206(3)–2, which is entitled ''Agency Cross Transactions for Advisory Clients,'' permits investment advisers to comply with section 206(3) of the Investment Advisers Act of 1940 (''Advisers Act'') by obtaining a client's blanket consent to enter into agency cross transactions (*i.e.*, a transaction in which an adviser acts as a broker to both the advisory client and the opposite party to the transaction), provided that certain disclosures are made to the client. Rule 206(3)-2 applies to all registered investment advisers. In relying on the rule, investment advisers must provide certain disclosures to their clients; advisory clients can use the disclosures to monitor agency cross transactions.

The information requirements of the rule consist of the following: (1) Prior to obtaining the client's consent appropriate disclosure must be made to the client as to the practice of, and the conflicts of interest involved in, agency cross transactions; (2) at or before the completion of any such transaction the client must be furnished with a written confirmation containing specified information and offering to furnish upon request certain additional information; and (3) at least annually, the client must be furnished with a written statement or summary as to the total number of transactions during the period covered by the consent and the total amount of commissions received by the adviser or its affiliated broker-dealer attributable to such transactions.

The Commission estimates that approximately 780 respondents use the rule annually, necessitating about 32 responses per respondent each year, for a total of 24,960 responses. Each response requires about .5 hours, for a total of 12,480 hours. The estimated average burden hours are made solely for the purposes of the PRA and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within sixty (60) days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: December 10, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31116 Filed 12–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Industry Guides Notice of Exempt Preliminary Roll-Up Communication. OMB Control Nos. 3235–0069 and 3235–0452; SEC File Nos. 270–069 and 270–396.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Industry Guides (OMB 3235–0069; SEC File No. 270–069) are used by registrants in certain specified industries as disclosure guidelines to be followed in disclosing information to investors in Securities Act and Exchange Act registration statements and certain other Exchange Act filings. The Commission estimates for administrative purposes only that the total annual burden with respect to the

Industry Guides is one hour. The Industry Guides do not directly impose any disclosure burden.

A Notice of Exempt Preliminary Roll-Up Communication (''Notice'') (OMB 3235–0452; SEC File No. 270–396) provides information regarding ownership interest and any potential conflicts of interest to be included in statements submitted by or on behalf of a person pursuant to § 240.14a-2(b)(4) and § 240.14a-6(n). The Notice takes approximately .25 hours per response and his filed by 4 respondents for a total of 1 annual burden hour.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: December 10, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31117 Filed 12–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549–0004.

Extension

Rule 88 and Form U–13–1, SEC File No. 270–80, OMB Control No. 3235–0182.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form U–13–1, Section 259.113 [17 CFR 259.113] under the Public Utility Holding Company Act of 1935, as amended (''Act''), 15 U.S.C. 79, *et seq.*, is required to be filed under Rule 88 of the Act by companies seeking Commission approval to become mutual service companies under the Act.

Rule 88 under the Act, which implements Section 13 of the Act, requires the information collection prescribed by Form U–13–1. The Commission estimates that the total annual reporting and record keeping burden of collections for Form U–13–1 is 88 hours (22 responses × 4 hours = 88 hours).

The estimate of average burden hours are made for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or representative survey or study of the costs of complying with the requirements of Commission rules and forms.

Written 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 collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549–0004.

Dated: December 10, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31118 Filed 12–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–31650]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Mindspeed Technologies, Inc., Common Stock, $.01 Par Value and the Associated Preferred Share Purchase Rights)

December 11, 2003.

Mindspeed Technologies, Inc., a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value, and the associated Preferred Share Purchase Rights (''Securities''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer intends to withdraw its Securities from listing on the Amex and to list its Securities on The Nasdaq Stock Market, Inc. National Market System (''Nasdaq NMS''). The Issuer believes that listing and trading of the Securities on Nasdaq NMS would provide, among other things, increased visibility to technology investors, increased liquidity for the Securities and increased volume of trading in the Securities; and that as a technology company, the Issuer would benefit from trading in a market where many of the Issuer's peer companies are traded. The Issuer states that it expects to commence trading on the Nasdaq NMS on December 15, 2003.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before January 5, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–31111 Filed 12–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–13964]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (The Southern Banc Company, Inc., Common Stock, $.01 Par Value)

December 11, 2003.

The Southern Banc Company, Inc., a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Board of Directors of the Issuer unanimously approved a resolution on November 12, 2003 to withdraw the Issuer's Security from listing on the Amex. The Board of Directors of the Issuer states that the reasons it is taking such action are as follows: (i) The Issuer has a limited number of stockholders of record; (ii) the costs associated with maintaining the Issuer's status as an Amex-listed company; (iii) the limited volume of trading of the shares; and (iv) no analysts cover the Issuer and the shares.

The Issuer stated in its application that it has met the requirements of Amex Rule l8 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act [3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before January 5, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–31110 Filed 12–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48902; File No. SR–NASD–2003–162]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Relating to Prime and ADAP Data Feeds in NASD Rule 7010(q)

December 10, 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 October 29, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On December 5, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq filed with the Commission a proposed rule change to NASD Rule 7010(q). The proposed rule change would rename the Nasdaq Prime data feed as the TotalView Data Feed, expand it to include quotes and orders at all price levels associated with an individual issue traded on Nasdaq, and discontinue the Nasdaq Aggregated Depth at Price (''ADAP'') data feed.

Nasdaq proposes to expand the TotalView Data Feed on or after April 1, 2004 and to eliminate the ADAP data feed on or after February 16, 2004; in each case, Nasdaq will issue a vendor alert announcing the actual date of the change at least three calendar days before it is implemented.[4] Nasdaq previously issued a vendor alert in August 2004 announcing its intention to seek these rule changes.[5]

Proposed new language is *italicized*; proposed deletions are in brackets.

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Rule 7010. Charges for Services and Equipment

(a)–(p) No change.

(q) Nasdaq Data Entitlement Packages

This subsection (q) sets out the charges for the data entitlement packages collectively known as ViewSuite. Subsections (q)(1) and (q)(2) describe the data entitlement packages and set out the regular charges for each. Subsection (q)(3) describes the Enterprise License Program, an optional pilot program that modifies the regular charges for participants as set out therein. Subsection (q)(4) describes *the Non-Display Enterprise License Pilot. Subsection (q)(5) describes* the ViewSuite entitlement, a second pilot

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[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

[1] 1 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 4, 2003. In Amendment No. 1, Nasdaq replaced in its entirety the original rule filing.

[4] Nasdaq has represented that even if it eliminates the ADAP data feed prior to the expansion of the TotalView Data Feed, distributors that wish to continue to distribute only the aggregate data (*i.e.*, the aggregate size of attributable and non-attributable quotes and orders at five price levels) may do so by using the aggregate data available from the current Nasdaq Prime data feed. Telephone conversation among Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, Thomas Davin, Senior Vice President, Nasdaq, and David Hsu, Attorney, Division, Commission, on December 10, 2003.

[5] *See* Nasdaq Vendor Alert 2003–51, which is available on *www.nasdaqtrader.com.*

program that suspends the regular charges set out in (q)(1) and (q)(2) during its operation. Thus, the monthly charges set out in (q)(1) and (q)(2) below are not in effect during the length of the pilot program set out in (q)[(4)](*5*). *Subsection (q)(6) sets forth definitions and subsection (q)(7) addresses revenue sharing.*

(1) DepthView and PowerView

(A) The DepthView entitlement package contains all [information disseminated through the Nasdaq Aggregated Depth at Price (ADAP) data feed: the five best price levels in Nasdaq on both the bid and offer side of the market. Each price level is dynamically updated and displays the aggregate size of ''displayed'' trading interest, attributable and non-attributable, at each price level.] *aggregate data carried on the TotalView Data Feed, as defined in (q)(2).* The Nasdaq PowerView entitlement package consists of DepthView and the Nasdaq Quotation Dissemination Service (NQDS) feed.

(i) Except as provided in *(q)*(1)(A)(ii) [below], for DepthView, there [will] *shall* be a $50.00 monthly charge [to be paid] for each controlled device.[1]

(ii) [t]*T*he charge to [be paid by] a non-professional [2] subscriber *of DepthView* for each controlled device shall be $25.00 per month.

(B)(i) Except as provided in [paragraph] *(q)*(1)(B)(ii) [below], for PowerView, there [will] *shall* be a $75.00 monthly charge [to be paid] for each controlled device.[3]

(ii) [t]*T*he charge to [be paid by] a non-professional subscriber [4] *of PowerView* for each controlled device [will] *shall* be $29.00 per month[5].

(C) Distributors [6] of [ADAP data] *aggregate data carried on the TotalView Data Feed* [(either through DepthView or PowerView)] shall pay a charge of $1,000.00 per month.

(D) Thirty-Day Free-Trial Offer. Nasdaq [will] *shall* offer all new individual subscribers and potential new individual subscribers a 30-day waiver of the fees for any ViewSuite service (DepthView or PowerView) that such subscriber or potential subscriber chooses to try for the 30-day period. This waiver [does] *shall* not include *the incremental* fees assessed for the NQDS-*only* service[7], *which are $30.00 for professional users and $9.00 for non-professional users per month.* This fee waiver period [will] *shall* be applied on a rolling basis, determined by the date on which a new individual subscriber or potential individual subscriber is first entitled by a distributor to receive access to DepthView or PowerView. A distributor may only provide this waiver to a specific individual subscriber once.

(i) DepthView. For the period of the offer, the DepthView fee of $50 per professional user and $25 per non-professional user *per month* [will] *shall* be waived.

(ii) PowerView. For the period of the offer, the PowerView fee of $45 per professional user and $20 per non-professional user *per month* [will] *shall* be waived.

(2) TotalView

The *TotalView Data Feed* [NQDS Prime data feed (hereinafter referred to as ''Prime'')] consists of the individual Nasdaq SuperMontage participant orders and quotes *and the aggregate size of such orders and quotes at each price level* [that make up the top five price levels] in [the] SuperMontage [System]. The TotalView entitlement package includes the information disseminated through the [Prime data feed] *TotalView Data Feed* in addition to the data contained in the PowerView entitlement package.

(A) Distributors of TotalView data shall pay a charge of $7,500 per month.

(B) For TotalView, there [will] *shall* be a charge of $150 per month per controlled device.[8]

(C) 30-Day Free-Trial Offer. Nasdaq [will] *shall* offer all new individual subscribers and potential new individual subscribers a 30-day waiver of the fees for TotalView. This waiver [does] *shall* not include *the incremental* fees assessed for the NQDS-*only* service[9]*, which are $30.00 for professional users and $9.00 for non-professional users per month.* This fee waiver period [will] *shall* be applied on a rolling basis, determined by the date on which a new individual subscriber or potential individual subscriber is first entitled by a distributor to receive access to TotalView. A distributor may only provide this waiver to a specific individual subscriber once.

[(i)] For the period of the offer, the TotalView fee of $120 per professional user and $141 per non-professional user *per month shall* [will] be waived.

(3) Enterprise License Pilot[.]

For a nine-month period commencing on April 1, 2003, each distributor of DepthView, PowerView, and/or TotalView may purchase one or more enterprise licenses that entitle it to distribute the licensed product to its entitled Level 1 or NQDS subscribers[3] for a fixed monthly fee based on the formulae set forth in [subparagraphs] *(q)(3)*(A)–(F) [below]. *The Enterprise License Pilot shall not apply to the Level 1 and NQDS data services. All distributors continue to be obligated to report and pay for all entitled Level 1 and NQDS subscribers throughout the pilot period.* A distributor must purchase an enterprise license(s) within two months following the beginning of this program and must agree by contract to pay the fixed monthly fee for the remaining length of the nine-month period. The distributor must also pay applicable distributor fees set forth in [subparagraph] *(q)*(1)*(C)* or *(q)*(2)*(A)* [above].

(A) DepthView Non-Professional Enterprise License:

(i) The DepthView Non-Professional Enterprise License permits a distributor to provide DepthView to all of its entitled Level 1 non-professional subscribers.

(ii) The formula for the DepthView Non-Professional Enterprise License fee is 0.25 × number of entitled Level 1 non-professional subscribers in the Predicate Month[4] × $25.

(B) DepthView Professional Enterprise License:

(i) The DepthView Professional Enterprise License permits a distributor to provide DepthView to all of its entitled Level 1 professional subscribers.

(ii) The formula for the DepthView Professional Enterprise License fee is 0.25 × number of Level 1 professional subscribers in the Predicate Month × $50.

(C) PowerView Non-Professional Enterprise License:

(i) The PowerView Non-Professional Enterprise License permits a distributor to provide PowerView to all of its entitled NQDS non-professional subscribers.

(ii) The formula for the PowerView Non-Professional Enterprise License fee is 0.35 × number of NQDS non-professional subscribers in the Predicate Month × $20.

(D) PowerView Professional Enterprise License:

(i) The PowerView Professional Enterprise License permits a distributor to provide PowerView to all of its entitled NQDS professional subscribers.

(ii) The formula for the PowerView Professional Enterprise License fee is 0.35 × number of NQDS professional subscribers in the Predicate Month × $45.

(E) TotalView Non-Professional Enterprise License:

(i) The TotalView Non-Professional Enterprise License permits a distributor to provide TotalView to all of its entitled NQDS non-professional subscribers.

(ii) The formula for the TotalView Non-Professional Enterprise License fee is 0.25 × number of NQDS non-

professional subscribers in the Predicate Month × $141.

(F) TotalView Professional Enterprise License:

(i) The TotalView Professional Enterprise License permits a distributor to provide TotalView to all of its entitled NQDS professional subscribers.

(ii) The formula for the TotalView Professional Enterprise License fee is 0.25 × number of NQDS professional subscribers in the Predicate Month × $120.

(4) Non-Display Enterprise License Pilot[.]

In addition or as an alternative to the Enterprise License Pilot, for a nine-month period commencing on April 1, 2003, each distributor of DepthView, PowerView, and/or TotalView may purchase one or more non-display licenses that entitle it to provide non-display benefits of the product to users of controlled devices who do not display the data for an additional fee calculated based on the formulae set forth in [subparagraphs] *(q)(4)*(A)–(C). [below.[5]] *The Non-Display Enterprise License Pilot shall not apply to the Level 1 and NQDS data services. All distributors continue to be obligated to report and pay for all entitled Level 1 and NQDS subscribers throughout the pilot period.* A distributor must purchase a non-display license(s) within two months following the beginning of this program and must agree by contract to pay the fixed monthly fee for the remaining length of the period. The distributor must also pay applicable distributor fees set forth in [subparagraph] *(q)*(1)*(C)* or *(q)*(2)*(A)* [above].

(A) DepthView Non-Display License. A distributor may provide non-display benefits of DepthView to users of controlled devices who do not display the data for an additional fee calculated as 0.25 × the population of non-display controlled devices in March 2003 × $50 for professional users or $25 for non-professional users.

(B) PowerView Non-Display License. A distributor may provide non-display benefits of PowerView to users of controlled devices who do not display the data for an additional fee calculated as 0.35 × the population of non-display controlled devices in March 2003 × $45 for professional users or $20 for non-professional users.

(C) TotalView Non-Display License. A distributor may provide non-display benefits of TotalView to users of controlled devices who do not display the data for an additional fee calculated as 0.25 × the population of non-display controlled devices in March 2003 × $120 for professional users or $141 for non-professional users.

[(4)] *(5) TotalView Entitlement Pilot*

For a one-year pilot period commencing on October 1, 2003, the DepthView, PowerView and TotalView entitlements described above in *(q)* (1) and *(q)*(2) [of this subsection (q)] shall be offered as a single entitlement, ''the [ViewSuite entitlement] *TotalView entitlement,*'' and not offered separately. The *TotalView entitlement* [ViewSuite entitlement] shall allow a subscriber to see all of the data in DepthView, PowerView and TotalView including [the ADAP data feed (aggregated depth at the top five price levels),] the NQDS feed[,] and *the TotalView Data Feed* [Prime (aggregated quotes of all participants in the top five price levels)].

(A)(i) Except as provided in *(q)(5)*[(4)](A)(ii) [below], for the [ViewSuite] *TotalView* entitlement there shall be a $70 monthly charge for each controlled device[, as defined in subsection (q)(1)(A)(i) above].

(ii) A non-professional subscriber[, as defined in subsection (q)(1)(A)(ii) above,] shall pay $14 per month for each controlled device.

(B) The pilot [ViewSuite] *TotalView* entitlement shall not affect the distributor charges [for ADAP data or Prime data] set out in [subsections] (q)(1)(C) and (q)(2)(A) respectively. Those distributors who are presently receiving only aggregate data may at their option continue to receive that feed at the [ADAP] distributor charge set out in [subsection] (q)(1)(C) [above].

(6) Definitions

(A) A ''controlled device'' is any device that a distributor of the Nasdaq data entitlement package(s) permits to: (i) Access the information in the Nasdaq data entitlement package(s); or (ii) communicate with the distributor so as to cause the distributor to access the information in the Nasdaq data entitlement package(s). If a controlled device is part of an electronic network between computers used for investment, trading or order routing activities, the burden shall be on the distributor to demonstrate that the particular controlled device should not have to pay for an entitlement. For example, in some display systems the distributor gives the end user a choice to see the data or not; a user that chooses not to see it would not be charged. Similarly, in a non-display system, users of controlled devices may have a choice of basic or advanced computerized trading or order routing services, where only the advanced version uses the information. Customers of the basic service then would be excluded from the entitlement requirement.

(B) A ''distributor'' of a Nasdaq data feed is any firm that receives a Nasdaq data feed directly from Nasdaq or indirectly through another vendor and then distributes it either internally or externally. All distributors shall execute a Nasdaq distributor agreement. Nasdaq itself is a vendor of its data feed(s) and has executed a Nasdaq distributor agreement and pays the distributor charge.

(C) A ''non-professional'' is a natural person who is neither: (i) registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment advisor'' as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (iii) employed by a bank or other organization exempt from registration under federal or state securities law to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

(D) ''Predicate Month'' shall mean December 2002 or, if a distributor reported no Level 1 or NQDS subscribers in December 2002, the most recent month after December 2002 in which the distributor did report Level 1 or NQDS subscribers.

(7) Revenue Sharing

So long as NQDS is subject to the Nasdaq Unlisted Trading Privileges (UTP) Plan, the revenues from TotalView and PowerView that are directly attributable to the sale of NQDS under the currently approved pricing for NQDS shall be shared pursuant to the UTP Plan.

Text of Footnotes to Subsections (q)(1) and (q)(2):

[1. A controlled device is any device that a distributor of the Nasdaq Data Entitlement Package(s) permits to: (a) Access the information in the Nasdaq Data Entitlement Package(s); (b) communicate with the distributor so as to cause the distributor to access the information in the Nasdaq Data Entitlement Package(s). If a controlled device is part of an electronic network between computers used for investment, trading or order routing activities, the burden will be on the distributor to demonstrate that the particular controlled device should not have to

pay for an entitlement. For example, in some display systems the distributor gives the end user a choice to see the data or not—a user that chooses not to see it would not be charged. Similarly, in a non-display system, users of controlled devices may have a choice of basic or advanced computerized trading or order routing services, where only the advanced version uses the information. Customers of the basic service would be excluded from the entitlement requirement.

2. A ''non-professional'' is a natural person who is neither: (a) Registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (b) engaged as an ''investment advisor'' as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (c) employed by a bank or other organization exempt from registration under federal or state securities law to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

3. So long as NQDS is subject to the Nasdaq Unlisted Trading Privileges (UTP) Plan, the revenues garnered from use of PowerView that are directly attributable to the sale of NQDS under the currently approved pricing for NQDS will be shared pursuant to the UTP Plan.

4. *See* footnote 2 (definition of non-professional).

5. *See* footnote 3 (sharing of revenue pursuant to the UTP Plan).

6. A distributor of a Nasdaq data feed is any firm that receives a Nasdaq data feed directly from Nasdaq or indirectly through another vendor and then distributes it either internally or externally. All distributors must execute a Nasdaq distributor agreement. Nasdaq itself is a vendor of its data feed(s) and will execute a Nasdaq distributor agreement and pay the distributor charge.

7. The NQDS-only fees (incremental to the Level 1 charges) are $30 for professional users and $9 for non-professional users.

8. So long as NQDS is subject to the Nasdaq UTP plan, the revenues from TotalView that are directly attributable to the sale of NQDS under the currently approved pricing for NQDS will be shared pursuant to the UTP Plan.

9. The NQDS-only fees (incremental to the Level 1 charges) are $30 for professional users and $9 for non-professional users.]

Text of Footnotes to Subsection (q)(3):

[3. The Enterprise License Pilot does not apply to the Level 1 and NQDS data services. All distributors continue to be obligated to report and pay for all entitled Level 1 and NQDS subscribers throughout the pilot period.

4. ''Predicate Month'' shall mean December of 2002 or, if a distributor reported no Level 1 or NQDS subscribers in December of 2002, the most recent month after December of 2002 in which the distributor did report Level 1 or NQDS subscribers.

5. The Non-Display License Pilot does not apply to the Level 1 and NQDS data services. All distributors continue to be obligated to report and pay for all entitled Level 1 and NQDS subscribers throughout the pilot period.]

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Nasdaq offers two data feeds to distributors to support the proprietary ViewSuite products that are offered to professional and non-professional subscribers. The Aggregated Depth at Price (''ADAP'') data feed includes the five best price levels in SuperMontage and the aggregate size of attributable and non-attributable quotes and orders at each of the five price levels, but does not include the individual quotes and orders that make up the aggregate size. The Prime data feed provides all of the information in the ADAP data feed plus the individual quotes and orders at the top five price levels in SuperMontage.[6]

In this rule filing, Nasdaq proposes to rename Prime as the Nasdaq TotalView Data Feed and expand it to include all of the Prime data feed information at all price levels in SuperMontage, rather than just the top five price levels. Nasdaq also proposes to discontinue the ADAP data feed since all of the data currently offered through it would be available in the new TotalView Data Feed. Nasdaq proposes no change to its distributor fees or its professional or non-professional subscriber fees.[7] Under Nasdaq's proposal, current ADAP-only distributors that wish to continue to distribute only the aggregate data (*i.e.*, the aggregate size of attributable and non-attributable quotes and orders at each price level) that is received either directly from Nasdaq via the new TotalView Data Feed or from another distributor may do so for the same distributor fee Nasdaq charges today.[8]

Nasdaq believes that the proposed rule change offers many benefits to investors and market data vendors. First, expanding the Prime data feed to cover all price levels, rather than just the top five price levels, enhances the transparency of the Nasdaq market for both securities professionals and individual investors. Second, current Prime distributors will have an opportunity to reduce their telecommunications charges because the new TotalView Data Feed is expected to use less bandwidth than the Prime data feed. Although the TotalView Data Feed will carry more price levels, it will not have to accommodate message traffic for eliminating quotes that have fallen out of the top five levels in SuperMontage as the Prime data feed did. Third, because the TotalView Data Feed will contain all of the data that is currently carried in the NQDS data feed plus the aggregate size information, some data recipients may choose to discontinue receipt of the NQDS data feed as a way to save telecommunications costs.[9]

[6] If a market participant has multiple attributable orders at one price, the total number of shares available from that market participant at that price is displayed in Prime. The total number of shares making up unattributable quotes and orders at a given price display under the SIZE moniker.

[7] The currently applicable subscriber fees are set forth in proposed paragraph (q)(5) of NASD Rule 7010.

[8] The fee for distributing the aggregate data only from the TotalView data feed will remain $1,000 per month under NASD Rule 7010(q)(1)(C). The fee for distributing the complete TotalView data feed will remain $7,500 per month under NASD Rule 7010(q)(2)(A).

[9] NQDS is the Nasdaq Quote Dissemination Service, a data feed that includes all quotes for Nasdaq issues. The NASD is required to provide the best bid and offer and quote size of each member acting as a market maker under SEC Rule 11Ac1–1(b)(1)(ii), 17 CFR 240.11Ac1–1(b)(1)(ii). As the Securities Information Processor for the UTP Plan, Nasdaq also provides a data feed of the best bid and offer for each Nasdaq issue (the UTP Quote Data Feed or ''UQDF'') and last sale information (the UTP Trade Data Feed or ''UTDF''). The UQDF and UTDF information are sometimes referred to as

Continued

Nasdaq also proposes to eliminate ADAP because the market for it as a separate data feed has been extremely limited. Nasdaq represents that the cost of maintaining a separate feed that carries redundant information is substantial, and Nasdaq does not recoup its costs from the few distributors choosing to take only ADAP. Nasdaq also believes that eliminating the ADAP feed will enable Nasdaq to reduce its overall costs, enabling greater opportunities to maintain low prices on all data products. Finally, Nasdaq represents that almost all of the current recipients of ADAP already receive the Prime data feed. Nasdaq believes that the elimination of ADAP feed will result in minimal disruption to the current recipients.

The proposed rule change also corrects certain subsection and footnote designations that were inadvertently duplicated in the adoption of SR–NASD–2003–27 and SR–NASD–2003–111. SR–NASD–2003–27 added new subsections (q)(3) and (q)(4) and new footnotes 3, 4, and 5, although footnotes with such numbers already existed in the then-effective rule. Nasdaq proposes to correct the duplicate footnote issue by eliminating all footnotes and adding the footnote text to the rule text or to the new subsection (q)(6) or (q)(7) as appropriate. SR–NASD–2003–111 inadvertently added a second subsection designated as (q)(4), which is redesignated as (q)(5). Nasdaq also proposes other non-substantive changes to the rule to make it more readable and consistent.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[10] in general and with section 15A(b)(5)[11] and 15A(b)(6)[12] of the Act, in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls, and it benefits investors and market data vendors. Under the proposal, one data feed will be expanded and another will be discontinued, but Nasdaq will not change its prices for either distributors or professional or non-professional subscribers. Nasdaq believes that expanding the Prime data feed to cover all price levels, rather than just the top five price levels, enhances the transparency of the Nasdaq market for both securities professionals and individual investors. In addition, Nasdaq believes that most market data distributors will have an opportunity to reduce their telecommunications charges and/or the number of feeds they receive.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Nasdaq believes that the expansion of the Prime data feed to include all price levels will benefit distributors and subscribers by providing more data at the same price. Nasdaq also believes that this benefit substantially outweighs any potential additional cost to the few distributors receiving only the ADAP feed directly from Nasdaq that may have to increase the bandwidth of their telecommunications lines to receive the new TotalView data feed directly from Nasdaq. Nasdaq represents that the proposed rule change also would not violate any of Nasdaq's contractual obligations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2003–162. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–162 and should be submitted by January 7, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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Level 1. Nasdaq is required under current law to offer the preceding three products. In contrast, the ViewSuite products are proprietary and Nasdaq has no legal obligation to offer them.

[10] 15 U.S.C. 78*o*–3.

[11] 15 U.S.C. 78*o*–3(b)(5).

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48894; File No. SR–PCX–2003–42]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. To Amend its Rules Governing the Execution of Complex Orders Involving Options and Single Stock Futures

December 8, 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 August 15, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change as described in items I, II and III below, which items have been substantially prepared by the PCX. On November 14, 2003, the PCX filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend its rules governing the execution of complex orders involving options and single stock futures (''SSF''). The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Rules of the Board of Governors

Rule 6

Options Trading

''Crossing'' Orders and Stock/Option, *SSF/Option* Orders

Rule 6.47(a)–(e)—No change.

(f) Stock/Option *and SSF/Option* Orders.

(1) When a stock/option or *SSF/option* order is taken to a crowd for execution, the stock transaction *or SSF transaction* must be effected prior to the option transaction pursuant to Rule 6.47, Commentary .04. The following procedure applies to all executions of stock/option *and SSF/option* orders: After an agreement with other members of the crowd has been reached as to the terms of the transaction, the option order tickets must be written up and time stamped. However, the order tickets should not be turned in to the Order Book Official at this time. The members shall attempt to immediately effect the transaction in the underlying or related security *or SSF*. If the stock *or SSF* transaction cannot be executed immediately or is effected at a price other than the agreed-upon price, the members shall not be held to the option transaction. If the stock *or SSF* transaction is effected at the agreed-upon price, then all the members who participated in the option transaction shall be held to their agreed-upon price. At the time the stock *or SSF* transaction is effected, the option trade tickets should be given to the Order Book Official.

(2) SSF/Option Orders Margin Requirements

(a) Any Member or Member Organization must elect to be bound by the initial and maintenance margin requirements of either the Chicago Board of Options Exchange or the New York Stock Exchange as the same may be in effect from time to time;

(b) Such election shall be made in writing by a notice filed with the Exchange.

(c) Upon the filing of such election, a Member will be bound to comply with the margin rules of the Chicago Board of Options Exchange or the New York Stock Exchange, as applicable, as though such rules were part of these rules.

Commentary:

.01–.06—No change.

Certain Types of Orders Defined

Rule 6.62(a)–(i)—No change.

(j) *Combination orders [with no-equity options legs]. One or more legs of a combination order may be to purchase or sell a stated number of units of another security.*

(1) Stock/option order. A stock/option order is an order to buy or sell a stated number of units of an underlying *stock* or a [related] security *convertible into the underlying stock (''convertible security'')* coupled with either *(A)*[(i)] the purchase or sale of option contract(s) [of the same series] on the opposite side of the market representing either the same number of units of the underlying *stock or convertible security or the number of units of the underlying stock necessary to create a delta neutral position;* [or related security] or *(B)*[(ii)] the purchase [and] *or* sale of an equal number of put and call option contracts, each having the same exercise price, expiration date and *each representing the same* number of units of [the underlying or related security,] stock as, and on the opposite side of the market *from, the stock or convertible security portion of the order.* [representing in aggregate twice the number of units of the underlying or related security.]

(2) Single Stock Future (''SSF'')/Option Order. An SSF/option order is an order to buy or sell a stated number of units of a single stock future or a security convertible into a single stock future (''convertible SSF'') coupled with either (A) the purchase or sale of option contract(s) on the opposite side of the market representing either the same number of units of stock underlying the single stock future or convertible SSF, or the number of units of stock underlying the single stock future or convertible SSF necessary to create a delta neutral position; or (B) the purchase or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date, and each representing the same number of units of underlying stock, as and on the opposite side of the market from, the stock underlying the single stock future or convertible SSF portion of the order.

Priority and Order Allocation Procedures

Rule 6.75. Except as provided by Rule 6.76 below, the following rules of priority shall be observed with respect to bids and offers:

(a)–(d)—No change.

(e) Notwithstanding anything in paragraphs (a) and (b) to the contrary, when a member holding a spread order, a straddle order, or a combination order and bidding or offering on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions with or within the bids and offers displayed by the Order Book Official or other members, in procedures determined by the Options Floor Trading Committee, then the order may be executed as a spread, straddle, or combination at the total credit or debit with one or more members without giving priority to bids or offers for the individual option series of the Order Book Official or of other members at the post that are no better than the bids or offers comprising such total credit or debit. Under the circumstances described above, a stock/option *or SSF/option* order has priority over the bids and offers of members in the trading crowd but not over the bids and offers of the Order Book Official.

(f)–(h)—No change.

Commentary:

.01–.04—No change.

Transactions Off the Exchange

Rule 6.78 (a)–(f)—No change.

Commentary:

.01–.02—No change.

.03 To the extent applicable, all other Exchange rules, including Rule 6.49, Solicited Transactions, will apply to the

[3] *See* letter from Mai Sharif Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 13, 2003 (''Amendment No. 1'') (replacing the form 19b–4 in its entirety). In Amendment No. 1, the Exchange, in part, clarified the margin requirements for members, requiring members who effect SSF/option order transactions to elect to be bound by the initial and maintenance margin requirements of either the Chicago Board Options Exchange (''CBOE'') or the New York Stock Exchange (''NYSE''), as those rules may be in effect from time to time. In addition, the Exchange amended the filing to make it immediately effective. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on November 14, 2003, the date the PCX filed Amendment No. 1. In addition, the Exchange made a technical correction to its rule text and amended its discussion of its change to its proposed rule 6.62. Telephone conversation between Mai Sharif Shiver, Senior Attorney, Regulatory Policy, PCX, and Elizabeth MacDonald, Attorney, Division of Market Regulation, Commission, December 8, 2003.

transfer procedure set forth in subsections (d) through (f). The following Rules do not apply to transfer procedures: 6.71 (Meaning of Premium Bids and Offers); 6.74 (Bids and Offers in Relation to Units of Trading); 6.75 (Priority of Bids and Offers); 6.76 (Priority of Split Price Transactions); 6.47 (''Crossing'' Orders and Stock/Option, *SSF/Option* Orders); and 7.9 (Meaning of Premium Bids and Offers, Index Options).

.04—No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX 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 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

PCX Rule 6.47(f) governs the execution process for complex orders including stock/option orders. The Exchange is proposing to amend this rule to authorize the execution of complex orders involving options and SSFs. The proposed procedures for the execution of SSF/option orders are virtually identical to the existing stock/option procedure and would permit members to enter SSF/option orders. As with stock/option orders, the option leg of the transaction would have priority over the bids (offers) of members at the same price in the trading crowd but not over bids (offers) in the limit order book.

When an SSF/option order is represented in the crowd for execution, the SSF transaction must be effected prior to the option leg of the trade pursuant to PCX Rule 6.47, Commentary .04. As with stock/option orders, if the parties are unable to execute the SSF leg of the transaction due to a change in market conditions, then they could cancel the option leg of the transaction. If the stock or SSF transaction is effected at the agreed-upon price, then all the members who participated in the option transaction shall be held to their agreed-upon price. At the time the stock or SSF transaction is effected, the option trade tickets should be given to the Order Book Official.

The Exchange also seeks to add a margin requirement as proposed PCX Rule 6.47(f)(2) that would require a Member or Member Organization who effects SSF/option order transactions to elect to be bound by the initial and maintenance margin requirements of either the CBOE or the NYSE as those rules may be in effect from time to time. The Member or Member Organization will be required to make its election in writing and file the same to the Exchange's Financial and Operational Compliance Department. Upon filing of the election, the Member or Member Organization will be bound to comply with the margin rules of the CBOE or the NYSE, as applicable, as though such rules were incorporated into the Exchange's rules.[4]

The Exchange also seeks to amend its Rule 6.62 that defines certain types of orders. Specifically, the Exchange seeks to modify PCX Rule 6.62(j) (Combination Orders) in order to: (i) Add a definition for SSF/option order types and (ii) modify the definition of stock/option order that correlates with the new proposed SSF definition. The Exchange proposes new PCX Rule 6.62(j)(2) in order to define a SSF/option order as an order to buy or sell a stated number of units of a single stock future or a security convertible into a SSF[5] coupled with either: (A) the purchase or sale of option contracts on the opposite side of the market representing the same number of units of stock underlying the SSF or convertible SSF or the number of units of stock underlying the SSF or convertible SSF necessary to create a delta neutral position, or (B) the purchase or sale of an equal number of put and call option contracts each having the same exercise price, expiration date, and representing the same number of units of underlying stock as, and on the opposite side of, the market from the stock underlying the single stock future or convertible SSF portion of the order. The proposed definition is identical to that used by the ISE.[6]

The Exchange also seeks to modify PCX Rule 6.62(j)(1) in order to amend its existing definition of stock/option order so that its provisions are parallel to its newly proposed definition for SSF/option orders and identical to the definition used by ISE Rule 722.

The Exchange proposes to amend PCX Rule 6.75 regarding priority and order allocation procedures in order to clarify that in addition to stock/option orders, SSF/option orders will also have priority over the bids and offers of members in the trading crowd but not over bids and offers of the Order Book Official.

The Exchange proposes to amend PCX Rule 6.78, Commentary .03 regarding transactions off of the Exchange in order to clarify that SSF will be included as a component of the rules that do not apply to transfer procedures off the floor as set forth in sub-sections (d) through (f) of PCX Rule 6.78.

2. Statutory Basis

The PCX believes that the rule change is consistent with section 6(b) of the Act in general[7] and section 6(b)(5) of the Act in particular.[8] The Exchange believes that the proposed rule change is intended to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes that making additional complex orders involving options and SSFs available to investors will offer investors new trading opportunities on the Exchange and enhance the Exchange's competitive position.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended, does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on

[4] This proposal is substantially similar to Rule 1202 of the International Securities Exchange (''ISE'').

[5] To the extent that ''a security convertible into a SSF'' means an option on a SSF, the Commission notes that trading of such products has not yet been approved by the Commission and the Commodity Futures Trading Commission. Nothing in this notice should be interpreted as granting such approval.

[6] *See* ISE Rule 722.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if the proposal is consistent with the protection of investors and the public interest; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing, or such shorter time as designated by the Commission, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] 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.[11]

The PCX has requested the Commission to waive the 30-day operative delay. The Commission has decided to waive the 30 day operative delay. The Commission believes such waiver is consistent with the protection of investors and the public interest. The Commission notes that PCX's proposal is substantially similar to ISE's rules.[12] For these reasons, the Commission designates the proposal to be effective and operative upon filing of Amendment No. 1 with the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amended proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–PCX–2003–42. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail, but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–42 and should be submitted by January 7, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31072 Filed 12–16–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on November 14, 2003, the date the PCX filed Amendment No. 1.

[12] For purposes of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(3)(f).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3560]

State of Texas

Harris County and the contiguous counties of Brazoria, Chamber, Fort Bend, Galveston, Liberty, Montgomery and Waller in the State of Texas constitute a disaster area due to excessive rain, flooding and tornadoes that occurred November 17 through November 18, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 9, 2004, and for economic injury until the close of business on September 8, 2004, at the address listed below or other locally announced locations:

U.S. Small Business Administration,
Disaster Area 3 Office,
14925 Kingsport Road,
Fort Worth, TX 76155–2243.

The interest rates are:

For Physical Damage:

Homeowners with credit available elsewhere: 6.250%;

Homeowners without credit available elsewhere: 3.125%;

Businesses with credit available elsewhere: 6.123%;

Businesses and non-profit organizations without credit available elsewhere: 3.061%;

Others (including non-profit organizations) with credit available elsewhere: 4.875%.

For Economic Injury:

Businesses and small agricultural cooperatives without credit available elsewhere: 3.061%.

The number assigned to this disaster for physical damage is 356006 and for economic injury the number is 9Y3900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 8, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–31080 Filed 12–16–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3561]

Commonwealth of Virginia

As a result of the President's major disaster declaration on December 9, 2003, I find that the Independent City of Galax, and the counties of Bland, Buchanan, Giles, Smyth, and Tazewell in the Commonwealth of Virginia constitute a disaster area due to damages caused by severe storms and flooding occurring on November 18, 2003 and continuing through November 19, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 9, 2004 and for economic injury until the close of business on September 9, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Carroll, Craig, Dickenson, Grayson, Montgomery, Pulaski, Russell, Washington, and Wythe Counties in the Commonwealth of Virginia; McDowell, Mercer, Mingo, Monroe, and Summers Counties in the State of West Virginia; and Pike County in the Commonwealth of Kentucky.

The interest rates are:

For Physical Damage:

Homeowners with credit available elsewhere: 6.250%;

Homeowners Without Credit Available Elsewhere: 3.125%;

Businesses with credit available elsewhere: 6.123%;

Businesses and non-profit organizations without credit available elsewhere: 3.061%; Others (Including non-

profit organizations) with credit available elsewhere: 4.875%.

For Economic Injury:

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere: 3.061%.

The number assigned to this disaster for physical damage is 356111. For economic injury the number is 9Y4000 for Virginia; 9Y4100 for West Virginia; and 9Y4200 for Kentucky.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 10, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–31079 Filed 12–16–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3558]

State of West Virginia (Amendment #4)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective December 9, 2003, the above numbered declaration is hereby amended to include Braxton, Lewis, Logan, and Taylor Counties as disaster areas due to damages caused by severe storms, flooding and landslides occurring on November 11, 2003, and continuing through November 30, 2003.

All other counties contiguous to the above named primary counties have been previously declared. All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 20, 2004, and for economic injury the deadline is August 23, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 10, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–31078 Filed 12–16–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 4527]

Bureau of Oceans and International Environmental and Scientific Affairs; Request for Nominations for the Scientific Advisory Subcommittee of the General Advisory Committee to the United States Section to the Inter-American Tropical Tuna Commission

SUMMARY: The Department of State is seeking applications and nominations for the Scientific Advisory Subcommittee of the General Advisory Committee to the Inter-American Tropical Tuna Commission (IATTC). The purpose of the Scientific Advisory Subcommittee is to provide public input and advice to the United States Section to the IATTC in the formulation of U.S. policy and positions at meetings of the IATTC and its subsidiary bodies. The Scientific Advisory Subcommittee shall also function as the National Scientific Advisory Committee (NATSAC) provided for in the Agreement on the International Dolphin Conservation Program (AIDCP). The United States Section to the IATTC is composed of the U.S. Commissioners to the IATTC, appointed by the President, and the Deputy Assistant Secretary of State for Oceans and Fisheries or his or her designated representative. Authority to establish the Scientific Advisory Subcommittee is provided by the Tuna Conventions Act of 1950, as amended by the International Dolphin Conservation Program Act (IDCPA) of 1997.

DATES: Nominations must be submitted on or before February 17, 2004.

ADDRESSES: Nominations should be submitted to David Balton, Deputy Assistant Secretary for Oceans and Fisheries, Bureau of Oceans and International Environmental and Scientific Affairs, Room 7831, Department of State, Washington, DC 20520–7818; or by fax to 202–736–7350.

FOR FURTHER INFORMATION CONTACT: David Hogan, Office of Marine Conservation, Department of State: 202–647–2335.

SUPPLEMENTARY INFORMATION:

Scientific Advisory Subcommittee

The Tuna Conventions Act (16 U.S.C. 953, Section 4) provides that the Secretary of State, in consultation with the U.S. Commissioners to the IATTC, shall appoint a Scientific Advisory Subcommittee (the Subcommittee) of the General Advisory Committee. The Subcommittee is composed of not fewer than 5 and not more than 15 qualified scientists with balanced representation from the public and private sectors, including non-governmental conservation organizations. The Subcommittee advises the Committee and the U.S. Section on matters including: the conservation of ecosystems; the sustainable uses of living marine resources related to the tuna fishery in the eastern tropical Pacific Ocean; and the long-term conservation and management of stocks of living marine resources in the eastern tropical Pacific Ocean.

In addition, at the request of the Committee, the U.S. Commissioners, or the Secretary of State, the Subcommittee performs such functions and provides such assistance as may be required by formal agreements entered into by the United States for the eastern Pacific tuna fishery, including the AIDCP. The functions may include: the review of data from the International Dolphin Conservation Program (IDCP), including data received from the IATTC staff; recommendations on research needs and the coordination and facilitation of such research; recommendations on scientific reviews and assessments required under the IDCP; recommendations with respect to measures to assure the regular and timely full exchange of data among the Parties to the AIDCP and each nation's NATSAC (or its equivalent); and consulting with other experts as needed. The Subcommittee is invited to have representatives attend all non-executive meetings of the U.S. Section and the General Advisory Committee and is given full opportunity to examine and to be heard on all proposed programs of scientific investigation, scientific reports, and scientific recommendations of the Commission. Representatives of the Subcommittee may attend meetings of the IATTC and the AIDCP as members of the U.S. delegation or otherwise in accordance with the rules of those bodies governing such participation. Participation as a member of the U.S. delegation is subject to such limits as may be placed on the size of the delegation.

National Scientific Advisory Committee

The Subcommittee also functions as the NATSAC established pursuant to Article XI of the AIDCP. In this regard, the Subcommittee performs the functions of the NATSAC as specified in Annex VI of the AIDCP including, but not limited to: receiving and reviewing relevant data, including data provided to the National Marine Fisheries Service (NMFS) by the IATTC Staff; advising and recommending to the U.S. Government measures and actions that should be undertaken to conserve and

manage stocks of living marine resources in the AIDCP Area; making recommendations to the U.S. Government regarding research needs related to the eastern Pacific Ocean tuna purse seine fishery; promoting the regular and timely full exchange of data among the Parties on a variety of matters related to the implementation of the AIDCP; and consulting with other experts as necessary in order to achieve the objectives of the Agreement.

General Provisions

Each appointed member of the Committee and the Subcommittee/NATSAC is appointed for a term of 3 years and may be reappointed. Logistical and administrative support for the operation of the Subcommittee will be provided by the Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, and by the Department of Commerce, National Marine Fisheries Service. Members receive no compensation for their service on the Subcommittee/NATSAC, nor will members be compensated for travel or other expenses associated with their participation.

Procedures for Submitting Applications/Nominations

Applications/nominations for the Scientific Advisory Subcommittee/NATSAC should be submitted to the Department of State (See **ADDRESSES**). Such applications/nominations should include the following information:

(1) Full name/address/phone/fax and e-mail of applicant/nominee;

(2) Applicant/nominee's organization or professional affiliation serving as the basis for the application/nomination;

(3) Background statement describing the applicant/nominee's qualifications and experience, especially as related to the tuna purse seine fishery in the eastern tropical Pacific Ocean or other factors relevant to the implementation of the Convention establishing the IATTC or the AIDCP;

(4) A written statement from the applicant/nominee of intent to participate actively and in good faith in the meetings and activities of the Scientific Advisory Subcommittee/NATSAC. Applicants/nominees who submitted material in response to the **Federal Register** notices published by the U.S. Department of State on November 12, 2002 and February 5, 2003 need not resubmit their applications pursuant to this notice.

Dated: December 1, 2003.

David A. Balton,

Deputy Assistant Secretary for Oceans and Fisheries, Department of State.

[FR Doc. 03–31134 Filed 12–16–03; 8:45 am]

BILLING CODE 4710–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) has determined that Cote d'Ivoire has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipment of textile and apparel articles and has implemented and follows, or making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible products from Cote d'Ivoire qualify for the textile and apparel benefits provided under the AGOA.

DATES: December 17, 2003.

FOR FURTHER INFORMATION CONTACT: Patrick Coleman, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Pub. L. 106–200, as amended by section 3108 of the Trade Act of 2002) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African Countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as ''beneficiary sub-Saharan African countries,'' provided that these countries: (1) Have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents; and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products.

In Proclamation 7561 (May 16, 2002), the President designated Cote d'Ivoire as a ''beneficiary sub-Saharan African country'' and proclaimed that, for purposes of section 112(b)(3)(B) of the AGOA, Cote d'Ivoire shall be considered a lesser developed beneficiary sub-Saharan African country. In Proclamation 7350 (October 2, 2002), the President delegated to the USTR the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that Cote d'Ivoire has taken, I have determined that Cote d'Ivoire has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS, and U.S. notes 1 and 2(d) to subchapter XIX of chapter 98 of the HTS are each modified by inserting ''Cote d'Ivoire'' in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this notice. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See Visa Requirements Under the African Growth and Opportunity Act,* 66 FR 7837 (2001).

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 03–31133 Filed 12–16–03; 8:45 am]

BILLING CODE 3190–W3–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) has determined that Niger has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible

products from Niger qualify for the textile and apparel benefits provided under the AGOA.

DATES: Effective December 17, 2003.

FOR FURTHER INFORMATION CONTACT: Patrick Coleman, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Pub. L. 106–200) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as ''beneficiary sub-Saharan African countries,'' provided that these countries: (1) Have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents; and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products.

In Proclamation 7350 (Oct. 2, 2000), the President designated Niger as a ''beneficiary sub-Saharan African country.'' Proclamation 7350 delegated to the USTR the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that Niger has taken, I have determined that Niger has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS and U.S. note 1 to subchapter XIX of chapter 98 of the HTS are each modified by inserting ''Niger'' in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this notice. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See Visa Requirements Under the African Growth and Opportunity Act,* 66 FR 7837 (2001).

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 03–31132 Filed 12–16–03; 8:45 am]

BILLING CODE 3190–W3–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aircraft Certification Policy Notice

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and requests for public comment; correction.

SUMMARY: This action corrects the Internet address needed to acquire a copy of the proposed Certification Policy Notice for approving Complex Supplemental Type Certificates (STC). This action also includes under the heading **ADDRESSES**, an Internet address for those persons who desire to submit their comments electronically.

DATES: Identify comments as Certification Policy Complex STC and they must arrive by February 12, 2004.

ADDRESSES: Send all comments on the proposed Certification Policy Notice to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. Attn: Stephen (Steve) Flanagan, AIR–110. Or, deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. You may electronically submit comments on the proposal to the following Internet address: *9-awa-avr-air-policycomments@faa.gov.* Include in the subject line of your e-Mail message the words ''Complex STC.''

FOR FURTHER INFORMATION CONTACT: Stephen (Steve) Flanagan, Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Certification Procedures Branch, AIR–110, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–3549, FAX (202) 267–5340. E-mail *steve.flanagan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

You may comment on the proposed Certification Policy Notice listed in this notice by sending such written data, views, or arguments to the above listed address. You may also examine comments received on the proposed Certification Policy Notice, before and after the comment closing date, in Room 815, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will consider all communications received by the closing date before issuing the final Certification Policy Notice.

Background

We typically issue STCs that permit installation on any aircraft of a specific type and model designation. Aircraft compatibility is addressed by the following limitation: ''The installer is responsible for determining the compatibility of this STC with other previously approved modifications.'' Nevertheless there have been installations made on inappropriate aircraft. These inappropriate installations could have been prevented if STC approvals were restricted to a specified baseline aircraft configuration that includes details of the STC physical and functional interfaces with the prototype aircraft.

Applicant's installation drawings or other installation instructions have not always been detailed enough for accurate replication of the design. This is especially true when follow-on STC installations occur at facilities other than that used by the STC holder for the prototype installation.

The STC certification process does not adequately address how to evaluate the compatibility of an STC with other previously installed STCs, major alterations or repairs. We need a more rigorous compatibility evaluation for certain STCs. This proposed policy ensures that the modified aircraft will be airworthy.

How To Get Copies

You may get a copy of the proposed Certification Policy Notice via the Internet at, *http://www.airweb.faa.gov/rgl,* or by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on December 11, 2003.

Nancy Lane,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–31097 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Statement No. ANM–03–117–58; Flight Data Recording Systems on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy that provides clarification of policy and advisory material associated with certification of flight data recording systems on transport category airplanes.

DATES: Send your comments on or before January 16, 2004.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Forrest Keller, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Safety Management Branch, ANM–117, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2790; fax (425) 227–1320; e-mail: *forrest.keller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http:///www.airweb.faa.gov/rgl.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The FAA invites your comments on this proposed policy. We will accept your commenters, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person listed in **FOR FURTHER INFORMATION CONTACT**. Mark your comments, ''Comments to Policy Statement ANM–03–117–58.''

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy. We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

This proposed policy:

- Establishes working definitions for the terms ''filtered data'' and ''method of readily retrieving'' and describes how these terms apply within a Flight Data Recorder (FDR) system certification program.
- Explains how FDR operational rules in 14 CFR parts 121, 125, and 135 affect certification of FDR systems, as well as the scope of findings to be made on such programs.
- Clarifies the guidance associated with AC 20–141, ''Airworthiness and Operational Approval of Digital Flight Data Recorder Systems,'' particularly paragraph 7b(1) that deals with ''filtered'' data.
- Addresses how to document compliance findings associated with the ''intended function'' requirement of 14 CFR 25.1301 for FDR installations approved as part of type, amended type, or supplemental type certification programs.

Issued in Renton, Washington on December 4, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31030 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement: Metrocenter Corridor in Phoenix, AZ

AGENCY: Federal Transit Administration, DOT.

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

SUMMARY: The Federal Transit Administration (FTA) and Valley Metro Rail, Inc., intend to prepare an Alternatives Analysis (AA) and an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) on a proposal by Valley Metro Rail, Inc. to provide additional transit service to the northwest portion of the City of Phoenix. The AA/EIS will consider the following alternatives: (1) A No-Build Alternative, consisting of improvements contained in the Maricopa Association of Governments (MAG) Long Range Transportation Plan and the Phoenix Transit Plan and programmed improvements with the exception of connections to the planned Central Phoenix/East Valley Light Rail Transit Project that is scheduled to begin operation in December 2006; (2) Transportation System Management Alternative (TSM), consisting of all reasonable cost-effective transit service improvements within the Metrocenter Corridor short of a major investment in a New Starts project; (3) Bus Rapid Transit (BRT) Alternatives; (4) Light Rail Transit (LRT) At Grade Alternatives; and (5) LRT Aerial Alternatives. The type, location, and need for ancillary facilities, such as maintenance facilities, will also be considered for each alternative. In addition, alternatives that are identified from the scoping process will be evaluated in the AA. Scoping will be accomplished through correspondence and discussions with interested persons; organizations; and Federal, State, and local agencies; and through public and agency meetings. Depending on the outcome of the scoping process and the analysis of a wide range of transit alternatives, a Locally Preferred Alternative (LPA) will be selected and evaluated in the EIS. The EIS will evaluate the potential impacts of the selected investment strategy (the Build Alternative) and a No-Build Alternative.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered in the AA/EIS must be received no later than January 27, 2004, and must be sent to Valley Metro Rail, Inc. at the address indicated below.

Scoping Meetings: Valley Metro Rail, Inc. will conduct two identical scoping meetings for the public. These meetings will be held on January 13, 2004, from 7 p.m. to 9 p.m. at the Westwind Preparatory Academy Charter High School, located at 2045 West Northern Avenue, Phoenix, Arizona; and January 15, 2004, from 6 p.m. to 8 p.m. at the Orangewood Elementary School, located at 7337 North 19th Avenue, Phoenix, Arizona. In addition, a scoping meeting for governmental agencies will be held on January 20, 2004, from 2 p.m. to 4 p.m. at the Valley Metro Rail, Inc. LRT Board Room, located at 411 North Central Avenue, Suite 200, Phoenix, Arizona.

ADDRESSES: Written comments should be sent to Mr. Jim Mathien, Metrocenter Corridor Study Project Manager, Valley Metro Rail, Inc., 411 North Central Avenue, Suite 200, Phoenix, Arizona 85004. e-mail: *jmathien@valleymetro.org.* Phone: (602) 744–5598. To be added to the mailing list, contact Mr. Jim Mathien at the address listed above. Please specify the mailing list for the Metrocenter Corridor Study Alternatives Analysis/Draft Environmental Impact Statement (AA/DEIS). Persons with special needs such

as sign language interpretation should contact Ruben Landa, Public Involvement Coordinator, Valley Metro Rail, Inc., 411 North Central Avenue, Suite 200, Phoenix, Arizona 85004. E-mail: *rlanda@valleymetro.org.* Phone: (602) 495–8230. The dates and addresses of the scoping meetings are given in the **DATES** section above. All locations are accessible to people with disabilities.

FOR FURTHER INFORMATION CONTACT: To request a scoping information packet, contact Mr. Jim Mathien, Metrocenter Corridor Study Project Manager, Valley Metro Rail, Inc., 411 North Central Avenue, Suite 200, Phoenix, Arizona 85004. E-mail: *jmathien@valleymetro.org.* Phone: (602) 744–5598. The Federal agency contact is Mr. Hymie Luden, Office of Planning and Program Development, FTA, 201 Mission Street, Room 2210, San Francisco, CA 94105. Phone: (415) 744–2732.

SUPPLEMENTARY INFORMATION:

I. Description of Study Area and Scope

The Federal Transit Administration (FTA), as joint lead agency with the Valley Metro Rail, Inc., will prepare an AA/EIS on a proposal to improve transit service in an approximately six mile-long corridor in northwest Phoenix, Arizona. The study area for the Metrocenter Corridor is bounded by Missouri Avenue to the south; 15th Avenue to the east; Cholla Street to the north; and 31st Avenue to the west. Most of the study area is densely developed with a mixture of urban land uses. Although not a part of the formal AA/EIS process for the Metrocenter Corridor Project, a secondary study area defined as the ''Future Deer Valley Core Connection Study Area'' will also be considered to identify opportunities for future transportation connections to that area should Valley Metro Rail, Inc. later decide to move forward with that potential project. The secondary study area is on the north side of the primary study area and is bounded by Dunlap Avenue to the south; 15th Avenue to the east; Rose Garden Lane to the north; and 31st Avenue to the west. Any further detailed planning and design for a future Deer Valley Core connection would be prepared in accordance with NEPA. Valley Metro Rail, Inc. will perform conceptual engineering for transit alternatives within the Metrocenter Corridor for the AA/DEIS that satisfies NEPA requirements. In addition, a financial plan will be developed that examines alternative funding sources.

II. Purpose and Need

The Metrocenter area is a major employment and activity center. The study corridor continues to experience significant growth in population and jobs. Along with this growth, traffic congestion and capacity deficiencies are expected to increase despite planned transportation improvements. Inadequate transit service has hampered access to this area and to other Valley destinations, other than by automobile. A major transit investment is recognized as a feasible alternative to providing additional capacity within this corridor.

The Metrocenter Corridor Project was included in the City of Phoenix's Transit 2000 ballot initiative that was passed by the voters in 2000 and provides a 0.4% sales tax to help fund the City's transit program. The project also is included in the currently approved Maricopa Association of Governments (MAG) financially constrained Long Range Transportation Plan (LRTP).

III. Alternatives

In 1999, a Major Investment Study (MIS) was completed for a proposed transit system from the northern end-of-line station of the planned Central Phoenix/East Valley Light Rail Transit Project (CP/EV LRT) continuing north and west into Phoenix and Glendale. The CP/EV LRT is scheduled to begin construction in late 2004. The MIS evaluated and recommended an appropriate transit technology and corridor alignment options. The study concluded that light rail transit (LRT) was the appropriate technology for the Metrocenter Corridor Connection. The MIS recommended 19th Avenue with various subalignments to the Metrocenter Shopping Center as the best alignment option(s) for this study corridor. Although the MIS made these recommendations, it does not meet current FTA requirements for Alternatives Analysis (AA). Therefore, the AA will re-evaluate both technology modes as well as alignment options within the study area. At a minimum, the alternatives to be considered include:

- No-Build Alternative;
- Transportation System Management (TMS)—all reasonable cost-effective transit service improvements short of an investment in a New Starts project;
- Bus Rapid Transit (BRT);
- LRT At Grade; and
- LRT Aerial.

Specific alignment alternatives include, but are not limited to: (1) 19th Avenue Corridor; (2) I–17 Freeway Corridor; and (3) 27th Avenue Corridor. These alternatives will be developed further during the preparation of the AA/DEIX. Additional reasonable Build Alternatives suggested during the scoping process, including those involving other modes, may be considered.

IV. Probable Effects

The purpose of the EIS is to fully disclose the environmental consequences of building and operating a major capital investment in the Metrocenter Corridor in advance of any decisions to commit substantial financial or other resources towards its implementation. The EIS will explore the extent to which study alternatives and alignment options result in environmental impacts and will discuss actions to reduce or eliminate such impacts.

Environmental issues to be examined in the EIS include: potential changes to the physical environment (natural resources, air quality, noise, water quality, geology, visual); changes in the social environment (land use, development, business and neighborhood disruptions); changes in traffic and pedestrian circulation; changes in transit service and patronage; associated changes in traffic congestion; and impacts on parklands and historic sites. Impacts will be identified both for the construction period and for the long-term operation of the alternatives. The proposed evaluation criteria include transportation, social, economic, and financial measures, as required by current Federal (NEPA) environmental laws and the implementing regulations of the Council on Environmental Quality and of FTA.

To ensure that the full range of issues related to this proposed action will be addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the Valley Metro Rail, Inc. Manager as noted in the **ADDRESSES** section above.

V. FTA Procedures

To streamline the NEPA process and to avoid duplication of effort, the agencies involved in the scoping process will consider the results of any previous planning studies or financial feasibility studies prepared in support of a decision by the Maricopa Association of Governments (MAG) to include a particular alternative in the regional transportation plan for metropolitan Phoenix. Prior transportation planning studies may be pertinent to establishing the purpose

and need for the proposed action and the range of alternatives to be evaluated in detail in the AA/EIS. Depending on the outcome of the scoping process and the analysis of a wide range of transit alternatives, a Locally Preferred Alternative (LPA) will be selected and evaluated in the Draft EIS. The Draft EIS will be prepared simultaneously with conceptual engineering for the alternatives, including station and alignment options. The Draft EIS process will address the potential use of Federal funds for the proposed action, as well as assess the social, economic, and environmental impacts of the station and alignment alternatives. Station designs and any alignment options will be refined to minimize and mitigate any adverse impacts.

After publication, the Draft EIS will be available for public and agency review and comment, and a public hearing will be held. Based on the Draft EIS and comments received, the LPA may be refined, and Valley Metro Rail, Inc. will further assess the LPA in the Final EIS and will apply for FTA approval to initiate Preliminary Engineering of the LPA.

Issued on: December 12, 2003.

F. James Kenna,

Deputy Regional Administrator, Region IX.

[FR Doc. 03–31141 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 9452

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 9452, Filing Assistance Program (Do you have to file a tax return?).

DATES: Written comments should be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbula, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Filing Assistance Program (Do you have to file a tax return?).

OMB Number: 1545–1316.

Form Number: 9452.

Abstract: Form 9452 aids individuals in determining whether it is necessary to file a Federal tax return. Form 9452 will not be collected by the IRS; it is to be used by individuals at their discretion. Form 9452 is used by the Service's taxpayer assistance programs. It is also available on the Internet, and it is distributed in an annual mailout to taxpayers.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,650,000.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 825,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 10, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–31035 Filed 12–16–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–H

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–H, Health Coverage Tax Credit (HCTC) Advance Payments.

DATES: Written comments should be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Health Coverage Tax Credit (HCTC) Advance Payments.

OMB Number: 1545–1813.

Form Number: 1099–H.

Abstract: Form 1099–H is used to report advance payments of health insurance premiums to qualified recipients for their use in computing the allowable health insurance credit on Form 8885.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 110,000.

Estimated Time Per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 33,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 10, 2003.

R. Joseph Durbula,

IRS Reports Clearance Officer.

[FR Doc. 03–31036 Filed 12–16–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 242

Wednesday, December 17, 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 HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Studies to Determine the Prevalence of a History of Traumatic Brain Injury (TBI) in an Institutionalized Population

Correction

In notice document 03–30583 beginning on page 68926 in the issue of Wednesday, December 10, 2003, make the following correction:

On page 68926, in the third column, the ''Application Deadline: February 18, 2003,'' should read, ''February 18, 2004.''

[FR Doc. C3–30583 Filed 12–16–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

Correction

In notice document 03–30640 beginning on page 68970 in the issue of Wednesday, December 10, 2003 make the following correction:

On page 68971, in the first column, in the signature block, the signer's name should read ''Bernard Coston''.

[FR Doc. C3–30640 Filed 12–16–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
December 17, 2003

Part II

Department of Transportation

Office of the Secretary

49 CFR Part 24

Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 24

[FHWA Docket No. FHWA–2003–14747]

RIN 2125–AE97

Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM), request for comments, and notice of public meetings.

SUMMARY: The FHWA is proposing to amend several sections of the regulations that set forth governmentwide requirements for implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act.) These proposed changes would clarify present requirements, meet modern needs and improve the service to individuals and businesses affected by Federal or federally-assisted projects while at the same time reducing the burdens of government regulations. The regulation has not been fully reviewed or updated since it was issued in 1989. The proposed amendments to the Uniform Act regulation would affect the land acquisition and displacement activities of 18 Federal Agencies including the new Department of Homeland Security. This document also provides notice of public meetings on the proposed changes to the regulation.

DATES: The public meetings will be held on January 15, 2004, from 10 a.m. to 2 p.m., Washington, DC; January 22, 2004, from 10 a.m. to 2 p.m., Lakewood, CO; and January 28, 2004, from 10 a.m. to 2 p.m., Atlanta, GA.

Comments in response to this NPRM must be received on or before February 17, 2004.

ADDRESSES: The January 15, 2004 meeting will be held in Washington, DC, United States Department of Transportation, 400 7th Street, SW., Room 8236. The January 22, 2004 meeting will be held in Lakewood, CO, Zang Building, Conference Room 360, 555 Zang Street. The January 28, 2004 meeting will be held in Atlanta, GA, Atlanta Federal Center, Conference Room B, 61 Forsyth Street, SW., Atlanta, Georgia. Each meeting will be scheduled from 10 a.m. to 2 p.m.

Mail or hand deliver comments to the docket number that appears in the heading of this document to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* All comments received will be available for examination and copying at the above address 9 a.m. to 5 p.m., e.s.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a pre-addressed, stamped envelope or post card or you may print the acknowledgement page that appears after submitting comments electronically.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2002 (Volume 65, Number 70, Page 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ronald E. Fannin, Office of Real Estate Services, HEPR, (202) 366–2042; Reginald K. Bessmer, Office of Real Estate Services, HEPR, (202) 366–2037 or Reid Alsop, Office of the Chief Counsel, HCC–30, (202) 366–1371, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.s.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8.) The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may be downloaded by using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

Reasons for This Proposal

Title 49 CFR part 24 has not been comprehensively revised or updated since its initial publication in 1989. We believe there is some confusion regarding a number of existing requirements. There could be improvement in achieving the goal of national program uniformity; and there are inadequacies in meeting contemporary needs. We also believe we could improve the service to individuals and businesses affected by Federal and federally-assisted projects while reducing administrative burdens.

History

Relevant Legislation

Title 49 CFR part 24 implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601 *et seq.*, (''the Uniform Act'').

Current Regulations

As originally enacted, the Uniform Act authorized ''the head of each Federal Agency'' to establish regulations and procedures for implementing the Uniform Act. Inevitably, this led to significant differences in Agencies implementing regulations. In a March 8, 1978, Report to Congress (GAO Report No. GGD–78–6, ''Changes Needed in the Relocation Act to Achieve More Uniform Treatment of Persons Displaced by Federal Programs, B–148044 (1978)),'' [1] the Comptroller General found that as a result of these differences the Federal government was not providing uniform treatment to people displaced from their homes and businesses by Federal or federally-assisted programs. Those differences among Federal implementing regulations also imposed significant administrative burdens on State and local governments. In 1981, for the Vice President's Presidential Task Force on Regulatory Relief, State and local governments identified the Uniform Act as a good candidate for State and local regulatory relief.

Therefore, in May 1982, the Office of Management and Budget (OMB) formed a Uniform Act Interagency Regulatory Review Working Group to develop uniform regulations to be implemented by each Agency covered by the Uniform Act. A Presidential Memorandum, dated February 27, 1985, was published in the **Federal Register** on March 5, 1985 (50

[1] A copy of this report, Changes Needed in the Relocation Act to Achieve More Uniform Treatment of Persons Displaced by Federal Programs, is available in the docket.

FR 8953), naming the U.S. Department of Transportation (USDOT) as the Agency with lead responsibility for the Uniform Act. The Secretary of Transportation (hereafter Secretary) delegated this responsibility to the Federal Highway Administrator.

On March 5, 1985 (50 FR 8955), the USDOT published a model Uniform Act regulation, which, in accordance with the President's Memorandum of February 27, 1985, served as the basis for a proposed Uniform Act ''common rule'' to be issued by the 16 other affected Agencies. The proposed common rule was issued for comment by those 16 Agencies on May 28, 1985 (50 FR 21712.) After consideration of comments, on February 27, 1986, the common rule was adopted by each of the affected Federal Agencies and the former disparate relocation regulations of those Agencies were removed. This common rulemaking effort by the Federal Agencies that administered both direct Federal programs and projects, and federally-assisted programs and projects undertaken by State or local Agencies, achieved regulatory consistency among the separate Federal Agencies subject to the Uniform Act.

This common rulemaking effort presaged several of the statutory changes to the Uniform Act that were made by the Uniform Relocation Act Amendments of 1987 (Title IV, Pub. L. 100–17, 101 Stat. 246) (''1987 Amendments''). In the administrative area, for example, to further ensure uniformity, the amendments specifically designated the USDOT as Lead Agency and required it, in coordination with other Federal Agencies, to issue a governmentwide rule, establish procedures and make interpretations to implement provisions of the Uniform Act. In the substantive area, the common rulemaking effort granted greater flexibility and discretion to State and local Agencies, a theme reiterated in the 1987 Amendments.

Implementation of the 1987 Amendments to the Uniform Act

On May 19, 1987 (52 FR 18768), the FHWA issued a notice proposing significant changes to the common rule as a result of the 1987 amendments to the Uniform Act. On December 1, 1987 (52 FR 45667), the FHWA issued a Notice of Regulatory Intent giving further notice of the specific regulatory actions that it and the other affected Federal Agencies would take to implement the 1987 Amendments.

On December 17, 1987 (52 FR 47994), the FHWA issued an interim final rule, as 49 CFR part 24, that revised the provisions of the common rule to include those provisions of the 1987 amendments to the Uniform Act (primarily increases in the dollar amounts of specific relocation assistance) that did not allow for administrative discretion or interpretation, and for which a period of public notices and comment would have been impractical. This interim final rule was promulgated in order to allow those Federal, State and local Agencies that were willing and able to provide the increased dollar amounts for specific relocation assistance, provided by the 1987 amendments, to do so expeditiously. On the same day at 52 FR 48015, 17 Federal Departments and Agencies that administer the Uniform Act published interim final rules rescinding the common rule from each of their regulations and adopting in its place a cross-reference to the single interim final rule published by the FHWA as 49 CFR part 24. The effective date for these Agency rescissions and cross-references varied. However, all such actions took effect on or before April 2, 1989, the date the 1987 Amendments became mandatory. The Department of Housing and Urban Development (HUD), was unable to join the other Federal Agencies in publishing an interim final rescission and cross referencing action on December 17, 1987, because of its need to first satisfy certain Congressional review obligations. HUD subsequently published such an interim rule on February 19, 1988 (53 FR 4964).

The FHWA issued an NPRM on July 21, 1988, at 53 FR 27598, proposing to fully implement the statutory amendments to the Uniform Act and to replace the interim final rule. On March 2, 1989 (54 FR 8928), the FHWA issued the final rule, which implemented all of the provisions of the 1987 Amendments to the Uniform Act, and replaced the interim final rule. This was the final step in the development of a single common rule for implementing the Uniform Act.

The Uniform Act and the common rule govern the relocation and land acquisition programs of all Federal departments and Agencies. Those departments and Agencies that, for convenience, provide a cross reference to this part, and the location of those cross-references, are listed below:

Department of Agriculture
  7 CFR Part 21
Department of Commerce
  15 CFR Part 11
Department of Defense
  32 CFR Part 259
Department of Education
  34 CFR Part 15
Department of Energy
  10 CFR Part 1039
Environmental Protection Agency
  40 CFR Part 4
Federal Emergency Management Agency
  44 CFR Part 25
General Services Administration
  41 CFR Part 105–51
Department of Health and Human Services
  45 CFR Part 15
Department of Housing and Urban Development
  24 CFR Part 42
Department of Justice
  41 CFR Part 128–18
Department of Labor
  29 CFR Part 12
National Aeronautics and Space Administration
  14 CFR Part 1208
Tennessee Valley Authority
  18 CFR Part 1306
Veterans Administration
  38 CFR Part 25

The United States Postal Service has indicated that it will comply voluntarily with the Uniform Act, although its current regulations (39 CFR part 777) differ slightly from these proposed regulations.

However, because the Uniform Act applies to all acquisitions of real property or displacements of persons resulting from Federal or federally-assisted programs or projects, the Act's application is not affected by the absence of a cross reference to 49 CFR part 24 in a department's or Agency's regulations. Further, Federal or federally-assisted activities involving land acquisition or displacement, undertaken by a newly constituted Federal department or Agency, such as, for example, the new Department of Homeland Security, would be covered by the Act.

1993 Amendments to the Governmentwide Regulations

On January 28, 1992, the President issued a Memorandum for Certain Department and Agency Heads entitled ''Reducing the Burden of Government Regulation'' which called upon Departments and Agencies to review their existing regulations in order to determine whether changes should be made to promote economic growth, create jobs, or eliminate unnecessary costs or other burdens on the economy.

The FHWA, as a result of its review of the Uniform Act common rule, identified several amendments that it believed would enhance the relocation assistance provided to displaced businesses, thus increasing their chances of a successful relocation. Additionally, we identified changes that

would reduce the regulatory burden imposed on such businesses as well as on State and local governments implementing the regulation. Therefore, on July 27, 1992 (57 FR 33164), we issued a notice of proposed rulemaking (NPRM) proposing these changes to the common rule and published the final rule on April 30, 1993 (58 FR 26072).

1999 Amendments to the Governmentwide Regulation

Pub. L. 105–117, 111 Stat. 2384 (November 21, 1997) amended the Uniform Act to provide that an alien not lawfully present in the United States shall not be eligible to receive relocation payments or any other assistance provided under the Uniform Act, unless such ineligibility would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, and such spouse, parent, or child is a citizen or an alien admitted for permanent residence. As a result of these changes, the FHWA proposed to amend the common rule to reflect the prohibitions on payments to aliens not lawfully present in the United States. After publishing an NPRM on June 12, 1998 (63 FR 32175), the FHWA published a final rule implementing these changes on February 12, 1999 (64 FR 7127).

FHWA Actions To Update the Regulations

Following a series of requests from other Federal Agencies, States, and local public agencies, concerning the need for updating the Uniform Act and Title 49, CFR Part 24, the FHWA initiated a comprehensive review of 49 CFR part 24 by hosting an all Federal Agency briefing and listening session at the Uniform Act 30th Anniversary Symposium in Mesa, Arizona, in November of 2001. Seventy-five individuals representing 14 Federal Agencies, provided specific comments and suggestions. We compiled the comments and in March of 2002 we formed a Federal Interagency Task Force (Task Force) to review all comments received from both the private and public sectors and to begin developing proposed changes to the common rule. All 18 Federal Agencies whose programs are affected by the Uniform Act were asked to provide a representative to be a member of the Task Force. Next, the FHWA published a notice on May 14, 2002 (67 FR 34514), announcing 5 nationwide public listening sessions in June and July 2002 to gather broader input.

Following these sessions, the Task Force once again evaluated each comment. Based on the comments received, the FHWA determined there was a need to update the regulation. The Task Force then began to identify specific provisions of the regulation that should be updated. The Task Force drafted proposed regulatory language, and on November 7, 2002, the FHWA hosted an All-Federal Agencies' meeting to present and discuss the draft language to each of the Agencies affected by this rule. On December 5, 2002, each Agency was given the draft language and asked to provide its specific feedback to the FHWA. This feedback helped the FHWA formulate the proposed changes in this NPRM.

Section-by-Section Discussion of Proposed Changes

Descriptions of the regulatory changes proposed in this part are set forth below. All members of the public who are affected by relocation or land acquisition activities undertaken or funded by Federal departments and Agencies are encouraged to comment on this NPRM. Comments from interested State and local governments are particularly requested. We have made several minor grammar changes such as adding or deleting commas and shortening sentences for clarity that will not change the meaning or intent. These minor changes are not addressed in the Section-by-Section discussion.

Subpart A—General

Section 24.2 Definitions

We propose to add a subsection listing acronyms and to include a numbering system to better identify definitions. This would provide users a list of the most commonly used acronyms in the regulation. These acronyms have become commonplace in conversation and correspondence in the land acquisition and displacement activities of the 18 Federal Agencies. Also, currently, there are 35 complex and lengthy definitions listed in alphabetical order. Without a clear and simple way of referring to definition provisions it is difficult to communicate with affected parties, which complicates both effective Agency administration and public understanding of applicable provisions. Since this rule applies to the programs of approximately 18 Federal Agencies, it is important that they all write and talk with the same understanding. To include a numbering system for the definitions was one of the most requested proposals received during the comment period from both the private and public domain.

Section 24.2(a)(6)(ii) Comparable Replacement Dwelling

We propose to remove the phrase ''style of living'' from paragraph (2) of the definition of comparable replacement dwelling.

The phrase ''style of living'' has sometimes been misused and has proven to be confusing. Occasionally, it has been used out of context and interpreted to require identical unique features found in acquired dwellings such as, cherry cabinets, gold fixtures, and other specialized items to be in comparable replacement dwellings. In such cases, the standard for replacement housing has been raised to a level above ''comparable.'' This interpretation can make it nearly impossible to find appropriate replacement housing and could result in replacement housing payments greater than those intended by Congress. As noted in the conference report accompanying the 1987 amendments, ''The Conferees recognize that strict and absolute adherence to an exhaustive, detailed, feature-by-feature comparison can result in rigidities. These can constitute a substantial economic burden and can lead to excessive cost if the law requires, or is interpreted to require, the replacement dwelling to possess every feature of the acquired dwelling as an absolute minimum.'' H.R. Conf. Rep. No. 100–27, at 247 (1987).

The Congress realized the difficulty in finding comparable replacement dwellings and intended there to be some flexibility in the definition. Removing the phrase ''style of living'' will not erode any protections provided to the displaced person. Other criteria under the definition of comparability would adequately cover the factors covered by ''style of living.''

Section 24.2(a)(6)(vii) Comparable Replacement Dwelling—Currently Available

We propose to revise section 24.2(a)(6)(vii) by deleting the last sentence and moving it to a new section, 24.2(a)(6)(ix). This new section would also provide that, when a person that is displaced from government subsidized housing accepts an offer of government housing assistance at the replacement dwelling, any requirements of the government housing program relating to the number of rooms or living space of the replacement dwelling would apply.

Section 24.2(a)(6)(viii) Comparable Replacement Dwelling—Within the Financial Means of the Displaced Person

We propose to consolidate the definition of comparable replacement

dwelling into a single paragraph, proposed as § 24.2(a)(6)(viii). This consolidation would define the purchase price or amount of rent that is considered to be within the displaced person's financial means for both a homeowner and a residential tenant. The consolidation would reduce verbiage, without any change in substance.

Section 24.2(a)(8)(ii) Decent, Safe, and Sanitary Dwelling

We propose to add a requirement to the decent, safe, and sanitary dwelling definition to reflect the protections provided by Public Law 102–550, Residential Lead-Based Paint Hazard Reduction Act of 1992. Lead based paint hazard levels established by the U.S. Environmental Protection Agency in accordance with Public Law 102–550 are intended to protect families and children under the age of six from ingesting paint dust or chips while occupying replacement housing. HUD's Lead Safe Housing Rule (24 CFR 35, subparts B–R), which implements that law for federally-owned and assisted housing, provides the strategy for protecting occupants during temporary relocation. The replacement dwelling unit must not have deteriorated paint (or deteriorated lead-based paint if paint testing is conducted) or dust-lead hazards. A unit built on or after January 1, 1978 meets the requirement. The lead safety provision does not apply to displacement of persons who are either elderly or disabled (unless a child under 6 years will reside or be expected to reside in the unit), nor if the replacement dwelling unit is a zero-bedroom dwelling. This proposed change would include this same standard in § 24.2(a)(8)(ii).

Section 24.2(a)(8)(v) Decent, Safe, and Sanitary Dwelling—Local Housing Codes

We propose to amend this definition to require the Agencies to follow the local housing code provision that addresses the maximum number of persons permitted to occupy a room used for sleeping purposes. In the absence of a local housing code requirement, the written policy of the Agency would govern. Additionally, Agencies must also follow any housing code provision which addresses the minimum amount of square feet for each person occupying a dwelling unit or portion thereof. This would make it easier to determine the number of bedrooms required for a replacement dwelling unit.

Similarly, we propose that the local housing code or, if no such code provision exists, the written policy of the Agency, would determine the minimum age of children of the opposite gender which must occupy separate rooms used for sleeping purposes. In the absence of a local housing code or a written policy by the Agency, the minimum standards established for a decent, safe and sanitary dwelling in § 24.2(a)(8) are to be applied.

Section 24.2(a)(9)(ii)(D) Persons Not Displaced

We proposed to amend this section in appendix A to provide that temporary relocation assistance to a person required to move from their dwelling, business, farm, or nonprofit organization are limited to a one year period. Such persons remaining in a temporary location for a period exceeding one year must be offered all permanent relocation assistance.

Section 24.2(a)(11) Dwelling Site

We propose to add a definition of the term ''dwelling site.'' The dwelling site represents the area, and specifically the size of the land area, on which a dwelling is located. The ''dwelling site,'' as defined, is a typical lot for similar dwellings in the neighborhood where the dwelling to be acquired is located. This definition would help ensure more accurate computations of replacement housing payments when a dwelling is located on a larger than normal site or when mixed-use or multi-family properties are involved, and reflects current practice.

Section 24.2(a)(12) Eviction for Cause

At the request of the HUD and with concurrence by the Task Force, we propose to simplify the eviction for cause provision in § 24.206 by adding a definition of eviction for cause to § 24.2(a)(12). The proposed definition includes some of the provisions that are currently included in § 24.206. Eviction is a legal process, not an administrative procedure, and therefore, the proposed definition would retain the current link to applicable State and local law.

Section 24.2(a)(15) Household Income

At the request of Federal, State, and local public Agencies having the responsibility of administering the Uniform Act, we propose to add, for clarity, a new definition, ''household income.'' This definition would include examples of what does and does not constitute a person's gross monthly household income for purposes of establishing a base monthly income under proposed § 24.402(b)(2)(ii).

Household income would generally include average monthly income from all sources, but would exclude income from dependent children 18 years old or younger and full time students, and various governmental assistance described in appendix A of this part, § 24.2(a)(15).

Section 24.2(a)(16) Initiation of Negotiations

We propose to add a sentence to the definition of ''initiation of negotiations'' to provide that, in the case of acquisitions of real property, described in the initiation of negotiations, for the purposes of § 24.101(b)(1) through (5) (that must be based on an amicable agreement with the owner) establishing a qualified tenant's eligibility for relocation benefits, would occur when the Agency and the owner reach agreement to purchase the real property.

Section 24.2(a)(18) Mobile Home

We propose to add a definition for a mobile home to this section. The term includes both manufactured homes and recreational vehicles used as residences. We also propose to add further requirements that recreational vehicles must meet in order to be qualified for relocation assistance in appendix A. Appendix A would also explain the difference between manufactured homes and mobile homes recognized by HUD for that Agency's programs. For purposes of this regulation, however, we propose that both are to be considered as mobile homes. (Subpart F continues to include an explanation of the different methods of computing relocation assistance when a mobile home has been determined to be personal property, and when it is determined to be real property.)

Section 24.2(a)(24) Salvage Value

We propose to revise the definition of ''salvage value'' to clarify that the value of an item is to be based on the item being removed at the buyer's expense.

Section 24.2(a)(30) Unlawful Occupant

We propose to change the term ''unlawful occupancy'' to ''unlawful occupant'' so that the definition can be stated more clearly. We also propose to remove the word ''squatter'' from the definition. The word may be offensive and is not necessary to the definition. The wording changes proposed would simplify the definition without changing its meaning.

Section 24.2(a)(34) Waiver Valuation

We propose to use the term ''waiver valuation'' to identify the valuation

process and product when § 24.102(c)(2) appraisal waiver provisions are implemented.

Section 24.9 Recordkeeping and Reports

In accordance with the Presidential Memorandum dated February 27, 1985, United States Department of Transportation is required to report annually to the President's Council on Management Improvement, a part of the Office of Management and Budget, on implementation of the Uniform Act. Under the current reporting requirement, the Lead Agency has received very little statistical information, and thus has little or no knowledge of the extent and impact of other Federal funding Agencies acquisition and displacement activities. Therefore, in § 24.9(c), we propose to require Federal Agencies to submit an annual report summarizing of their real property acquisition and displacement activities to the Lead Agency. This proposed change would enable us to prepare and submit a more comprehensive and useful report, in addition to facilitating a more active monitoring role in our duty as Lead Agency.

We propose to redesign Appendix B to be less burdensome and to enable the information to be reported electronically. Appendix B is the statistical support form of which Agencies are required to submit reports of real property acquisition and displacement activities, if required by the Federal Agency funding the project. Additionally, we propose to remove the requirement that the Agency submit this report no more frequently than every three years, since this report is issued each year.

The Department of Housing and Urban Development and most other Federal funding Agencies support this proposed change.

Subpart B—Real Property Acquisition

We propose to make a minor change by replacing the term ''fair market value'' with ''market value'' throughout the subpart to better reflect current appraisal terminology.

Section 24.101 Applicability of Acquisition Requirements

We propose to restructure § 24.101(a) to clarify the application of the real property acquisition requirements set forth in this subpart, and to revise the exceptions to those requirements.

Currently, the two major exceptions to real property acquisition requirements in Subpart B are voluntary transactions and acquisitions in which the Agency does not have the power of eminent domain.

Based on the suggestion of Federal Agencies, we propose that these exceptions no longer apply to acquisitions by Federal Agencies. We are advised that some Federal Agencies use these types of transactions to a significant extent. To best ensure that the objectives of the Uniform Act are satisfied, we propose that Federal Agencies follow the valuation processes set forth in this subpart for all of their direct acquisitions. This proposal is also consistent with section 305(b)(2) (42 U.S.C. 4655(b)(2)) of the Uniform Act, which allows these exceptions for recipients of Federal financial assistance, but provides no such exceptions for Federal Agencies themselves. We propose to retain the exceptions for federally-assisted projects and programs.

Essential to the exceptions is the requirement that the owner must be informed that the property would not be acquired unless an amicable agreement can be reached. Currently, the regulation requires the Agency to inform the owner what it believes to be the fair market value of the property. We propose to require the Agency to inform the property owner in writing (1) that the property will not be acquired unless an amicable agreement can be reached, and (2) of the market value of his/her property. This would more closely parallel the Uniform Act requirement that is applicable to covered transactions, and provide the property owner with documented assurance of the Agency's authority and intentions.

Some Agencies suggested that the requirement that the Agency inform the owner of what it believes to be market value in § 24.101(a)(1) and (2) be revised to also include a requirement for a supporting appraisal. We have not proposed adding such a requirement. However, we propose adding language to Appendix A noting that, while the regulation does not require an appraisal in these cases, an Agency may still decide to use some form of an appraisal, and, in any event, an agency must have some reasonable basis for the valuation required by § 24.101(a)(1) and (2).

To assist readers/users, we propose to add a cross reference to the location in the rule of relocation assistance provisions that are applicable to any tenants that must move as a result of these excepted acquisitions.

We propose to delete the introductory phrase in proposed § 24.101(c), currently § 24.101(b), to eliminate unnecessary verbiage.

Section 24.102 Basic Acquisition Policies

The Uniform Act provides that the requirement for an appraisal may be waived in cases involving the acquisition of property with a low market value. We propose to clarify § 24.102(c)(2) by separating it into paragraphs (i) and (ii). Paragraph (i) would concern donations and is essentially unchanged. Paragraph (ii) would address low value properties and would specify that when such properties are to be acquired, and the appraisal waived, the Agency must prepare a ''waiver valuation,'' a term proposed to be defined in § 24.2(a)(34). We propose to raise the appraisal waiver threshold in § 24.102(c)(2) from $2,500 to $10,000. In addition, we propose to add a new provision that would allow the Federal funding Agency to raise the threshold up to a maximum of $25,000, provided that the Agency acquiring the real property offers the property owner the option of having an appraisal performed.

These proposed changes reflect the general increase in property values since the present threshold was established. Comments we have received and our experience to date, have shown no indication of administrative abuse or property owner objection. Broad Agency support indicates a higher threshold is justified.

Section 24.102(e) Summary Statement

We propose to revise the language in (3) to be clearer and more specific.

Section 24.102(i) Administrative Settlement

We propose to revise the language to require more specific information in the written justification (''state'' rather than ''indicate'') and delete specific suggestions (''appraisals, recent court awards, estimated trial costs, or valuation problems'') in favor of requesting ''what available information, including trial risks, supports the settlement.''

Section 24.102(n) Conflict of Interest

Language currently in § 24.103(e) Criteria for appraisals, addresses conflicts of interest for appraisers and review appraisers. Proposed language would add all persons making waiver valuations under § 24.102(c)(2) to this section. This proposed change would bring equal conflict of interest standards to all individuals valuing real property, whether their work be waiver valuations, appraisal, or appraisal review, and would clarify who is covered.

We also propose adding a new provision that any person functioning as a negotiator shall not supervise or formally evaluate either the appraiser, review appraiser or person making waiver valuations. This provision would enhance appraiser independence and further support the Uniform Act concept that the appraisal is part of the acquisition process that includes not only appraisal and appraisal review, but also the Agency responsibility and authority to establish an amount, based on an approved (reviewed) appraisal, believed to be just compensation, offer that amount to the property owner, and be prepared to consider updating the offer of just compensation (§ 24.102(g)) and administrative settlement (§ 24.102(i)), as appropriate. Recognizing that some Federal assistance recipients, particularly those with limited staff resources, may find this provision unworkable, we propose that, in such cases, the Federal funding agency may waive this provision. And, since the proposed provision would apply to more individuals than just the appraiser, we propose to relocate it to be under basic acquisition policies.

Section 24.103 Criteria for Appraisal

The revisions we propose to §§ 24.103 and 24.104 are the first since the Appraisal Foundation published the Uniform Standards of Professional Appraisal Practice (USPAP).[2] Considerable confusion and misunderstanding as to the applicability of USPAP provisions to Uniform Act real property acquisitions have existed ever since USPAP was published. The Uniform Act and 49 CFR Part 24 set the requirements for appraisal and appraisal review in support of Federal and federally-assisted acquisition of real property for government projects.

Appraisers who are committed to adhere to USPAP by virtue of State appraisal licensing or certification should look to the provisions of USPAP, including the scope of work, the Jurisdictional Exception Rule and the Supplemental Standards provisions, and their State Appraisers' board for guidance on how they can remain in compliance with USPAP and perform appraisals for Agencies following Uniform Act and 49 CFR part 24 requirements.

Many of the proposed provisions of §§ 24.103 and 24.104, are intended to assist the appraiser, the Agency and others in understanding the requirements of these subparts in light of USPAP.

We propose to change the terminology throughout this section from ''standards'' to ''requirements'' to avoid confusion with USPAP standards rules. We also propose to add the phrase ''Federal and federally-assisted program'' to more accurately identify the type of appraisal practices that are to be referenced, and to differentiate them from private sector, especially mortgage lending, appraisal practice.

Section 24.103(a) Appraisal Requirements

We propose to add a sentence indicating that these regulations set forth the requirements for real property acquisition appraisals for Federal and federally-assisted programs. This would make it clear that other performance standards, such as USPAP and those issued by professional appraisal societies, do not govern programs covered by the Uniform Act. We propose to reorder other sentences in the paragraph for greater clarity, and to add a requirement for a scope of work statement in each appraisal. In appendix A, we propose to add a discussion on preparing the scope of work. We also propose to insert the word ''simple'' to help identify and differentiate the ''minimum requirements'' appraisal. We propose to move the requirements now in § 24.103(a)(1) to the scope of work, as discussed in appendix A, and renumber the remaining detailed appraisal requirements (1) through (5).

Section 24.103(a)(3)

To clarify the intent of this section, we propose to add language that describes the content of a detailed appraisal to conform with currently used terminology (sales comparison approach). We also propose to move the discussion of the Agency's authority to require only the market approach (sales comparison approach) to appendix A, where we propose it be included in the determination of the scope of work.

Section 24.103(b)

We propose to delete the first phrase because it is redundant.

Section 24.103(d)

We propose to specifically add ''review appraisers'' to clarify that they are included in this section that addresses appraiser qualifications. We also propose to add a discussion to appendix A to emphasize the need for appraisers and review appraisers to be qualified and competent, and that State licensing or certification can help provide an indication of an appraiser's abilities.

Section 24.104 Review of Appraisals

We propose to use consistent terminology to refer to the person performing appraisal reviews, *i.e.*, review appraiser. We also propose to add language to clarify and specify the responsibilities, authorities and expectations associated with appraisal review.

Section 24.104(a)

We propose to add language that would specifically state that the review appraiser's examination of the appraisal must include examination of the presentation and analysis of market information. While this may not be a change from what Agencies, as a matter of practice, now expect of review appraisers, we believe this proposed language would avoid misunderstanding and confusion. Also, we propose to state clearly that the review appraiser is to ensure that appraisal performance complies with appraisal requirements in § 24.103 and other applicable requirements, and supports the appraiser's opinion of value. This would avoid any misunderstanding as to the criteria for the review. The level of analysis and reporting would depend on the complexity of the appraisal and appraisal review problems. We propose that the report identify the appraisal report(s) reviewed, document the findings and conclusions arrived at during the review of the appraisal(s), and identify each appraisal report as rejected, accepted (meets all requirements, but not selected as approved), or approved (as the basis for the establishment of the amount believed to be just compensation). Identification of each appraisal report is proposed as a method of avoiding confusion as to the status of each reviewed appraisal.

Section 24.104(b)

We propose to add language that would make it clear that the review appraiser may develop independent valuation information as part of the appraisal review process.

Section 24.104(c)

We propose to add language that would require the review appraiser to prepare a written report and specify what is to be in the report.

We also propose that the review appraiser prepare a signed certification, which would state the parameters of the review and the approved value and, if

[2] Uniform Standards of Professional Appraisal Practice (USPAP). Published by the Appraisal Foundation, a non-profit educational organization. Copies may be ordered from the Foundation at the following URL: *http://www.appraisalfoundation.org/html/USPAP2003/toc.htm.*

appropriate, the amount believed to be just compensation to be offered the property owner.

Subpart C—General Relocation Requirements

Section 24.202 Applicability

We propose to add a sentence to § 24.202 that adds a requirement that displaced persons be fully informed of their rights and benefits. It has come to our attention that displaced persons have been asked to waive their relocation rights and benefits without being informed of the extent of those benefits. This proposal would protect and strengthen the requirement that Agencies fully inform displaced persons of any rights and benefits they may be eligible for under this part.

This proposal is also integral to new proposed § 24.207(f), Waiver of relocation benefits, which would prohibit Agencies from proposing or asking displaced persons to waive their relocation rights and benefits.

Section 24.203(d) Notice of Intent To Acquire

We propose to move the definition of ''notice of intent to acquire'' from § 24.2 ''Definitions'' to § 24.203, ''Relocation notices,'' with a minor revision. This proposed revision would be for continuity and clarity.

Section 24.205 Relocation Planning, Advisory Services and Coordination

In response to widespread concern about the inadequacy of Uniform Act relocation and reestablishment procedures and payments for displaced businesses, we sponsored the National Business Relocation Study [3] (''the study''). The study, undertaken for FHWA by an independent consultant, investigated business relocation concerns and provided recommendations to develop solutions to these problems.

The study found that relocation assistance advisory services for businesses were generally considered fair to poor. Some of the findings specifically noted that relocation agents were not adequately trained or informed to address the complexities of complicated business relocations, and were unable to provide meaningful assistance in locating replacement properties.

The changes proposed in this section are based upon the findings and recommendations of the study and are meant to address the added burden of displacement on businesses, and provide additional assistance to increase businesses' viability after displacement.

Section 24.205(a) Relocation Planning

We propose to change § 24.205(a) to provide additional items for Agencies to consider in planning for business relocations.

The Uniform Act and this section of the regulation require Agencies to plan federally funded programs and projects in such a manner that Agencies recognize the problems associated with displacement and develop solutions to minimize the adverse affects of displacement. An Agency must engage in such planning before proceeding with any action, which causes displacement and should scope the plan to the complexity and nature of the displacing action.

Currently, this section of the regulation provides examples of items to consider in relocation planning. The planning considerations currently include both residential and non-residential items, but residential planning requirements are more comprehensive than the non-residential planning ones. We recognize that the Uniform Act requires a more generous ''make whole'' approach for residential displacements. However, we also recognize that a significant number of displaced small businesses have not been able to successfully relocate. Therefore, we propose to require the Agency to engage in planning for the problems associated with non-residential displacement.

Section 24.205(c)(2)(i)(A)–(F) Relocation Assistance Advisory Services

We propose to change § 24.205(c)(2)(i)(A) through (F) to include six specific items in personal interviews for business relocations. These six paragraphs are a result of our National Relocation Business Study and will assist in determining the future needs of displaced businesses.

During the five national listening sessions, the FHWA received many comments concerning the lack of guidance and direction on what information the Agency should obtain when making personal interviews with businesses. The FHWA also received testimony from States and Local Public Agencies of actual cases where good interviewing and early planning is credited with preventing business closures.

The Uniform Act and this section of the regulation requires Agencies to ensure that relocation assistance advisory services are made available to all persons displaced by the Agency. A critical element in any successful relocation, and also an advisory services requirement, is to determine the needs and preferences of displaced persons through a personal interview.

Currently, this section of the regulations provides no examples of items for Agencies to consider in personal interviews for either residential or non-residential displacements. Generally, we believe Agencies do not need additional guidance in conducting personal interviews for residential displacements. However, we believe that specific guidance in conducting personal interviews for non-residential displacements is necessary to help address the added burden of displacement on businesses and provide additional assistance to increase their viability after displacement. Therefore, we have proposed guidance in (c)(2)(i)(A) through (F) of this section to assist Agencies in conducting personal interviews. This proposed change is based upon the findings and recommendations of the National Business Relocation Study.

Section 24.205(c)(2)(ii)(C) Relocation Assistance Advisory Service

We propose to revise this section to permit any displacing agency that has a program objective of providing minority persons with an opportunity to relocate to areas outside of minority concentration to provide reasonable and justifiable increases in the replacement housing payment to facilitate such moves.

Section 24.205(c)(2)(ii)(D) Transportation

In order to make it clear that all displaced persons must be offered transportation to inspect replacement housing, we propose to eliminate the specific reference to the elderly and handicapped in the current regulation.

Section 24.206 Eviction for Cause

We propose to revise this section on eviction for cause by moving several of the current provisions to the new definition of eviction for cause in § 24.2(a)(12).

Section 24.207(f) Waiver of Relocation Benefits

We propose to implement a new requirement for ''waiver of relocation benefits.'' This requirement would offer more protection to displaced persons. It would prohibit an Agency from proposing or requesting a displaced person to give up his/her rights or entitlements to relocation assistance.

[3] The National Business Relocation Study (2002) is available for public inspection at the following URL: *http//www.fhwa.dot.gov/realestate/nbrs2002.htm.*

We do not believe that an otherwise eligible person may relieve a governmental body of its statutory obligation to provide Uniform Act assistance by agreeing to waive such assistance. The primary purpose of the Uniform Act is to impose requirements upon Agencies that acquire property and displace persons for Federal or federally-funded projects. The Uniform Act does not grant rights or benefits directly to individuals, rather it imposes duties and obligations upon Federal, State, and local governments.

A statement or agreement by a displaced person who does not wish to receive certain assistance does not free a government Agency from the obligations or requirements imposed by Federal law. In such a case where a displaced person indicates in writing he/she does not want assistance, the Federal or State Agencies must still fully inform the displaced person of all the assistance he/she is entitled to receive.

Section 24.207(g) Entitlement to Payments

We propose to add new paragraph (g) to § 24.207 to clarify that, since relocation payments are considered a form of compensation, they do not constitute Federal financial-assistance, and accordingly, the expenditure of such relocation payments by a displaced person would not trigger further application of the Uniform Act or similarly applicable Federal requirements.

Section 24.208(f)(1) Aliens Not Lawfully Present in the United States

We propose that the references to the Immigration and Naturalization Service (INS) in § 24.208(f)(1) be revised to reflect the fact that the INS has become part of the Department of Homeland Security, and renamed the Bureau of Citizenship and Immigration Services (BCIS).

Subpart D—Payments for Moving and Related Expenses

We propose to substantially reorganize Subpart D. With few exceptions, the basic content would remain the same; however, based upon the comments from our 5 national public listening sessions and comments from other Agencies, this subpart needs to be reorganized for clarity and ease of use. Accordingly, we propose to realign the different moving costs allowance provisions.

We propose to divide Subpart D into six sections. We would transfer a number of criteria from § 24.304, Reestablishment Expense, with its $10,000 limit, to § 24.301, Payment for actual reasonable moving and related expenses, and § 24.303, Payment for related non-residential expenses, where there are no limits and the payment is determined by actual, reasonable and necessary criteria. This would offer greater flexibility in assisting small businesses, farms, and non-profit organizations by removing several relocation costs from inclusion in the $10,000 statutory limit placed on reestablishment expenses. We propose to incorporate existing § 24.303 into proposed § 24.301 with specific criteria clearly spelled out for each type of move.

We propose several new paragraphs that would help clarify the different types of moving costs. In § 24.303 we propose that payment would be provided for certain moving related costs that are not personal property but are essential to the continuance of operation of the business. We propose a new paragraph, § 24.301(e), that would compensate displaced persons who are not forced to move from their residence or business but have personal property that must be moved from the acquired area.

Section 24.301(b)(3), 24.301(c)(iii) and 24.301(d)(2)(ii) Moving Cost Finding

We are proposing to add a provision allowing moving expenses to be determined by a qualified staff person for small uncomplicated personal property moves, commonly called a ''moving cost finding'' or ''a finding.'' The proposed moving cost finding is another option available to the displaced person and the Agency. This option cannot be forced on the displaced person. The proposed moving cost finding would recognize an additional method of moving personal property that is currently being used by many Agencies. The proposed moving cost finding gives the Agency a cost effective and expeditious way to pay for small uncomplicated moves of personal property that are located outside of the primary dwelling or business structure(s). This method would allow the Agency to use qualified staff personnel to estimate the cost of such small-uncomplicated personal property moves and offer the option to the displaced person as a means of a self move. The cost would be capped at $3,000 and not be binding on the displaced person. The displaced person may elect any of the other methods to move. This provides both the Agency and the displaced person a quick cost effective way of making a self-move.

Section 24.301(e) Personal Property Only

We propose a new paragraph that would describe the relocation assistance available to a displaced person for moving personal property from the acquisition area, when the acquisition does not require the relocation of a dwelling (including a mobile home), business, farms or nonprofit organizations. Personal property only moves might include moving such things as farm equipment or livestock where the related buildings are not affected.

Section 24.301(g)(14)(i) Actual Direct Loss of Tangible Personal Property

The Uniform Act provides that a displaced business, farm or non-profit organization is entitled to be compensated for the actual direct loss of tangible personal property. We propose to slightly change the direct loss of tangible personal property provision to eliminate much confusion over the term ''fair market value for continued use.'' Displacing Agencies are reluctant to discuss this benefit with displaced businesses because of the uncertainty over how to determine the payment.

Therefore, we propose to strike the phrase ''fair market value of the item for continued use at the displacement site'' and replace it with ''market value of the item, less the proceeds of the sale'' to clarify the basis for valuing such property. This is consistent with the intent of the Uniform Act, 42 U.S.C. 4622(a)(2).

Section 24.301(g)(14)(ii) Actual Direct Loss of Tangible Personal Property

We propose to add language to this section that would clarify what constitutes the estimated cost of moving when a business elects to discontinue the business or the business has a piece of equipment in storage or non-operational at the acquired site. Confusion comes from whether or not such an estimate, used to compute the payment for actual direct loss of tangible personal property, should include disconnecting and reconnecting costs when the business elects to discontinue operation or elects not to move the equipment to the replacement location. The proposed language would clarify those cases in which reconnecting costs would or would not be included in calculating the estimated cost of moving such equipment. We believe this would be consistent with the intent of the Uniform Act, to provide moving benefits that are actual, reasonable and necessary.

Section 24.301(g)(17) Searching for a Replacement Location

We propose to move this paragraph from § 24.303(a)(13) and increase ''searching expenses'' from $1,000 to $2,500. This amount has been set at $1,000 for 16 years. This proposed change is supported by the FHWA's National Business Relocation Study which recommended increasing the searching expenses. Searching expenses are intended to provide compensation for the actual time and effort to find a replacement site, which also should include reasonable costs to investigate the site. Such costs may include the cost of obtaining permits, attending zoning hearings or negotiating the purchase of a replacement site. We propose to provide additional insight and flexibility in appendix A on the application of searching expenses.

Section 24.301(g)(18) Low Value/High Bulk

We propose to add a paragraph on low value/high bulk property. The current regulation does not address cases where items of personal property owned by a displaced business are more costly to move than they are worth. The proposed change would provide a procedure available when the personal property to be moved is of low value and high bulk and, in the judgment of the displacing Agency, the cost of moving the personal property is disproportionate to its value.

Section 24.301(h)(12) Ineligible Moving and Related Expenses.

For clarity and uniformity, we propose to add refundable security and utility deposits to the list of ineligible moving expenses, § 24.301(h)(12). Since refundable deposits, by the name alone, indicates a return of the investment to the displaced person, we do not consider a refundable deposit a reimbursable expense under the Uniform Act.

Section 24.301(i)(1) and (2) Notification and Inspection

We propose to reorganize and merge this section from four paragraphs into three paragraphs. We do not propose to change the wording. These proposed changes are for clarity and readability. The phrase ''The displaced person must'' is merged into the introductory paragraph to eliminate redundancy and provide clarity.

Section 24.302 Fixed Payment for Moving Expenses-Residential Moves

This section provides that displaced residential owners and tenants may receive a moving expense payment based on the Fixed Residential Moving Cost Schedule [4] approved by the FHWA. Currently, this section provides that the Fixed Residential Moving Cost Schedule payment made to a person with minimal personal possessions in occupancy of a dormitory style room or whose residential move is performed by an Agency at no cost to the individual is limited to $50. This has been the limit since 1987. Since this payment is included in the fixed residential moving cost schedule that is updated periodically, we are proposing to remove the $50 dollar amount from § 24.302, so that the amount and future increases to this payment would be established by the Fixed Residential Moving Cost Schedule. Therefore, each time the schedule is updated, this payment could be updated as well. Agencies must be sure they are using the most current edition of the Fixed Residential Moving Cost Schedule.

Section 24.303 Related Non-Residential Eligible Expenses

As a result of reorganizing Subpart D for convenience and clarity, the relocation of all items of personal property would be included in § 24.301. We are proposing to add a new section, § 24.303, that would provide reimbursement for several costs that are not considered to be personal property but are essential to the continuing operation of the business. These costs are additional expenses, other than for moving personal property, that are not covered by either § 24.301 (personal property) or § 24.304 (real property.) Reimbursement for these expenses would be allowed if they are determined by the Agency to be ''actual, reasonable and necessary.''

Subpart E—Replacement Housing Payments

Section 24.401(e)(4) Incidental Expenses

We are proposing to add professional home inspection to the list of reimbursable incidental expenses. Professional home inspections including electrical systems, plumbing, and HVAC are commonplace and should be added to the list of reimbursable incidental expenses. Most agencies are currently allowing for this expense.

Section 24.401(f) Rental Assistance Payment for 180 Day Homeowner-Occupant

We propose to add language that would allow a rental assistance payment for a 180-day homeowner, who elects to rent, instead of purchase, a replacement dwelling, to exceed $5,250 if the difference in the estimated market rent of the acquired dwelling and the rent for a comparable replacement dwelling support a higher figure. However, the rental supplemental payment would not be allowed to exceed the amount the 180-day owner would have received as a housing (purchase) supplemental payment under proposed § 24.401(b). It was brought to our attention through the national listening sessions and through discussions with other Federal Agencies that this change would be fair and make the displaced person whole at no additional cost to the Agency.

An example of the proposed change would be where an elderly couple who own their home may want to rent rather than purchase another home. Under current procedure, the Agency would compute a replacement housing offer, which for this example is, say, $10,000. The Agency would then compute a rental assistance payment based on the difference in market rent and an available comparable dwelling, which for this example is $7,000. Currently, we would only pay the maximum amount of $5,250. The proposed change would allow the Agency to pay the $7,000 rent supplement or any rent supplement up to what they would have received as a 180-day homeowner ($10,000 in this example) to purchase a replacement dwelling.

We feel this would be a fair and equitable approach, provided the rent supplement does not exceed the amount the 180-day homeowner could receive if he or she elected to purchase a replacement dwelling, rather than to rent one.

Section 24.402(b)(2)(ii) Replacement Housing Payment for 90-Day Occupant

We propose to slightly revise § 24.402(b)(2)(ii) to reflect the statutory requirement that only a low-income displaced person's income shall be taken into consideration when calculating rental assistance payments for a comparable replacement dwelling (42 U.S.C. 4624(a).)

Section 24.402(b)(2) currently uses 30 percent of a person's average monthly gross household income as the criteria for computing replacement housing payments for all eligible displaced tenants. This often results in large payments to existing tenants who are

[4] The Fixed Residential Moving Cost Schedule is available for public inspection at the following URL: *http://www.fhwa.dot.gov//////realestate/fixsch96.htm.*

not low income and who elect to pay more than 30 percent of their monthly gross household income for rental housing. This proposed change would be more reflective of the intent of the Uniform Act in that it assures consideration of income for low-income persons.

The proposal would rely on the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits.[5] The proposed procedures in § 24.402(b)(2)(ii) would continue to use the 30 percent of monthly gross household income, but only for displaced persons who qualify as low income. The base monthly rental would continue to be established solely on the criteria in § 24.402(b)(2).

Section 24.402(c) Downpayment Assistance Payment

For uniformity, we propose to clarify that the replacement housing payment received under § 24.402(b) may be used for a downpayment assistance payment. There is a disparity among Agencies as to the amount that can be used as the downpayment. Most State and Federal Agencies currently allow the full amount of the rent supplement to be applied to the downpayment. Some, on the other hand, follow the guidance in appendix A of this regulation which limits the amount of the downpayment to what would ordinarily be required to obtain conventional loan financing for a decent, safe and sanitary dwelling. No such limits are included in the Uniform Act.

Therefore, we propose to add language that would allow the displaced person to apply the full amount of the rent supplement to the downpayment on a decent, safe and sanitary dwelling. We also propose to slightly modify appendix A to conform to the proposed change.

Section 24.403(a) Determining Cost of Comparable Replacement Dwelling

At the request of several Federal Agencies, we are proposing that Agencies pay, as a part of the reasonable cost of a comparable replacement dwelling, the increased real estate taxes, if any, for displaced 180-day owner occupants displaced as a result of a Federal or federally-funded project. This payment would be based on the difference between the monthly real estate tax on the acquired dwelling, and the monthly real estate tax on the replacement dwelling at the time of purchase but not to exceed the monthly real estate tax on a comparable replacement dwelling.

The benefit would be calculated over a 24-month period. If the displaced person elects to purchase a replacement dwelling where the real estate tax at the time of purchase exceeds that of the comparable replacement dwelling, the increased tax payment, if any, would be limited to the increased monthly tax cost of the comparable replacement dwelling at the time of purchase for 24 months. Should the displaced person elect to purchase a replacement dwelling for less than the cost of a comparable replacement dwelling, the increased tax calculation would be based on the 24 month increase, if any, in the real estate tax of the acquired dwelling and that of the replacement dwelling at the time of purchase.

The rationale for this proposal is that increased real estate taxes represent a real part of the cost of a replacement dwelling and are often a financial burden, particularly for displaced persons with fixed incomes, such as social security. Other situations could arise where a displaced person that purchases a new home may lose his/her grand-fathered real estate tax rate privileges and be subject to a higher real estate tax rate. The proposal would comport with the spirit and purpose of the Uniform Act, which is to treat displaced persons fairly by ensuring that they are able to relocate to a replacement dwelling that is comparable to the dwelling from which they were displaced.

Section 24.403(a)(1) Adjustment of Comparables

We propose to remove the requirement that Agencies adjust the asking price of the comparable replacement dwelling in computing replacement housing payments. Currently, this section bases a displaced person's replacement housing payment on the adjusted difference between the asking price and the selling price of a comparable replacement dwelling as determined by an Agency survey of the area. This requirement, because it can provide a replacement housing payment that is different than the price of a comparable dwelling, is burdensome and forces the displaced person to become a negotiator. This imposes an unnecessary obligation on the displaced person for which he/she probably is not qualified. Removing this requirement also would relieve the Agency of the administrative burden of conducting a market survey to determine the adjusted sales value. The procedure for determining a comparable dwelling would not change, only the current requirement to adjust the price of the selected comparable dwelling would be eliminated. The replacement housing payment would be based on the list price of the comparable dwelling not the adjusted price. Additionally, the reference to the adjustment of comparable replacement dwellings in Appendix A would be removed.

Subpart F—Mobile Homes

Based upon the comments from our five national public listening sessions and comments from the other Agencies, we are proposing to reorganize Subpart F for clarity and ease of use. The basic content would remain unchanged.

We propose to move the required determinations to distinguish a mobile home displacement as either an acquisition of real property or as a move of personal property, to the eligibility paragraph in § 24.502.

Subpart E provides replacement housing payments for an owner occupant or tenant occupant displaced from a conventional dwelling. Subpart F provides similar payments for an owner occupant or tenant that is displaced from an acquired mobile home. However, mobile homes may instead be considered personal property and relocated, not purchased, which in turn may lead to the determination that the occupant is not displaced from his/her dwelling. The proposed reorganization merely consolidates the necessary displacement determination, locating each with the applicable payment eligibility provisions.

We propose to eliminate § 24.505 (Additional rules governing relocation payments to mobile home occupants), and consolidate its provisions into the following paragraphs in which they are more closely affiliated: § 24.501 (Applicability); § 24.502 (currently § 24.503—Replacement housing payment for 180-day mobile homeowner-occupants); and § 24.503 (currently § 24.504 —Replacement housing payment for 90-day mobile home occupants.) Also, as previously discussed in the preamble to Subpart D, we propose to consolidate the moving provisions in § 24.301(g)(8) through (g)(10).

Section 24.502(b) Replacement Housing Payment Computation for a 180-Day Owner Displaced From a Mobile Home

We propose to modify and consolidate § 24.502(b) that provides for payment of actual moving expenses with the criteria for replacement housing payments in those cases where the displacing Agency determines the homeowner is displaced from the

[5] The Annual Survey of Income Limits can be found at the following URL: *http://www.huduser.org/datasets/il.html.*

mobile home for the reasons described in § 24.502(a)(3).

Section 24.502(c) Rental Assistance Payment for a 180-Day Owner-Occupant Displaced From Acquired Leased or Rented Site

We propose to allow the displaced person to claim the computed rental assistance payment if it is applied towards the purchase of a replacement site or added to the eligible purchase price of a conventional dwelling or mobile home. This would eliminate the confusion over combining the two payments (mobile home and mobile home site) in the purchase of a conventional dwelling. The justification being that when buying a conventional dwelling, the land and dwelling are one; whereas, in many instances with mobile homes, the displaced person owns the mobile home but rents the land. Therefore, in the case where the mobile home owner buys a conventional dwelling we would allow the rental supplement on the land (site) to be added to the housing supplement, not to exceed the statutory limit of $22,500 (unless the housing supplement is in Housing of Last Resort). The total payment must be used toward the purchase of replacement decent, safe and sanitary housing.

Distribution Tables

For ease of reference, distribution and derivation tables are provided for the current sections and the proposed sections, as follows:

DISTRIBUTION TABLE

Old section	New section
Subpart A	
24.1	24.1 Text unchanged.
24.1(b)	24.1(b) Revised.
24.2 Heading	24.2 Heading revised.
None	24.2(a) Introductory para. added.
Agency	24.2(a)(1) Paras. revised.
Alien not lawfully present in the United States	24.2(a)(2) Paras. redesignated.
Appraisal	24.2(a)(3) Redesignated.
Business	24.2(a)(4) Redesignated.
Citizen	24.2(a)(5) Redesignated.
Comparable replacement dwelling	24.2(a)(6) Redesignated.
(1) and (2)	24.2(a)(6)(i) and (ii) Redesignated and revised.
(3) through (6)	24.2(a)(6)(iii) through (vi) Redesignated and text unchanged.
(7) and (8)	24.2(a)(6)(vii) and (viii) Redesignated and revised.
None	24.2(a)(6)(ix) Added.
Contribute materially	24.2(a)(7) Redesignated and text unchanged.
Decent, safe, and sanitary dwelling	24.2(a)(8) Redesignated and revised.
(1)	24.2(a)(8) Redesignated and text unchanged.
None	24.2(a)(8) Added.
(2) and (3)	24.2(a)(8)(iii) and (iv) Redesignated and text unchanged.
(4)	24.2(a)(8)(v) and (vi) Redesignated and revised.
(5) and (6)	24.2(a)(8)(vii) and (viii) Redesignated and revised.
Displaced person	24.2(a)(9) All paras. redesignated.
Displaced person (1)(i)	24.2 (a)(9)(i)(A) Revised.
Displaced person (1)(iii)	24.2 (a)(9)(i)(C) Revised.
Displaced person (2)(v)	24.2(a)(9)(ii)(E) Revised.
Displaced person (2)(vii)	24.2(a)(9)(ii)(G) Revised.
Displaced person (2)(xi)	24.2(a)(9)(ii)(K) Revised.
Dwelling	24.2(a)(10) Redesignated.
None	24.2(a)(11) Added.
None	24.2(a)(12) Added.
Farm operation	24.2(a)(13) Redesignated.
Federal financial assistance	24.2(a)(14) Revised.
None	24.2(a)(15) Added.
Initiation of negotiations—Intro. Para	24.2(a)(16)Intro. para. Redesignated and text unchanged.
(1) through(3)	24.2(a)(16)(i) through (iii) Redesignated and text unchanged.
None	24.2(a)(16)(iv) Added.
Lead agency	24.2(a)(17) Redesignated.
None	24.2(a)(18) Added.
Mortgage	24.2(a)(19) Redesignated.
Nonprofit organization	24.2(a)(20) Redesignated.
Notice of intent to acquire or notice of eligibility for relocation assistance.	24.203(d) Revised.
Owner of a dwelling	24.2(a)(21) Revised.
Person	24.2(a)(22) Redesignated.
Program or project	24.2(a)(23) Redesignated.
Salvage value	24.2(a)(24) Revised.
Small business	24.2(a)(25) Redesignated.
State	24.2(a)(26) Redesignated.
Tenant	24.2(a)(27) Redesignated.
Uneconomic remnant	24.2(a)(28) Redesignated.
Uniform Act	24.2(a)(29) Revised.
Unlawful occupancy	24.2(a)(30) Revised.
Utility costs	24.2(a)(31) Redesignated.
Utility facility	24.2(a)(32) Redesignated.

DISTRIBUTION TABLE—Continued

Old section	New section
Utility relocation	24.2(a)(33) Redesignated.
None	24.2(a)(34) Added.
None	24.2(b) Added.
24.3	24.3 Revised.
24.4(a)(1) and (2)	24.4(a)(1) and (2) Text unchanged.
None	24.4(a)(3) Added.
24.4(a)(3)	24.4(a)(4) Revised.
24.4(b) and (c)	24.4(b) and (c) Text unchanged.
24.5 through 24.7	24.5 through 24.7 Text unchanged.
24.8 (a) through (g)	24.8(a) through (g) Text unchanged.
24.8(h)	24.8(h) Revised.
24.8(i)	24.8(i) Revised.
24.8(j) through (l)	24.8(j) through (l) Text unchanged.
24.8(m)	24.8(m) Removed.
24.8(n)	24.8(m) Redesignated.
None	24.8(n) Added
24.9(a) and (b)	24.9(a) and (b) Text unchanged.
24.9(c)	24.9(c) Revised.
24.10(a) through (f)	24.10(a) through (f) Text unchanged.
24.10(g) and (h)	24.10(g) and (h) Revised.
Subpart B	
24.101 Heading.	24.101 Heading Text unchanged.
24.101(a)	24.101(a) Revised.
24.101(a) Second para.	24.101(b) Redesignated and revised.
24.101(a)(1)	24.101(b)(1) Redesignated and revised.
24.101(a)(1)(i)	24.101(b)(1)(i) Redesignated and revised.
24.101(a)(1)(ii) and (iii)	24.101(b)(1)(ii) and (iii) Redesignated.
24.101(a)(1)(iv)	24.101(b)(1)(iv) Redesignated and revised.
24.101(a)(2)	24.101(b)(2) Redesignated.
24.101(a)(2)(i)	24.101(b)(2)(i) Redesignated.
24.101(a)(2)(ii)	24.101(b)(2)(ii) Redesignated and revised.
24.101(a)(3) and (4)	24.101(b)(3) and (4) Redesignated.
24.101(a)(5)	24.101(b)(5) Redesignated and revised.
24.101(b)	24.101(c) Redesignated and revised.
24.101(c)	24.101(d) Redesignated and revised.
24.102(a)	24.102(a) Text unchanged.
24.102(b)	24.102(b) Revised.
24.102(c) Intro. para.	24.102(c) Intro. para. Text unchanged.
24.102(c)(1) through (e) Intro. para.	24.102(c)(1) through (e) Intro para. Revised.
24.102(e)(1) and (2)	24.102(e)(1) and (2) Text unchanged.
24.102(e)(3)	24.102(e)(3) Revised.
24.102(f)	24.102(f) Revised.
24.102(g) and (h)	24.102(g) and (h) Text unchanged.
24.102(i) through (k)	24.102(i) through (k) Revised.
24.102 (l)	24.102 (l) Text unchanged.
24.102(m)	24.102(m) Revised.
None	24.102(n) Added.
24.103 Heading	24.103 Heading Text unchanged.
24.103(a)	24.103(a) Revised.
24.103(a)(1)	Appendix 24.103(a).
24.103(a)(2)	24.101(a)(1) Redesignated and text unchanged.
24.103(a)(3)	24.103(a)(2) Redesignated and revised.
24.103(a)(4) through (6)	24.103(a)(3) through (5) Redesignated.and text unchanged.
24.103(b) and (c)	24.103(b) and (c) Revised.
24.103(d) Heading and (d)(1)	24.103(d) Heading and (d)(1) Revised.
24.103(d)(2)	24.103(d)(2) Text unchanged.
24.103(e)	24.102(n) Redesignated and revised.
24.104 Introductory para.	24.104 Introductory para. Text unchanged.
24.104(a), (b) and (c)	24.104(a), (b) and (c) Revised.
24.105(a) and (b)	24.105(a) and (b) Text unchanged.
24.105(c)	24.105(c) Revised.
24.105(d) Introductory para	24.105(d) Introductory para. Revised.
24.105(d)(1) through 24.105(e)	24.105(d)(1) through 24.105(e) Text unchanged.
24.106(a)	24.106(a) Text unchanged.
24.106(b)	24.106(b) Revised.
24.107 through 24.108	24.107 through 24.108 Text unchanged.
Subpart C	
24.201	24.201 Text unchanged.

DISTRIBUTION TABLE—Continued

Old section	New section
24.202	24.202 Revised.
24.203 (a) and (a)(1)	24.203(a) and (a)(1) Text unchanged
24.203(a)(2) through (5)	24.203(a)(2)–(5) Revised.
24.203(b) and (c)	24.203(b) and (c) Text unchanged.
None	24.203(d) Added.
24.204(a)	24.204(a) Revised.
24.204(a)(1) through (c)	24.204(a)(1) through (c) Text unchanged.
24.205(a)	24.205(a) Revised.
24.205(a)(1) and (2)	24.205(a)(1) and (2) Revised.
24.205(a)(3)	24.205(a)(3) Text unchanged.
None	24.205(a)(4) Added.
24.205(a)(4)	24.205(a)(5) Redesignated.
24.205(b) through 24.205(c)(2)	24.205(b) through 24.205(c)(2) Text unchanged.
24.205(c)(2)(i)	24.205(c)(2)(i) Revised.
None	24.205(c)(2)(i)(A) through (F) Added.
24.205(c)(2)(ii) and (c)(2)(ii)(A)	24.205(c)(2)(ii) and (c)(2)(ii)(A) Text unchanged.
24.205(c)(2)(ii)(B) through (E)	24.205(c)(2)(ii)(B) through (E) Revised.
None	24.205(c)(2)(ii)(F) Added.
24.205(c)(2)(iii) through (v)	24.205(c)(2)(iii) through (v) Text unchanged.
24.205(c)(2)(vi)	24.205(e) Redesignated and text unchanged.
None	24.205(c)(2)(vi) Added.
24.205(d)	24.205(d) Text unchanged.
24.206 Introductory paragraph	24.206 Revised.
24.206(a) and (b)	24.2(a)(12)(i) and (ii) Redesignated and revised.
24.206(c)	24.206 Redesignated and revised.
24.207(a) through (d)(1)	24.207(a) through (d)(1) Text unchanged.
24.207(d)(2)	24.207(d)(2) Revised.
24.207(e)	24.403(a)(5) Redesignated.
24.207(f)	24.403(a)(6) Redesignated
24.207(g)	24.207(e) Redesignated.
None	24.207(f) and (g) Added.
24.208 Intro. para.	24.208 Intro. para. Text unchanged.
24.208(a) through (f) Intro. para	24.208(a) through (f) Intro. para. Text unchanged.
24.208(f)(1)	24.208(f)(1) Revised.
24.208(f)(2) through 24.209	24.208(f)(2) through 24.209 Text unchanged.
Subpart D	
24.301 Heading	24.301 Heading Revised.
24.301 Introductory paragraph	24.301(a) Redesignated and revised.
None	24.301(a) Added.
24.301(a) and (b)	24.301(g)(1) and (g)(2) Redesignated and text unchanged.
None	24.301(b) Added.
24.301(c)	24.301(g)(3) Redesignated
None	24.301(c) Added.
24.301(d) through (f)	24.301(g)(4) through (g)(6) Redesignated.
None	24.301(d) through (f) Added.
24.301(g)	24.301(g)(7) Revised.
None	24.301(g)(18) Added.
None	24.301(h) through (j) Added.
24.302	24.302 Revised.
24.303	24.303 Revised.
24.303(a) through (a)(14)	24.301(g)(1) through (g)(17) Redesignated and revised.
24.303(b) through (b)(3)	24.301(i)(1) and (2) Redesignated and revised.
24.303(c)	24.301(d) Redesignated and revised.
24.303(d)	24.301(j) Redesignated and text unchanged.
24.303(e) through (e)(2)	24.301(f) through (f)(2) Redesignated and text unchanged.
24.304 Heading	24.304 Heading Text unchanged.
24.304 Introductory para.	24.304 Introductory para. Revised.
24.304(a) through (a)(3)	24.304(a) through (a)(3) Text unchanged.
24.304(a)(4)	24.303(a) Redesignated.
24.304(a)(5)	24.304(a)(4) Redesignated.
24.304(a)(6)	24.301(g)(11) Redesignated.
24.304(a)(7)	24.303(b) Redesignated and revised.
24.304(a)(8)	24.304(a)(5) Redesignated.
24.304(a)(9)	24.303(b) Redesignated and revised.
24.304(a)(10)	24.304(a)(6) Redesignated.
24.304(a)(11)	24.303(c) Redesignated and revised.
24.304(a)(12)	24.304(a)(7) Redesignated.
24.304(b)(1) through (3)	24.304(b)(1) through (3) Text unchanged.
24.304(b)(4)	24.304(b)(4) Revised.
24.305 section heading	24.305 Removed.

DISTRIBUTION TABLE—Continued

Old section	New section
24.305(a) through (k)	24.301(h) through (h)(11) Redesignated and revised.
None	24.305(h)(12) Added.
24.306 section heading	24.305 Redesignated.
24.306(a)	24.305(a) Redesignated and revised.
24.306(a)(1) through (a)(5)	24.305(a)(1) through (a)(5) Redesignated and text unchanged.
24.306(a)(6)	24.305(a)(6) Revised.
24.306(b)	24.305(b) Revised.
24.306(c)	24.305(c) Revised.
24.306(c)(1) through (d)	24.305(c)(1) through (d) Redesignated.
24.306(e)	24.305(e) Revised.
24.307 section heading	24.306 Redesignated.
24.307(a) through (b)	24.306(a) through (b) Redesignated.
24.307(c)	24.306(c) Revised.
Subpart E	
24.401 through 24.401(b)	24.401 through 24.401(b) Text unchanged.
24.401(c)	24.401(c) Text unchanged.
24.401(c)(1)	24.401(c)(1) Revised.
24.401(c)(1)(i) and (ii)	24.401(c)(1)(i) and (ii) Text unchanged.
24.401(c)(2)	24.403(a)(7) Redesignated and revised.
24.401(c)(3)	24.403(g) Redesignated and revised.
24.401(c)(4)	24.401(c)(2) Redesignated and text unchanged.
24.401(c)(4)(i)	24.401(c)(2)(i) Redesignated and text unchanged.
24.401(c)(4)(ii) and (iii)	24.401(c)(2)(ii) and (iii) Redesignated and revised.
24.401(c)(4)(iv)	24.401(c)(2)(iv) Redesignated and text unchanged.
24.401(d) through 24.401(e)(3)	24.401(d) through 24.401(e)(3) Text unchanged.
24.401(e)(4)	24.401(e)(4) Revised.
24.401(e)(5) through (e)(3)	24.401(e)(5) through (e)(9) Text unchanged.
24.401(f)	24.401(f) Revised.
24.402(a) through (b)(2)(i)	24.402(a) through (b)(2)(i) Text unchanged.
24.402(b)(2)(ii)	24.402(b)(2)(ii) Revised.
24.402(b)(2)(iii) and (b)(3)	24.402(b)(2)(iii) and (b)(3) Text unchanged.
24.402(c)(1)	24.402(c)(1) Revised.
24.402(c)(2)	24.402(c)(2) Text unchanged.
24.403 Heading	24.403 Text unchanged.
24.403(a) and (a)(1)	24.403(a) and (a)(1) Revised.
24.403(a)(2) through (4)	24.403(a)(2) through (4) Text unchanged.
None	24.403(a)(5) through (7) Added.
24.403(b)	24.403(b) Revised.
24.403(c) through (f)(1)	24.403(c) through (f)(1) Text unchanged.
24.403(f)(2)	24.403(f)(2) Revised.
24.403(f)(3)	24.403(f)(3) Text unchanged.
None	24.403(g) Added.
24.404(a) through 404(a)(2)(ii)	24.404(a) through 404(a)(2)(ii) Text unchanged.
24.404(a)(2)(iii)	24.404(a)(2)(iii) Revised.
24.404(b) through 404(c)(1)	24.404(b) through 404(c)(1) Text unchanged.
24.404(b) through 404(c)(1)(i)	24.404(b) through 404(c)(1)(i) Revised.
24.404(c)(ii) through 404(c)(1)(vi)	24.404(c)(ii) through 404(c)(1)(vi) text unchanged.
24.404(c)(1)(vii)	24.404(c)(1)(vii) Revised.
24.404(c)(1)(viii)	24.404(c)(1)(viii) Text unchanged.
24.404(c)(2)	24.404(c)(2) Revised.
24.404(c)(3)	24.404(c)(3) Text unchanged.
Subpart F	
24.501 Heading	24.501 Heading Text unchanged.
24.501 Intro. para.	24.501(a) Revised.
None	24.501(b) Added.
24.502(b) through (b)(3)	24.301(f)(8) through (f)(10) Redesignated and revised.
24.503 section heading	24.502 Redesignated and revised.
24.503(a)	24.502(a) Redesignated and revised.
24.503(a)(1)	24.502(a)(1) Revised.
None	24.502(a)(1)(i) through (iii) Added.
24.503(a)(2) through (3)	24.502(a)(2) through (3) Redesignated and text unchanged.
24.503(a)(3)	24.502(a)(3) Revised.
24.503(a)(3)(i) through (iv)	24.502(a)(3)(i) through (iv) Redesignated and text unchanged.
None	24.502(b)(1) Added.
24.503(b)	24.502(b)(2) Revised.
None	24.502 (c) through (e) Added.
24.504 Heading	24.503 Heading Redesignated and text unchanged.
24.504 Intro. para.	24.503 Intro. para. Redesignated.

DISTRIBUTION TABLE—Continued

Old section	New section
24.504(a) and (b)	24.503(a) and (b) Redesignated and text unchanged.
24.504(c)	24.503(c) Redesignated and revised.
24.505(a) through (e)	24.505(a) through (e) Removed.
24.505(e)	24.501(b) Redesignated.
24.601	24.601 Text unchanged.
24.602	24.602 Revised.
24.603	24.603 Text unchanged.

DERIVATION TABLE

New section	Old section
24.1	24.1.
24.2(a)	None.
24.2(a)(1)	24.2 Agency.
24.2(a)(2)	24.2 Alien not lawfully present in the United States.
24.2(a)(3)	24.2 Appraisal.
24.2(a)(4)	24.2 Business.
24.2(a)(5)	24.2 Citizen.
24.2(a)(6)	24.2 Comparable replacement dwelling.
24.2(a)(6)(ix)	None.
24.2(a)(7)	24.2 Contribute materially.
24.2(a)(8)	24.2 Decent, safe, and sanitary dwelling.
24.2(a)(8)(i)	24.2 Decent, safe, and sanitary dwelling, Para. (1).
24.2(a)(8)(ii)	None.
24.2(a)(8)(iii)	24.2 Decent, safe, and sanitary dwelling, Para. (2).
24.2(a)(8)(iv)	24.2 Decent, safe, and sanitary dwelling, Para. (3).
24.2(a)(8)(v)	24.2 Decent, safe, and sanitary dwelling, Para. (4), First sentence.
24.2(a)(8)(vi)	24.2 Decent, safe, and sanitary dwelling, Para. (4), All text after first sentence.
24.2(a)(8)(vii) and (viii)	24.2 Decent, safe, and sanitary dwelling, Paras. (5) and (6).
24.2(a)(9)	24.2 Displaced person.
24.2(a)(10)	24.2 Dwelling.
24.2(a)(11)	None.
24.2(a)(12)	24.206 Intro. para.
24.2(a)(12)(i) and (ii)	24.206(a) and (b).
24.2(a)(13)	24.2 Farm operation.
24.2(a)(14)	24.2 Federal financial assistance.
24.2(a)(15)	None.
24.2(a)(16)	24.2 Initiation of negotiations.
24.2(a)(17)	24.2 Lead Agency.
24.2(a)(18)	None.
24.2(a)(19)	24.2 Mortgage.
24.2(a)(20)	24.2 Nonprofit organization.
24.2(a)(21)	24.2 Owner of a dwelling.
24.2(a)(22)	24.2 Person.
24.2(a)(23)	24.2 Program or project.
24.2(a)(24)	24.2 Salvage value.
24.2(a)(25)	24.2 Small business.
24.2(a)(26)	24.2 State.
24.2(a)(27)	24.2 Tenant.
24.2(a)(28)	24.2 Uneconomical remnant.
24.2(a)(29)	24.2 Uniform Act.
24.2(a)(30)	24.2 Unlawful occupancy.
24.2(a)(31)	24.2 Utility costs.
24.2(a)(32)	24.2 Utility facility.
24.2(a)(33)	24.2 Utility relocation.
24.2(a)(34)	None.
24.2(b)	None.
24.8(m)	24.8(n).
24.8(n)	None.
24.101(b)	24.101(a) 2nd para.
24.101(b)(1)	24.101(a)(1).
24.101(b)(1)(i)	24.101(a)(1)(i).
24.101(b)(1)(ii)	24.101(a)(1)(ii).
24.101(b)(1)(iii)	24.101(a)(1)(iii).
24.101(b)(1)(iv)	24.101(a)(1)(iv).
24.101(b)(2)	24.101(a)(2).
24.101(b)(2)(i)	24.101(a)(2)(i).
24.101(b)(2)(ii)	24.101(a)(2)(ii).
24.101(b)(3)	24.101(a)(3).

DERIVATION TABLE—Continued

New section	Old section
24.101(b)(4)	24.101(a)(4).
24.101(b)(5)	24.101(a)(5).
24.101(c)	24.101(b).
24.101(d)	24.101(c).
24.102(n)	24.103(e).
24.103(a)(1)	24.103(a)(2).
24.103(a)(2)	24.103(a)(3).
24.103(a)(3)	24.103(a)(4).
24.103(a)(4)	24.103(a)(5).
24.103(a)(5)	24.103(a)(6).
24.203(d)	24.2 Notice of intent to acquire.
24.205(a)(4)	None.
24.205(a)(5)	24.205(a)(4).
24.205(c)(2)(i)(A) through (F)	None.
24.205(c)(2)(ii)(F)	None.
24.205(c)(2)(vi)	Added.
24.205(e)	24.205(c)(2)(vi) Redesignated and text unchanged.
24.206	24.206 Intro. para. and 24.206(c).
24.207(e)	24.207(g)
24.207(f) and (g)	Added.
24.301(a)	24.303(a) and 24.502(b).
24.301(a)(1)	24.502(a).
24.301(b)	None.
24.301(b)(1) and (2)	24.301 Intro. para.
24.301(b)(1)	24.303(a).
24.301(b)(2)(i)	24.302 First sentence.
24.301(b)(3)	None.
24.301(c)	None.
24.301(d)	24.303(a) and (c).
24.301(d)(1) and (2)	24.303(c).
24.301(f)	24.303(e).
24.301(f)(8) through (10)	24.502(b) through (b)(3)
24.301(g)(1)	24.301(a) and 24.303(a)(1).
24.301(g)(2)	24.301(b) and 24.303(a)(2).
24.301(g)(3)	24.301(a) and 24.303(a)(3).
24.301(g)(4)	24.301(d) and 24.303(a)(4).
24.301(g)(5)	24.301(e) and 24.303(a)(5).
24.301(g)(6)	24.301(f) and 24.303(a)(7).
24.301(g)(7)	24.301(g) and 24.303(a)(14).
24.301(g)(8)	24.502(b)(1).
24.301(g)(9)	24.502(b)(2).
24.301(g)(10)	24.502(b)(3).
24.301(g)(11)	24.303(a)(6).
24.301(g)(12)	24.303(a)(8).
24.301(g)(12)(i) through (iii)	24.303(a)(8)(i) through (iii).
24.301(g)(13) through (17)	24.303(a)(9) through (13).
24.301(g)(18)	None.
24.301(h)(1) through (11)	24.305(a) through (k).
24.301(i)	24.303(b).
24.301(j)	24.303(d).
24.303 Intro. para.	23.303 Intro. para.
24.303(a)	24.304(a)(4).
24.303(b)	24.304(a)(7) and (a)(9).
24.303(c)	24.304(a)(11).
24.304(a)(4)	24.304(a)(5).
24.304(a)(5)	24.304(a)(8).
24.304(a)(6)	24.304(a)(10).
24.304(a)(7)	24.304(a)(12).
24.304(b)	24.305(b).
24.305 and 24.305(a) and (b)	24.306 and 24.306(a) and (b).
24.305(b)(1) through (4)	24.306(b)(1) through (4).
24.305(c) through (e)	24.306(c) through (e).
24.306	24.307.
24.401(c)(2)	24.401(c)(4).
24.403(a)(5)	24.207(e).
24.403(a)(6)	24.207(f).
24.403(a)(7)	24.401(c)(2).
24.403(g)	24.401(c)(3).
24.501(a)	24.501 Intro. para.
24.501(b)	24.505(e).
24.502 Heading	24.503.
24.502(a)	24.503(a)(1).

DERIVATION TABLE—Continued

New section	Old section
24.502(a)(1)	24.503(a)(1).
24.502(a)(2) and (3)	24.503(a)(2) and (3).
24.502(b)	24.503(b).
24.502(b)(1)	None.
24.502(b)(2)	24.503(a)(3) and 503(b).
24.502(c)	24.505(a).
24.502(d)	24.503(a)(3)(iii).
24.502(e)	24.505(b)(2).
24.503	24.504.

Public Meetings

Public meetings will be held on January 15, 22, and 28, 2004. The January 15, 2004 meeting will be held in Washington, DC, United States Department of Transportation, 400 7th Street SW., Room 8236; the January 22, 2004 meeting will be held in Lakewood, CO, Zang Building, Conference Room 360, 555 Zang Street. The January 28, 2004 meeting will be held in Atlanta, GA, Atlanta Federal Center, Conference Room B, 61 Forsyth Street, SW., Atlanta, Georgia. Each meeting will be held from 10 am to 2 pm.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that this action would not be a significant regulatory action within the meaning of Executive Order 12866, nor would it be significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal.

This action proposes to update and streamline the Uniform Act regulation and does not propose any new initiatives. We have proposed only nominal adjustments to enhance services and payments to persons displaced by Federal and federally-assisted real property acquisitions. The costs of the increased benefits will continue to be funded through Federal and federally-assisted project funds. These proposed changes would assist the 18 Federal Agencies that acquire real property and several of these Agencies provided input in developing these proposals.

These proposed changes would not adversely affect, in a material way, any sector of the economy. These changes would assist Agencies in developing their programs that acquire real property by providing increased assistance, especially for businesses, farms and non-profit organizations. None of the proposed changes would materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the FHWA has evaluated the effects of this proposed action on small entities and has determined that the proposed action would not have a significant economic impact on a substantial number of small entities.

This action proposes to update the governmentwide regulation that provides assistance for persons, including small businesses, displaced by government acquisition of real property. One of the reasons for proposing the update is to increase assistance for displaced small businesses. We anticipate this proposal would have a positive impact on those relatively few small businesses that are affected by government acquisition of real property. Financial impacts on local governments are mitigated by the fact that any increased costs would accrue only on federally-assisted programs, which would include participation of Federal funds. For these reasons, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The proposed updates are applicable only on Federal and federally-assisted programs. This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this proposed action would not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. The FHWA has also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations.

Most of the data FHWA proposes to collect is currently required under the

existing regulation. All information the FHWA proposes to collect for reporting purposes is statistical data from the 18 Federal Agencies engaged in land acquisition and displacement activities. The PRA was enacted to minimize paperwork burdens and recordkeeping requirements that the Federal government imposes on non-Federal entities. All the information this proposed rule proposes to collect comes from the 18 Federal Agencies that acquire real property for Federal and federally-assisted projects, and the information is generally already collected by those Agencies for their own internal purposes. Therefore, the FHWA has determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The FHWA has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this proposed action would not have any effect on the quality of the environment.

Executive Order 12630 (Taking of Private Property)

This proposed action would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and Interface with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposal under Executive Order 13175, dated November 6, 2000, and believes that the proposed action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 24

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements and Transportation.

Issued on: December 5, 2003.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to revise title 49 Code of Federal Regulations part 24, as set forth below:

PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS

Subpart A—General

Sec.

24.1 Purpose.
24.2 Definitions and acronyms.
24.3 No duplication of payments.
24.4 Assurances, monitoring and corrective action.
24.5 Manner of notices.
24.6 Administration of jointly-funded projects.
24.7 Federal Agency waiver of regulations.
24.8 Compliance with other laws and regulations.
24.9 Recordkeeping and reports.
24.10 Appeals.

Subpart B—Real Property Acquisition

24.101 Applicability of acquisition requirements.
24.102 Basic acquisition policies.
24.103 Criteria for appraisals.
24.104 Review of appraisals.
24.105 Acquisition of tenant-owned improvements.
24.106 Expenses incidental to transfer of title to the Agency.
24.107 Certain litigation expenses.
24.108 Donations.

Subpart C—General Relocation Requirements

24.201 Purpose.
24.202 Applicability.
24.203 Relocation notices.
24.204 Availability of comparable replacement dwelling before displacement.
24.205 Relocation planning, advisory services, and coordination.
24.206 Eviction for cause.
24.207 General requirements—claims for relocation payments.
24.208 Aliens not lawfully present in the United States.
24.209 Relocation payments not considered as income.

Subpart D—Payments for Moving and Related Expenses

24.301 Payment for actual reasonable moving and related expenses.
24.302 Fixed payment for moving expenses—residential moves.
24.303 Related non-residential eligible expenses.
24.304 Reestablishment expenses—non-residential moves.
24.305 Fixed payment for moving expenses—non-residential moves.
24.306 Discretionary utility relocation payments.

Subpart E—Replacement Housing Payments

24.401 Replacement housing payment for 180-day homeowner-occupants.
24.402 Replacement housing payment for 90-day occupants.
24.403 Additional rules governing replacement housing payments.
24.404 Replacement housing of last resort.

Subpart F—Mobile Homes

24.501 Applicability.
24.502 Replacement housing payment for 180-day mobile homeowner displaced from a mobile home, and/or from the acquired mobile home site.
24.503 Replacement housing payment for 90-day mobile home occupants.

Subpart G—Certification

24.601 Purpose.
24.602 Certification application.
24.603 Monitoring and corrective action.
Appendix A to Part 24—Additional Information
Appendix B to Part 24—Statistical Report Form

Authority: 42 U.S.C. 4601 *et seq.*; 49 CFR 1.48(cc).

Subpart A—General

§ 24.1 Purpose.

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs;

(b) To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

(c) To ensure that Agencies implement these regulations in a manner that is efficient and cost effective.

§ 24.2 Definitions and acronyms.

(a) *Definitions.* Unless otherwise noted, the following terms used in this part shall be understood as defined in this section:

(1) *Agency.* The term *Agency* means the Federal Agency, State, State Agency, or person that acquires real property or displaces a person.

(i) *Acquiring Agency.* The term *acquiring Agency* means a State Agency, as defined in paragraph (a)(1)(iv) of this section, which has the authority to acquire property by eminent domain under State law, and a State Agency or person which does not have such authority.

(ii) *Displacing Agency.* The term *displacing Agency* means any Federal Agency carrying out a program or project, and any State, State Agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(iii) *Federal Agency.* The term *Federal Agency* means any department, Agency, or instrumentality in the executive branch of the Government, any wholly owned government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(iv) *State Agency.* The term *State Agency* means any department, Agency or instrumentality of a State or of a political subdivision of a State, any department, Agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

(2) *Alien not lawfully present in the United States.* The phrase ''alien not lawfully present in the United States'' means an alien who is not ''lawfully present'' in the United States as defined in 8 CFR 103.12 and includes:

(i) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) and whose stay in the United States has not been authorized by the United States Attorney General, and

(ii) An alien who is present in the United States after the expiration of the period of stay authorized by the United States Attorney General or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.

(3) *Appraisal.* The term *appraisal* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(4) *Business.* The term *business* means any lawful activity, except a farm operation, that is conducted:

(i) Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property;

(ii) Primarily for the sale of services to the public;

(iii) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(iv) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(5) *Citizen.* The term *citizen* for purposes of this part, includes both citizens of the United States and noncitizen nationals.

(6) *Comparable replacement dwelling.* The term *comparable replacement dwelling* means a dwelling which is:

(i) Decent, safe and sanitary as described in paragraph (a)(8) of this section;

(ii) Functionally equivalent to the displacement dwelling. The term *functionally equivalent* means that it performs the same function, and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling. (See appendix A to this part);

(iii) Adequate in size to accommodate the occupants;

(iv) In an area not subject to unreasonable adverse environmental conditions;

(v) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

(vi) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also § 24.403(a)(2));

(vii) Currently available to the displaced person on the private market except as provided in paragraph (a)(6)(ix) of this section. (*See* appendix A, section 24.2(a)(6)); and

(viii) Within the financial means of the displaced person eligible for a replacement housing payment. This means that after receipt of all acquisition and relocation payments under this regulation (including any amount deducted because of rent owed the Agency), the price or rent (including utilities), as appropriate, of the replacement dwelling offered as a comparable does not exceed the price or rent (including utilities) of the dwelling from which displaced.

(ix) For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance. In such cases any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply. (*See* appendix A, section 24.2(a)(6)).

(7) *Contribute materially.* The term *contribute materially* means that during

the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(i) Had average annual gross receipts of at least $5,000; or

(ii) Had average annual net earnings of at least $1,000; or

(iii) Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.

(iv) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

(8) *Decent, safe, and sanitary dwelling.* The term *decent, safe, and sanitary dwelling* means a dwelling which meets local housing and occupancy codes. However, any of the following standards which are not met by the local code shall apply unless waived for good cause by the Federal Agency funding the project. The dwelling shall:

(i) Be structurally sound, weathertight, and in good repair;

(ii) Have no deteriorated paint (or no deteriorated lead-based paint if paint testing is conducted) and have no dust-lead hazards, as these terms are defined at 24 CFR 35.110, unless the displaced person is either elderly or disabled and no child under 6 years of age will reside or be expected to reside in the unit, or the replacement dwelling unit is a zero-bedroom dwelling. A unit built on or after January 1, 1978, shall meet this requirement;

(iii) Contain a safe electrical wiring system adequate for lighting and other devices;

(iv) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system;

(v) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes or the policies of the displacing Agency. In addition, the displacing Agency shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes or the policies of such Agencies;

(vi) There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator;

(vii) Contains unobstructed egress to safe, open space at ground level; and

(viii) For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person. (*See* appendix A, section 24.2(a)(8).)

(9) *Displaced person*—(i) *General.* The term *displaced person* means, except as provided in paragraph (a)(9)(ii) of this section, any person who moves from the real property or moves his or her personal property from the real property. (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described at § 24.401(a) and § 24.402(a)):

(A) As a direct result of a written notice of intent to acquire (*see* section 24.203(d)), the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project;

(B) As a direct result of rehabilitation or demolition for a project; or

(C) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under § 24.205(c), and moving expenses under § 24.301, § 24.302 or § 24.303.

(ii) *Persons not displaced.* The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

(A) A person who moves before the initiation of negotiations (see section 24.403(d)), unless the Agency determines that the person was displaced as a direct result of the program or project;

(B) A person who initially enters into occupancy of the property after the date of its acquisition for the project;

(C) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

(D) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal Agency funding the project. (*See* appendix A, section 24.2(a)(9)(ii)(D));

(E) An owner-occupant who moves as a result of an acquisition of real property as described in § 24.101(b)(1) through (5), or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or federally-assisted project is subject to this part.);

(F) A person whom the Agency determines is not displaced as a direct result of a partial acquisition;

(G) A person who, after receiving a notice of relocation eligibility (described at § 24.203(b)), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;

(H) An owner-occupant who conveys his or her property, as described in § 24.101(b)(1) through (5), after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part; or

(I) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency;

(J) An owner who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of the Interior under Public Law 93–477, Appropriations for National Park System, or Public Law 93–303, Land and Water Conservation Fund, except that such owner remains a displaced person for purposes of subpart D of this part;

(K) A person who is determined to be in unlawful occupancy prior to or after the initiation of negotiations, or a person who has been evicted for cause, under applicable law, as provided for in § 24.206. However, advisory assistance may be provided to unlawful occupants at the option of the Agency in order to facilitate the project; or

(L) A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with § 24.208.

(10) *Dwelling.* The term *dwelling* means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

(11) *Dwelling site.* The term *dwelling site* means a typical site upon which a dwelling is located.

(12) *Eviction for cause.* The term *eviction for cause* means an eviction in conformance with applicable State and local requirements, provided:

(i) The eviction notice was received before or after the initiations of negotiations and as a result of that notice is later evicted; or

(ii) Eviction was for serious or repeated violations of material terms of the lease or occupancy agreement.

(13) *Farm operation.* The term *farm operation* means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(14) *Federal financial assistance.* The term *Federal financial assistance* means a grant, loan, lease payments or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(15) *Household income.* The term *household income* means total gross income received for a 12 month period from all sources (earned and unearned) including, but not limited to wages, salary, child support, alimony, unemployment benefits, workers compensation social security, or the net income from a business. It does not include income received or earned by dependent children and full time students under 18 years of age. (See appendix A, section 24.2(a)(15) for examples of exclusions to income.)

(16) *Initiation of negotiations.* Unless a different action is specified in applicable Federal program regulations, the term *initiation of negotiations* means the following:

(i) Whenever the displacement results from the acquisition of the real property by a Federal Agency or State Agency, the *initiation of negotiations* means the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal Agency or State Agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the *initiation of negotiations* means the actual move of the person from the property.

(ii) Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal Agency or a State Agency), the *initiation of negotiations* means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

(iii) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Public Law 96–510, or Superfund) the *initiation of negotiations* means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

(iv) In the case of permanent relocation of a tenant as a result of an acquisition of real property described in § 24.101(b)(1) through (5), the initiation of negotiations means acceptance of the Agency's offer to purchase the real property.

(17) *Lead Agency.* The term *Lead Agency* means the Department of Transportation acting through the Federal Highway Administration.

(18) *Mobile home.* The term *mobile home* includes manufactured homes and recreational vehicles. (*See* appendix A, section 24.2(a)(18).)

(19) *Mortgage.* The term *mortgage* means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(20) *Nonprofit organization.* The term *nonprofit organization* means an organization that is incorporated under the applicable laws of a State as a non-profit organization, and exempt from paying Federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

(21) *Owner of a dwelling.* The term owner of a dwelling means a person who is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property;

(i) Fee title, a life estate, a land contract, a 99 year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

(ii) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(iii) A contract to purchase any of the interests or estates described in § 24.2(a)(1)(i) or (ii) of this section, or

(iv) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(22) *Person.* The term *person* means any individual, family, partnership, corporation, or association.

(23) *Program or project.* The phrase *program or project* means any activity or series of activities undertaken by a Federal Agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding Agency guidelines.

(24) *Salvage value.* The term *salvage value* means the probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense (*i.e.*, not eligible for relocation assistance). This includes items for re-use as well as items with components that can be re-used or recycled when there is no reasonable prospect for sale except on this basis.

(25) *Small business.* A *small business* is a business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of § 24.304.

(26) *State.* Any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or a political subdivision of any of these jurisdictions.

(27) *Tenant.* The term *tenant* means a person who has the temporary use and occupancy of real property owned by another.

(28) *Uneconomic remnant.* The term *uneconomic remnant* means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the Agency has determined has little or no value or utility to the owner.

(29) *Uniform Act.* The term *Uniform Act* means the Uniform Relocation Assistance and Real Property

Acquisition Policies Act of 1970 (Public Law 91–646, 84 Stat. 1894; 42 U.S.C. 4601 *et seq.*), and amendments thereto.

(30) *Unlawful occupant.* A person who occupies without property right, title or payment of rent or a person legally evicted, with no legal rights to occupy a property under State law. An Agency, at its discretion, may consider such person to be in lawful occupancy.

(31) *Utility costs.* The term *utility costs* means expenses for heat, lights, water and sewer.

(32) *Utility facility.* The term *utility facility* means any electric, gas, water, steam power, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

(33) *Utility relocation.* The term *utility relocation* means the adjustment of a utility facility required by the program or project undertaken by the displacing Agency. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on a new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

(34) *Waiver valuation.* The term *waiver valuation* means the valuation process used and the product produced when the Agency determines that an appraisal is not required, pursuant to § 24.102(c)(2) appraisal waiver provisions.

(b) *Acronyms.* The following acronyms are commonly used in the implementation of programs subject to this part:

(1) *BCIS.* Bureau of Citizenship and Immigration Service.

(2) *FEMA.* Federal Emergency Management Agency.

(3) *FHA.* Federal Housing Administration.

(4) *FHWA.* Federal Highway Administration.

(5) *FIRREA.* Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(6) *HLR.* Housing of last resort.

(7) *HUD.* U. S. Department of Housing and Urban Development.

(8) *MIDP.* Mortgage interest differential payment.

(9) *RHP.* Replacement housing payment.

(10) *STURAA.* Surface Transportation and Uniform Relocation Act Amendments of 1987.

(11) *URA.* Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(12) *USDOT.* U.S. Department of Transportation.

(13) *USPAP.* Uniform Standards of Professional Appraisal Practice.

§ 24.3 No duplication of payments.

No person shall receive any payment under this part if that person receives a payment under Federal, State, local law, or insurance proceeds which is determined by the Agency to have the same purpose and effect as such payment under this part. (See appendix A, section 24.3.)

§ 24.4 Assurances, monitoring and corrective action.

(a) *Assurances.* (1) Before a Federal Agency may approve any grant to, or contract, or agreement with, a State Agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State Agency must provide appropriate assurances that it will comply with the Uniform Act and this part. A displacing Agency's assurances shall be in accordance with section 210 of the Uniform Act. An acquiring Agency's assurances shall be in accordance with section 305 of the Uniform Act and must contain specific reference to any State law which the Agency believes provides an exception to sections 301 or 302 of the Uniform Act. If, in the judgment of the Federal Agency, Uniform Act compliance will be served, a State Agency may provide these assurances at one time to cover all subsequent federally-assisted programs or projects. An Agency, which both acquires real property and displaces persons, may combine its section 210 and section 305 assurances in one document.

(2) If a Federal Agency or State Agency provides Federal financial assistance to a ''person'' causing displacement, such Federal or State Agency is responsible for ensuring compliance with the requirements of this part, notwithstanding the person's contractual obligation to the grantee to comply.

(3) Any Agency or person solely acquiring property pursuant to the provisions of § 24.101(b)(1) through (5) need not provide the assurances required by § 24.4(a)(1) or (2).

(4) As an alternative to the assurance requirement described in paragraph (a)(1) of this section, a Federal Agency may provide Federal financial assistance to a State Agency after it has accepted a certification by such State Agency in accordance with the requirements in subpart G of this part.

(b) *Monitoring and corrective action.* The Federal Agency will monitor compliance with this part, and the State Agency shall take whatever corrective action is necessary to comply with the Uniform Act and this part. The Federal Agency may also apply sanctions in accordance with applicable program regulations. (Also see § 24.603 of this part.)

(c) *Prevention of fraud, waste, and mismanagement.* The Agency shall take appropriate measures to carry out this part in a manner that minimizes fraud, waste, and mismanagement.

§ 24.5 Manner of notices.

Each notice which the Agency is required to provide to a property owner or occupant under this part, except the notice described at § 24.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§ 24.6 Administration of jointly-funded projects.

Whenever two or more Federal Agencies provide financial assistance to an Agency or Agencies, other than a Federal Agency, to carry out functionally or geographically related activities, which will result in the acquisition of property or the displacement of a person, the Federal Agencies may by agreement designate one such Agency as the cognizant Federal Agency. In the unlikely event that agreement among the Agencies cannot be reached as to which Agency shall be the cognizant Federal Agency, then the Lead Agency shall designate one of such Agencies to assume the cognizant role. At a minimum, the agreement shall set forth the federally-assisted activities which are subject to its terms and cite any policies and procedures, in addition to this part, that are applicable to the activities under the agreement. Under the agreement, the

cognizant Federal Agency shall assure that the project is in compliance with the provisions of the Uniform Act and this part. All federally-assisted activities under the agreement shall be deemed a project for the purposes of this part.

§ 24.7 Federal Agency waiver of regulations.

The Federal Agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

§ 24.8 Compliance with other laws and regulations.

The implementation of this part must be in compliance with other applicable Federal laws and implementing regulations, including, but not limited to, the following:

(a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 *et seq.*).

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

(e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 *et seq.*).

(f) The Flood Disaster Protection Act of 1973 (Public Law 93–234).

(g) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*).

(h) Executive Order 11063—Equal Opportunity and Housing, revised by Executive Order 12892.

(i) Executive Order 11246—Equal Employment Opportunity, as amended.

(j) Executive Order 11625—Minority Business Enterprise.

(k) Executive Orders 11988—Floodplain Management, and 11990—Protection of Wetlands.

(l) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.

(m) Executive Order 12630—Governmental Actions and Interference with Constitutionally Protected Property Rights.

(n) Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*)

§ 24.9 Recordkeeping and reports.

(a) *Records.* The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part, or in accordance with the applicable regulations of the Federal funding Agency, whichever is later.

(b) *Confidentiality of records.* Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) *Reports.* (1) The Agency shall submit a report of its real property acquisition and displacement activities under this part if required by the Federal Agency funding the project. The report shall be prepared in the format contained in appendix B of this part.

(2) Federal Agencies shall submit an annual report summarizing their real property acquisition and displacement activities under this part to the Lead Agency. The report may be prepared and submitted using the format contained in appendix B of this part.

§ 24.10 Appeals.

(a) *General.* The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part.

(b) *Actions which may be appealed.* Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the person's application for assistance under this part. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under § 24.106 or § 24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.* The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review of the Agency decision.

(h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

Subpart B—Real Property Acquisition

§ 24.101 Applicability of acquisition requirements.

(a) *Federal program or project.* The requirements of this subpart apply to any acquisition of real property for a direct Federal program or project, except acquisition for a program or project which is undertaken by the Tennessee Valley Authority or the Rural Electrification Administration. (*See* appendix A, section 24.101(a).)

(b) *Programs and projects receiving Federal financial assistance.* The requirements of this subpart apply to any acquisition of real property for programs and projects where there is Federal financial assistance in any part of project costs except for the acquisitions described in paragraphs (b)(1) through (5) of this section. The relocation assistance provisions in this part are applicable to any tenants that must move as a result of an acquisition described in paragraphs (b)(1) through (5) of this section. Such tenants are considered displaced persons. (*See* § 24.2(a)(9))

(1) Acquisitions that meet all of the conditions in paragraphs (b)(1)(i) through (iv) of this section.

(i) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area. Where an Agency wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated similarly. (*See* appendix A, section 24.101(b)(1)(i).)

(ii) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

(iii) The Agency will not acquire the property in the event negotiations fail to result in an agreement, and the owner is so informed in writing.

(iv) The Agency will inform the owner in writing of what it believes to be the market value of the property. (*See* appendix A, section 24.101(b)(1)(iv) & (2)(ii).)

(2) Acquisitions for programs or projects undertaken by an Agency or person that receives Federal financial assistance but does not have authority to acquire property by eminent domain, provided that such Agency or person shall:

(i) Prior to making an offer for the property, advise the owner in writing that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement; and

(ii) Inform the owner in writing of what it believes to be market value of the property. (*See* appendix A, section 24.101(b)(1)(iv) & (2)(ii).)

(3) The acquisition of real property from a Federal Agency, State, or State Agency, if the Agency desiring to make the purchase does not have authority to acquire the property through condemnation.

(4) The acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.

(5) Acquisition for a program or project which receives Federal financial assistance from the Tennessee Valley Authority or the Rural Electrification Administration.

(c) *Less-than-full-fee interest in real property.* The provisions of this subpart apply when acquiring fee title subject to retention of a life estate or a life use; to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more; and to the acquisition of permanent easements. (*See* appendix A, section 24.101(c).)

(d) *Federally-assisted projects.* For projects receiving Federal financial assistance, the provisions of §§ 24.102, 24.103, 24.104, and 24.105 apply to the greatest extent practicable under State law. (*See* section 24.4(a).)

§ 24.102 Basic acquisition policies.

(a) *Expeditious acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the Agency shall notify the owner in writing of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and this part. (*See also* § 24.203.)

(c) *Appraisal, waiver thereof, and invitation to owner.* (1) Before the initiation of negotiations, the real property to be acquired shall be appraised, except as provided in § 24.102(c)(2), and the appraiser shall provide the owner, or the owner's designated representative, an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(2) An appraisal is not required if:

(i) The owner is donating the property and releases the Agency from its obligation to appraise the property, or

(ii) The Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the market value is estimated at $10,000 or less, based on a review of available data. When an appraisal is determined to be unnecessary, the Agency shall prepare a waiver valuation. The Federal Agency funding the project may, on a case-by-case basis, approve exceeding the $10,000 threshold, up to a maximum of $25,000, if the Agency acquiring the real property offers the property owner the option of having the Agency appraise the property. If the property owner elects to have the Agency appraise the property, the Agency shall obtain an appraisal and not use procedures described in this paragraph. (*See* appendix A, section 24.102(c)(2).)

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the market value of the property, taking into account the value of allowable damages or benefits to any remaining property. The amount believed to be just compensation must be established by an Agency official. (*See also* § 24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation. (*See* appendix A, section 24.102(d).)

(e) *Summary statement.* Along with the initial written purchase offer, the Agency shall provide the owner a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be stated separately.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation. Where appropriate, the statement shall identify any other separately held ownership interest in the property, *e.g.*, a tenant-owned improvement, and indicate that such interest is not covered by this offer.

(f) *Basic negotiation procedures.* The Agency shall make reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with § 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation. (*See* appendix A, section 24.102(f).)

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal

funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement. (*See* appendix A, section 24.102(i).)

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner. (*See* appendix A, section 24.102(j).)

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (*See* section 24.2(a)(28).)

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term or a period, subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy. (*See* appendix A, section 24.102(m).)

(n) *Conflict of interest.* No appraiser, review appraiser or other person making an appraisal or a waiver valuation under § 24.102(c)(2) shall have any interest, direct or indirect, in the real property being valued for the Agency that would in any way conflict with the preparation of the appraisal, the waiver valuation or the review of the appraisal. Compensation for making an appraisal or a waiver valuation shall not be based on the amount of the valuation estimate. No person functioning as a negotiator for a project or program shall supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work for that project or program, except that, for a program or project receiving Federal financial assistance, the Federal funding agency may waive this requirement if it determines it would create a hardship for the Agency. No appraiser or other person making an appraisal or a waiver valuation shall act as a negotiator for real property for which that person has made an appraisal or a waiver valuation, except that the Agency may permit such person to negotiate an acquisition where the offer to acquire the property is $10,000, or less. (*See* appendix A, section 24.102(n).)

§ 24.103 Criteria for appraisals.

(a) *Appraisal requirements.* These regulations set forth the requirements for real property acquisition appraisals on Federal and federally-assisted programs. The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. An appraisal must contain a scope of work statement and sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. The Agency shall develop minimum requirements for simple appraisals consistent with established and commonly accepted Federal and federally-assisted program appraisal practice for those acquisitions, which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect established and commonly accepted Federal and federally-assisted program appraisal practices, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition.[1] At a minimum, a detailed appraisal shall contain the following items: (*See* appendix A, sections 24.103 and 24.103(a).)

(1) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5 year sales history of the property.

(2) All relevant and reliable approaches to value consistent with established Federal and federally-assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value. (*See* appendix A, section 24.103(a).)

(3) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(4) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

(5) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) *Influence of the project on just compensation.* The appraiser shall disregard any decrease or increase in the market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner. (*See* appendix A, section 24.103(b).)

(c) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at § 24.2(a)(24)) of the retained improvement.

(d) *Qualifications of appraisers and review appraisers.* (1) The Agency shall establish criteria for determining the minimum qualifications of appraisers and review appraisers. Qualifications shall be consistent with the level of difficulty of the assignment. The Agency shall review the experience, education, training, and other qualifications of appraisers and review appraisers and use only those determined to be qualified. (*See* appendix A, section 24.103(d)(1).)

(2) If the appraisal assignment requires the preparation of a detailed appraisal pursuant to § 24.103(a), and the Agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be certified in accordance with title XI of the Financial Institutions Reform, Recovery, and

[1] The ''Uniform Appraisal Standards for Federal Land Acquisitions'' is published by the Interagency Land Acquisition Conference. It is a compendium of Federal eminent domain appraisal law, both case and statute, regulations and practices. It is available at *http://www.usdoj.gov/enrd/land-ack/toc.htm* or in soft cover format from the Appraisal Institute at *http://www.appraisalinstitute.org/ecom/publications/Items.asp?ID=3* or call 888–570–4545.

Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 *et seq.*).

§ 24.104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified review appraiser (*See* § 24.103(d)(2) and appendix A, section 24.104) shall examine the presentation and analysis of market information in all appraisals to assure that they meet the definition of appraisal found in 49 CFR 24.2(a)(3), appraisal requirements found in 49 CFR 24.103 and other applicable requirements, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition, and support the appraiser's opinion of value. The level of review analysis and reporting depends on the complexity of the appraisal problem. As needed, the review appraiser shall, prior to acceptance, seek necessary corrections or revisions. The review appraiser shall identify each appraisal report as approved (as the basis for the establishment of the amount believed to be just compensation), accepted (meets all requirements, but not selected as approved), or rejected. If authorized by the Agency to do so, the review appraiser shall also develop and report the amount believed to be just compensation. (*See* appendix A, section 24.104(a).)

(b) If the review appraiser is unable to approve an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined by the acquiring Agency that it is not practical to obtain an additional appraisal, the review appraiser may develop appraisal documentation in accordance with § 24.103 to support an approved or recommended value. (*See* appendix A, section 24.104(b).)

(c) The review appraiser shall prepare a written report that identifies the appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisal(s). Any damages or benefits to any remaining property shall be identified in the review appraiser's report. The review appraiser shall also prepare a signed certification that states the parameters of the review. The certification shall state the approved value, and, if the review appraiser is authorized to do so, the amount believed to be just compensation for the acquisition. (*See* appendix A, section 24.104(c).)

§ 24.105 Acquisition of tenant-owned improvements.

(a) *Acquisition of improvements.* When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this subpart.

(c) *Appraisal and establishment of just compensation for tenant-owned improvements.* Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the market value of the whole property or its salvage value, whichever is greater. (Salvage value is defined at § 24.2(a)(24).)

(d) *Special conditions for tenant owned improvements.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement; and

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternative compensation.* Nothing in this subpart shall be construed to deprive the tenant-owner of any right to reject payment under this subpart and to obtain payment for such property interests in accordance with other applicable law.

§ 24.106 Expenses incidental to transfer of title to the Agency.

(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property;

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

(b) Whenever feasible, the Agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency. (*See* appendix A, section 24.106(b).)

§ 24.107 Certain litigation expenses.

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

§ 24.108 Donations.

An owner whose real property is being acquired may, after being fully informed by the Agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefore, to the Agency as such owner shall determine. The Agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation, except as provided in § 24.102(c)(2).

Subpart C—General Relocation Requirements

§ 24.201 Purpose.

This subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this part.

§ 24.202 Applicability.

These requirements apply to the relocation of any displaced person as defined at § 24.2(a)(9). Any person who qualifies as a displaced person must be fully informed of his or her rights and benefits to relocation assistance and payments provided by the Uniform Act and this regulation. (See appendix A, section 24.202.)

§ 24.203 Relocation notices.

(a) *General information notice.* As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing Agency's relocation program which does at least the following:

(1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

(2) Informs the displaced person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the displaced person successfully relocate.

(3) Informs the displaced person that he or she will not be required to move without at least 90 days advance written notice (See paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

(4) Informs the displaced person that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as defined in § 24.208(h).

(5) Describes the displaced person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this part.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in § 24.2(a)(16)) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) *Ninety-day notice.* (1) *General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The displacing Agency may issue the notice 90 days or earlier before it expects the person to be displaced.

(3) *Content of notice.* The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (*See* § 24.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the displacing Agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

(d) *Notice of intent to acquire.* A notice of intent to acquire is a displacing Agency's written communication that is provided to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity, which clearly sets forth that the Agency intends to acquire the property. A notice of intent to acquire establishes eligibility for relocation assistance prior to the initiation of negotiation and/or prior to the commitment of Federal financial assistance. (*See* § 24.2(a)(9)(i)(A).)

§ 24.204 Availability of comparable replacement dwelling before displacement.

(a) *General.* No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at § 24.2 (a)(6)) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed of its location;

(2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal Agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person to be displaced is required to relocate for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling;

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling.)

§ 24.205 Relocation planning, advisory services, and coordination.

(a) *Relocation planning.* During the early stages of development, an Agency shall plan Federal and federally-assisted programs or projects in such a manner that recognizes the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations and develops solutions to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study which may include the following:

(1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and persons with disabilities when applicable.

(2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, the Agency should consider housing of last resort actions.

(3) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

(4) An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed. Planning for displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.

(5) Consideration of any special relocation advisory services that may be necessary from the displacing Agency and other cooperating Agencies.

(b) *Loans for planning and preliminary expenses.* In the event that an Agency elects to consider using the duplicative provision in section 215 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the Lead Agency will establish criteria and procedures for such use upon the request of the Federal Agency funding the program or project.

(c) *Relocation assistance advisory services.* (1) *General.* The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offer the services described in paragraph (c)(2) of this section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

(2) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(i) Determine, for non-residential (businesses, farms and non-profit organizations) displacements, the relocation needs and preferences of each business (farms and non-profit organizations) to be displaced and explain the relocation payments and other assistance for which the business may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each business. At a minimum, interviews with displaced business owners and operators should include the following items:

(A) The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.

(B) Determination of the need for outside specialists in accordance with § 24.301(g)(12) that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.

(C) For tenant businesses, an identification and resolution of personalty/realty issues. This determination must be made prior to the appraisal of the property.

(D) An estimate of the time required for the business to vacate the site.

(E) An estimate of the searching expense payments required based on the anticipated difficulty in locating a replacement property.

(F) An identification of any advance relocation payments required for the move, and the Agency's legal capacity to provide them.

(ii) Determine, for residential displacements, the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each residential displaced person. At a minimum, interviews with displaced business owners and operators should include the following items:

(A) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in § 24.204(a).

(B) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (*See* § 24.403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(C) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (*See* § 24.2(a)(8).) If such an inspection is not made, the Agency shall notify the person to be displaced that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(D) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. While this policy does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling, if a displacing Agency has a program objective of providing minority persons with an opportunity to relocate to areas outside of minority concentration, the Agency may determine to provide a reasonable and justifiable increase in the payment to facilitate a move to a comparable replacement dwelling in such areas.

(E) The Agency shall offer all persons transportation to inspect housing to which they are referred.

(F) Any displaced person that may be eligible for government housing assistance at the replacement dwelling shall be advised of any requirements of such government housing assistance program that would limit the size of the replacement dwelling (*see* § 24.2(a)(6)(ix)), as well as of the long term nature of such rent subsidy, and the limited (42 month) duration of the relocation rental assistance payment.

(iii) Provide, for non-residential moves, current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(iv) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(v) Supply persons to be displaced with appropriate information concerning Federal and State housing

programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

(d) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized. (*See also* § 24.6.)

(e) Any person who occupies property acquired by an Agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the Agency.

§ 24.206 Eviction for cause.

An eviction may not be undertaken to deny assistance or evade the provisions of the Uniform Act or this part. Any person who occupies the real property on the date of the initiation of negotiations is presumed to be entitled to relocation payments and other assistance set forth in this part unless the Agency determines that such person vacated the real property as the result of an eviction for cause. (*See* § 24.2(a)(12) and appendix A section 24.206.)

§ 24.207 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expeditious payments.* The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advance payments.* If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing.* (1) All claims for a relocation payment shall be filed with the Agency no later than 18 months after:

(i) For tenants, the date of displacement;

(ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(2) The Agency shall waive this time period for good cause.

(e) *Notice of denial of claim.* If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

(f) *Waiver of relocation assistance.* A displacing Agency shall not propose or request that a displaced person waive his or her rights or entitlements to relocation assistance and payments provided by the Uniform Act and this part.

(g) *Entitlement to payments.* Relocation payments, provided pursuant to this part, provide compensation for relocation costs and impacts, and shall not be considered to constitute Federal financial assistance. Accordingly, this part does not apply to purchases of real property resulting from the expenditure of such payments by, or for, a displaced person.

§ 24.208 Aliens not lawfully present in the United States.

(a) Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

(1) In the case of an individual, that he or she is either a citizen or national of the United States, or an alien who is lawfully present in the United States.

(2) In the case of a family, that each family member is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members.

(3) In the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.

(4) In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.

(b) The certification provided pursuant to paragraphs (a)(1), (a)(2), and (a)(3) of this section shall indicate whether such person is either a citizen or national of the United States, or an alien who is lawfully present in the United States. Requirements concerning the certification in addition to those contained in this rule shall be within the discretion of the Federal funding Agency and, within those parameters, that of the displacing Agency.

(c) In computing relocation payments under the Uniform Act, if any member(s) of a household or owner(s) of an unincorporated business, farm, or nonprofit organization is (are) determined to be ineligible because of a failure to be legally present in the United States, no relocation payments may be made to him or her. Any payment(s) for which such household, unincorporated business, farm, or nonprofit organization would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.

(d) The displacing Agency shall consider the certification provided pursuant to paragraph (a) of this section to be valid, unless the displacing Agency determines in accordance with paragraph (f) of this section that it is invalid based on a review of an alien's documentation or other information that the Agency considers reliable and appropriate.

(e) Any review by the displacing Agency of the certifications provided pursuant to paragraph (a) of this section shall be conducted in a nondiscriminatory fashion. Each displacing Agency will apply the same standard of review to all such certifications it receives, except that such standard may be revised periodically.

(f) If, based on a review of an alien's documentation or other credible evidence, a displacing Agency has reason to believe that a person's certification is invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, it shall obtain the following information before making a final determination:

(1) If the Agency has reason to believe that the certification of a person who has certified that he or she is an alien

lawfully present in the United States is invalid, the displacing Agency shall obtain verification of the alien's status from the local Bureau of Citizenship and Immigration Service (BCIS) Office. A list of local BCIS offices is available at *http://www.bcis.gov/graphics/fieldoffices/alphaa.htm.* Any request for BCIS verification shall include the alien's full name, date of birth and alien number, and a copy of the alien's documentation. (If an Agency is unable to contact the BCIS, it may contact the FHWA in Washington, DC, Office of Real Estate Services at 202–366–0142 or Office of Chief Counsel, 202–366–0740, for a referral to the BCIS.)

(2) If the Agency has reason to believe that the certification of a person who has certified that he or she is a citizen or national is invalid, the displacing Agency shall request evidence of United States citizenship or nationality from such person and, if considered necessary, verify the accuracy of such evidence with the issuer.

(g) No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the displacing Agency's satisfaction that the denial of relocation assistance will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States.

(h) For purposes of paragraph (g) of this section, ''exceptional and extremely unusual hardship'' to such spouse, parent, or child of the person not lawfully present in the United States means that the denial of relocation payments and advisory assistance to such person will directly result in:

(1) A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child;

(2) A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member; or

(3) Any other impact that the displacing Agency determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.

(i) The certification referred to in paragraph (a) of this section may be included as part of the claim for relocation payments described in § 24.207 of this part. (Approved by the Office of Management and Budget under control number 2105–0508.)

§ 24.209 Relocation payments not considered as income.

No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been redesignated as the Internal Revenue Code of 1986 (Title 26, U.S.C.), or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act (42 U.S.C. 301 *et seq.*) or any other Federal law, except for any Federal law providing low-income housing assistance.

Subpart D—Payments for Moving and Related Expenses

§ 24.301 Payment for actual reasonable moving and related expenses.

(a) *General.* (1) Any owner-occupant or tenant who qualifies as a displaced person (defined at § 24.2(a)(9)) and who moves from a dwelling (including a mobile home) or who moves from a business, farm or non-profit organization is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary.

(2) A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under § 24.301 to relocate the mobile home. If the mobile home is not acquired as real estate, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described at § 24.502(a)(3), the owner is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home.

(b) *Moves from a dwelling.* A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a dwelling may be determined based on the cost of one, or a combination of the following methods, but not by the lower of two bids or estimates. Eligible expenses for moves from a dwelling include the expenses described in paragraphs (g)(1) through (g)(7) of this section.

(1) *Commercial move*—moves performed by a professional mover.

(2) *Self move*—moves that may be performed by the displaced person in one or a combination of the following methods:

(i) *Fixed Residential Moving Cost Schedule.* (Described in § 24.302.)

(ii) *Actual cost move.* Supported by receipted bills for labor and equipment. Hourly labor rates and equipment rental fees should not exceed the cost paid by a commercial mover.

(iii) *Moving cost finding.* A qualified Agency staff person may estimate and determine the cost of a small uncomplicated personal property move of $3,000 or less, with the informed consent of the displaced person. This estimate may include only the cost of moving personal property located outside of the dwelling, that is not included in the Fixed Residential Moving Cost Schedule, such as personal property in garages, storage sheds or other loose items outside of structures that are personal property.

(c) *Moves from a mobile home.* A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a mobile home may be determined based on the cost of one, or a combination of the following methods, but not by the lower of two bids or estimates. Eligible expenses for moves from a mobile home include those expenses described in paragraphs (g)(1) through (g)(7) of this section. In addition to the items in paragraph (a) of this section, the owner-occupant of a mobile home that is moved as personal property and used as the person's replacement dwelling, is also eligible for the moving expenses described in paragraphs (g)(8) through (g)(10) of this section.

(1) *Commercial move*—moves performed by a professional mover.

(2) *Self move*—moves that may be performed by the displaced person in one or a combination of the following methods:

(i) *Fixed Residential Moving Cost Schedule.* (Described in § 24.302.)

(ii) *Actual cost move.* Supported by receipted bills for labor and equipment. Hourly labor rates and equipment rental fees should not exceed the cost paid by a commercial mover.

(iii) *Moving cost finding.* A qualified Agency staff person may estimate and determine the cost of a small uncomplicated personal property move of $3,000 or less, with the informed consent of the displaced person. This estimate may include only the cost of moving personal property located outside of the mobile home, that is not included in the Fixed Residential Moving Cost Schedule, such as personal property in garages, storage sheds or other loose items outside of structures that are personal property

(d) *Moves from a business, farm or nonprofit organization.* Personal property as determined by an inventory from a business, farm or non-profit organization may be moved by one or a combination of the following methods. Eligible expenses for moves from a business, farm or nonprofit organization include those expenses described in

paragraphs (g)(1) through (g)(7) of this section and paragraphs (g)(11) through (g)(18) of this section and § 24.303.

(1) *Commercial move.* Based on the lower of two bids or estimates prepared by a commercial mover. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(2) *Self-move.* A self-move payment may be based on one or a combination of the following:

(i) The lower of two bids or estimates prepared by a commercial mover or qualified Agency staff person. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; or

(ii) *Moving cost finding.* A qualified Agency staff person may estimate and determine the cost of a small uncomplicated personal property move of $3,000 or less, with the informed consent of the displaced person. This method may be used to estimate the cost of small uncomplicated moves of equipment or other personal property.

(e) *Personal property only.* Eligible expenses for a person who is required to move personal property from real property but is not required to move from a dwelling (including a mobile home), business, farm or nonprofit organization include those expenses described in paragraphs (g)(1) through (g)(7) of this section.

(f) *Advertising signs.* The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

(g) *Eligible actual moving expenses.* (1) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, machinery, equipment, and other personal property, including substitute personal property. For businesses, this includes connection to utilities available within the building. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.

(4) Storage of the personal property for a period not to exceed l2 months, unless the Agency determines that a longer period is necessary.

(5) Insurance for the replacement value of the property in connection with the move and necessary storage.

(6) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(7) Other moving-related expenses that are not listed as ineligible under § 24.301(h), as the Agency determines to be reasonable and necessary.

(8) The reasonable cost of disassembling, moving, and reassembling any appurtenances attached to a mobile home, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility ''hookup'' charges.

(9) The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made decent, safe, and sanitary.

(10) The cost of a nonrefundable mobile home park entrance fee, to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

(11) Any license, permit, fees or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fees or certification.

(12) Professional services as the Agency determines to be actual, reasonable and necessary for:

(i) Planning the move of the personal property;

(ii) Moving the personal property; and

(iii) Installing the relocated personal property at the replacement location.

(13) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(14) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The market value in place of the item as is for continued use, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the market value shall be based on the cost of the goods to the business, not the potential selling prices.); or

(ii) The estimated cost of moving the item as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site (See appendix A, section 24.301(g)(14)(ii).) If the business or farm operation is discontinued, the estimated cost of moving the item shall be based on a moving distance of 50 miles.

(15) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(16) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs of the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(17) Searching for a replacement location. A business or farm operation is entitled to reimbursement for actual expenses, not to exceed $2,500, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:

(i) Transportation;

(ii) Meals and lodging away from home;

(iii) Time spent searching, based on reasonable salary or earnings;

(iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such sites; and

(v) The costs of obtaining permits and attending zoning hearings.

(18) Low value/high bulk. When the personal property which is used in connection with any business or farm operation is of low value and high bulk, and the cost of moving the property would be disproportionate in relation to its value in the judgment of the displacing Agency, the allowable moving cost reimbursement shall not exceed the difference between the

amount which would have been received if such property was sold, and the cost of replacing the material at the replacement site with a comparable quantity available on the market. This provision applies to items such as stockpiled sand, gravel, minerals, and other similar items of personal property.

(h) *Ineligible moving and related expenses.* A displaced person is not entitled to payment for:

(1) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. (However, this part does not preclude the computation under § 24.401(c)(2)(iii));

(2) Interest on a loan to cover moving expenses;

(3) Loss of goodwill;

(4) Loss of profits;

(5) Loss of trained employees;

(6) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in § 24.304(a)(6);

(7) Personal injury;

(8) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency;

(9) Expenses for searching for a replacement dwelling;

(10) Physical changes to the real property at the replacement location of a business or farm operation except as provided in §§ 24.301(g)(3) and 24.304(a); and

(11) Costs for storage of personal property on real property already owned or leased by the displaced person.

(12) Refundable security and utility deposits.

(i) *Notification and inspection.* The Agency shall inform the displaced person, in writing, of the requirements of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided the displaced person as set forth in § 24.203. To be eligible for payments under this section the displaced person must:

(1) Provide the Agency reasonable advance notice of the approximate date of the start of the move or disposition of the personal property and an inventory of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(2) Permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(j) *Transfer of ownership.* Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

§ 24.302 Fixed payment for moving expenses—residential moves.

Any person displaced from a dwelling or a seasonal residence or a dormitory style room is entitled to receive a fixed moving cost payment as an alternative to a payment for actual moving and related expenses under § 24.301. This payment shall be determined according to the Fixed Residential Moving Cost Schedule [2] approved by the Federal Highway Administration and published in the **Federal Register** on a periodic basis. The payment to a person with minimal personal possessions who is in occupancy of a dormitory style room or a person whose residential move is performed by an Agency at no cost to the person shall be limited to the amount stated in the most recent edition of the Fixed Residential Moving Cost Schedule.

§ 24.303 Related non-residential eligible expenses.

The following expenses, in addition to those provided by § 24.301 for moving personal property, shall be provided if the Agency determines that they are actual, reasonable and necessary:

(a) Connection to available nearby utilities from the right-of-way to improvements at the replacement site.

(b) Professional services in connection with the purchase or lease of a replacement site including feasibility surveys, soil testing, and marketing studies (exclusive of any fees or commissions related to such site).

(c) Impact fees or one time assessments for anticipated heavy utility usage, as determined necessary by the Agency.

§ 24.304 Reestablishment expenses—non-residential moves.

In addition to the payments available under §§ 24.301 and 24.303 of this subpart, a small business, as defined in § 24.2(a)(25), farm or nonprofit organization is entitled to receive a payment, not to exceed $10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(a) *Eligible expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They include, but are not limited to, the following:

(1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.

(2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

(3) Construction and installation costs for exterior signing to advertise the business.

(4) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.

(5) Advertisement of replacement location.

(6) Estimated increased costs of operation during the first 2 years at the replacement site for such items as:

(i) Lease or rental charges,

(ii) Personal or real property taxes,

(iii) Insurance premiums, and

(iv) Utility charges, excluding impact fees.

(7) Other items that the Agency considers essential to the reestablishment of the business.

(b) *Ineligible expenses.* The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(1) Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.

(2) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(3) Interest on money borrowed to make the move or purchase the replacement property.

(4) Payment to a part-time business in the home which does not contribute materially (defined at § 24.2(a)(7)) to the household income.

§ 24.305 Fixed payment for moving expenses—non-residential moves.

(a) *Business.* A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by §§ 24.301 and 24.303. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $20,000. The displaced business is eligible for the payment if the Agency determines that:

(1) The business owns or rents personal property which must be moved

[2] The Fixed Residential Moving Cost Schedule is available at the following URL: *http://www.fhwa.dot.gov//////realestate/fixsch96.htm.* Agencies are cautioned to ensure they are using the most recent edition.

in connection with such displacement and for which an expense would be incurred in such move and, the business vacates or relocates from its displacement site;

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings.) A business is assumed to meet this test unless the Agency determines that it will not suffer a substantial loss of its existing patronage;

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, and which are not under the same ownership and engaged in the same or similar business activities.

(4) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others;

(5) The business is not operated at the displacement site solely for the purpose of renting the site to others; and

(6) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement. (*See* § 24.2(a)(7).)

(b) *Determining the number of businesses.* In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) *Farm operation.* A displaced farm operation (defined at § 24.2(a)(13)) may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $20,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) *Nonprofit organization.* A displaced nonprofit organization may choose a fixed payment of $1,000 to $20,000, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the Agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele.) A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise. Any payment in excess of $1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses. (*See* appendix A, 24.305(d).)

(e) *Average annual net earnings of a business or farm operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Agency determines is satisfactory. (*See* appendix A, 24.305(e).)

§ 24.306 Discretionary utility relocation payments.

(a) Whenever a program or project undertaken by a displacing Agency causes the relocation of a utility facility (*See* § 24.2(a)(32)) and the relocation of the facility creates extraordinary expenses for its owner, the displacing Agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

(1) The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right-of-way;

(2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement;

(3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the displacing Agency;

(4) There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the displacing Agency's program or project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by the displacing Agency is in accordance with State law.

(b) For the purposes of this section, the term extraordinary expenses means those expenses which, in the opinion of the displacing Agency, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

(c) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally-assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The displacing Agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (See appendix A to this part, section 24.306.)

Subpart E—Replacement Housing Payments

§ 24.401 Replacement housing payment for 180-day homeowner-occupants.

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the Agency may extend such one year period for good cause):

(i) The date the displaced person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court; or

(ii) The date the displacing Agency's obligation under § 24.204 is met.

(b) *Amount of payment.* The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed $22,500. (See also § 24.404.) The payment under this subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section;

(2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) of this section; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) *Price differential*—(1) *Basic computation.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling and site (See § 24.2(a)(11)) to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with § 24.403(a); or

(ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move;

(ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at § 24.2(a)(8)); and

(iii) The current market value for residential use of the replacement site (*See* appendix A of this part, section 24.401(c)(2)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention value of the dwelling, if such retention value is reflected in the ''acquisition cost'' used when computing the replacement housing payment.

(d) *Increased mortgage interest costs.* The displacing Agency shall determine the factors to be used in computing the amount to be paid to a displaced person under paragraph (b)(2) of this section. The payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interests that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs (d)(1) through (d)(5) of this section shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

(1) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the displaced person obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination the payment will be prorated and reduced accordingly. (*See* appendix A, section 24.401(d).) In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

(3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(4) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area;

(iii) The Agency determines them to be necessary; and

(iv) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of the mortgage balance under this section.

(5) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

(e) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or § 24.402(c)(1) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Professional home inspection, certification of structural soundness, and termite inspection when required.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, *e.g.*, title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determines to be incidental to the purchase.

(f) Rental assistance payment for 180-day homeowner. A 180-day homeowner-occupant, who could be eligible for a replacement housing payment under paragraph (a) of this

section but elects to rent a replacement dwelling, is eligible for a rental assistance payment. The amount of the rental assistance payment is based on a determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. The difference, if any, is computed and disbursed in accordance with § 24.402(b), however, the calculation under § 24.402(b)(2)(ii) is not applicable. Under no circumstance would the rental assistance payment exceed the amount that could have been received had the 180-day homeowner elected to receive a replacement housing payment under paragraph (a) of this section.

§ 24.402 Replacement housing payment for 90-day occupants.

(a) *Eligibility.* A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed $5,250 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

(i) For a tenant, the date he or she moves from the displacement dwelling; or

(ii) For an owner-occupant, the later of:

(A) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or

(B) The date he or she moves from the displacement dwelling.

(b) *Rental assistance payment*—(1) *Amount of payment.* An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed $5,250 for rental assistance. (*See also* § 24.404.) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

(i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

(ii) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) *Base monthly rental for displacement dwelling.* The base monthly rental for the displacement dwelling is the lesser of:

(i) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency (for an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances);

(ii) Thirty (30) percent of the displaced person's average monthly gross household income if the amount is classified as ''low income'' by the U.S. Department of Housing and Urban Development's annual survey of Income Limits for the Public Housing and Section 8 Programs.[3] The base monthly rental shall be established solely on the criteria in paragraph (b)(2)(i) of this section for persons with income exceeding the survey's ''low income'' limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise or,

(iii) The total of the amounts designated for shelter and utilities if the displaced person is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

(3) *Manner of disbursement.* A rental assistance payment may, at the Agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by § 24.403(f), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

(c) *Downpayment assistance payment*—(1) *Amount of payment.* An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under paragraph (b) of this section if the person rented a comparable replacement dwelling. At the Agency's discretion, a downpayment assistance payment that is less than $5,250 may be increased to any amount not to exceed $5,250. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under § 24.401(b) if he or she met the 180-day occupancy requirement. If the Agency elects to provide the maximum payment of $5,250 as a downpayment, the Agency shall apply this discretion in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 180-day owner-occupant under § 24.401(a) is not eligible for this payment. (*See* appendix A, section 24.402.)

(2) *Application of payment.* The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

§ 24.403 Additional rules governing replacement housing payments.

(a) *Determining cost of comparable replacement dwelling.* The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at § 24.2(a)(6)), and the amount, if any, that will compensate a displaced homeowner for the estimated amount of any increase real estate taxes for 24 months determined in accordance with appendix A. (*See* appendix A, section 24.403(a).)

(1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (*e.g.*, the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

(3) If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(4) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if

[3] The U.S. Department of Housing and Urban Development's Home Program Income Llimits are updated annually and are available annually on HUD's Web site at *http://www.huduser.org/datasets/il.html.*

that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(5) Multiple occupants of one displacement dwelling. If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(6) Deductions from relocation payments. An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, a Federal Agency shall, and a State Agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by § 24.204. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(7) Mixed-use and multifamily properties. If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered the acquisition cost when computing the replacement housing payment.

(b) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing the initial payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at § 24.2(a)(8).

(c) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

(1) Purchases a dwelling;

(2) Purchases and rehabilitates a substandard dwelling;

(3) Relocates a dwelling which he or she owns or purchases;

(4) Constructs a dwelling on a site he or she owns or purchases;

(5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or

(6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current market value.

(d) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

(1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal Agency funding the project, or the displacing Agency; or

(2) Another reason, such as a delay in the construction of the replacement dwelling, military duty, or hospital stay, as determined by the Agency.

(e) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under § 24.402(b) is eligible to receive a payment under § 24.401 or § 24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1 year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under § 24.401 or § 24.402(c).

(f) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(2) Any remaining payment shall be disbursed to the remaining family members of the displaced household in any case in which a member of a displaced family dies.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

(g) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (*See also* § 24.3.)

§ 24.404 Replacement housing of last resort.

(a) *Determination to provide replacement housing of last resort.* Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in § 24.401 or § 24.402, as appropriate, the Agency shall provide additional or alternative assistance under the provisions of this subpart. Any decision to provide last resort housing assistance must be adequately justified either:

(1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:

(i) The availability of comparable replacement housing in the program or project area;

(ii) The resources available to provide comparable replacement housing; and

(iii) The individual circumstances of the displaced person.

(2) By a determination that:

(i) There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole;

(ii) A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and

(iii) The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total program or project costs.

(b) *Basic rights of persons to be displaced.* Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under these procedures (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

(c) *Methods of providing comparable replacement housing.* Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-

case analysis is justified for an entire project.

(1) The methods of providing replacement housing of last resort include, but are not limited to:

(i) A replacement housing payment in excess of the limits set forth in § 24.401 or § 24.402. A replacement housing payment under this section may be provided in installments or in a lump sum at the Agency's discretion.

(ii) Rehabilitation of and/or additions to an existing replacement dwelling.

(iii) The construction of a new replacement dwelling.

(iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(v) The relocation and, if necessary, rehabilitation of a dwelling.

(vi) The purchase of land and/or a replacement dwelling by the displacing Agency and subsequent sale or lease to, or exchange with a displaced person.

(vii) The removal of barriers for persons with disabilities.

(viii) The change in status of the displaced person with his or her concurrence from tenant to homeowner when it is more cost effective to do so, as in cases where a downpayment may be less expensive than a last resort rental assistance payment.

(2) Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling (*See* appendix A, § 24.404), including upgraded, but smaller replacement housing that is decent, safe, and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with § 24.2(a)(6)(ii) of this part.

(3) The Agency shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under §§ 24.401 and 24.402 because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the displaced person's financial means. (*See* § 24.2(6)(viii)). Such assistance shall cover a period of 42 months.

Subpart F—Mobile Homes

§ 24.501 Applicability.

(a) *General.* This subpart describes the requirements governing the provision of replacement housing payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this part. Except as modified by this subpart, such a displaced person is entitled to a moving expense payment in accordance with subpart D to this part and a replacement housing payment in accordance with subpart E to this part to the same extent and subject to the same requirements as persons displaced from conventional dwellings. Moving cost payments to persons occupying mobile homes are covered in §§ 24.301(g)(1) through (g)(10).

(b) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the occupant of the mobile home shall be considered to be a displaced person who is entitled to relocation payments and other assistance under this part.

§ 24.502 Replacement housing payment for 180-day mobile homeowner displaced from a mobile home, and/or from the acquired mobile home site.

(a) *Eligibility.* An owner-occupant displaced from a mobile home is entitled to a replacement housing payment, not to exceed $22,500, under § 24.401 if:

(1) The person occupied the mobile home on the displaced site for at least 180 days immediately before:

(i) The initiation of negotiations to acquire the mobile home, if the person owned the mobile home and the mobile home is real property;

(ii) The initiation of negotiations to acquire the mobile home site if the mobile home is personal property, but the person owns the mobile home site; or

(iii) The date the person is notified that he or she is a displaced person if the person owns neither the mobile home or the site, if the Agency makes one of the determinations in paragraphs (a)(3)(i) through (iv) of this section.

(2) The person meets the other basic eligibility requirements at § 24.401(a); and

(3) The Agency acquires the mobile home as real estate, or acquires the mobile home site from the displaced owner, or the mobile home is personal property but the owner is displaced from the mobile home because the Agency determines that the mobile home:

(i) Is not, and cannot economically be made decent, safe, and sanitary;

(ii) Cannot be relocated without substantial damage or unreasonable cost;

(iii) Cannot be relocated because there is no available comparable replacement site; or

(iv) Cannot be relocated because it does not meet mobile home park entrance requirements.

(b) *Replacement housing payment computation for a 180-day owner that is displaced from a mobile home.* The replacement housing payment for an eligible displaced 180-day owner is computed as described at § 24.401(c) incorporating the following, as applicable:

(1) If the Agency acquires the mobile home as real estate, the acquisition cost used to compute the payment is the actual amount paid to the owner as just compensation for the acquisition of the mobile home, and site, if owned by the displaced mobile homeowner.

(2) If the owner is determined to be eligible for a replacement housing payment based on paragraph (a)(1)(iii) of this section, but the Agency does not purchase the mobile home as real estate, the cost of a replacement mobile home used to compute the payment, is the lesser of the displaced mobile homeowner's net cost to purchase a replacement mobile home (*i.e.*, purchase price of the replacement mobile home less trade-in or sale proceeds of the displacement mobile home); or, the cost of the Agency's selected comparable mobile home less the Agency's estimate of the salvage or trade-in value for the mobile home from which the person is displaced.

(c) *Rental assistance payment for a 180-day owner-occupant that is displaced from a leased or rented mobile home site.* If the displacement mobile home site is leased or rented, a displaced 180-day owner-occupant is entitled to a rental assistance payment computed as described in § 24.402(b). This rental assistance payment may be used to lease a replacement site; may be applied to the purchase price of a replacement site; or may be applied, with any replacement housing payment attributable to the mobile home, to the purchase of a replacement mobile home or conventional decent, safe and sanitary dwelling.

(d) *Comparable mobile home site not available.* If a comparable replacement mobile homesite is not available, the replacement housing payment shall be

computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(e) *Owner not displaced from the mobile home.* If the Agency determines that a mobile home is personal property and may be relocated to a comparable replacement site, but the owner-occupant elects not to do so, the owner is not entitled to a replacement housing payment for the purchase of a replacement mobile home. However, the owner is eligible for moving costs described at § 24.301 and any replacement housing payment for the purchase or rental of a comparable site as described in paragraph (c) of this section.

§ 24.503 Replacement housing payment for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed $5,250, under § 24.402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § 24.402(a); and

(c) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the Agency determines that the occupant is displaced from the mobile home because of one of the circumstances described at § 24.502(a)(3).

Subpart G—Certification

§ 24.601 Purpose.

This subpart permits a State Agency to fulfill its responsibilities under the Uniform Act by certifying that it shall operate in accordance with State laws and regulations which shall accomplish the purpose and effect of the Uniform Act, in lieu of providing the assurances required by § 24.4 of this part.

§ 24.602 Certification application.

An Agency wishing to proceed on the basis of a certification may request an application for certification from the Lead Agency Director, Office of Real Estate Services, HEPR–1, Federal Highway Administration, 400 Seventh St. SW., Washington, DC 20590. The completed application for certification must be approved by the governor of the State, or the governor's designee, and must be coordinated with the Federal funding Agency, in accordance with application procedures.

§ 24.603 Monitoring and corrective action.

(a) The Federal Lead Agency shall, in coordination with other Federal Agencies, monitor from time to time State Agency implementation of programs or projects conducted under the certification process and the State Agency shall make available any information required for this purpose.

(b) The Lead Agency may require periodic information or data from affected Federal or State Agencies.

(c) A Federal Agency may, after consultation with the Lead Agency, and notice to and consultation with the governor, or his or her designee, rescind any previous approval provided under this subpart if the certifying State Agency fails to comply with its certification or with applicable State law and regulations. The Federal Agency shall initiate consultation with the Lead Agency at least 30 days prior to any decision to rescind approval of a certification under this subpart. The Lead Agency will also inform other Federal Agencies, which have accepted a certification under this subpart from the same State Agency, and will take whatever other action that may be appropriate.

(d) Section 103(b)(2) of the Uniform Act, as amended, requires that the head of the Lead Agency report biennially to the Congress on State Agency implementation of section 103. To enable adequate preparation of the prescribed biennial report, the Lead Agency may require periodic information or data from affected Federal or State Agencies.

Appendix A to Part 24—Additional Information

This Appendix provides additional information to explain the intent of certain provisions of this part.

Subpart A—General

Section 24.2 Definitions and Acronyms.

Section 24.2(a)(6) Definition of comparable replacement dwelling. The requirement in § 24.2(a)(6)(ii) that a comparable replacement dwelling be ''functionally equivalent'' to the displacement dwelling means that it must perform the same function, and provide the same utility. While it need not possess every feature of the displacement dwelling, the principal features must be present.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequentially, less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is ''adequate to accommodate'' the displaced person) may be found to be ''functionally equivalent'' to a larger but very run-down substandard displacement dwelling. Another example is when a displaced person accepts an offer of government housing assistance and the applicable requirements of such housing assistance program require that the displaced person occupy a dwelling that has fewer rooms or less living space than the displacement dwelling.

Section 24.2(a)(6)(vii). The definition of comparable replacement dwelling requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

Section 24.2(a)(6)(ix). A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit. A privately owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing.

A housing program subsidy that is paid to a person (not tied to the building), such as a HUD Section 8 Housing Voucher Program, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately owned subsidized unit or public housing unit before displacement.

However, nothing in this part prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under this part. (If a person accepts assistance under a government housing assistance program the rules of that program governing the size of the dwelling apply, and the rental assistance payment under § 24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

Section 24.2(a)(8)(viii) Persons with a disability. Reasonable accommodation of a displaced person with a disability at the replacement dwelling means the Agency is required to address situations involving persons dependent on the use of a wheelchair for mobility. In these situations, reasonable accommodation should include the following at a minimum: Doors of adequate width; ramps or other assistance devices to traverse stairs and access bathtubs, shower stalls, toilets and sinks; storage cabinets, vanities, sink and mirrors at appropriate heights. Kitchen accommodations will include sinks and storage cabinets built at appropriate heights for access. The Agency shall also consider

other items that may be necessary, such as physical modification to a unit, based on the displaced person's needs.

Section 24.2(a)(9)(ii)(D) Persons not displaced. Paragraph (a)(9)(ii)(D) of this section recognizes that there are circumstances where the acquisition of real property takes place without the intent or necessity that an occupant of the property be permanently displaced. Because such occupants are not considered ''displaced persons'' under this part, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily occupied housing must be decent, safe, and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation. These expenses may include moving expenses and increased housing costs during the temporary relocation. Temporary relocation should not extend beyond one year before the person is returned to his or her previous unit or location. Any residential tenant who has been temporarily relocated for a period beyond one year must be contacted by the Agency and be offered all permanent relocation assistance. This assistance would be in addition to any assistance the person has already received for temporary relocation, and may not be reduced by the amount of any temporary relocation assistance.

Similarly, if a business will be shut-down for any length of time due to rehabilitation of a site, it may be temporarily relocated and reimbursed for all reasonable out of pocket expenses or must be determined to be displaced at the agency's option.

It is also noted that any person who disagrees with the Agency's determination that he or she is not a displaced person under this part may file an appeal in accordance with 49 CFR 24.10.

Section 24.2(a)(15) Household income (exclusions). Household income for purposes of this regulation does not include program benefits that are not considered income by Federal law such as food stamps and the Women Infants and Children (WIC) program. For a more detailed list of income exclusions see Federal Highway Administration, Office of Real Estate Services Web site: *http://www.fhwa.dot.gov/realestate.* (FR 4644–N–16 page 20319 Updated.) If there is a question on whether or not to include income from a specific program contact the Federal Agency administering the program.

Section 24(a)(16) Initiation of negotiations. This section provides a special definition for acquisitions and displacements under Public Law 96–510 or Superfund. These activities differ under Superfund in that relocation may precede acquisition, the reverse of the normal sequence. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert the public to the danger and to the advisability of moving immediately. If a decision were made later to permanently relocate such persons, those who had moved earlier would no longer be on site when a formal, written offer to acquire the property was made and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition that is based on the public health advisory or announcement of permanent relocation.

Section 24.2(a)(18) Mobile home. A recreational vehicle that is capable of providing living accommodations may be considered a replacement dwelling if the following criteria are met: the recreational vehicle is purchased and occupied as the ''primary'' place of residence; it is located on a purchased or leased site and connected to all necessary utilities for functioning as a housing unit on the date of the displacing Agency's inspection; and, the dwelling, as sited, meets all local, State, and Federal requirements for a DSS dwelling. (It should be noted that the regulations of some local jurisdictions will not permit the consideration of these vehicles as DSS dwellings. In those cases, the recreational vehicle will not qualify as a replacement dwelling.)

There are several types of factory-built housing, but the most common is ''HUD-Code'' or manufactured homes. HUD-Code homes are so named because since June 15, 1976, these home must be designed and constructed according to the Federal ''Manufactured Home Construction and Safety Standards'' [1] administered by HUD.

Our definition of a mobile home would also include mobile homes, defined as being transportable in one or more sections not less than eight feet wide and forty feet long.

When assembled, manufactured homes built after 1976 contain no less than 320 square feet. They are built on and remain on a permanent chassis, and may or may not be installed on a permanent foundation when connected to utilities. Manufactured homes may be single or multi-sectioned units when installed. Their designation as personalty or realty will be determined by State law. When determined to be realty, most are eligible for conventional mortgage financing.

The 1976 HUD standards distinguish manufactured homes from factory-built ''modular homes'' as well as conventional or ''stick-built'' homes. Both of these types of housing are required to meet State and local construction codes.

Section 24.3 No Duplication of Payments. This section prohibits an Agency from making a payment to a person under these regulations that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment is computed.

Section 24.9 Recordkeeping and Reports.

Section 24.9(c) Reports. This paragraph requires that Federal Agencies submit an annual report of their real property acquisition and displacement activities under this part to the lead Agency. The report covers activities during the Federal fiscal year immediately prior to the submission date. In order to minimize the administrative burden on Agencies implementing this part, a basic report form (See appendix B of this part) has been developed which, with only minor modifications, would be used in all Federal and federally-assisted programs or projects.

Subpart B—Real Property Acquisition

Section 24.101 Applicability of Acquisition Requirements.

Section 24.101(a) Direct Federal program or project. All 49 CFR Part 24 requirements apply to all direct acquisitions for Federal programs and projects by Federal Agencies, except for acquisitions undertaken by the Tennessee Valley Authority or the Rural Electrification Administration. There are no exceptions for ''voluntary transactions.''

Section 24.101(b)(1)(i). The term ''general geographic area'' is used to clarify that the ''geographic area'' is not to be construed to be a small, limited area.

Section 24.101(b)(1)(iv) and *(2)(ii).* These sections provide that for programs and projects receiving Federal financial assistance, Agencies are to inform the owner(s) in writing of the Agency's estimate of the market value for the property to be acquired.

While this part does not require an appraisal for these transactions, Agencies may still decide that an appraisal is necessary to support their determination of the market value of these properties, and, in any event, Agencies must have some reasonable basis for their determination of market value. In addition, some of the concepts inherent in Federal Program appraisal practice are appropriate for these estimates. It would be appropriate for Agencies to adhere to project influence restrictions, as well as guard against discredited ''public interest value'' valuation concepts.

Section 24.101(c) Less-than-full-fee interest in real property. This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases. However, the Agency may apply the regulations to any less-than-full-fee acquisition which is less than 50 years in duration, but which in its judgment should be covered.

Section 24.102 Basic Acquisition Policies.

Section 24.102(c)(2) Appraisal, waiver thereof, and invitation to owner. The threshold for an appraisal waiver is based on minimizing appraisal costs for low value, non-complex acquisitions.

The determination to use the appraisal waiver process, *i.e.*, that the acquisition will be uncomplicated and the market value is estimated at $10,000 or less must be made by a person who has enough understanding of appraisal principles to be qualified to make such a determination.

The intent of the appraisal waiver provision is that waiver valuations be made by non-appraisers, freeing appraisers to do more sophisticated work. Since waiver

[1] The U.S. Department of Housing & Urban Development's ''Manufactured Home Construction and Safety Standards'' is available at the following URL: *http://www.cfda.gov/public/viewprog.asp?progid=316.*

valuations are not appraisals, there is no requirement for an appraisal review. However, the Agency must have a reasonable basis for the waiver valuation and an Agency official must still establish an amount believed to be just compensation to offer the property owner(s).

All parties, including State certified and licensed appraisers who may be engaged to perform waiver valuations, should keep in mind that waiver valuations are not appraisals under the applicable definitions of ''appraisal'' in § 24.2(a)(3) and ''waiver valuation'' in § 24.2(a)(34). Waiver valuations may be used on Federal and federally-assisted programs and projects without regard to whether or not appraisal requirements from any non-governmental source, such as the Appraisal Foundation's Uniform Standards of Professional Appraisal Practice (USPAP) or professional appraiser societies, account for such waiver valuations. Waiver valuations are intended to avoid the costs and time delays associated with appraisal requirements for low value, non-complex acquisitions.

Section 24.102(d) Establishment of offer of just compensation. The initial offer to the property owner may not be less than the amount of the Agency's approved appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

Section 24.102(f) Basic negotiation procedures. An offer should be adequately presented to an owner, and the owner be properly informed. Personal, face-to-face contact should take place, if feasible, but this section does not require such contact in all cases.

This section also provides that the property owner be given a reasonable opportunity to consider the Agency's offer and to present relevant material to the Agency. In order to satisfy this requirement, Agencies must allow owners time for analysis, research and development, and compilation of a response, including perhaps getting an appraisal. The needed time can vary significantly, depending on the circumstances, but thirty (30) days would seem to be the minimum time these actions can be reasonably expected to require. Regardless of project time pressures, property owners must be afforded this opportunity.

In some jurisdictions, there is pressure to initiate formal eminent domain procedures at the earliest opportunity because completing the process, including gaining possession of the needed real property, is very time consuming. These provisions are not intended to restrict this practice, so long as it does not interfere with the reasonable time that must be provided for negotiations, described above, and the Agencies adhere to the Uniform Act ban on coercive action [section 301(7) of the Uniform Act].

If the owner expresses an intent to provide an appraisal report, Agencies are encouraged to provide the owner and/or his/her appraiser a copy of Agency appraisal requirements and inform them that their appraisal should be based on those requirements.

Section 24.102(i) Administrative settlement. This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including review appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

Section 24.102(j) Payment before taking possession. It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

Section 24.102(m) Fair rental. Section 301(6) of the Uniform Act limits what an Agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the Agency on short notice. Such rent may not exceed ''the fair rental value of the property to a short-term occupier.'' Generally, the Agency's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

Section 24.102(n) Conflict of interest. The overall objective is to minimize the risk of fraud and while allowing Agencies to operate as efficiently as possible. There are three parts to this provision. The first provision is the prohibition against having any interest in the real property being valued by the appraiser (for an appraisal), the valuer (for a waiver estimate) or the review appraiser (for an appraisal review). The second provision is that no person functioning as a negotiator for a project or program can supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work for that project or program. However, for a program or project receiving Federal financial assistance, the Federal funding agency may waive this requirement if it would create a hardship for the Agency. The intent is to accommodate Federal-aid recipients that have a small staff where this provision would be unworkable. The third provision is to minimize situations where administrative costs exceed acquisition costs, § 24.102(n) also provides that the same person may prepare a valuation estimate (including an appraisal) and negotiate that acquisition, if the valuation estimate amount is $10,000 or less. However, it should be noted that this exception for properties valued at $10,000 or less is not mandatory, *e.g.*, Agencies are not required to use those who prepare a waiver valuation or appraisal of $10,000 or less to negotiate the acquisition, and, all appraisals must be reviewed in accordance with § 24.104. This includes appraisals of real property valued at $10,000 or less.

Section 24.103 Criteria for Appraisals.

The term ''requirements'' is used throughout this section to avoid confusion with the Appraisal Foundation's Uniform Standards of Professional Appraisal Practice (USPAP) ''standards.'' Although this section discusses appraisal requirements, the definition of ''appraisal'' itself at § 24.2(a)(3) includes appraisal performance requirements that are an inherent part of this section.

The term ''Federal and federally-assisted program'' is used to better identify the type of appraisal practices that are to be referenced and to differentiate them from the private sector, especially mortgage lending, appraisal practice.

Section 24.103(a) Appraisal requirements. The first sentence instructs readers that requirements for appraisals for Federal and federally-assisted programs are located in 49 CFR part 24. These are the basic appraisal requirements for Federal and federally-assisted programs. However, Agencies may enhance and expand on them, and there may be specific project or program legislation that references other appraisal requirements.

The term ''scope of work'' defines the general parameters of the appraisal. It reflects the needs of the Agency and the requirements of Federal and federally-assisted program appraisal practice. It should be developed cooperatively by the assigned appraiser and an Agency official who is competent to both represent the Agency's needs and respect valid appraisal practice. The scope of work statement should include the purpose and/or function of the appraisal, a definition of the estate being appraised, and if it is market value, its applicable definition, and the assumptions and limiting conditions affecting the appraisal. It may include parameters for the data search and identification of the technology, including approaches to value, to be used to analyze the data. The scope of work for a detailed appraisal should consider the specific requirements in 49 CFR 24.103(a)(1) through (5) and address them as appropriate.

Paragraph (a)(2) of this section, explains that all relevant and reliable approaches to value are to be used. However, where an Agency determines that the sales comparison approach will be adequate by itself because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the sales comparison approach. This should be reflected in the scope of work.

Section 24.103(b) Influence of the project on just compensation. As used in this section, the term ''project'' means an undertaking which is planned, designed, and intended to operate as a unit.

When the public is aware of the proposed project, project area property values may be affected. Therefore, property owners should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

Section 24.103(d)(1). The appraiser and review appraiser must each be qualified and competent to perform the appraisal and appraisal review assignments, respectively. Among other qualifications, State licensing or certification can help provide an indication of an appraiser's abilities.

Section 24.104 Review of appraisals.

The term ''review appraiser'' is used rather than ''reviewing appraiser,'' to emphasize that ''review appraiser'' is a separate specialty and not just an appraiser who happens to be reviewing an appraisal. Federal Agencies have long held the perspective that appraisal review is a unique skill that, while it certainly builds on appraisal skills, requires more. The review appraiser should posses both appraisal technical abilities and the ability to be the two-way bridge between the Agency's real property valuation needs and the appraiser.

Agency review appraisers typically perform a role greater than technical appraisal review. They are often involved in early project development. Later they may be involved in devising the appraisal problem statements and participate in making appraisal assignments to fee and/or staff appraisers. They are also mentors and technical advisors, especially on Agency policy and requirements, to appraisers, both staff and fee. Additionally, review appraisers are frequently technical advisors to other Agency officials.

Section 24.104(a). This paragraph states what the review appraiser is to review (the appraiser's presentation and analysis of market information) and what it is to be reviewed against § 24.103 and other applicable requirements, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. The appraisal review is to be a technical review by an appropriately qualified review appraiser. The qualifications of the review appraiser and the level of explanation of the basis for the reviewer's approved value depend on the complexity of the appraisal problem. If the initial appraisal submitted for review is unacceptable, the review appraiser is expected to communicate and work with the appraiser to the greatest extent possible to facilitate the appraiser's development of an acceptable appraisal. In doing this, the review appraiser is to remain in an advisory role, not directing the appraisal, and retaining objectivity and options for the appraisal review itself.

If the Agency intends that the staff review appraiser establish the amount the Agency believes is just compensation, she/he must be specifically authorized by the Agency to do so. If the review appraiser is not specifically authorized to establish the amount believed to be just compensation, that authority is with another Agency official.

Section 24.104(b). If the review appraiser develops an independent opinion of value, he/she may reference any acceptable resource, including acceptable parts of any appraisal, including an otherwise unacceptable appraisal, to support his/her independent approved value. If no submitted appraisal is approved, and the review appraiser determines an independent review amount, while remaining the appraisal review, that review also becomes the appraisal of record for Uniform Act purposes. It is within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on the property.

Section 24.104(c). Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and analysis of that data, demonstrates the soundness of the appraiser's opinion of value. For the purposes of this part, an acceptable appraisal is any appraisal that, on its own, meets the requirements of § 24.103. An approved appraisal is the one acceptable appraisal that is determined to best fulfill the requirement to be the basis for the amount believed to be just compensation. Recognizing that appraisal is not an exact science, there may be more than one acceptable appraisal of a property, but for the purposes of this part, there can be only one approved appraisal.

At the Agency's discretion, for a low value property requiring only a simple appraisal process, the review appraiser's approval, endorsing the appraiser's report, may be determined to satisfy the requirement for the review appraiser's signed report and certification.

Section 24.106(b) Expenses incidental to transfer of title to the agency. Generally, the Agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Agency's intent to make such arrangements. Such expenses must be reasonable and necessary.

Subpart C—General Relocation Requirements

Section 24.202 Applicability and *Section 205(c) Services to be provided.* In extraordinary circumstances, when a displaced person is not readily accessible, the Agency must make a good faith effort to comply with these sections and document its efforts in writing.

Section 24.204 Availability of comparable replacement dwelling before displacement.

Section 24.204(a) General. This provision requires that no one may be required to move from a dwelling without a comparable replacement dwelling having been made available. In addition, § 24.204(a) requires that, ''Where possible, three or more comparable replacement dwellings shall be made available.'' Thus, the basic standard for the number of referrals required under this section is three. Only in situations where three comparable replacement dwellings are not available (*e.g.*, when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.

Section 24.205 Relocation assistance advisory services.

Section 24.205(c)(2)(ii)(C) emphasizes that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

Section 24.206 Eviction for cause. An eviction related to non-compliance with a requirement related to carrying out a project (*e.g.*, failure to move or relocate when instructed, or to cooperate in the relocation process) shall not negate a person's entitlement to relocation payments and other assistance set forth in this part.

Section 24.207 General requirements—Claims for relocation payments. Section 24.207(a) allows an Agency to make a payment for low cost or uncomplicated moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate, as provided for in § 24.301(d)(1).

While section 24.207(f) prohibits an Agency from proposing or requesting that a displaced person waive his or her rights or entitlements to relocation assistance and payments, an Agency may accept a written statement from the displaced person that states that they have chosen not to accept some or all of the payments or assistance to which they are entitled. Any such written statement must clearly show that the individual knows what they are entitled to receive (a copy of the Notice of Eligibility which was provided may serve as documentation) and their statement must specifically identify which assistance or payments they have chosen not to accept. The statement must be signed and dated.

Subpart D—Payment for Moving and Related Expenses

Section 24.301 Payment for actual reasonable moving and related expenses.

Section 24.301(g)(14)(ii). If the piece of equipment is operational at the acquired site the estimated cost to reconnect the equipment shall be based on the cost to install the equipment as it currently exists, and shall not include the cost of code-required betterments or upgrades that may apply at the replacement site.

Section 24.301(g)(17) Searching expenses. In special cases where the displacing Agency determines it to be reasonable and necessary, certain additional categories of searching costs may be considered for reimbursement. These include those costs involved in investigating potential replacement sites and the time of the business owner, based on salary or earnings, required to apply for licenses or permits, zoning changes, and attendance at zoning hearings. Necessary permit, license and attorney fees are also reimbursable. In those instances when such additional costs to investigate and acquire the site exceed $2,500, the displacing Agency may consider waiver of the cost limitation under the § 24.7 waiver provision. Such a waiver should be subject to the approval of the Federal funding Agency in accordance with existing delegation authority.

Section 24.305 Fixed Payment for Moving Expenses—Nonresidential Moves.

Section 24.305(d) Nonprofit organization. Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the non-profit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising, and other like items as well as fundraising expenses. Operating expenses for carrying out the purposes of the non-profit organization are not included in

administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public Agencies.

Section 24.305(e) Average annual net earnings. If the average annual net earnings of the displaced business, farm, or non-profit organization are determined to be less than $1,000, even $0 or a negative amount, the minimum payment of $1,000 shall be provided.

Section 24.306 Discretionary Utility Relocation Payments.

Section 24.306(c) describes the issues that the Agency and the utility facility owner must agree to in determining the amount of the relocation payment. To facilitate and aid in reaching such agreement, the practices in the Federal Highway Administration regulation, 23 CFR part 645, subpart A, Utility Relocations, Adjustments and Reimbursement, should be followed.

Subpart E—Replacement Housing Payments

Section 24.401 Replacement Housing Payment for 180-day Homeowner-Occupants.

Section 24.401(a)(2). An extension of eligibility may be granted if some event beyond the control of the displaced person such as acute or life threatening illness, bad weather preventing the completion of construction, or physical modifications required for reasonable accommodation of a replacement dwelling, or other like circumstances causes a delay in occupying a decent, safe, and sanitary replacement dwelling.

Section 24.401(c)(2)(iii) Price differential. The provision in § 24.401(c)(2)(iii) to use the current market value for residential use does not mean the Agency must have the property appraised. Any reasonable method for arriving at the market value may be used.

Section 24.401(d) Increased mortgage interest costs. The provision in § 24.401(d) sets forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to the downpayment) to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages. This payment is commonly known as the ''buydown.''

The Agency must know the remaining principal balance, the interest rate, and monthly principal and interest payments for the old mortgage as well as the interest rate, points and term for the new mortgage to compute the increased mortgage interest costs. If the combination of interest and points for the new mortgage exceeds the current prevailing fixed interest rate and points for conventional mortgages and there is no justification for the excessive rate, then the current prevailing fixed interest rate and points shall be used in the computations. Justification may be the unavailability of the current prevailing rate due to the amount of the new mortgage, credit difficulties, or other similar reasons.

SAMPLE COMPUTATION

Old Mortgage:	
Remaining Principal Balance	$50,000
Monthly Payment (principal and interest)	458.22
Interest rate (percent)	7
New Mortgage:	
Interest rate (percent)	10
Points	3
Term (years)	15

Remaining term of the old mortgage is determined to be 174 months. Determining, or computing, the actual remaining term is more reliable than using the data supplied by the mortgagee.) However, if it is shorter, use the term of the new mortgage and compute the needed monthly payment.

Amount to be financed to maintain monthly payments of $458.22 at 10%—$42,010.18

Calculation:	
Remaining Principal Balance	$50,000.00
Minus Monthly Payment (principal and interest)	−42,010.18
Increased mortgage interest costs	7,989.82
3 points on $42,010.18	1,260.31
Total buydown necessary to maintain payments at $458.22/month	9,250.13

If the new mortgage actually obtained is less than the computed amount for a new mortgage ($42,010.18), the buydown shall be prorated accordingly. If the actual mortgage obtained in our example were $35,000, the buydown payment would be $7,706.57 ($35,000 / by $42,010.18 = .8331; $9,250.13 × .83 = $7,706.57).

The Agency is obligated to inform the displaced person of the approximate amount of this payment and that the displaced person must obtain a mortgage of at least the same amount as the old mortgage and for at least the same term in order to receive the full amount of this payment. The Agency must advise the displaced person of the interest rate and points used to calculate the payment.

Section 24.402 Replacement Housing Payment for 90-day Occupants.

The down payment assistance provisions in § 24.402(c) limit such assistance to the amount of the computed rental assistance payment for a tenant or an eligible homeowner. It does, however, provide the latitude for Agency discretion in offering down payment assistance that exceeds the computed rental assistance payment, up to the $5,250 statutory maximum. This does not mean, however, that such Agency discretion may be exercised in a selective or discriminatory fashion. The displacing Agency should develop a policy that affords equal treatment for displaced persons in like circumstances and this policy should be applied uniformly throughout the Agency's programs or projects.

For the purpose of this section, should the amount of the rent supplement exceed the purchase price of the replacement dwelling, the payment would be limited to the cost of the dwelling.

Section 24.403 Additional Rules Governing Replacement Housing.

Section 24.403(a) Determining Cost of Comparable Replacement Dwelling. The payment for increased real estate taxes, if any, for displaced 180-day owner occupants displaced as a result of a Federal or federally-funded project, would be based on the difference between the monthly real estate tax on the acquired dwelling, and the monthly real estate tax on the replacement dwelling at the time of purchase, but not to exceed the real estate tax on a comparable replacement dwelling.

The increase dollar amount, if any, would be provided for a 24 month period. If the displaced person elects to purchase a replacement dwelling whose real estate tax exceeds that of the comparable dwelling, the increased tax payment would be limited to the increased monthly tax on the comparable replacement dwelling at the time of purchase for 24 months. Should the displaced person elect to purchase a replacement dwelling for less than the cost of a comparable replacement dwelling, the increased tax calculation would be based on the 24 month increase, if any, in the tax cost of the acquired dwelling and that of the replacement dwelling at the time of purchase.

24.404 Replacement Housing of Last Resort.

Section 24.404(b) Basic rights of persons to be displaced. This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under § 24.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of ''owner of a dwelling'' at § 24.2(a)(21). The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

Section 24.404(c) Methods of providing comparable replacement housing. This Subpart emphasizes the use of cost effective means of providing comparable replacement housing. The term ''reasonable cost'' is used to highlight the fact that while innovative means to provide housing are encouraged, they should be cost-effective. Section 24.404(c)(2) permits the use of last resort housing, in special cases, which may involve variations from the usual methods of obtaining comparability. However, such variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller, decent, safe and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

Appendix B to Part 24—Statistical Report Form

This Appendix sets forth the statistical information collected from Agencies in accordance with § 24.9(c).

General

1. *Report coverage.* This report covers all relocation and real property acquisition activities under a Federal or a federally-assisted project or program subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. If the exact numbers are not easily available, an Agency may provide what it believes to be a reasonable estimate.

2. *Report period.* Activities shall be reported on a Federal fiscal year basis, i.e., October 1 through September 30.

3. *Where and when to submit report.* Submit a copy of this report to the lead Agency as soon as possible after September 30, but not later than November 15. Lead Agency address: Federal Highway Administration, Office of Real Estate Services (HEPR), Room 3221, 400 7th Street SW., Washington, DC 20590.

4. *How to report relocation payments.* The full amount of a relocation payment shall be reported as if disbursed in the year during which the claim was approved, regardless of whether the payment is to be paid in installments.

5. *How to report dollar amounts.* Round off all money entries in Parts of this section A, B and C to the nearest dollar.

6. *Regulatory references.* The references in Parts A, B, C and D of this section indicate the subpart of the regulations pertaining to the requested information.

Part A. Real Property Acquisition Under the Uniform Act

Line 1. Report all parcels acquired during the report year where title or possession was vested in the Agency during the reporting period. The parcel count reported should relate to ownerships and not to the number of parcels of different property interests (*e.g.,* fee, perpetual easement, temporary easement, *etc.*) that may have been part of an acquisition from one owner. For example, an acquisition from a property that includes a fee simple parcel, a perpetual easement parcel, and a temporary easement parcel should be reported as 1 parcel not 3 parcels. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.)

Line 2. Report the number of parcels reported on Line 1 that were acquired by condemnation. Include those parcels where compensation for the property was paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the Agency through condemnation authority.

Line 3. Report the number of parcels in Line 1 acquired through administrative settlement where the purchase price for the property exceeded the amount offered as just compensation and efforts to negotiate an agreement at that amount have failed.

Line 4. Report the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the Agency in Line 1.

Part B. Residential Relocation Under the Uniform Act

Line 5. Report the number of households who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling. The term ''households'' includes all families and individuals. A family shall be reported as ''one'' household, not by the number of people in the family unit.

Line 6. Report the total amount paid for residential moving expenses (actual expense and fixed payment).

Line 7. Report the total amount paid for residential replacement housing payments including payments for replacement housing of last resort provided pursuant to § 24.404 of this part.

Line 8. Report the number of households in Line 5 who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling as part of last resort housing assistance.

Line 9. Report the number of tenant households in Line 5 who were permanently displaced during the fiscal year by project or program activities, and who purchased and moved to their replacement dwelling using a down payment assistance payment under this part.

Line 10. Report the total sum costs of residential relocation expenses and payments (excluding Agency administrative expenses) in Lines 6 and 7.

Part C. Nonresidential Relocation Under the Uniform Act

Line 11. Report the number of businesses, nonprofit organizations, and farms who were permanently displaced during the fiscal year by project or program activities and moved to their replacement location. This includes businesses, nonprofit organizations, and farms, that upon displacement, discontinued operations.

Line 12. Report the total amount paid for nonresidential moving expenses (actual expense and fixed payment.)

Line 13. Report the total amount paid for nonresidential reestablishment expenses.

Line 14. Report the total sum costs of nonresidential relocation expenses and payments (excluding Agency administrative expenses) in Lines 12 and 13.

Part D. Relocation Appeals

Line 15. Report the total number of relocation appeals filed during the fiscal year by aggrieved persons (residential and nonresidential).

BILLING CODE 4910–22–P

FEDERAL FISCAL YEAR ENDING SEPT. 30, 20____
REPORTING AGENCY: _____
STATE: _____
CITY/COUNTY (For Local Government Agencies): _____
FEDERAL FUNDING AGENCY: _____

PART A. REAL PROPERTY ACQUISITION UNDER THE UNIFORM ACT	
1) Total Number of Parcels Acquired (Ownerships)	
2) Number of Parcels in Line 1 Acquired by Condemnation	
3) Number of Parcels in Line 1 Acquired by Administrative Settlement (Above initial offer –see 24.102(i))	
4) Compensation – Total Costs (Including 24.106; Excluding appraisal costs, negotiator fees and other administrative expenses)	
PART B. RESIDENTIAL RELOCATION UNDER THE UNIFORM ACT	
5) Total Number of Residential Displacements (Households)	
6) Residential Moving Payments – Total Costs	
7) Replacement Housing Payments – Total Costs	
8) Number of Last Resort Housing Displacements in Line 5 (Households)	
9) Number of Tenants converted to Homeowners in Line 5 (Households using 24.402(c))	
10) Total Costs for Residential Relocation Expenses and Payments (Sum of lines 6 and 7; excluding Agency Administrative Costs)	
PART C. NONRESIDENTIAL RELOCATION UNDER THE UNIFORM ACT	
11) Total Number of Non-Residential Displacements	
12) Non-Residential Moving Payments – Total Costs (Including 24.305)	
13) Non-Residential Reestablishment Payments – Total Costs	
14) Total Costs for Nonresidential Relocation Expenses and Payments (Sum of lines 12 and 13; excluding Agency Administrative Costs)	
PART D. RELOCATION APPEALS UNDER THE UNIFORM ACT	
15) Total Number of Relocation Appeals (Residential & Non-Residential)	

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BILLING CODE 4910–22–C

Federal Register

Wednesday,
December 17, 2003

Part III

Securities and Exchange Commission

17 CFR Part 270

Amendments to Rules Governing Pricing of Mutual Fund Shares; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–26288; File No. S7–27–03]

RIN 3235–AJ01

Amendments to Rules Governing Pricing of Mutual Fund Shares

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing amendments to the rule under the Investment Company Act that requires forward pricing of redeemable securities issued by registered investment companies (''funds''). The amendments would provide that an order to purchase or redeem fund shares would receive the current day's price only if the fund, its designated transfer agent, or a registered securities clearing agency receives the order by the time that the fund establishes for calculating its net asset value. The amendments are designed to prevent unlawful late trading in fund shares.

DATES: Comments must be received on or before February 6, 2004.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only. Comments in paper format should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments in electronic format should be submitted to the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–27–03; if E-mail is used, this file number should be included on the subject line. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site *(http://www.sec.gov)*.[1]

FOR FURTHER INFORMATION CONTACT: Adam B. Glazer, Attorney, or Penelope W. Saltzman, Senior Counsel, Office of Regulatory Policy, (202) 942–0690, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

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

SUPPLEMENTARY INFORMATION: The Commission today is proposing for public comment amendments to rule 22c–1 [17 CFR 270.22c–1] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Investment Company Act'' or the ''Act'').

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I. Background

Rule 22c–1 under the Investment Company Act, the ''forward pricing'' rule, requires funds, their principal underwriters, and dealers to sell and redeem fund shares at a price based on the current net asset value (''NAV'') next computed after receipt of an order to buy or redeem.[2] The rule also requires that funds calculate their NAV at least once a day.[3] Today, most funds calculate NAV when the major U.S. stock exchanges close at 4 p.m. Eastern Time.[4]

Under rule 22c–1, an investor who submits an order before the 4 p.m. pricing time must receive that day's price, and an investor who submits an order after the pricing time must receive the next day's price. ''Late trading'' refers to the illegal practice of permitting a purchase or redemption order received after the 4 p.m. pricing time to receive the share price calculated as of 4 p.m. that day.[5] A late trader can exploit events occurring after 4 p.m., such as earnings announcements, by buying on good news (and thus obtaining fund shares too cheaply) or selling on bad news (and thus selling at a higher price than the shares are worth). In either case, the late trader profits at the expense of long-term investors in the fund.

Investors do not submit orders directly to funds, but to any one of several different types of intermediaries. All order information for a particular fund is ultimately submitted to the transfer agent (''primary transfer agent'') that acts as the master recordkeeper for the fund, keeping track of shares sold and redeemed and cash flowing into and out of the fund.[6] Those investors who deal directly with the fund by telephone or computer typically submit their order information to the fund's primary transfer agent.[7] Many, however, invest in mutual fund shares through other intermediaries such as broker-dealers, banks, and retirement plans[8] that form a network of intermediaries that process and record the transactions.[9]

Instead of submitting hundreds or even thousands of individual purchase and redemption orders each day, intermediaries typically net orders received from investors against each other and submit a single file containing net or omnibus purchase or redemption

[2] 17 CFR 270.22c–1(a). The rule also applies to any other person designated in the fund's prospectus as authorized to receive purchase orders or tenders of securities for redemption. *Id.*

[3] *See* 17 CFR 270.22c–1(b)(1). The rule provides exceptions from the daily pricing requirement for: (i) days on which changes in the value of the fund's portfolio securities will not materially affect the current NAV of the fund's redeemable securities; (ii) days during which the fund does not receive an order for purchase or redemption of fund shares; and (iii) customary national business holidays and local and regional business holidays listed in the fund's prospectus. *Id.*

[4] Thus, a fund's NAV generally reflects the closing prices of the securities it holds. For securities that are not listed on exchanges or for which there are otherwise no readily available market values, a fund's board of directors must establish a fair value for the securities. *See* 15 U.S.C. 80a–2(a)(41)(B)(ii).

[5] In this Release, we will assume for convenience that all funds choose to price their securities daily as of 4 p.m. Some funds, however, price their securities more than once per day, and many funds price their securities earlier than 4 p.m.

[6] A ''transfer agent'' is any person who engages on behalf of a securities issuer, or on behalf of itself as an issuer of securities, in (a) countersigning the issuer's securities when issued; (b) monitoring issuance of the securities to prevent unauthorized issuance; (c) registering the transfer of the securities; (d) exchanging or converting the securities; or (e) transferring record ownership of the securities by book entry (*i.e.,* record entry of ownership without issuing a physical certificate). *See* 15 U.S.C. 78c(a)(25). Transfer agents are registered with and regulated by the Commission. *See* 15 U.S.C. 78q–1(c).

[7] Such intermediaries that are not registered as broker-dealers need to consider whether the securities activities that they are undertaking are brokerage activities that require them to register as broker-dealers. Section 3(a)(4) of the Securities Exchange Act of 1934 (''Exchange Act'') defines a broker as a person engaged in the business of effecting transactions in securities for the account of others. It includes several exceptions for certain bank activities. *See* 15 U.S.C. 78c(a)(4). It includes several exceptions for certain bank activities. *See* 15 U.S.C. 78c(a)(4). Section 15 of the Exchange Act essentially makes it unlawful for a broker or dealer ''to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills)'' unless the broker or dealer is reregistered with the Commission. *See* 15 U.S.C. 78o)a)(1).

[8] A large portion of these investors invest through tax-advantaged retirement plans, such as 401(k) accounts. About one-third of all mutual fund shares are held through retirement accounts. *See* Investment Company Institute, *Mutual Funds and the U.S. Retirement Market in 2002,* Fundamentals, June 2003, AT 1, 2.

[9] *See supra* note 7.

order information to the fund's primary transfer agent.[10] Many of the purchase and redemption orders are routed to fund primary transfer agents through the National Securities Clearing Corporation (''NSCC''), currently the only registered clearing agency [11] that operates an automated system for processing those orders for funds [12] (''Fund/SERV'').[13] Fund/SERV provides a central processing system that collects order information from clearing brokers and others, sorts all the incoming order information according to fund, and transmits the order information to each fund's primary transfer agent.[14]

Although purchase and redemption orders must be submitted to retail dealers and other intermediaries by 4 p.m. in order to receive that day's price, our rules permit those intermediaries to forward the order information to Fund/SERV or fund primary transfer agents at a later time.[15] These intermediaries, which include broker-dealers, banks, and administrators of retirement plans, typically process orders received before 4 p.m. in the early evening hours before submitting them to Fund/SERV or fund primary transfer agents. The process is typically completed in the middle of the night.

II. Discussion

Investigations by Commission staff and state securities authorities have uncovered late trading of fund shares by intermediaries in violation of our rules, in some cases with the assistance of fund managers.[16] Our investigations and examinations are ongoing, but to date suggest that late trading of fund shares is not isolated, nor is it limited to any one type of fund or intermediary.[17]

Fund managers themselves have permitted late trades by favored investors. Late trading not only violates rule 22c–1, but managers who permit late trading also breach their fiduciary duties to the funds and fund shareholders. We have approved a new rule requiring that all funds have policies and procedures in place designed, among other things, to prevent late trading facilitated by fund personnel. We believe these new policies and procedures, administered by a chief compliance officer reporting directly to the fund's board of directors, will make such schemes more difficult. Vigorous civil enforcement, as well as criminal enforcement actions, when appropriate, will further deter such behavior.

Fund intermediaries have blended late trades with legitimate trades in the file containing net order information submitted to Fund/SERV or a fund's primary transfer agent after 4 p.m., effectively concealing the late trades from fund managers and from our compliance examiners. When we adopted rule 22c–1, we also amended our broker-dealer recordkeeping rules to require time-stamping of fund orders, which would permit us to detect late trades.[18] The rule has been circumvented by, for example, routinely permitting favored investors to place orders before 4 p.m., but cancel them after late news is received. Purchase orders would survive only when good news released after 4 p.m. increased the value of the fund's portfolio, while redemption orders would survive only when bad news depressed the value of the portfolio. Similarly, orders have been placed before 4 p.m. to be modified or changed after 4 p.m. Also clients that had placed an order for one fund's shares before 4 p.m. that was rejected by the fund, have been permitted to substitute an order for another fund's shares after 4 p.m. In each of these circumstances, the broker's records would appear to support a series of bona fide trades all of which were time-stamped before 4 p.m.

We are very concerned that our current rules, which permit intermediaries to process trades after 4 p.m., have failed to prevent late trading, and that available tools to control late trading facilitated by fund intermediaries have proven inadequate. Fund managers have informed us that, although they contractually require intermediaries to segregate orders submitted before 4 p.m. from those submitted later, they have no practical way to enforce that contractual obligation because they cannot discern late trades. Some broker-dealers engaging in late trading appear to have successfully concealed their activities from our examination staff and the self-regulatory organizations. Other fund intermediaries are not subject to our regular examination, and we cannot take steps we believe are adequate to prevent late trading through those intermediaries.

To eliminate late trading through fund intermediaries, we are proposing to amend rule 22c–1, as discussed in more detail below, to require that all purchase and redemption orders be received by the fund,[19] a single transfer agent

[10] Some intermediaries submit one aggregated purchase order and one aggregated redemption order in a single ''batch.'' Others submit orders in multiple batches in the course of the day. The intermediary will batch customer orders it receives during the day at various times, with a 4 p.m. cut-off time for orders that are included in the last batch transmitted to the fund's primary transfer agent for same-day pricing. Orders received by the intermediary after the last cut-off time are included in a batch of orders transmitted to the fund's primary transfer agent for next-day pricing.

[11] A ''clearing agency'' is a person that acts as an intermediary in making payments or deliveries (or both) in connection with transactions in securities, or that provides facilities for comparing data with respect to the terms of securities transactions to reduce the number of settlements or the allocation of securities settlement responsibilities. *See* 15 U.S.C. 78c(a)(23)(A). A clearing agency is a self-regulatory organization, and its rules of operation are subject to approval by the appropriate federal regulatory agency. *See* 15 U.S.C. 78c(a)(26), 78s(b).

[12] Shares of exchange-traded funds (''ETFs''), however, are cleared through NSCC and the Depository Trust Company. An ETF typically is a registered open-end investment company with shares that trade intra-day at market-determined prices. *See* Actively Managed Exchange-Traded Funds, Investment Company Act Release No. 25258, nn. 6–8 and accompanying text (Nov. 8, 2001) [66 FR 57614 (Nov. 15, 2001)].

[13] ''Fund/SERV'' is an acronym for the Mutual Fund Settlement, Entry and Registration Verification Service. Only NSCC members who are Fund/SERV participants may use the system. Funds or their distributors are NSCC members, who designate the primary transfer agent to receive information on share transactions on the fund or distributor's behalf.

[14] The primary transfer agent provides Fund/SERV with its electronic confirmation of the order, and Fund/SERV forwards those confirmations back to the clearing brokers. In 2002, Fund/SERV processed 83 million fund transactions at a value of $1.3 trillion. *See DTCC Business Volumes Set Records in 2002*, The Depository Trust & Clearing Corporation, Press Release (May 5, 2003) (available at *http://www.dtcc.com/PressRoom/2003/2002review.html*).

[15] *See* Staff Interpretive Position Relating to Rule 22c–1, Investment Company Act Release No. 5569 (Dec. 27, 1968) (rule 22c–1 ''contemplates that the time of receipt of the order by the retail dealer is controlling'' for purposes of determining the price obtained by the dealer). *See also* Charles Schwab & Co., Inc., SEC Staff No-Action Letter (July 7, 1997) (the time an order was received by a person designated in the fund's prospectus will be deemed the time the order was received for purposes of rule 22c–1).

[16] *See, e.g.*, In the Matter of Steven B. Markovitz, Investment Company Act Release No. 26201 (Oct. 2, 2003).

[17] *See* Testimony of Stephen M. Cutler Concerning Recent Commission Activity to Combat Misconduct Relating to Mutual Funds Before the Senate Subcommittee on Financial Management, the Budget, and International Security, Committee on Governmental Affairs, 108th Cong., 1st Sess., 11–15 (Nov. 3, 2003).

[18] *See* Adoption of Rule 22c–1 Under the Investment Company Act of 1940 Prescribing the Time of Pricing Redeemable Securities for Distribution, Redemption, and Repurchase, and Amendment of Rule 17a–3(a)(7) Under the Securities Exchange Act of 1934 Requiring Dealers to Time-Stamp Orders, Investment Company Act Release No. 5519 (Oct. 16, 1968) [33 FR 16331 (Nov. 7, 1968)]. *See also* 17 CFR 240.17a–3(a)(6)(i) (requiring broker-dealers to record each brokerage order and information pertaining to the order, including the time the order was received and the time of entry).

[19] Under the rule, orders submitted to various intermediaries, such as third-party administrators, would not be considered orders received by the

Continued

designated by the fund and required by written contract to receive order information and maintain a record of the date and time it receives the information (''designated transfer agent''), or a registered clearing agency (*e.g.,* Fund/SERV) no later than the time at which the fund prices its securities (*e.g.,* 4 p.m.), in order to obtain the current day's price.[20] As a consequence, fund intermediaries, such as broker-dealers, banks, and administrators of retirement plans would have to submit orders to the fund before 4 p.m. in order for their customers to receive the 4 p.m. price.[21] Orders received later would have to receive the following day's price.

We recognize that this proposed rule change, if adopted, would likely require substantial changes in the way fund intermediaries process fund purchase and redemption orders. The capacity of computer systems that process those orders will likely have to be expanded to handle more transactions within a shorter period of time. Intermediaries will likely require investors to submit purchase orders at an earlier time in the day (*e.g.,* 2 p.m.) to obtain the 4 p.m. price, in order to allow the intermediary time to process the purchase and redemption orders before submitting them to the fund, its designated transfer agent, or the clearing agency. Administrators of defined contribution employee pension plans, (*e.g.,* 401(k) plans) have informed us that they likely will be unable to process any purchase and redemption requests the same day they are made.[22]

We seek comment on these costs, and whether they are justified by the benefits of the proposed amendments. In proposing these amendments, we assume investors and intermediaries will adapt to the new requirements, just as they adapted when we required forward pricing in 1968. Investors for whom it is important to be able to place orders shortly before 4 p.m. will seek out fund complexes that permit investors to submit orders directly to the fund's designated transfer agent. Some fund intermediaries also may compete for such investors by developing more efficient order processing systems. Others may eschew such customers because they tend to be short-term traders or market-timers. We believe that the burden on most fund investors will be small because most are not sensitive to the time at which their purchase or redemption orders are priced. They make longer-term investments, often as part of an automatic purchase program, and treat the time and date of the purchase order as a random event controlled by their employer's payroll processing protocols, or the delivery of the mail. In some cases, a purchase order executed at the next day's price will be executed at a lower price than it would the same day; in other cases, it will be executed at a higher price.

We also seek comment on an approach that has been suggested.[23] This approach would require fund intermediaries, in order to be eligible to submit orders to designated transfer agents or Fund/SERV after 4 p.m., to have adopted certain protections designed to prevent late trading.[24] Such protections could include:

- Electronic or physical time-stamping of orders in a manner that cannot be altered or discarded once the order is entered into the trading system;
- Annual certification that the intermediary has policies and procedures in place designed to prevent late trades, and that no late trades were submitted to the fund or its designated transfer agent during the period; and
- Submission of the intermediary to an annual audit of its controls conducted by an independent public accountant who would submit his report to the fund's chief compliance officer.

We have identified these three protections as important components of this approach. Would each of these protections be appropriate to preventing trading in fund shares? Are there other protections that would be necessary or appropriate to prevent unlawful late trading while permitting intermediaries to continue processing purchase and redemption orders after 4 p.m.? If so, what are they?

Would such an approach be effective at stopping late trading? Some broker-dealers appear to have easily circumvented current system controls, including the time-stamping required by our rules. Our staff reports that at least one broker-dealer that had obtained an annual audit of its internal controls by an independent auditor has submitted late trades. We are therefore concerned that an independent auditor may fail to detect weaknesses in internal controls that allow late trading to occur. How could we prevent any such protections and controls from being circumvented similarly in the future? How would we police compliance with the controls by the fund intermediaries over which we have no regulatory authority? Finally, we recognize that this approach might require different systems changes than those required under the proposed amendments discussed in this Release. What costs would this approach impose on intermediaries? Would these costs be passed on to fund investors? Are there other conditions that would be more effective, or equally effective but less costly?

A. Proposed Pricing Requirements

Rule 22c–1 currently deems a purchase or redemption order to be received, for purposes of determining the appropriate day's price, when the retail dealer receives the order, even if it is actually submitted to the fund's transfer agent at a later time. The proposed amendments would deem an order received only when it is received[25] by (i) the fund itself, (ii) the fund's designated transfer agent, or (iii) a clearing agency registered with the

''fund,'' even if those intermediaries are agents of the fund.

[20] *See* proposed rule 22c–1(a).

[21] The general requirement of the rule would be subject to a few limited exceptions. *See infra* Section II.C.

[22] *See, e.g.,* Letter from Robert G. Wuelfing, *The Spark Institute, Inc.,* to Paul F. Roye, Director, *Division of Investment Management, Securities and Exchange Commission,* and Cynthia M. Fornelli, Deputy Director, *Division of Investment Management, Securities and Exchange Commission* (Oct. 31, 2003) (''*Spark Institute Letter*'') (available in the public comment file). Another administrator has noted that orders would have to be placed several hours earlier than 4 p.m. *See* Testimony of E. Scott Peterson, Global Practice Leader of Defined Contribution Services, Hewitt Associates, Submitted for the Record, U.S. Senate Subcommittee on Financial Management, the Budget, and International Security, Committee on Governmental Affairs, Hearing on Mutual Funds, Trading Practices and Abuses that Harm Investors, 108th Cong., 1st Sess. 6 (Nov. 3, 2003).

[23] Several groups have urged us to adopt such an approach. *See, e.g.,* Letter from Marc E. Lackritz, President, *Securities Industry Association,* to Paul F. Roye, Director, *Division of Investment Management, Securities and Exchange Commission* (Oct. 31, 2003); *Spark Institute Letter, supra* note 22. *See also* Letter from Edward L. Yingling, Executive Vice President, *American Bankers Association,* to Paul F. Roye, Director, *Division of Investment Management, Securities and Exchange Commission* (Nov. 12, 2003); Letter from Steve Bartlett, President, *The Financial Services Roundtable,* to Paul Roye, Director, *Division of Investment Management, Securities and Exchange Commission* (Nov. 10, 2003); Letter from Geof Gradler, Senior Vice President and Head, Office of Government Affairs, *Charles Schwab & Co., Inc.,* to Paul F. Roye, Director, *Division of Investment Management, Securities and Exchange Commission,* Cynthia M. Fornelli, Deputy Director, *Division of Investment Management, Securities and Exchange Commission,* and Douglas J. Scheidt, Chief Counsel, *Division of Investment Management, Securities and Exchange Commission* (Oct. 27, 2003) (advocating similar approaches). Each of the letters cited is available in the public comment file.

[24] These protections would be required for intermediaries other than the fund's designated transfer agent or the registered clearing agency.

[25] We use the term ''receive'' in the proposed rule text for purposes of proposed rule 22c–1 only. Receipt of an order in NSCC's Fund/SERV refers only to its role as an electronic communication hub that transmits fund orders from the broker-dealer to the appropriate mutual fund processor.

Commission (*e.g.,* NSCC's Fund/SERV system).[26]

Under the proposed rule, fund designated transfer agents would be required to record the date and time they receive order information.[27] These transfer agents and NSCC will operate, in effect, as time-stamping organizations, ensuring that orders are assigned the correct day's price.[28] We believe these organizations, which are regulated by the Commission [29] and operate large automated processing systems, will serve to ensure the integrity of fund pricing.[30]

Are there other intermediaries that could also serve this role? Are there intermediaries that may become involved in processing order information in the foreseeable future that would be capable of serving this role? We recognize that this proposal will require fund transfer agents, NSCC, and other intermediaries to modify, and in some cases to expand, their data processing systems to reflect the rule proposals. If we adopt these proposals in similar form, we would expect to provide a one-year transition period to accommodate system changes. Would such a transition period be adequate? We also note that transfer agents currently are not required under Commission rules to time-stamp information they record.[31] Nevertheless, only a transfer agent that has the ability to time-stamp order information it receives and maintain a record of that information could be a ''designated transfer agent'' under the proposed amendments. Should our transfer agent rules include time-stamping and record retention requirements for designated transfer agents? If so, should any information in addition to the order information and date and time of receipt be included in the record? In what form and for how long should the record be maintained?

B. Purchase and Sale Orders; Exchanges

We propose to define the term ''order'' in the rule to clarify when an order is complete (and therefore has been received) for purposes of obtaining the appropriate day's price. Under the proposed amendments an ''order'' would mean the direction to purchase or sell either (i) a specific number of shares of a fund (*e.g.,* all the shares held in the account), or (ii) an indeterminate number of shares of a specific value (*e.g.,* $10,000 of shares of the fund).[32] The definition also would state that each order would be deemed irrevocable as of the next pricing time after receipt by the fund, its designated transfer agent, or registered clearing agency.[33] This provision is designed to prevent the cancellation or modification of orders after the pricing time applicable to the order.

Our proposed amendment also contains a special provision for exchange orders. An investor who exchanges between two funds actually engages in two transactions—a redemption of the securities he owns in one fund and a purchase (using the redemption proceeds) of securities in another fund. Typically, exchanges between funds in the same fund complex, and sometimes in different complexes, are processed as a single transaction so that they receive the same day's prices. In the case of an exchange involving a fixed number of shares (*e.g.,* in which the investor redeems all of his shares of the first fund), neither the amount nor the number of shares of the second fund will be known until the NAV of the first fund is determined, which will be sometime after 4 p.m. To preserve the ability of funds to offer ''seamless'' exchange transactions, we propose to define ''order'' to include a direction to purchase redeemable securities of the fund using proceeds of a contemporaneous order to redeem a specific number of shares of another.

C. Exceptions

Rule 22c–1 contains several exceptions from the forward pricing requirements, all of which we would preserve.[34] We would add to those exceptions another exception that would permit investor orders to receive same-day treatment if, as a result of an emergency, a dealer (or its agent) was unable to transmit the orders, or NSCC or the fund's designated transfer agent was unable to receive the orders.[35] The exception would prevent investors from losing the current day's price for orders received by dealers before 4 p.m., if those orders could not be transmitted to or received by NSCC or the fund's designated transfer agent by 4 p.m. because of, for example, a power failure, hurricane or other emergency.[36]

The emergency exception would be available to dealers only if the chief executive officer certifies to the fund (i) the nature, existence, and duration of the emergency, and (ii) that the intermediary received the orders before the applicable pricing time.[37] A fund also would be required to keep a record of each certification it received for six years.[38] If an emergency prevented the designated transfer agent or the clearing agency from receiving order information, the chief executive officer of the designated transfer agent or clearing agency would have to provide notice of the emergency to the fund.[39]

The second exception addresses ''conduit'' funds, which invest all their

[26] *See* proposed rule 22c–1(a). The proposed amendments would retain the requirements in the current rule concerning the frequency and time of determining NAV, but would reorganize and reword those provisions. The proposed amendment would use the phrase ''based on the current net asset value established as of the next pricing time'' instead of the phrase ''based on the current net asset value which is next computed.'' This amendment is intended to clarify the current requirement that orders received after the pricing time, but before calculation of the NAV is complete, do not receive same-day pricing.

[27] The proposed rule defines ''designated transfer agent'' to mean the single registered transfer agent, as defined in section 3(a)(25) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(25)], that is designated, in the fund's registration statement, and required by written contract to receive order information and maintain a record of the date and time it receives the order information. *See* proposed rule 22c–1(c)(1).

[28] Although orders would have to be received by Fund/SERV or the designated transfer agent by 4 p.m. to ensure same-day pricing, the clearing agency and designated transfer agent each may complete its processing after the pricing time.

[29] *See supra* notes 6, 11.

[30] Some groups have endorsed this approach. *See* Statement of Paul G. Haaga, Jr., Chairman, Investment Company Institute on ''Mutual Funds: Who's Looking Out for Investors,'' Before the House Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises of the Committee on Financial Services, 108th Cong., 1st Sess. (Nov. 4, 2003) (available at *http://www.ici.org/statements/tmny/03_house_haaga_tmny.html*); Letter from David B. Yeske, President, *The Financial Planning Association,* to William H. Donaldson, Chairman, *Securities and Exchange Commission* (Nov. 7, 2003) (available in the public comment file).

[31] The proposed amendments would not impose any new recordkeeping requirements on transfer agents in general.

[32] *See* proposed rule 22c–1(c)(3).

[33] *Id.*

[34] The rule preserves three existing exceptions. The first permits sales of unit investment trust shares in the secondary market involving backward pricing under conditions that do not dilute existing shareholders' interest in the trust. *See* proposed rule 22c–1(b)(3). The second permits insurance company separate accounts to price initial purchase payments up to two days after receipt of a complete contract application and up to five days while obtaining additional information to complete the application. *See* proposed rule 22c–1(b)(4). The third permits a fund to adjust the price of its redeemable securities sold pursuant to a sale, merger, consolidation, or purchase of substantially all the assets of certain companies. *See* proposed rule 22c–1(b)(5).

[35] *See* proposed rule 22c–1(b)(1)(i).

[36] *See, e.g.*, Amendment to Pricing Rule and Adoption of Rule on Pricing of Redemptions, Investment Company Act Release No. 14559 (June 6, 1985) (distinguishing circumstances, such as a natural disaster or other external occurrence, that constitute an emergency for purposes of rule 22c–1, from other circumstances, such as internal operational difficulties, that do not).

[37] *See* proposed rule 22c–1(b)(1)(i)(A).

[38] The fund, or its designated agent, would be required to keep the records for six years, the first two years in an easily accessible location. *See* proposed rule 22c–1(b)(1)(ii).

[39] *See* proposed rule 22c–1(b)(1)(i)(B).

assets in another fund and therefore must calculate their NAV on the basis of the other fund's NAV.[40] These funds are registered investment companies, and are subject to regulation and oversight by the Commission. The exception would permit a conduit fund, such as a ''master-feeder'' fund or an insurance company separate account, to submit its orders based on the NAV established by the other fund on the same day.[41]

We request comment on the exceptions included in the amended rule. Are there other exceptions that we should consider?

III. General Request for Comment

The Commission requests comment on the proposed amendments to rule 22c–1, suggestions for additions to the proposed amendments, and comment on other matters that might have an effect on the proposals contained in this Release. We note that the comments that are of greatest assistance are those that are accompanied by supporting data and analysis of the issues addressed in those comments.

IV. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. As discussed above, the proposed amendments to rule 22c–1 would require that an order to purchase or redeem fund shares be received by the fund, its designated transfer agent, or a registered securities clearing agency, by the time that the fund's board of directors establishes for calculating the fund's NAV in order to receive the current day's price.

A. Benefits

We anticipate that funds and shareholders would benefit from the proposed amendments. The amendments to rule 22c–1 are designed to prevent late trading in fund shares. Preventing late trading would ensure that the value of a fund's outstanding redeemable securities would not be diluted through the sale of a fund's securities at a price below its NAV, or the redemption or repurchase of a fund's securities at a price above its NAV.[42] This dilution harms the fund's long-term shareholders who lose at least as much as late traders gain in profits. By preventing this dilution, long-term investors would have more confidence in the financial markets as a whole, and funds in particular.

Funds would benefit by the increase in investor confidence, as investors would be less likely to seek alternative financial products in which to invest. Long-term investors also would benefit. Without these protections, many long-term investors, who would prefer to invest in mutual funds, may choose other investment instruments to avoid losses to late traders. Finally, these reforms will reduce the transaction costs that funds incur. When a late trader rapidly moves a large amount of money into and out of a fund, the fund incurs significant costs in buying securities and then selling them. These transaction costs include commissions and the spread between the bid and ask prices.

B. Costs

Currently, orders for a fund's shares received by broker-dealers, 401(k) plan administrators, and other third-party intermediaries from their customers prior to the fund's pricing time are eligible to receive that day's price. The proposed amendments to rule 22c–1 would limit same-day pricing to orders received by the fund, its designated transfer agent, or a registered clearing agency prior to the fund's pricing time. As a result, third-party intermediaries (including broker-dealers and retirement plan administrators) and NSCC would incur certain costs, and funds and investors might incur costs.[43] In addition, fund designated transfer agents would incur costs as a result of a recordkeeping requirement contained in the proposed amendments.

Third-party intermediaries would have to combine their fund share orders for processing prior to the pricing time, and therefore their customers may have to place their orders earlier in the day than investors who conduct business directly with the fund's designated transfer agent in order to receive that day's price.[44] This would put intermediaries at a competitive disadvantage with designated transfer agents, and may result in a number of an intermediary's customers or potential customers bypassing the intermediary and purchasing or redeeming shares directly with the designated transfer agent. Alternatively, intermediaries, in order to compete with designated transfer agents, may upgrade their computer systems in order to process orders more quickly, thus allowing customers to place their orders as close to the pricing time as possible while qualifying for that day's price.[45] We would expect that the systems would become increasingly efficient over time and thus reduce the delay between the intermediary's receipt of the order and transmission to Fund/SERV or the designated transfer agent. The Commission, however, has no reasonable basis for determining the number of customers or potential customers that intermediaries might lose or the costs associated with the potential lost customer orders. The computer system upgrade would impose one-time costs. The Commission, however, has no reasonable basis for determining the costs of the technological upgrades intermediaries might incur as a result of the proposed amendments, because each intermediary could upgrade in a way that it deems best for its particular computer system.

NSCC, which operates Fund/SERV, would incur costs as a result of the proposed rule amendments. Under the proposed amendments, orders transmitted to Fund/SERV by broker-dealers and other intermediaries prior to a fund's pricing time would receive that day's price. Orders transmitted to Fund/SERV after a fund's pricing time, including orders received by the intermediary prior to a fund's pricing time, would receive the fund's next-day price. Intermediaries, therefore, would likely transmit a number of orders to Fund/SERV close to the pricing time, resulting in a substantial increase in the volume of transmissions received by Fund/SERV just prior to the pricing time. In response to this increase, NSCC would likely have to increase Fund/SERV's capacity to handle the expected

[40] Proposed rule 22c–1(b)(2).

[41] Conduit funds rely on section 12(d)(1)(E) of the Act, and include most insurance company separate accounts. *See* 15 U.S.C. 80a–12(d)(1)(E). Section 12(d)(1)(E) permits a fund's acquisition of securities issued by another fund if, among other requirements, the security is the only investment security the acquiring fund holds (or the securities are the only investment securities the acquiring fund holds if it is a registered unit investment trust that issues two or more classes or series of securities, each of which provides for the accumulation of shares of a different fund). The separate account invests the proceeds from the sale of interests in variable annuity and variable life insurance contracts in shares of the underlying mutual fund according to the directions of the investor in the insurance contract. ''Master-feeder funds'' typically are arrangements in which two or more funds invest in a single fund. Investors purchase shares in the ''feeder'' fund, which is an open-end fund and a conduit to the master fund. *See* H.R. REP NO. 622, 104th Cong. 2d Sess., at 41 (1996).

[42] It has been estimated that shareholders lose as much as $400 million per year as a result of late trading. *See* Eric Zitzewitz, *How Widespread is Late Trading in Mutual Funds?* (Sept. 2003) *http://gobi.standord.edu/ResearchPapers/Library/RP1817.pdf.*

[43] *See supra* notes 11–12 and accompanying text.

[44] Some have estimated that orders would have to be submitted from two to four hours before pricing time. *See* Tom Lauricella, *Funds, Regulators Seek Balanced Fix in U.S. Industry*, Wall St. J. Eur., Oct. 31, 2003 at M1.

[45] Some administrators of 401(k) plans have informed us that they likely would not be able to process any purchase or redemption requests the same day they are made due to the myriad of rules governing 401(k) plans. *See supra* note 22 and accompanying text.

concentration of orders just prior to the pricing time. We do not know what the cost estimate for the increased capacity might be.

Funds might incur costs as a result of the proposed rule amendments. First, if third-party intermediaries, such as retirement plan administrators, find it too expensive to upgrade their computer systems, potential investors may end up investing in alternative financial products. For example, if a retirement plan sponsor determines that the system upgrades necessary to complete fund orders in a timely fashion are too expensive, the plan may discontinue offering investments in some or all funds and offer investments in alternative financial products, causing funds to lose potential investors. The Commission, however, cannot predict the potential loss in investments to funds. Second, some funds, particularly smaller funds, that do not have the financial resources to increase their advertising expenditures might lose potential investors as a result of investors bypassing third-party intermediaries and purchasing shares from fund designated transfer agents. Financial intermediaries are likely to be aware of and offer many or most funds regardless of whether the funds advertise. Individual investors, however, are less likely to be aware of funds that do not advertise extensively. Therefore, as a result of investors bypassing financial intermediaries, smaller funds may lose some potential investors.

Finally, if a fund chooses to select a designated transfer agent to receive order information, the fund would incur costs. A fund would have to identify its designated transfer agent in its registration statement and include a provision in its contract with the designated transfer agent requiring the designated transfer agent to receive order information and to maintain a record of the date and time it received the order information.[46] For purposes of the Paperwork Reduction Act, Commission staff has estimated that the one-time cost of identifying a designated transfer agent in the fund's registration statement would be negligible. The one-time cost of modifying the fund's existing contract with one of its transfer agents would be approximately 4.5 hours and $287.66 per fund. It is estimated that all funds together would spend 17,662.5 hours and $1,129,065.50 to comply with this contract modification requirement.

As noted above, as a result of the proposed amendments, some investors might choose to send order information directly to a designated transfer agent instead of to an intermediary that transmits information through Fund/SERV. In that case, designated transfer agents might have to augment their capacity to handle increased order information and an expected concentration of orders shortly before pricing time. The Commission has no reasonable basis for predicting the increase in orders that may be directed to designated transfer agents, and therefore does not know how to estimate the cost for the increased capacity. An increase in order information directed to designated transfer agents also would result in the transmission of larger numbers of individual orders, rather than smaller numbers of aggregated and netted orders for omnibus accounts. We do not know what, if any, costs to funds would result if there were such an increase in order information.

We believe the costs of these rule amendments will be minimal for long-term investors. Long-term investors (who invest both on their own and through retirement funds) attempt to save for events that are years in the future, such as retirement. They may find a deposit or redemption is delayed by one day because it reached the fund after 4 p.m. However, because they have no special information about day-to-day deviations in a fund's NAV from its fair market value, long-term investors are likely to receive a better price as often as they receive a worse one. In addition, because day-to-day changes in NAVs are generally small, the effect on long-term investors who receive a worse price because their orders were received after 4 p.m. is likely to be small.

A possible consequence of the proposed amendments is that some long-term investors will choose other financial instruments to avoid the risk of getting the next day's price. These investors may believe the instruments they choose are inferior to mutual funds (which were these investors' first choice). However, this disadvantage is likely to be minimal because products such as exchange-traded funds are available.[47] These instruments offer features very similar to conventional mutual funds but are actively traded intra-day at market-determined prices. In addition, the proposed amendments would allow many investors, for whom mutual funds would be a first choice but for fear of share value dilution resulting from late trading, to invest in mutual funds with greater confidence. If returns on investments in the alternative financial products were higher than the returns on investments in funds that investors would have chosen, investors would benefit. Conversely, if returns on investments in the alternative financial products were lower than the returns on investments in funds that investors would have chosen, investors would incur costs. The Commission, therefore, cannot quantify the potential costs (or benefits) to investors.

As discussed above, the proposed amendments would include an emergency exception so that orders would receive same-day treatment if, as a result of an emergency, the fund intermediary was unable to transmit the orders, or NSCC or the fund's designated transfer agent was unable to receive the orders.[48] The emergency exception would be available to fund intermediaries only if the chief executive officer of the intermediary certifies to the fund (i) the nature, existence, and duration of the emergency, and (ii) that the intermediary received the orders before the applicable pricing time.[49] A fund, or its designated agent, also would be required to keep a record of each certification it received for six years.[50] The certification requirement would impose costs on the intermediary, and the recordkeeping requirement would impose costs on funds. If an emergency prevented the designated transfer agent or the clearing agency from receiving order information, the chief executive officer of the designated transfer agent or registered clearing agency would have to provide notice of the emergency to the fund.[51] We have not specified the manner in which the chief executive officer must notify the fund, and seek comment on what method these entities are likely to use. The Commission, however, expects emergencies to occur infrequently. Therefore, we believe the costs involved in qualifying for the emergency exception would be minor.[52]

[46] *See* proposed rule 22c–1(c)(1).

[47] *See supra* note 12.

[48] *See* proposed rule 22c–1(b)(1)(i).

[49] *See* proposed rule 22c–1(b)(1)(i)(A).

[50] The fund would be required to keep the records for six years, the first two years in an easily accessible location. *See* proposed rule 22c–1(b)(1)(ii).

[51] *See* proposed rule 22c–1(b)(1)(i)(B).

[52] Notification for emergencies preventing the receipt of orders by the designated transfer agent or NSCC could be by telephone or in writing and would not need to be certified. Therefore, the notification requirement would involve minimal, if any, costs. For purposes of the Paperwork Reduction Act, the Commission staff has estimated that it would take a total of approximately 1 hour and $163.53 per broker-dealer to comply with the certification requirement. It is estimated that all broker-dealers together would spend 2,203 hours and $360,246 to comply with the certification requirement. For purposes of the Paperwork Reduction Act, the Commission staff has estimated that it would take a total of approximately 1 hour

Continued

If a fund chooses to select a designated transfer agent to receive order information and the transfer agent accepts this designation, the proposed amendments would impose a recordkeeping requirement on the fund's designated transfer agent. The designated transfer agent would be required to maintain a record of the date and time it receives order information.[53] For purposes of the Paperwork Reduction Act, the Commission staff has estimated that it would take a total of approximately 100 hours and $1,892 per designated transfer agent to comply with the time of receipt recordkeeping requirement. It is estimated that all designated transfer agents together would spend 20,800 hours and $393,536 to comply with this recordkeeping requirement.

C. Request for Comment

The Commission requests comment on the potential costs and benefits of the proposed rule amendments. We also request comment on the potential costs and benefits of the approach under which intermediaries, in order to be eligible to submit orders to the fund after 4 p.m., would be required to adopt certain protections designed to prevent late trading. The Commission also requests comment on the potential costs and benefits of any other alternatives suggested by commenters. We encourage commenters to identify, discuss, analyze, and supply relevant data regarding any additional costs and benefits. For purposes of the Small Business Regulatory Enforcement Act of 1996,[54] the Commission also requests information regarding the potential impact of the proposals on the U.S. economy on an annual basis. Commenters are requested to provide data to support their views.

V. Paperwork Reduction Act

Certain provisions of the proposed amendments to rule 22c–1 would result in new ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[55] The Commission is submitting these proposals to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information requirements is ''Rule 22c–1 under the Investment Company Act of 1940, 'Pricing of redeemable securities for distribution, redemption and repurchase.' '' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

To eliminate late trading through fund intermediaries, we are proposing to amend rule 22c–1 to require that all purchase and redemption orders be received by the fund, its designated transfer agent, or a registered clearing agency no later than the time at which the fund prices its securities, in order to obtain the current day's price. As a consequence, certain fund intermediaries, such as broker-dealers, banks, and retirement plan administrators would have to submit orders to the fund before 4 p.m. in order for their customers to receive the 4 p.m. price. Orders submitted later would have to receive the following day's price. The proposed amendments to rule 22c–1 would allow a fund to designate a transfer agent to receive orders to purchase or redeem fund shares. Orders received by that designated transfer agent no later than the fund's pricing time would receive same-day pricing. The amendments would require that the fund designate the transfer agent in its registration statement filed with the Commission, and include a provision in the fund's contract with the designated transfer agent requiring the transfer agent to receive order information and maintain a record of the date and time it receives the order information.[56] These collection of information requirements would be voluntary, because a fund does not need to select a designated transfer agent unless the fund chooses to have same-day pricing available for orders received by its transfer agent. These collection of information requirements are needed to ensure that designated transfer agents do not allow late trading to occur, and to assist the Commission's examination staff in assessing whether late trading is occurring.

The proposed rule amendments would contain an exception that would permit investor orders to receive same-day pricing if, as a result of an emergency, a dealer (or its agent) was unable to transmit the orders, or NSCC or the fund's designated transfer agent was unable to receive the orders by the fund's pricing time.[57] The exception would prevent investors from losing the current day's price for orders received by dealers before 4 p.m., if those orders could not be transmitted to or received by NSCC or the fund's designated transfer agent by 4 p.m. because of, for example, a power failure, hurricane, or other emergency. The emergency exception would be available to dealers only if the chief executive officer of the dealer certifies to the fund (i) the nature, existence, and duration of the emergency, and (ii) that the dealer received the orders before the applicable pricing time.[58] A fund also would be required to keep a record of each certification it received for six years.[59] In the event an emergency prevented the designated transfer agent or the clearing agency from receiving order information, the chief executive officer of the designated transfer agent or clearing agency would have to provide notice of the emergency to the fund.[60] These information collections are voluntary because they are only required for an exception for orders that are not timely received due to an emergency and, therefore, funds may choose not to rely on the emergency exception. These collections are needed to ensure that the emergency exception is limited to bona fide emergencies that prevent the orders from reaching the fund's designated transfer agent or Fund/SERV by 4 p.m. and that late trading is not occurring. The recordkeeping information collection requirement also would assist the Commission's examination staff in assessing whether a particular event constituted an emergency for purposes of the exception.

The proposed amendments would require a fund that chooses to have a designated transfer agent to identify that transfer agent in the fund's registration statement. This information collection would be a one-time event, and the Commission believes that this burden would be negligible. A fund that chooses to select a designated transfer agent also would be required to include in its contract with the transfer agent a provision obligating the transfer agent to receive order information and maintain a record of the date and time the transfer agent receives order information. The Commission staff estimates that there are currently 3,925 funds (3,100 registered open-end investment companies and 825 registered unit investment trusts) and that each fund would select one of its current transfer agents to be its designated transfer

and $18.92 per fund to comply with the recordkeeping requirement. It is estimated that all funds together would spend 3,925 hours and $74,261 to comply with the recordkeeping requirement.

[53] *See* proposed rule 22c–1(c)(1).

[54] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[55] 44 U.S.C. 3501.

[56] *See* proposed rule 22c–1(c)(1).

[57] *See* proposed rule 22c–1(b)(1)(i).

[58] *See* proposed rule 22c–1(b)(1)(i)(A).

[59] The fund would be required to keep the records for six years, the first two years in an easily accessible location. *See* proposed rule 22c–1(b)(1)(ii).

[60] *See* proposed rule 22c–1(b)(1)(i)(B).

agent.[61] As such, each fund would have to modify the existing contract it has with the transfer agent it selects to be its designated transfer agent. This modification would create a one-time burden of 4.5 hours per fund (4 hours by in-house counsel, .5 hours by support staff) or about 17,662.5 burden hours.[62]

Under the proposal, a transfer agent that is designated by the fund would have to maintain records of the date and time it receives order information. There are currently approximately 208 registered fund transfer agents.[63] The Commission estimates that these transfer agents receive approximately 83 million fund share orders per year.[64] Each of the 208 transfer agents, therefore, receives approximately 399,038 orders per year. The Commission estimates that each designated transfer agent would spend approximately 100 hours per year maintaining records of the time it received order information.[65] Thus, the annual aggregate burden hours associated with the time of receipt recordkeeping requirement would be 20,800 hours.[66]

Broker-dealers and funds that choose to rely on the emergency exception would have collection of information requirements. There are currently approximately 2,203 broker-dealers that are classified as specialists in fund shares.[67] The Commission estimates that each broker-dealer would incur no more than one emergency per year that would qualify for the emergency exception. The Commission also estimates that each broker-dealer is involved in the sale of shares of approximately 300 funds. Thus, approximately 2,203 broker-dealers could be subject to preparing and transmitting one certification each year to each of the 300 funds whose shares they sell, for a total of 300 certifications per year for each broker-dealer. We estimate that the average annual hour burden for all certifications per broker-dealer emergency would be one hour, or one burden hour per year for each broker-dealer.[68] Thus, the annual aggregate burden hours associated with the certification requirement would be 2,203 hours.[69]

The staff estimates that each fund would spend one hour annually, on average, maintaining the records of the certifications required by proposed rule 22c–1(b)(1)(ii). Thus, the annual aggregate burden hours associated with the emergency exception recordkeeping requirement would be 3,925 hours.[70] In total, the collections of information associated with the emergency exception contained in the proposed amendments to rule 22c–1 would entail 6,128 burden hours.[71] Using a three-year period, the average information collection burden under the proposed amendments to rule 22c–1 would be 32,815.5 hours.[72]

We request comment on whether these estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the Office of Management and Budget, Attention Desk Officer of the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, with reference to File No. S7–27–03. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this Release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–27–03, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services.

VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (''IRFA'') has been prepared in accordance with 5 U.S.C. 603. It relates to the amendments to rule 22c–1 under the Investment Company Act that we are proposing in this Release.

A. Reasons for the Proposed Action

Section I of this Release describes the background and reasons for the proposed action. As discussed above, late trading appears to have been facilitated by fund managers, intermediaries, and investors in violation of our rules.[73] Our investigations are ongoing, but suggest that late trading of fund shares is not isolated, nor limited to any one type of fund or intermediary.[74]

B. Objectives of the Proposed Action

Section II of this Release discusses the objectives of the proposed amendments. As discussed above, the Commission is proposing amendments to the rule under the Investment Company Act that requires forward pricing of redeemable securities issued by funds. The

[61] These numbers are based on Commission filings and are current as of the end of September 2003.

[62] 3,925 funds × 4.5 hours = 17,662.5 hours.

[63] The number of fund transfer agents is based on Form TA–2 filings with the Commission between January 1, 2003 and November 11, 2003.

[64] The Commission staff estimates that transfer agents receive approximately half of the total number of fund share orders made each year. Fund/SERV processes the other half of the total number of fund share orders made each year. In 2002, Fund/SERV processed 83 million fund transactions. *See supra* note. Based on that information, the Commission estimates that there were 166,000,000 total fund share orders processed in 2002. Transfer agents received approximately half of those 166,000,000 orders. Therefore, transfer agents directly received approximately 83,000,000 fund share orders. We request comment on our estimate of the number of fund orders submitted directly to designated transfer agents.

[65] For purposes of this supporting statement, the Commission assumes that transfer agents receive most fund share orders electronically, and that designated transfer agents would maintain the records of the time of receipt electronically.

[66] 208 transfer agents × 100 hours = 20,800 hours.

[67] The number of broker-dealers is based on year-end 2002 Commission filings.

[68] Because the certification to each of the 300 funds would be based on the same emergency, the information required to be included in the certification would be the same for each of the 300 certifications. Therefore, little time would be required after the preparation of the first certification to prepare the remaining certifications.

[69] 2,203 broker-dealers × 1 hour = 2,203 hours.

[70] 3,925 funds × 1 hour = 3,925 hours.

[71] 2,203 hours for the certification of the emergencies + 3,925 hours maintaining records = 6,128 hours.

[72] The average of the first year burden of 44,590.5 hours (17,662.5 hours for the contract modification collection of information + 20,800 hours for the time of receipt recordkeeping collection of information + 6,128 hours for the emergency exception collections of information) and the burden of 26,928 hours for each of the next two years (20,800 hours for the time of receipt recordkeeping collection of information + 6,128 hours for the emergency exception collections of information) is 32,815.5 hours.

[73] *See supra* note 17 and accompanying text.

[74] *See supra* notes 16–17 and accompanying text.

proposed amendments would deem an order received for purposes of determining the applicable pricing time only when it is received by (i) the fund itself, (ii) the fund's designated transfer agent, or (iii) a clearing agency registered with the Commission.[75]

C. Legal Basis

The amendments to rule 22c–1 are proposed pursuant to the authority set forth in sections 22(c) and 38(a) of the Investment Company Act.[76]

D. Small Entities Subject to the Proposed Rule and Amendments

A small business or small organization (collectively, ''small entity'') for purposes of the Regulatory Flexibility Act is a fund that, together with other funds in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[77] Of approximately 3,925 funds (3,100 registered open-end investment companies and 825 registered unit investment trusts), approximately 163 are small entities.[78] A broker-dealer is considered a small entity if its total capital is less than $500,000, and it is not affiliated with a broker-dealer that has $500,000 or more in total capital.[79] Of approximately 6,800 registered broker-dealers, approximately 880 are small entities, with approximately 400 of these classified as specialists in funds. A transfer agent is considered a small entity if it has: (i) received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (ii) transferred items only of issuers that would be deemed ''small business'' or ''small organizations'' as defined in rule 0–10 under the Securities Exchange Act of 1934;[80] (iii) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (iv) is not affiliated with any person (other than a natural person) that is not a small business or small organization under rule 0–10. We estimate that 40 out of approximately 208 registered fund transfer agents qualify as small entities.

As we discuss above, under the proposed rule amendments, an order placed with a registered broker-dealer (or with any other intermediary) would no longer receive a fund's NAV price calculated on the day the intermediary received the order, unless the order were transmitted to the fund, its designated transfer agent, or a registered clearing agency prior to the pricing time.[81] These amendments would apply to all intermediaries and third-party administrators, including those that fall within the various definitions of small entities. How much these amendments would affect these small entities would be determined largely by the importance these intermediaries and their clients place on receiving the NAV calculated on the day a client places an order.

The Commission staff expects that these rule changes may alter the manner in which some intermediaries transmit their purchase (or redemption) orders to funds, what they charge for their services, and perhaps how they market these services. A broker-dealer, for example, that commits to transmitting its orders to a fund (or to the designated transfer agent or clearing agency) prior to the fund's pricing time may need to modify its existing computer system. Because the Commission and its staff are not familiar with the full range of available technologies associated with these upgrades, we request that commenters address the cost of such upgrades, including specific data when available.

E. Reporting, Recordkeeping, and Other Compliance Requirements

The proposal would contain one new recordkeeping requirement and one new compliance requirement for funds that choose to designate a transfer agent. If a fund designates a transfer agent, the fund would be required to identify the designated transfer agent in the fund's registration statement filed with the Commission, and include a provision in the fund's contract with the transfer agent requiring the transfer agent to receive order information and maintain a record of the date and time it receives the order information. All funds, regardless of size, would be subject to the reporting requirement and the compliance requirement. The designation of a transfer agent would occur once and involve minimal compliance efforts. The inclusion of the contract provision also would occur once and involve minimal compliance efforts. Funds that are small entities would not be unduly burdened by these requirements.

The proposed amendments also would introduce one new recordkeeping requirement for transfer agents that choose to become a ''designated transfer agent.'' In order to be a designated transfer agent under the proposal, a transfer agent would have to maintain a record of the date and time it receives order information. All designated transfer agents, regardless of size, would be subject to this recordkeeping requirement. The time of receipt recordkeeping requirement for designated transfer agents would be minimal; designated transfer agents that are small entities would not be unduly burdened by the record maintenance duty.

The proposal also would contain new compliance and recordkeeping requirements for a registered broker-dealer that sought to rely on the proposed rule's emergency exception. The exception would permit investor orders to receive same-day treatment if, as a result of an emergency, the dealer (or its agent) was unable to transmit the orders, or NSCC or the fund's designated transfer agent could not receive the orders. The exception would permit investors to receive the same day's price for orders received by a dealer before 4 p.m. that could not be transmitted to the fund, its designated transfer agent, or the registered clearing agency (or could not be received by the designated transfer agent or the registered clearing agency) because of, for example, a power failure, hurricane or other emergency. The exception would be available only if the chief executive officer of the dealer certifies to the fund (i) the nature, existence, and duration of the emergency, and (ii) that the orders were received before the applicable pricing time.[82] In addition, a fund, or its designated agent, would be required to keep a record of each certification it receives.[83] If the emergency were experienced by the fund's designated transfer agent or NSCC, the chief executive officer of the designated transfer agent or NSCC would have to provide notice of the emergency to the fund.[84]

All intermediaries and funds, regardless of size, would be subject to these notification and recordkeeping

[75] *See* proposed rule 22c–1(a).

[76] 15 U.S.C. 80a–22(c), 80a–37(a).

[77] 17 CFR 270.0–10.

[78] Some or all of these entities may contain multiple series or portfolios. If a registered investment company is a small entity, the portfolios or series it contains are also small entities.

[79] 17 CFR 240.0–10.

[80] 17 CFR 240.0–10(h).

[81] The proposal would permit exceptions in very limited circumstances. See proposed rule 22c–1(b).

[82] *See* proposed rule 22c–1(b)(1)(i)(A).

[83] The fund would be required to keep these records for six years, the first two years in an easily accessible location. *See* proposed rule 22c–1(b)(1)(ii). The fund would not have to keep a record of the notices it receives from its designated transfer agent or NSCC.

[84] *See* proposed rule 22c–1(b)(1)(i)(B).

requirements in the event they rely on the exception. Neither the certification that the broker-dealer would be required to send, nor the notification that the designated transfer agent or registered clearing agent would be required to provide as a result of an emergency that delayed the transmission or receipt of orders, is intended to be a lengthy document, and small entities should not bear a disproportionate expense in complying with this condition. Furthermore, because the proposed emergency exception would be optional, a small entity might not use the exception, particularly if it concluded that any costs borne are unlikely to be offset by the resulting benefits. Similarly, the recordkeeping requirements for funds that receive emergency certifications are minimal; funds that are small entities would not be unduly burdened by these record maintenance duties.

F. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any federal rules that duplicate, overlap, or conflict with the proposed rule or amendments.

G. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. Alternatives in this category would include: (i) establishing different compliance or reporting standards that take into account the resources available to small entities; (ii) clarifying, consolidating, or simplifying the compliance requirements under the rule for small entities; (iii) using performance rather than design standards; and (iv) exempting small entities from coverage of the rule, or any part of the rule.

The Commission does not presently believe that the establishment of special compliance requirements or timetables under the proposals for small entities is feasible or necessary.[85] Because the proposed amendments arise from a concern that fund shareholders are disadvantaged by abuses of a deadline, exceptions for small entities could compromise the effectiveness of the amended rule. Except for funds that are small entities, the other small entities affected by the proposed amendments (*e.g.*, broker-dealers and designated transfer agents) would have no formal compliance requirements as a result of these proposed amendments.

A recordkeeping requirement would arise for small transfer agents that choose to be a fund's designated transfer agent. The time of receipt recordkeeping requirement is necessary to enable the Commission and its staff to verify that late trading has not taken place. Reporting or compliance obligations would arise for a small broker-dealer that invoked the proposed emergency exception allowing for an order to receive same-day pricing for orders transmitted to the fund, its designated transfer agent, or registered clearing agency after 4 p.m. These minimal compliance and reporting requirements would be necessary to enable the Commission and its staff to verify that late trading has not taken place. Accordingly, the Commission cannot further clarify, consolidate, or simplify the requirements associated with this exception.

The Commission is asking for comment on an approach that would allow certain intermediaries to continue to obtain same-day pricing for orders they receive before the pricing time even if they submit those orders to the fund (or its designated transfer agent or a registered clearing agency) after the pricing time. This approach would be available to intermediaries who have technology-based systems, as well as controls, that demonstrably limit the ability of the intermediary to trade after the pricing time.[86] We request comment on any concerns raised by this approach. Assessing the reliability of such technology, for example, may be difficult for funds and the Commission. Would the Commission or its staff need to establish and then verify the standards of such systems?

Moreover, under this approach, small intermediaries desiring same-day pricing might have to choose between potentially costly technological and telecommunication upgrades in order to compete with larger firms. Would this approach place small intermediaries at a disadvantage with respect to their larger competitors?[87]

H. Solicitation of Comments

The Commission encourages the submission of comments with respect to any aspect of this IRFA. Comment is specifically requested on the number of small entities that would be affected by the proposed amendments, and the likely impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in connection with the adoption of the proposed rule and amendments, and reflected in the Final Regulatory Flexibility Analysis.

Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–27–03, and this file number should be included on the subject line if E-mail is used.[88] Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters also will be posted on the Commission's Internet Web site (*http://www.sec.gov*).

VII. Statutory Authority

The Commission is proposing amendments to rule 22c–1 pursuant to the authority set forth in sections 22(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–22(c) and 80a–37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule

For reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

2. Section 270.22c–1 is revised to read as follows:

[85] The proposal would permit exceptions in very limited circumstances, such as well-documented emergencies that prohibit timely transmission. *See* proposed rule 22c–1(b)(1)(i).

[86] *See supra* notes 23–24 and accompanying and following text.

[87] We have found through investigations and examinations of transfer agents that clients of broker-dealers that have a small volume of business in fund share transactions rely on paper-based applications in 10–40% of mutual fund share transactions. There is no discernible time sensitivity in this mode of fund investment, in which account applications and bank checks are sent to funds or their transfer agents through regular or express mail.

[88] Comments on the IRFA will be placed in the same public file that contains comments on the proposed rule and amendments themselves.

§ 270.22c–1 Pricing of redeemable securities for distribution, redemption and repurchase.

(a) *Forward pricing required.* It is unlawful for any registered investment company issuing redeemable securities (''fund''), its principal underwriter, and any dealer to sell, redeem, or repurchase a redeemable security issued by the fund at a price other than the price based on the current net asset value established as of the next pricing time after the fund, its designated transfer agent, or a registered clearing agency receives an order to purchase or redeem the security.

(1) *Time.* The fund's board of directors must initially set the time or times during the day as of which the current net asset value of the fund's redeemable securities must be calculated, and may make and approve any changes the board deems necessary.

(2) *Frequency.* The fund must calculate the current net asset value of any redeemable security at least once daily, Monday through Friday, at the specific time or times during the day that the fund's board of directors sets, except on:

(i) Days on which changes in the value of the fund's portfolio securities will not materially affect the current net asset value of the fund's redeemable securities;

(ii) Days during which the fund, its designated transfer agent, and registered clearing agency receives no order to purchase or redeem the fund's redeemable securities; or

(iii) Customary national business holidays described or listed in the prospectus and local and regional business holidays listed in the prospectus.

(b) *Exceptions permitted.* Notwithstanding paragraph (a) of this section:

(1) *Emergencies.* (i) The fund may deem an order to have been received by the fund, its designated transfer agent, or a registered clearing agency immediately before the applicable pricing time if:

(A) An emergency prevents a dealer (or any agent of the dealer) from timely transmitting the orders to the fund, its designated transfer agent, or a registered clearing agency; and the chief executive officer of the dealer provides a written certification to the fund as to the nature, existence, and duration of the emergency, and that the orders were received by the dealer before the applicable pricing time; or

(B) An emergency prevents a designated transfer agent or registered clearing agency from timely receiving orders, and the chief executive officer of the designated transfer agent or registered clearing agency notifies the fund as to the nature, existence, and duration of the emergency.

(ii) The fund, or its designated agent, must maintain a written record of each certification it receives under paragraph (b)(1)(i)(A) of this section for at least six years after the end of the fiscal year in which it receives the report, the first two years in an easily accessible place.

(2) *Transactions through conduit funds.* A fund may deem receipt of an order to have occurred immediately before the applicable pricing time if the fund, its designated transfer agent, or registered clearing agency receives the order from a registered investment company that invests in the fund in reliance on section 12(d)(1)(E) of the Act (15 U.S.C. 80a–12(d)(1)(E)).

(3) *Secondary market transactions.* A sponsor of a unit investment trust (''trust'') engaged exclusively in the business of investing in eligible trust securities (as defined in § 270.14a–3(b)) may sell or repurchase trust units in a secondary market at a price based on the offering side evaluation of the eligible trust securities in the trust's portfolio, determined at any time on the last business day of each week, effective for all sales made during the following week, if on the days that such sales or repurchases are made the sponsor receives a letter from a qualified evaluator stating, in its opinion, that:

(i) In the case of repurchases, the current bid price is not higher than the offering side evaluation, computed on the last business day of the previous week; and

(ii) In the case of resales, the offering side evaluation, computed as of the last business day of the previous week, is not more than one-half of one percent ($5.00 on a unit representing $1,000 principal amount of eligible trust securities) greater than the current offering price.

(4) *Insurance company separate accounts.* A registered separate account offering variable annuity contracts may apply the initial purchase payment for any such contract at a price based on the current net asset value of the contract established as of the next pricing time:

(i) Not later than two business days after receipt of the order to purchase by the insurance company sponsoring the separate account (''insurer''), if the contract application and other information necessary for processing the order to purchase (collectively, ''application'') are complete upon receipt; or

(ii) Not later than two business days after an application which is incomplete upon receipt by the insurer is made complete, provided that, if an incomplete application is not made complete within five business days after receipt:

(A) The prospective purchaser is informed of the reasons for the delay; and

(B) The initial purchase payment is returned immediately and in full, unless the prospective purchaser specifically consents to the insurer retaining the purchase payment until the application is made complete.

(5) *Mergers.* Any fund may adjust the price of its redeemable securities sold pursuant to a merger, consolidation or purchase of substantially all of the assets of a company that meets the conditions specified in § 270.17a–8.

(c) *Definitions.* For purposes of this section,

(1) *Designated transfer agent* means the single registered transfer agent (as defined in section 3(a)(25) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(25))) that is designated, in the fund's registration statement filed with the Commission, and is required by written contract to receive order information and maintain a record of the date and time it receives the order information.

(2) *Initial purchase payment* means the first purchase payment submitted to the insurer by, or on behalf of, a prospective purchaser.

(3) *Order* means a direction to purchase or redeem a specific number of fund shares or an indeterminate number of fund shares of a specific value. Each order is deemed to be irrevocable as of the next pricing time after the fund, its designated transfer agent, or registered clearing agency receives it. If a fund, its designated transfer agent, or registered clearing agency receives a direction to purchase redeemable securities of the fund using the proceeds of a contemporaneous order to redeem a specific number of shares of another fund (an exchange), the first fund may deem the direction to purchase its redeemable securities to be an order.

(4) *Pricing time* means the time of day as of which the fund calculates the current net asset value pursuant to paragraph (a)(1) of this section.

(5) *Prospective purchaser* means either an individual contract owner or an individual participant in a group contract.

(6) *Qualified evaluator* means any evaluator that represents it is in a position to determine, on the basis of an informal evaluation of the eligible trust securities held in a unit investment trust's portfolio, whether:

(i) The current bid price is higher than the offering side evaluation, computed

on the last business day of the previous week; and

(ii) The offering side evaluation, computed as of the last business day of the previous week, is more than one-half of one percent ($5.00 on a unit representing $1,000 principal amount of eligible trust securities) greater than the current offering price.

By the Commission.

Dated: December 11, 2003.

J. Lynn Taylor,

Assistant Secretary.

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Part IV

Securities and Exchange Commission

17 CFR Parts 239 and 274

Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings, Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239 and 274

[Release Nos. 33–8343; IC–26287; File No. S7–26–03]

RIN 3235–AI99

Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing amendments to Form N–1A under the Securities Act of 1933 and the Investment Company Act of 1940 to require open-end management investment companies to disclose in their prospectuses both the risks to shareholders of the frequent purchase and redemption of investment company shares, and the investment company's policies and procedures with respect to such frequent purchases and redemptions. The proposals would also amend Forms N–3, N–4, and N–6 to require similar prospectus disclosure for insurance company separate accounts issuing variable annuity and variable life insurance contracts. The Commission is also proposing to amend Forms N–1A and N–3 to clarify that open-end management investment companies and insurance company managed separate accounts that offer variable annuities, other than money market funds, are required to explain both the circumstances under which they will use fair value pricing and the effects of using fair value pricing. In addition, the Commission is proposing to require open-end management investment companies and insurance company managed separate accounts that offer variable annuities to disclose their policies and procedures with respect to the disclosure of their portfolio securities, and any ongoing arrangements to make available information about their portfolio securities.

DATES: Comments must be received on or before February 6, 2004.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–26–03; this file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters also will be posted on the Commission's Internet Web site *(http://www.sec.gov)*.[1]

FOR FURTHER INFORMATION CONTACT: Kieran G. Brown, Attorney, or Sanjay Lamba, Attorney, Office of Disclosure Regulation, Division of Investment Management, (202) 942–0721, at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is proposing for comment amendments to Form N–1A [17 CFR 239.15A and 274.11A], Form N–3 [17 CFR 239.17a and 274.11b], Form N–4 [17 CFR 239.17b and 274.11c], and Form N–6 [17 CFR 239.17c and 274.11d], registration forms used by investment companies to register under the Investment Company Act of 1940 (''Investment Company Act'') and to offer their securities under the Securities Act of 1933 (''Securities Act'').

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

I. Introduction and Background

Millions of individual American investors hold shares of open-end management investment companies (''mutual funds''), relying on these funds for their retirements, their children's educations, and their other basic financial needs.[2] The tremendous growth of mutual funds reflects the trust that investors have placed in funds and the regulatory protections provided by the federal securities laws.

Recent allegations regarding late trading and abusive market timing, however, point to instances where it appears that some in the mutual fund industry, and some intermediaries that sell fund shares, have lost sight of their obligations to investors.[3] These allegations relate to abuses in at least three areas:

- ''Late trading,'' the practice of placing orders to buy or redeem mutual fund shares after 4 p.m., Eastern time, as of which most funds calculate their net asset value (''NAV''), but receiving the price based on the 4 p.m. NAV;
- Abuses related to ''market timing,'' including the alleged overriding of stated market timing policies by fund executives to benefit large investors at the expense of small investors, or to benefit the fund's investment adviser; and
- The selective disclosure by some fund managers of their funds' portfolio holdings in order to curry favor with large investors.

The Commission is extremely concerned by the abuses that have surfaced in the mutual fund industry, and we have taken vigorous enforcement action where abuses have been uncovered.[4] We also believe,

[2] A management investment company is an investment company other than a unit investment trust or face-amount certificate company. *See* section 4 of the Investment Company Act [15 U.S.C. 80a–4]. Management investment companies typically issue shares representing an undivided proportionate interest in a changing pool of securities, and include open-end and closed-end companies. *See* T. Lemke, G. Lins, A. Smith III, Regulation of Investment Companies, Vol. I, ch. 4, § 4.04, at 4–5 (2002). An open-end company is a management company that is offering for sale or has outstanding any redeemable securities of which it is the issuer.

[3] *See, e.g.*, Riva D. Atlas, *Another Fund Faces Inquiry Over Trading,* NEW YORK TIMES, October 22, 2003, at C4; Tom Lauricella, *Two-Tier System: For Staid Mutual Fund Industry, Growing Probe Signals Shake Up—Investigators Find Indications of Widespread Abuses Hurting Small Investors—Unfair Pricing for Big Players,* WALL STREET JOURNAL, October 20, 2003, at A1; Brooke A. Masters, *Spitzer Alleges Mutual Fund Improprieties,* WASHINGTON POST, September 4, 2003, at E1.

[4] *See, e.g., In the Matter of Putnam Investment Management, LLC,* Release No. IC–26255 (Nov. 13, 2003) (investment adviser violated antifraud provisions of the federal securities laws by failing to disclose potentially self-dealing short-term

however, that regulatory reforms are necessary to help prevent such abuses from recurring in the future. The Commission is proposing a package of rule amendments intended to address abuses that have surfaced in the areas of late trading, market timing, and selective disclosure. In this release, we are proposing disclosure reforms intended to shed more light on market timing and selective disclosure of portfolio holdings. In a second release, we are proposing amendments that would require that an order to purchase or redeem redeemable securities of a registered investment company be received by the company, its designated transfer agent, or a registered securities clearing agency by the time that the fund establishes for calculating its NAV in order to receive that day's price. In addition, we are publishing a release adopting rules requiring registered investment companies and investment advisers to adopt and implement written compliance policies and procedures, review those policies and procedures annually, and designate a chief compliance officer responsible for their administration.

A. Forward Pricing and Market Timing

Section 22 of the Investment Company Act of 1940 (the ''Investment Company Act'') regulates the pricing, distribution, and redemption of redeemable securities, including mutual fund shares.[5] Paragraph (c) of section 22 gives the Commission broad power to regulate the pricing of redeemable securities, including the power to prescribe by rule methods for computing the price that a shareholder will receive upon redemption. Rule 22c–1(a) under the Investment Company Act requires mutual funds to sell and redeem their shares at a price based on the NAV next computed after receipt of an order. This requirement is referred to as ''forward pricing.'' The purpose of this requirement is to prevent dilution and assure that prices bear an appropriate relation to the current NAV of a mutual fund's shares.[6] Rule 22c–1 generally requires mutual funds to compute their NAVs at least once daily, Monday through Friday, at a specific time or times as determined by their boards.[7] Typically, mutual funds calculate their NAVs once each day at or near the close of the major U.S. securities exchanges and markets (usually 4 p.m., Eastern time).

Mutual funds generally calculate their NAVs by using the closing prices of portfolio securities on the exchange or market on which the securities principally trade. In some cases, however, the closing price of a security held in a mutual fund's portfolio may not reflect its current market value at the time of the fund's NAV calculation, for example, if an event that will affect the value of those securities has occurred since the closing price was established, but before the fund's NAV calculation.[8]

When market quotations for a portfolio security are not readily available (including when market quotations are unreliable), a mutual fund is required to calculate its NAV by using the fair value of that security, as determined in good faith by the fund's board.[9] In a separate release adopting rule 38a–1 under the Investment Company Act, we are reemphasizing the obligation of mutual funds to fair value their securities under certain circumstances. If a mutual fund misprices its shares by failing to use fair value pricing when market quotations for its portfolio securities are unreliable, an investor may take advantage of the disparity between the portfolio securities' last quoted prices and their fair value. When mutual fund shares are mispriced, short-term traders have an arbitrage opportunity that they can use to exploit the fund and disadvantage the fund's long-term investors by extracting value from the fund without assuming any significant investment risk, through market timing.[10] Mutual funds that fair value their portfolio securities consistent with their obligations can effectively reduce or eliminate the profit that market timers seek to exploit.[11]

Mutual funds that invest in overseas securities markets are particularly vulnerable to market timers who may take advantage of time zone differences between the foreign markets on which international funds' portfolio securities trade and the U.S. markets which generally determine the time as of which NAV is calculated (''time-zone arbitrage''). For example, a market timer may purchase shares of a mutual fund that invests in overseas markets based on events occurring after foreign market closing prices are established, but before the fund's NAV calculation, that are likely to result in higher prices in foreign markets the following day. The market timer would redeem the fund's shares the next day when the fund's share price would reflect the increased prices in foreign markets, for a quick profit at the expense of long-term fund shareholders. Market timing opportunities are not limited to international funds. Mutual funds that invest in small-cap securities and other types of investments which are not frequently traded, including high-yield bonds, also can be the targets of market timers.[12]

trading of mutual fund shares by several of its employees, and by failing to take adequate steps to detect and deter such trading activity through its own internal controls and its supervision of investment management professionals); *In the Matter of James Patrick Connelly, Jr.,* Release No. IC–26209 (Oct. 16, 2003) (vice chairman of investment advisory firm violated antifraud provisions of the federal securities laws by allowing select investors to time mutual funds managed by the firm); *In the Matter of Steven B. Markovitz,* Release No. IC–26201 (Oct. 2, 2003) (hedge fund trader who engaged in late trading of mutual fund shares violated antifraud provisions of the federal securities laws and rule 22c–1(a) under the Investment Company Act).

[5] Both mutual funds and unit investment trusts issue redeemable securities. *See* section 4(2) and 5(a)(1) of the Investment Company Act [15 U.S.C. 80a–4(2) and 80a–5(a)(1)]. For purposes of simplicity, this section of the release only refers to mutual funds.

[6] Investment Company Act Release No. 5519 (Oct. 16, 1968) [33 FR 16331 (October 8, 1968) (adopting rule 22c–1) (''Rule 22c–1 Adopting Release'').

[7] Rule 22c–1(b) under the Investment Company Act [17 CFR 270.22c–1(b)].

[8] Investment Company Act Release No. 14244 (Nov. 21, 1984) [49 FR46558, 46559–46660 n.7 (Nov. 27, 1984)].

[9] *See* Accounting Series Release No. 118 (Dec. 23, 1970) [35 FR 19986 (Dec. 31, 1970)]; Investment Company Act Release No. 14244 (Nov. 21, 1984) [49 FR46558, 46559–46660 n.7 (Nov. 27, 1984)]. Subsequent to the issuance of these releases, our staff has reminded funds of their fair valuation obligations. In 1999 and 2001, the Division of Investment Management issued interpretive letters elaborating on funds' obligations under sections 2(a)(41) of the Investment Company Act and rule 22c–1 [17 CFR 270.22c–1] thereunder. Letter from Douglas Scheidt, Associate Director and Chief Counsel, SEC Division of Investment Management, to Craig S. Tyle, General Counsel, Investment Company Institute (Dec. 8, 1999) (*http://www.sec.gov/divisions/investment/guidance/tyle120899.htm*); Letter from Douglas Scheidt, Associate Director and Chief Counsel, SEC Division of Investment Management, to Craig S. Tyle, General Counsel, Investment Company Institute (Apr. 30, 2001) (*http://www.sec.gov/divisions/investment/guidance/tyle043001.htm*).

[10] *See* Rule 22c–1 Adopting Release, *supra* note 6 (describing market timing). Market timing may take many forms. In this release, we use the term to refer to arbitrage activity involving the frequent buying and selling of mutual fund shares in order to take advantage of the fact that there may be a lag between a change in the value of a mutual fund's portfolio securities and the reflection of that change in the fund's share price.

[11] ''Fair valuation'' refers to the process of determining the current market value of a security when market quotations are not readily available (such as when there are no market quotations for the security or if the market quotations for the security are unreliable). When market quotations for a security are not readily available, a fund is required to calculate its NAV by using the fair value of that security, as determined in good faith by the fund's board.

[12] *See* Eric Zitzewitz, *Who Cares About Shareholders? Arbitrage-Proofing Mutual Funds,* Research Paper No. 1749, Stanford Graduate School of Business Research Paper Series (Oct. 2002), available at *http://faculty-gsb.stanford.edu/zitzewitz/Research/arbitrage1002.pdf* (''Zitzewitz''), at 2 (estimating arbitrage returns available in domestic small-cap equity funds at 20–25 percent

Continued

Market timing itself is not illegal. However, market timing may dilute the value of long-term shareholders' interests in a mutual fund if the fund calculates NAV using closing prices that are no longer accurate. Dilution may occur, for example, if fund shares are overpriced because redeeming shareholders will receive a windfall at the expense of the shareholders that remain in the fund. Similarly, dilution may occur when a fund sells its shares at a price lower than its NAV.[13]

Market timing also may harm shareholders because it may cause mutual funds to manage their portfolios in a disadvantageous manner. For example, a mutual fund's investment adviser may maintain a larger percentage of its assets in cash or may be forced to liquidate certain portfolio securities prematurely to meet higher levels of redemptions due to market timing. This is particularly true for mutual funds that invest primarily in foreign or emerging market securities, which are often thinly traded. Mutual funds also may incur increased brokerage and administrative costs related to the frequent purchases and redemptions associated with market timing.

In order to discourage market timers, many mutual funds have developed policies and procedures with respect to frequent purchases and redemptions of fund shares. Some mutual funds disclose in their prospectuses that they do not permit market timing, and many mutual funds have taken steps to discourage market timing. These steps may include, for example:

- Imposing redemption or exchange fees on shares that are redeemed or exchanged within a certain time period following their purchase;
- Restricting exchange privileges, for example, by restricting exchange requests submitted through a particular medium, such as telephone or facsimile transmission, or received after a certain time of day, or by delaying both the redemption and purchase sides of an exchange;
- Restricting frequent trading, for example by limiting the total number of exchanges that an investor may make within a certain time period, or by limiting the number of ''round trip'' transactions where an investor purchases shares of a fund, exchanges those shares for shares of a different fund, and then exchanges back into the originally purchased fund;
- Delaying the payment of the proceeds from the redemption of fund shares for up to seven days;[14] and
- Identifying market timers and restricting their trading privileges or expelling them from the fund.

While many mutual funds disclose in their prospectuses that they discourage market timing, many do not identify with specificity the frequency or type of trading that they consider to be problematic, or the specific steps that they will take to ensure that market timing trades are detected and prevented. Other mutual funds disclose specifically the number of trades that they consider to be problematic and the steps that they take to prevent and detect market timing. Item 7(c) of Form N–1A requires mutual funds to disclose in their prospectuses procedures for redeeming the fund's shares, including any restrictions on redemptions; any redemption charges, including how these charges will be collected and under what circumstances the charges will be waived; and the circumstances, if any, under which the fund may delay honoring a request for redemption for a certain time after a shareholder's investment.[15] Item 8(a)(2) of Form N–1A requires a description of exchange privileges, which may be provided in the prospectus or the Statement of Additional Information (''SAI'').[16] Item 3 of Form N–1A requires a mutual fund to include any exchange fee or redemption fee in the fee table of its prospectus.[17]

Other aspects of mutual fund policies and procedures to deter market timing are not explicitly required to be disclosed, however. For example, our registration forms do not explicitly require funds to describe with specificity the circumstances under which restrictions on frequent purchases and redemptions will not be imposed, or the terms of arrangements with particular investors pursuant to which frequent purchases and redemptions are permitted.[18]

We believe that it may be useful to require mutual funds to describe with specificity the restrictions they place on frequent purchases and redemptions and the circumstances and arrangements under which the restrictions are not imposed. These additional disclosure requirements would enable investors to better assess a mutual fund's risks, policies, and procedures in this area, and to determine if a fund's policies and procedures are in line with their expectations.

B. Selective Disclosure of Fund Portfolio Holdings

Currently, mutual funds are required to include their complete portfolio holdings in the reports that are delivered to all shareholders twice a year.[19] In December 2002, we proposed amendments that would require mutual funds to disclose their complete

and estimating arbitrage returns available in convertible and high-yield and convertible bond funds at 10–25 percent). *See also* William Goetzmann, Zoran Ivkovich, and K. Geert Rouwenhorst, Day Trading International Mutual Funds: Evidence and Policy Solutions, Working Paper No. ICF–00–03, Yale School of Management, Yale University (Oct. 2000), available at: *http://papers.ssrn.com/paper.taf?abstract__id=217168,* at 7–8 (describing opportunities for arbitrage in stale pricing of Russell 2000 index).

[13] By one estimate, dilution resulting from market timing can cost investors in international stock funds that are focused on a particular geographic region as much as 2.3% of their assets each year, and may cost fund shareholders as a whole up to $4.9 billion per year. *See* Zitzewitz, *supra* note 12, at 2 and 16; Jason Greene and Charles Hodges, *The Dilution Impact of Daily Fund Flows on Open-End Mutual Funds: Evidence and Policy Solutions,* 36 Journal of Financial Economics, 131–158 (2002) (estimating annualized dilution from market timing of 0.48% in international funds and nearly 1% for a subsample of funds whose daily flows are particularly large).

[14] Under section 22(e) of the Investment Company Act [15 U.S.C. 80a–22(e)], in general no registered investment company may suspend the right of redemption, or postpone the date of payment or satisfaction upon redemption of any redeemable security, for more than seven days after the tender of such security to the company or its agent designated for that purpose for redemption.

[15] Items 7(c)(1), (c)(2), and (c)(6) of Form N–1A. Form N–1A is the registration form used by mutual funds to register under the Investment Company Act and to offer their shares under the Securities Act of 1933 [15 U.S.C. 77a].

[16] Item 8(a)(2) of Form N–1A. Similarly, Items in the registration forms for insurance company separate accounts that issue variable annuities and variable life insurance policies require disclosure of provisions and limitations for transfers of contract value among sub-accounts of the separate account. Item 8(b)(ii) of Form N–3; Item 7(b)(ii) of Form N–4; Item 6(b)(2) of Form N–6.

The SAI is part of a fund's registration statement and contains information about a fund in addition to that contained in the prospectus. The SAI is required to be delivered to investors upon request and is available on the Commission's Electronic Data Gathering, Analysis, and Retrieval System.

[17] Item 3 and Instructions 2(b) and 2(c) to Item 3 of Form N–1A. Similarly, Item 3(a) and Instruction 10 to Item 3(a) of Form N–3; Item 3(a) and Instruction 11 to Item 3(a) of Form N–4; and Item 3 and Instruction 2(b) to Item 3 of Form N–6 require fee table disclosure of fees charged for transfers of contract value among sub-accounts.

[18] Commission staff sent information requests to 88 of the largest mutual fund complexes, with approximately 90% of the fund industry's total assets and 4,100 individual funds or portfolios under management. Fifty percent of the fund groups that responded to these staff information requests appear to have one or more arrangements with certain shareholders to allow these shareholders to engage in market timing.

[19] Section 30(e) of the Investment Company Act [15 U.S.C. 80a–29(e)] (requiring a registered investment company to transmit to its stockholders, at least semi-annually, reports containing financial statements and other financial information as the Commission may prescribe by rules and regulations); rule 6–10(c)(1) of Regulation S–X [17 CFR 210.6–10(c)(1)] (requiring that a portfolio schedule be filed in support of the balance sheet entry for investments in securities of unaffiliated issuers).

portfolio schedules on a quarterly basis.[20] A significant majority of funds already make their full portfolio schedules publicly available at least quarterly.[21]

Recent allegations, however, have highlighted instances where some mutual fund managers may be selectively disclosing their portfolios in order to reward large investors. Specifically, allegations have been made that certain funds gave frequent updates of their portfolio holdings to favored shareholders, enabling these shareholders to use a fund's portfolio information to short the fund's holdings in the same or similar proportions to the fund's established positions.[22] In addition, more than 30% of mutual fund complexes that responded to a recent Commission examination request for information sent to 88 of the largest such complexes appear to have disclosed portfolio information in circumstances that may have provided certain fund shareholders with the ability to make advantageous decisions to place orders for fund shares. This selective disclosure can facilitate fraud and have severely adverse ramifications for a fund's investors if someone uses that portfolio information to trade against the fund, or otherwise uses the information in a way that would harm the fund.

We are concerned about the misuse of material, nonpublic information that may occur when a mutual fund's portfolio holdings are selectively disclosed and professional traders are given the opportunity to use this information to their advantage to the detriment of fund shareholders. For many issuers, Regulation FD generally requires that when an issuer discloses material information, it do so through public disclosure, not through selective disclosure.[23] Regulation FD does not, however, apply to mutual funds.[24] We have concluded that the recent allegations regarding selective disclosure of portfolio holdings by some mutual fund managers suggest that we need to take steps to reinforce funds' and advisers' obligations to prevent the misuse of portfolio holdings information that is selectively disclosed.

C. Disclosure Proposals

The Commission is proposing form amendments to require better disclosure with respect to the tools that mutual funds use to combat market timing activity. First, in order to enable investors to assess a mutual fund's practices regarding frequent purchases and redemptions of fund shares to determine if they are in line with their expectations, the Commission is proposing to require improved disclosure in fund prospectuses of a mutual fund's risks, policies, and procedures in this area. The proposals would:

- Require a mutual fund to describe in its prospectus the risks, if any, that frequent purchases and redemptions of fund shares may present for other shareholders;
- Require a mutual fund to state in its prospectus whether or not the fund's board of directors has adopted policies and procedures with respect to frequent purchases and redemptions of fund shares and, if the board has not adopted any such policies and procedures, state the specific basis for the view of the board that it is appropriate for the fund not to have such policies and procedures;
- Require a mutual fund to describe any policies and procedures for deterring frequent purchases and redemptions of fund shares, and any arrangements to permit frequent purchases and redemptions of fund shares; and
- Require similar disclosure in prospectuses for insurance company separate accounts offering variable insurance contracts, with respect to frequent transfers among sub-accounts.

Second, we are proposing to clarify instructions to our registration forms to require all mutual funds (other than money market funds) and insurance company managed separate accounts that offer variable annuities to explain in their prospectuses both the circumstances under which they will use fair value pricing and the effects of using fair value pricing. As described above, fair valuation of a fund's portfolio securities, which is required under certain circumstances, can serve to foreclose arbitrage opportunities available to market timers.

In addition, in order to provide greater transparency of fund practices with respect to the disclosure of the fund's portfolio holdings, and to reinforce funds' and advisers' obligations to prevent the misuse of material, non-public information, the Commission is proposing to require mutual funds and insurance company managed separate accounts that offer variable annuities to disclose their policies with respect to disclosure of portfolio holdings information. The proposals would:

- Require a fund to describe in its SAI any policies and procedures with respect to the disclosure of the fund's portfolio securities to any person and any ongoing arrangements to make available information about the fund's portfolio securities to any person; and
- Require a fund to state in its prospectus that a description of the policies and procedures is available in the fund's SAI, and on the fund's Web site, if applicable.

II. Discussion

A. Disclosure Concerning Frequent Purchases and Redemptions of Fund Shares

The Commission is proposing amendments to Form N–1A, the registration form used by mutual funds, that would require disclosure of both the risks to fund shareholders of the frequent purchase and redemption of fund shares, and a fund's policies and procedures with respect to such frequent purchases and redemptions.[25] As discussed above, market timing strategies often involve such frequent purchases and redemptions of fund shares. These proposals are intended to require mutual funds to describe with specificity the restrictions they place on frequent purchases and redemptions, if any, and the circumstances under which any such restriction will not apply. This additional disclosure would enable investors to assess mutual funds' risks, policies, and procedures in this area and determine if a fund's policies and procedures are in line with their

[20] Investment Company Act Release No. 25870 (Dec. 18, 2002) [68 FR 160 (Jan. 2, 2003)].

[21] *See* Scott Cooley, *Tell Investors What They Own,* Morningstar Online, Feb. 6, 2002 (more than 70% of funds currently provide monthly or quarterly portfolio disclosure to Morningstar). *See also* Tom Lauricella and Aaron Lucchetti, *To Industry, Silence is Golden—Mutual Funds Embrace Disclosure Rules—As Long as it Doesn't Involve Them,* Wall Street Journal Europe, Aug. 1, 2002, at M1 (roughly 200 fund firms and 17 of the top 20 largest funds provide quarterly or monthly holdings updates to investors); *Survey of Fund Groups' Portfolio Disclosure Policies Summary of Results,* Investment Company Institute (2001), available at: *http://www.ici.org/port_holdings__appdxa.html.*

[22] *See State of New York* v. *Canary Capital Partners, LLC, et. al.,* at 25 and 41, (N.Y. Sup. Ct., filed Sept. 3, 2003) available at: *http://www.oag.state.ny.us/press/2003/sep/canary__complaint.pdf* (alleging that fund group regularly provided investor with detailed breakdowns of the portfolios of the target funds, allowing the investor to sell short the stocks that the portfolios contained); Ian McDonald, *Will Funds Disclose More—Publicly?,* The Wall Street Journal, Sept. 9, 2003, at C1 (describing allegations that fund groups provided hedge fund with more frequent reports on their fund holdings than were available to other investors).

[23] Regulation FD [17 CFR 243.100 *et seq.*]; Investment Company Act Release No. 24599 (Aug. 15, 2000) [65 FR 51716 (Aug. 24, 2000)] (adopting Regulation FD).

[24] Rule 101(b) of Regulation FD [17 CFR 243.101(b)].

[25] Proposed Item 7(e) of Form N–1A.

expectations.[26] We are also proposing similar amendments to the registration forms for insurance company separate accounts that issue variable annuities and variable life insurance policies.[27]

The amendments that we are proposing to Form N–1A would require that a mutual fund's prospectus describe the risks, if any, that frequent purchases and redemptions of fund shares may present for other shareholders of the fund.[28] These risks may include, among other things, dilution in the value of fund shares held by long-term shareholders, interference with the efficient management of the fund's portfolio, and increased brokerage and administrative costs. The disclosure should be specific to the fund, taking into account its investment objectives, policies, and strategies. For example, we would generally expect a fund that invests in overseas markets to describe the risks of time-zone arbitrage.

The proposed amendments would also require a mutual fund's prospectus to state whether the fund's board of directors has adopted policies and procedures with respect to frequent purchases and redemptions of fund shares by fund shareholders.[29] If the fund's board of directors has not adopted any such policies and procedures, the fund's prospectus would be required to include a statement of the specific basis for the view of the board that it is appropriate for the fund not to have such policies and procedures.[30] On the other hand, if the fund's board of directors has adopted such policies and procedures, the fund's prospectus would be required to include a description of those policies and procedures, including:

- Whether or not the fund discourages frequent purchases and redemptions of fund shares by fund shareholders;
- Whether or not the fund accommodates frequent purchases and redemptions of fund shares by fund shareholders;
- Any policies and procedures of the fund for deterring frequent purchases and redemptions of fund shares by fund shareholders; and
- Any policies and procedures of the fund for detecting frequent purchases and redemptions of fund shares, including any arrangements for detecting frequent purchases and redemptions of fund shares through intermediaries, such as investment advisers, broker-dealers, transfer agents, and third party administrators.[31]

The description of the mutual fund's policies and procedures, if any, for deterring frequent purchases and redemptions of fund shares by fund shareholders would be required to include any restrictions imposed by the fund to prevent or minimize such frequent purchases and redemptions, including:

- Any restrictions on the volume or number of purchases, redemptions, or exchanges that a shareholder may make within a given time period;
- Any exchange fee or redemption fee;
- Any costs or administrative or other fees or charges that are imposed on shareholders deemed to be engaged in frequent purchases and redemptions of fund shares, together with a description of the circumstances under which such costs, fees, or charges will be imposed;
- Any minimum holding period that is imposed before an investor may make exchanges into another fund;
- Any restrictions imposed on exchange or purchase requests submitted by overnight delivery, electronically, or via facsimile or telephone; and
- Any right of the fund to reject, limit, delay, or impose other conditions on exchanges or purchases or to close or otherwise limit accounts based on a history of frequent purchases and redemptions of fund shares, including the circumstances under which such right will be exercised.

The proposals would require that the policies and procedures for deterring frequent purchases and redemptions, including any restrictions imposed to prevent or minimize such frequent purchases and redemptions, be described with specificity.[32] For example, a fund might state that a 2% redemption fee will be applied to all redemptions within 60 days after purchase or, in describing any restrictions on the volume or number of purchases, redemptions, or exchanges that a shareholder may make within a given time period, a fund might state that it prohibits more than 3 exchanges per year.

A fund would also be required to indicate whether each restriction applies uniformly in all cases or whether the restriction will not be imposed under certain circumstances. If any restriction will not be imposed under certain circumstances, the fund would be required to describe with specificity the circumstances under which the restriction will not be imposed. [33]

We are also proposing to require a mutual fund to describe in its prospectus any arrangements with any person to permit frequent purchases and redemptions of fund shares.[34] This description would include the identity of the persons permitted to engage in frequent purchases and redemptions and any compensation or other consideration received by the fund, its investment adviser, or any other party pursuant to such arrangements. A proposed instruction would clarify that the consideration required to be disclosed includes any agreement to maintain assets in the fund or in other investment companies or accounts managed by the investment adviser or by any affiliated person of the investment adviser.[35]

We emphasize that a mutual fund that enters into an arrangement with any person to permit frequent purchases and redemptions of fund shares may only do so consistent with the antifraud provisions of the federal securities laws and the fiduciary duties of the fund and its investment adviser to fund shareholders. Disclosure provided pursuant to these proposed amendments would not make lawful conduct that is otherwise unlawful. For example, disclosure would not render lawful an arrangement whereby an investment adviser permits frequent purchases and redemptions of a mutual fund's shares in return for consideration that benefits the adviser, such as an agreement to

[26] In our release adopting rule 38a–1 under the Investment Company Act, we state that a fund must have procedures reasonably designed to ensure compliance with its disclosed policies regarding market timing.

[27] Proposed Item 8(e) of Form N–3; proposed Item 7(e) of Form N–4; proposed Item 6(f) of Form N–6.

[28] Proposed Item 7(e)(1) of Form N–1A.

[29] Proposed Item 7(e)(2) of Form N–1A.

[30] Proposed Item 7(e)(3) of Form N–1A.

[31] Proposed Item 7(e)(4) of Form N–1A.

Persons that are not registered as broker-dealers need to consider whether the securities activities that they are undertaking are brokerage activities that require them to register as broker-dealers. Section 3(a)(4) of the Securities Exchange Act of 1934 (''Exchange Act'') defines a broker as a person engaged in the business of effecting transactions in securities. It includes several exceptions for certain bank activities. Section 15 of the Exchange Act essentially makes it unlawful for a broker or dealer ''to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills)'' unless the broker or dealer is registered with the Commission.

[32] Proposed Item 7(e)(4)(iii) of Form N–1A. A fund need not repeat this disclosure to the extent it is provided in the prospectus in response to other Items of Form N–1A, including Items 3 (redemption and exchange fees), 7(c) (restrictions on redemptions, and redemption charges), and 8(a)(2) (exchange privileges).

[33] Proposed Item 7(e)(4)(iii) of Form N–1A.

[34] Proposed Item 7(e)(5) of Form N–1A.

[35] Proposed Instruction to Item 7(e)(5) of Form N–1A.

maintain assets in other accounts managed by the adviser.

The proposed amendments to Form N–1A would also clarify that the new disclosure that would be required regarding frequent purchases and redemptions of fund shares may not be omitted from the prospectus in reliance on current Item 7(f), which would be redesignated as Item 7(g).[36] Current Item 7(f) permits funds to omit from the prospectus certain information concerning purchase and redemption procedures if, among other things, the information is included in a separate document that is incorporated by reference into, and filed and delivered with, the prospectus.[37] We believe that the information required by new Item 7(e) is more appropriately included in the same document as the prospectus.

We are proposing to require similar disclosure in Forms N–3,[38] N–4,[39] and N–6,[40] the registration forms for insurance company separate accounts that issue variable annuity and variable life insurance contracts, with respect to both the risks of frequent transfers of contract value among sub-accounts, and the separate account's policies and procedures with respect to such frequent transfers. However, we are proposing the following modifications to address the different structure of these issuers:

- The proposed amendments to Forms N–3, N–4, and N–6 would require disclosure regarding the risks of, and policies and procedures with respect to, frequent transfers of contract value among sub-accounts of the registrant. A person attempting to engage in market timing of mutual funds through a variable annuity or variable life insurance contract typically would make tax-free transfers of contract value among sub-accounts, each of which invests in a particular underlying mutual fund.[41]
- The proposed amendments to Forms N–4 and N–6 would require disclosure with respect to whether the separate account or its depositor has policies and procedures with respect to frequent transfers of contract value among sub-accounts, rather than whether such policies and procedures have been adopted by the separate account's board of directors. The separate accounts registered on these forms are unit investment trusts, which do not have boards of directors, and the depositor would be responsible for adopting and implementing any policies and procedures.[42] If neither the separate account nor the depositor has any such policies and procedures, the proposals would require that the prospectus include a statement of the specific basis for the view of the depositor that it is appropriate for the separate account and depositor not to have such policies and procedures.[43]
- The proposed amendments to Forms N–3, N–4, and N–6 would require disclosure of the risks that frequent transfers of contract value among sub-accounts may present not only for other contractowners, but also for other persons who have material rights under the contract (including, in the case of Forms N–3 and N–4, participants, annuitants, and beneficiaries, and, in the case of Form N–6, the insured or beneficiary).[44]
- The proposed amendments to Forms N–3, N–4, and N–6 that require disclosure of any arrangements for detecting frequent transfers of contract value among sub-accounts would not explicitly reference arrangements for detecting transfers through intermediaries, such as investment advisers, broker-dealers, transfer agents, and third party administrators.[45] Because the variable annuity and variable life insurance contracts registered on these forms are typically held in the name of the contractowner and not an intermediary, insurance companies generally will not need to enter into any such arrangements with intermediaries in order for the insurance company to be able to detect frequent transfers among sub-accounts. If an insurance company had any such arrangements with intermediaries, however, disclosure of those arrangements would be required.
- The proposed amendments to Forms N–3, N–4, and N–6 would specifically require disclosure concerning any consideration received by the sponsoring insurance company pursuant to any arrangements to permit frequent transfers of contract value.[46]
- A proposed Instruction in Form N–3 clarifies that consideration received pursuant to arrangements to permit frequent transfers of contract value includes any agreement to maintain assets in the registrant or in other investment companies or accounts managed or sponsored by the investment adviser, the insurance company, or any affiliated person of the investment adviser or the insurance company.[47] The parallel proposed Instructions in Forms N–4 and N–6 would include as consideration any agreement to maintain assets in the registrant or in other investment companies or accounts managed or sponsored by any investment adviser of a mutual fund in which a sub-account of the registrant is invested, the sponsoring insurance company, or any affiliated person of such an investment adviser or the insurance company.[48]

We request comment generally on the proposals described above and specifically on the following issues:

- Should we require that mutual funds and insurance company separate accounts make each of the proposed disclosures discussed above? Should we require any additional disclosures?
- Is the prospectus the appropriate location for each of the proposed disclosures? Would all or part of the disclosure be more appropriately located in the SAI, reports to shareholders, Form N–CSR, the registrant's Web site, or another location? Should we permit mutual funds to disclose any of the required information in the separate disclosure document referenced in current Item 7(f) of Form N–1A?
- Several Items of Forms N–1A, N–3, N–4, and N–6 (*e.g.*, Items 3, 7(c), and 8(a)(2) of Form N–1A; Items 3 and 8(b)(ii) of Form N–3; Items 3 and 7(b)(ii) of Form N–4; and Items 3 and 6(b)(2) of Form N–6) call for disclosures that are related to the disclosures called for by the proposals. Should we amend any of these other Items or alter the proposals

[36] Proposed Item 7(g) of Form N–1A.

[37] Item 7(f) of Form N–1A.

[38] Proposed Item 8(e) of Form N–3. Form N–3 is used by all insurance company separate accounts offering variable annuity contracts that are registered under the Investment Company Act as management investment companies.

[39] Proposed Item 7(e) of Form N–4. Form N–4 is used by all insurance company separate accounts offering variable annuity contracts that are registered under the Investment Company Act as unit investment trusts. *See* section 4(2) of the Investment Company Act [15 U.S.C. 80a–4(2)] (defining ''unit investment trust'').

[40] Proposed Item 6(f) of Form N–6. Form N–6 is used by all insurance company separate accounts offering variable life insurance policies that are registered under the Investment Company Act as unit investment trusts.

[41] Increases in the cash values of variable annuity and variable life insurance contracts—known as the ''inside buildup''—are tax-deferred until the contract's surrender or maturity. *See* I.R.C. section 7702(g) (1986).

[42] Proposed Item 7(e)(ii) of Form N–4; proposed Item 6(f)(2) of Form N–6.

[43] Proposed Item 7(e)(iii) of Form N–4; proposed Item 6(f)(3) of Form N–6.

[44] Proposed Item 8(e)(i) of Form N–3; proposed Item 7(e)(i) of Form N–4; proposed Item 6(f)(1) of Form N–6.

[45] Proposed Item 8(e)(iv)(D) of Form N–3; proposed Item 7(e)(iv)(D) of Form N–4; proposed Item 6(f)(4)(iv) of Form N–6.

[46] Proposed Item 8(e)(v) of Form N–3; proposed Item 7(e)(v) of Form N–4; proposed Item 6(f)(5) of Form N–6.

[47] Proposed Instruction to Item 8(e)(v) of Form N–3.

[48] Proposed Instruction to Item 7(e)(v) of Form N–4; proposed Instruction to Item 6(f)(5) of Form N–6.

in any way to better coordinate the disclosure requirements of these Items?

• Exchange traded funds (''ETFs) are investment companies that are registered under the Investment Company Act as open-end management investment companies or unit investment trusts. However, unlike typical open-end funds or unit investment trusts, ETFs do not sell or redeem their individual shares at NAV. Instead, ETFs sell and redeem their shares at NAV only in large blocks, generally in exchange for a basket of securities that mirrors the composition of the ETF's portfolio, plus a small amount of cash. Shares of ETFs are listed on national securities exchanges for trading, which allows investors to purchase and sell individual ETF shares among themselves at market prices throughout the day. Should ETFs be expressly excluded from the proposed disclosure requirements?

B. Disclosure of Circumstances Under Which Funds Will Use Fair Value Pricing

The Commission is proposing to amend the Instruction to Item 7(a)(1) of Form N–1A, and to add a corresponding Instruction to Form N–3, to clarify that all mutual funds and managed separate accounts that offer variable annuities, other than money market funds, are required to explain briefly in their prospectuses both the circumstances under which they will use fair value pricing and the effects of using fair value pricing.[49] We are proposing to amend this instruction to clearly reflect that funds are required to use fair value prices any time that market quotations for their portfolio securities are not readily available (including when they are not reliable). Money market funds would not be subject to the proposed requirement to disclose the circumstances under which they would use fair value pricing and the effects of such use, because such funds are subject to rule 2a–7 under the Investment Company Act, which contains its own detailed pricing requirements.[50]

We note that the disclosure regarding the circumstances under which a fund would use fair value pricing and the effects of such use should be specific to the fund. For example, if a fund invests exclusively in frequently traded exchange listed securities of large capitalization domestic issuers and calculates its NAV as of the time the exchange typically closes, there may be very limited circumstances in which it would use fair value pricing (*e.g.*, if the exchange on which a portfolio security is principally traded closes early or if trading in a particular portfolio security was halted during the day and did not resume prior to the fund's NAV calculation). By contrast, if a fund invests primarily in securities that are traded on overseas markets, we would expect a fuller discussion of the circumstances under which the fund would use fair value pricing, such as specific events occurring after the close of the overseas exchange that would cause the fund to use fair value pricing. Similarly, we would expect that the description of the effects of using fair value pricing would be fund specific, *e.g.*, minimizing the possibilities for time-zone arbitrage, in the case of a fund investing in overseas markets.[51]

We request comment generally on the proposed disclosure regarding fair value pricing and specifically on the following issues:

• Is the proposed Instruction requiring funds to explain briefly the circumstances under which they will use fair value pricing and the effects of using fair value pricing appropriate? Is this proposed disclosure necessary in light of the fact that all funds are required to use fair value pricing if market quotations for a portfolio security are not readily available (including when they are not reliable)? Will the disclosure provide useful information to investors about the particular circumstances under which a fund will use fair value pricing and the effects on that fund of using fair value pricing? Should money market funds or any other types of funds not be required to provide the disclosure?

• Is the fund prospectus the appropriate location for the proposed disclosure, or would the SAI provide investors with adequate access to this information? Are there any other locations, such as Form N–CSR, reports to shareholders, or the fund's Web site, that would be more appropriate for this disclosure?

• Are there cases where disclosure of the circumstances under which a mutual fund will use fair value pricing and the effect on the fund of using fair value pricing may assist investors who intend to engage in market timing strategies? If so, how should we modify the proposed Instruction to address these cases?

C. Selective Disclosure of Fund Portfolio Holdings

We are proposing amendments to Form N–1A that would require mutual funds to disclose their policies and procedures with respect to the disclosure of their portfolio securities and any ongoing arrangements to make available information about their portfolio securities.[52] We are also proposing parallel amendments to Form N–3 for managed separate accounts that issue variable annuities.[53] These amendments are intended to provide greater transparency of fund practices with respect to the disclosure of the fund's portfolio holdings, and to reinforce funds' and advisers' obligations to prevent the misuse of material, non-public information.

We emphasize that a mutual fund or investment adviser that discloses the fund's portfolio securities may only do so consistent with the antifraud provisions of the federal securities laws and the fund's or adviser's fiduciary duties to fund shareholders. Disclosure provided pursuant to these proposed amendments would not make lawful conduct that is otherwise unlawful. Divulging portfolio holdings to selected third parties is permissible only when the fund has legitimate business purposes for doing so and the recipients are subject to a duty of confidentiality. Examples of instances in which selective disclosure of a fund's portfolio securities may be appropriate, subject to confidentiality agreements and trading restrictions, include disclosure for due diligence purposes to an investment

[49] Proposed Instruction to Item 7(a)(1) of Form N–1A; proposed Instruction to Item 11(c) of Form N–3. We are not proposing to amend Forms N–4 and N–6 because these forms are used by insurance company separate accounts that are organized as unit investment trusts and typically hold only securities issued by underlying mutual funds. These underlying mutual funds are responsible for valuing their own portfolio securities, including, as required, through fair valuation.

[50] Rule 2a–7(c) (describing the requirements for calculating the share price of money market funds using the amortized cost and penny-rounding methods).

[51] We also note that the Commission is issuing a release adopting new rule 38a–1 under the Investment Company Act, which requires funds to adopt policies and procedures that require a fund to monitor for circumstances that may necessitate the use of fair value prices, establish criteria for determining when market quotations are no longer reliable for a particular portfolio security, provide a methodology or methodologies by which the fund determines the current fair value of the portfolio security, and regularly review the appropriateness and accuracy of the method used in valuing securities and make any necessary adjustments.

[52] Proposed Items 4(d) and 12(f) of Form N–1A. In the release adopting rule 38a–1 under the Investment Company Act, we state that a fund's compliance policies and procedures should address misuses of nonpublic information, including the disclosure to third parties of material information about the fund's portfolio, its trading strategies, or pending transactions.

[53] Proposed Items 5(f) and 19(e) of Form N–3. We are not proposing to amend Forms N–4 and N–6 because these forms are used by insurance company separate accounts that are organized as unit investment trusts, which typically hold only securities issued by underlying mutual funds.

adviser that is in merger or acquisition talks with the fund's current adviser, disclosure to a newly hired investment adviser or sub-adviser prior to commencing its duties, or disclosure to a rating agency for use in developing a rating.

Our proposals would require a mutual fund's SAI to describe the fund's policies and procedures with respect to the disclosure of its portfolio securities.[54] The mutual fund's prospectus would be required to state that a description of its policies and procedures is available in its SAI and, if applicable, on its Web site.[55] The SAI description of the mutual fund's policies and procedures with respect to the disclosure of its portfolio securities would be required to include:

- How the policies and procedures apply to disclosure to different categories of persons, including individual investors, institutional investors, intermediaries that distribute the fund's shares, third-party service providers, rating and ranking organizations, and affiliated persons of the fund;[56]
- Any conditions or restrictions placed on the use of information about portfolio securities that is disclosed, including any requirement that the information be kept confidential or prohibitions on trading based on the information, and any procedures to monitor the use of this information;[57]
- The frequency with which information about portfolio securities is disclosed, and the length of the lag, if any, between the date of the information and the date on which the information is disclosed;[58]
- Any policies and procedures with respect to the receipt of compensation or other consideration by the fund, its investment adviser, or any other party in connection with the disclosure of information about portfolio securities;[59]
- The persons who may authorize disclosure of the fund's portfolio securities;[60]
- The procedures that the fund uses to ensure that disclosure of information about portfolio securities is in the best interests of fund shareholders, including procedures to address conflicts between the interests of fund shareholders, on the one hand, and those of the fund's investment adviser; principal underwriter; or any affiliated person of the fund, its investment adviser, or its principal underwriter, on the other;[61] and
- The manner in which the board of directors exercises oversight of disclosure of the fund's portfolio securities.[62]

A mutual fund's disclosure of its policies and procedures with respect to the disclosure of its portfolio securities would be required to include any policies and procedures of the fund's investment adviser, or any other third party, that the fund uses or that are used on the fund's behalf.[63]

We are also proposing to require a mutual fund to describe in its SAI any ongoing arrangements to make available information about the fund's portfolio securities to any person, including the identity of the persons who receive information pursuant to such arrangements and any compensation or other consideration received by the fund, its investment adviser, or any other party in connection with such arrangements.[64] A proposed instruction would clarify that the consideration required to be disclosed would include any agreement to maintain assets in the fund or in other investment companies or accounts managed by the investment adviser or by any affiliated person of the investment adviser.[65] As indicated above, however, divulging portfolio holdings to selected third parties is permissible only when the fund has legitimate business purposes for doing so, and legitimate business purposes generally would not include the receipt of consideration by the fund's investment adviser or its affiliates. With respect to these ongoing arrangements, funds would also be required to describe:

- Any conditions or restrictions placed on the use of information about portfolio securities that is disclosed, including any requirement that the information be kept confidential or prohibitions on trading based on the information, and any procedures to monitor the use of this information;
- The frequency with which information about portfolio securities is disclosed, and the length of the lag, if any, between the date of the information and the date on which the information is disclosed; and
- The persons who may authorize disclosure of the fund's portfolio securities.[66]

We request comment generally on the proposed disclosure requirements regarding disclosure of a fund's portfolio securities and specifically on the following issues:

- Should we require mutual funds and insurance company managed separate accounts to disclose their policies and procedures with respect to the disclosure of portfolio securities to any person? If so, what information should they be required to disclose?
- Are there any types of arrangements that should be excluded from the requirement to disclose ongoing arrangements to make available information about portfolio securities, such as arrangements where the information that is disclosed is subject to a confidentiality requirement or a prohibition on trading based on the information?
- What is the appropriate location for any disclosure about a mutual fund's or separate account's disclosure of its portfolio securities (*e.g.*, prospectus,

[54] Proposed Item 12(f)(1) of Form N–1A; proposed Item 19(e)(i) of Form N–3.

[55] Proposed Item 4(d) of Form N–1A; proposed Item 5(f) of Form N–3.

[56] Proposed Item 12(f)(1)(i) of Form N–1A. With respect to managed separate accounts issuing variable annuity contracts registered on Form N–3, the categories would include contractowners, participants, annuitants, and beneficiaries. Proposed Item 19(e)(i)(A) of Form N–3.

[57] Proposed Item 12(f)(1)(ii) of Form N–1A; proposed Item 19(e)(i)(B) of Form N–3.

[58] Proposed Item 12(f)(1)(iii) of Form N–1A; proposed Item 19(e)(i)(C) of Form N–3.

[59] Proposed Item 12(f)(1)(iv) of Form N–1A. With respect to managed separate accounts issuing variable annuity contracts registered on Form N–3, this description would also be required to include any policies and procedures with respect to the receipt of compensation or other consideration by the sponsoring insurance company. Proposed Item 19(e)(i)(D) of Form N–3.

[60] Proposed Item 12(f)(1)(v) of Form N–1A; proposed Item 19(e)(i)(E) of Form N–3.

[61] Proposed Item 12(f)(1)(vi) of Form N–1A. With respect to managed separate accounts issuing variable annuity contracts registered on Form N–3, this description would be required to include the procedures that are used to ensure that disclosure of information about portfolio securities is in the best interests of contractowners, participants, annuitants, and beneficiaries, including procedures to address conflicts between the interests of such persons, on the one hand, and those of the separate account's investment adviser or principal underwriter; the sponsoring insurance company; or any affiliated person of the separate account, its investment adviser or principal underwriter, or the sponsoring insurance company, on the other. Proposed Item 19(e)(i)(F) of Form N–3.

[62] Proposed Item 12(f)(1)(vii) of Form N–1A; proposed Item 19(e)(i)(G) of Form N–3.

[63] Proposed Instruction to Item 12(f)(1) of Form N–1A; proposed Instruction to Item 19(e)(i) of Form N–3.

[64] Proposed Item 12(f)(2) of Form N–1A. With respect to managed separate accounts issuing variable annuity contracts registered on Form N–3, disclosure of any compensation or other consideration received by the sponsoring insurance company would also be required. Proposed Item 19(e)(ii) of Form N–3.

[65] Proposed Instruction to Item 12(f)(2) of Form N–1A. With respect to managed separate accounts issuing variable annuity contracts registered on Form N–3, the consideration required to be disclosed would also include any agreement to maintain assets in other investment companies or accounts managed or sponsored by the sponsoring insurance company of the registrant or by an affiliated person of such sponsoring insurance company. Proposed Instruction to Item 19(e)(ii) of Form N–3.

[66] Proposed Item 12(f)(2) of Form N–1A; proposed Item 19(e)(ii) of Form N–3.

SAI, Form N–CSR, Form 8–K, shareholder reports, Web site, etc.)?

• In addition to disclosing ongoing arrangements, should we require mutual funds and insurance company managed separate accounts to disclose all instances of selective disclosure of portfolio securities? If so, when should this disclosure be required to be made? What facts should be required to be disclosed regarding each such instance of selective disclosure (*e.g.*, the names of persons or entities who receive portfolio holdings information; the terms of the disclosure, including any compensation paid for the information; the reasons why the disclosure is in the best interests of fund shareholders; the terms of any confidentiality agreement)? Should funds be required to disclose whether the board of directors has approved each individual instance of selective disclosure?

• Currently, Regulation FD, which governs the selective disclosure of material non-public information, does not apply to funds, other than closed-end funds.[67] Should Regulation FD apply to mutual funds or managed separate accounts with respect to their disclosure of portfolio holdings or other information?

• Are there any other measures that we should consider to reinforce the obligations of funds and their advisers to comply with their fiduciary duties and to prevent the misuse of material, non-public information, including the selective disclosure of portfolio holdings information?

D. Compliance Date

If we adopt the proposed disclosure requirements, we expect to require all new registration statements and all post-effective amendments to effective registration statements filed on or after the effective date of the amendments to comply with the proposed amendments. The Commission requests comment on this proposed compliance date.

III. General Request for Comments

The Commission requests comment on the amendments proposed in this release, whether any further changes to our rules or forms are necessary or appropriate to implement the objectives of our proposed amendments, and on other matters that might have an effect on the proposals contained in this release.

IV. Paperwork Reduction Act

Certain provisions of the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501, *et seq.*], and the Commission is submitting the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are: (1) ''Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies'; (2) ''Form N–3—Registration Statement of Separate Accounts Organized as Management Investment Companies''; (3) ''Form N–4—Registration Statement of Separate Accounts Organized as Unit Investment Trusts''; and (4) ''Form N–6 under the Investment Company Act of 1940 and the Securities Act of 1933, Registration Statement of Insurance Company Separate Accounts Registered as Unit Investment Trusts that Offer Variable Life Insurance Policies.'' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Form N–1A (OMB Control No. 3235–0307), Form N–3 (OMB Control No. 3235–0316), Form N–4 (OMB Control No. 3235–0318), and Form N–6 (OMB Control No. 3235–0503) were adopted pursuant to section 8(a) of the Investment Company Act [15 U.S.C. 80a–8(a)] and section 5 of the Securities Act [15 U.S.C. 77e].

We are proposing amendments to Form N–1A to require mutual funds to provide improved disclosure regarding their policies and procedures with respect to frequent purchases and redemptions of fund shares. The proposals also would amend Forms N–3, N–4, and N–6 to require similar disclosure in prospectuses for insurance company separate accounts offering variable insurance contracts, with respect to frequent transfers among sub-accounts. In addition, we are proposing amendments to clarify instructions to Forms N–1A and N–3 to require all mutual funds (other than money market funds) and managed separate accounts that issue variable annuities, to explain in their prospectuses the circumstances under which they will use fair value pricing, and the effects of using fair value pricing.

Finally, we are proposing amendments to Form N–1A to require disclosure regarding mutual funds' policies and procedures with respect to the selective disclosure of their portfolio holdings to any person. We are also proposing parallel amendments to Form N–3 for managed separate accounts that issue variable annuities.

Form N–1A

Form N–1A, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are open-end funds registering with the Commission. Compliance with the disclosure requirements of Form N–1A is mandatory. Responses to the disclosure requirements are not confidential.

The current hour burden for preparing an initial registration statement on Form N–1A is 809 hours per portfolio. The current annual hour burden for preparing post-effective amendments of Form N–1A is 101 hours per portfolio. The Commission estimates that, on an annual basis, registrants file initial registration statements on Form N–1A covering 483 portfolios, and file post-effective amendments on Form N–1A covering 6,542 portfolios. An additional burden of 1,694 hours for the preparation and filing of initial registration statements and 22,897 hours for the filing of post-effective amendments is expected to result from the Commission's recent proposed rulemaking relating to ''fund of funds'' arrangements.[68] Thus, the Commission estimates that the current total annual hour burden for the preparation and filing of Form N–1A is 1,076,080 hours.[69]

We estimate that the proposed amendments would increase the hour burden per portfolio per filing of an initial registration statement by 10 hours and would increase the hour burden per portfolio per filing of a post-effective amendment to a registration statement by 4 hours. Thus, if the proposed amendments to Form N–1A are adopted, the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments to Form N–1A would be 1,107,078 hours ((10 hours × 483 portfolios) + (4 hours × 6,542 portfolios) + 1,076,080 hours).

Form N–3

Form N–3, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are separate accounts, organized as management investment

[67] 17 CFR 243.101(b).

[68] *See* Investment Company Act Release No. 26198 (Oct. 2, 2003) (''Fund of Funds Proposing Release'').

[69] This estimate is based on the following calculation: (809 hours × 483 portfolios) + (101 hours × 6,542 portfolios) = 1,051,489 hours. The additional annual hour burden of 24,591 hours (22,897 + 1,694) resulting from the proposed rules described in the Fund of Funds Proposing Release yield a total annual hour burden of 1,076,080 hours.

companies offering variable annuities, registering with the Commission on Form N–3. Compliance with the disclosure requirements of Form N–3 is mandatory. Responses to the disclosure requirements are not confidential.

The current annual hour burden for preparing an initial registration statement on Form N–3 is 915.2 hours per portfolio. The current annual hour burden for preparing post-effective amendments of Form N–3 is 150.4 hours per portfolio. The Commission estimates that, on an annual basis, 3 initial registration statements will be filed on Form N–3 and 38 post-effective amendments will be filed on Form N–3. We estimate that the average number of portfolios per filing is 4, and therefore that annually there are a total of 12 portfolios covered by initial registration statements on Form N–3 and 152 portfolios covered by post-effective amendments on Form N–3. The Fund of Funds Proposing Release would require additional cumulative burdens of 42 hours and 49 hours, respectively. Thus, we estimate that the current total annual hour burden for the preparation and filing of Form N–3 is 33,934 hours.[70]

We estimate that the proposed amendments would increase the hour burden per portfolio per filing of an initial registration statement on Form N–3 by 10 hours and would increase the hour burden per portfolio per filing of a post-effective amendment to a registration statement on Form N–3 by 4 hours. Thus, if the proposed amendments to Form N–3 are adopted, the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments on Form N–3 would be 34,662 hours ((10 hours × 12 portfolios) + (4 hours × 152 portfolios) + 33,934 hours).

Form N–4

Form N–4, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are separate accounts, organized as unit investment trusts that offer variable annuity contracts, registering with the Commission on Form N–4. Compliance with the disclosure requirements of Form N–4 is mandatory. Responses to the disclosure requirements are not confidential.

The current annual hour burden for preparing an initial registration statement on Form N–4 is 273.2 hours per separate account. The current annual hour burden for preparing a post-effective amendment on Form N–4 is 195 hours per separate account. The Commission estimates that annually, 157 initial registration statements are filed on Form N–4 and 1,242 post-effective amendments are filed on Form N–4. The Fund of Funds Proposing Release would require additional cumulative burdens of 39.5 hours and 310.5 hours, respectively. Thus, we estimate that the current total annual hour burden for the preparation and filing of Form N–4 is 285,432 hours.[71]

We estimate that the proposed amendments would increase the hour burden per filing of an initial registration statement on Form N–4 by 5 hours and would increase the hour burden per filing of a post-effective amendment to a registration statement on Form N–4 by 2 hours. Thus, if the proposed amendments to Form N–4 are adopted, the total annual hour burden for separate accounts for preparation and filing of initial registration statements and post-effective amendments on Form N–4 would be 288,701 hours ((5 hours × 157 portfolios) + (2 hours × 1,242 portfolios) + 285,432 hours).

Form N–6

Form N–6, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are separate accounts, organized as unit investment trusts that offer variable life insurance policies, registering with the Commission on Form N–6. Compliance with the disclosure requirements of Form N–6 is mandatory. Responses to the disclosure requirements are not confidential.

The current annual hour burden for preparing an initial registration statement on a Form N–6 is 765 hours per separate account. The current annual hour burden for preparing a post-effective amendment filed as an annual update on Form N–6 is 65 hours, and the annual hour burden for preparing a post-effective amendment filed for other purposes is 10 hours. The Commission estimates that annually, 50 initial registration statements, 150 post-effective amendments that are annual updates, and 350 additional post-effective amendments are filed on Form N–6. The Fund of Funds Proposing Release would require additional cumulative burdens of 12.5 hours for initial registration statements, and 37.5 hours for annual update post-effective amendments and additional post-effective amendments. Thus, we estimate that the current total annual hour burden for the preparation and filing of Form N–6 is 51,550 hours.[72]

We estimate that the proposed amendments would increase the hour burden per filing of an initial registration statement on Form N–6 by 5 hours, and would increase the hour burden per filing of a post-effective amendment that is an annual update on Form N–6 by 2 hours. Thus, if the proposed amendments to Form N–6 are adopted, the total annual hour burden for separate accounts for preparation and filing of initial registration statements and post-effective amendments on Form N–6 would be 52,100 hours ((5 hours × 50 portfolios) + (2 hours × 150 portfolios) + 51,550 hours).

Request for Comments

We request your comments on the accuracy of our estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609, with reference to File No. S7–26–03. OMB is required to make a decision concerning

[70] This estimate is based on the following calculation: (915.2 hours × 12 portfolios) + (150.4 hours × 152 portfolios) + (42 hours + 49 hours) = 33,934.2 hours.

[71] This estimate is based on the following calculation: (273.2 hours × 157 separate accounts) + (195 hours × 1,242 separate accounts) + (39.5 hours + 310.5 hours) = 285,432.4 hours.

[72] This estimate is based on the following calculation: (765 hours × 50 initial registration statements) + (65 hours × 150 annual update post-effective amendments) + (10 hours × 350 additional post-effective amendments) + (12.5 hours + 37.5 hours) = 51,550 hours.

the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release.

V. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. Our proposals would require mutual funds to provide enhanced disclosure about their policies and procedures with respect to frequent purchases and redemptions of fund shares. Specifically, the proposals would:

- Require a mutual fund to describe in its prospectus the risks, if any, that frequent purchases and redemptions of fund shares may present for other shareholders;
- Require a mutual fund to state in its prospectus whether or not the fund's board of directors has adopted policies and procedures with respect to frequent purchases and redemptions of fund shares and, if the board has not adopted any such policies and procedures, state the specific basis for the view of the board that it is appropriate for the fund not to have such policies and procedures;
- Require a mutual fund to describe any policies and procedures for deterring frequent purchases and redemptions of fund shares, and any arrangements to permit frequent purchases and redemptions of fund shares; and
- Require similar disclosure in prospectuses for insurance company separate accounts offering variable insurance contracts, with respect to frequent transfers among sub-accounts.

The Commission is also proposing amendments to clarify instructions to our registration forms for mutual funds and insurance company managed separate accounts that offer variable annuities to require that all such funds (other than money market funds) explain in their prospectuses both the circumstances under which they will use fair value pricing and the effects of using fair value pricing.

In addition, our proposals would require mutual funds, and insurance company managed separate accounts that offer variable annuities, to disclose their policies with respect to the disclosure of portfolio holdings information. The proposals would:

- Require a fund to describe in its SAI any policies and procedures with respect to the disclosure of the fund's portfolio securities to any person and any ongoing arrangements to make available information about the fund's portfolio securities to any person; and
- Require a fund to state in its prospectus that a description of the policies and procedures is available in the fund's SAI, and on the fund's Web site, if applicable.

A. Benefits

The proposed form amendments will benefit fund investors by providing them with more detailed information about mutual fund practices relating to frequent purchases and redemptions of fund shares (or, in the case of insurance company separate accounts offering variable insurance products, frequent transfers of contract value among sub-accounts). These proposals are intended to require mutual funds and insurance company separate accounts to describe with specificity the restrictions they place on frequent purchases and redemptions (or frequent transfers among sub-accounts), if any, and the circumstances under which a restriction will not apply. Market timing arbitrage strategies often involve such frequent purchases and redemptions of mutual fund shares or frequent transfers among sub-accounts of insurance company separate accounts. By increasing transparency of funds' policies and procedures in this area, the proposals are designed to help restore investor confidence in the fairness of fund operations and in the practices and procedures of intermediaries selling fund shares. This additional disclosure would enable investors to assess funds' risks, policies, and procedures in this area and determine if a fund's policies and procedures are in line with the investor's expectations. In addition, these proposed amendments may benefit fund shareholders by deterring decisions relating to portfolio management that are motivated by considerations of the interests of the fund or the fund's adviser rather than the interests of fund shareholders.

The proposed amendments to Forms N–1A and N–3 relating to fair value pricing also will benefit investors by clarifying that all mutual funds and managed separate accounts that offer variable annuities, other than money market funds, are required to explain both the circumstances under which they will use fair value pricing and the effects of using such pricing. These amendments would clearly reflect that funds are required to use fair value prices any time that market quotations for their portfolio securities are not readily available (including when they are not reliable). Fair valuation of a fund's portfolio securities, which is required under certain circumstances, can serve to foreclose arbitrage opportunities available to market timers.

Similarly, the proposed amendments to Forms N–1A and N–3 relating to funds' policies and procedures with respect to the selective disclosure of portfolio holdings information may benefit investors by providing greater transparency of fund practices relating to the disclosure of the fund's portfolio holdings, and reinforcing funds' and advisers' obligations to prevent the misuse of material, non-public information. We have no means by which to quantify these benefits, however.

We seek comment on the benefits of the proposed amendments (and any alternatives suggested by commenters) as well as any data quantifying those benefits.

B. Costs

The proposals would impose new requirements on mutual funds to provide disclosure of their policies and procedures with respect to frequent purchases and redemptions of fund shares (or frequent transfers of contract value among sub-accounts, in the case of insurance company separate accounts offering variable insurance contracts), and selective disclosure of portfolio holdings information. We estimate that complying with the proposed new disclosure requirements would entail a relatively small financial burden. The information regarding a fund's policies and procedures in these areas should be readily available to management and the board of directors of a fund. Therefore, we expect that the cost of compiling and reporting this information should be limited.

Our proposals would require additional disclosure by a mutual fund in its prospectus regarding its policies and procedures relating to frequent purchases and redemptions by fund shareholders and additional disclosure by an insurance company separate account that issues variable insurance products in its prospectus regarding its policies and procedures relating to frequent transfers among sub-accounts. In addition, we are proposing to require each mutual fund and insurance company managed separate account to describe in its SAI any policies and procedures regarding the disclosure of the fund's portfolio holdings information, and to state in its prospectus that a description of those policies and procedures is available in the fund's SAI.[73] These costs may include both internal costs (for attorneys

[73] The proposed amendments that would clarify mutual funds' and insurance company managed separate accounts' disclosure requirements with respect to fair value pricing are not expected to result in any significant costs.

and other non-legal staff of a fund, such as computer programmers, to prepare and review the required disclosure) and external costs (for printing and typesetting of the disclosure).[74] For purposes of the Paperwork Reduction Act, we have estimated that the proposed new disclosure requirements would add 35,545 hours to the burden of completing Forms N–1A, N–3, N–4, and N–6.[75] We estimate that this additional burden would equal total internal costs of $1,608,411 annually, or approximately $423 per fund.[76]

The external costs of providing the new prospectus disclosure relating to frequent purchases and redemptions of mutual fund shares and frequent transfers among sub-accounts of insurance company separate accounts may or may not be significant, depending on the complexity of a fund's policies and procedures in these areas, the extent to which restrictions on frequent purchases and redemptions or transfers among sub-accounts apply uniformly in all cases or will not be imposed under certain circumstances, and the extent to which a fund currently provides specific disclosure in this area. We expect that the external costs of providing the new disclosure relating to each mutual fund's and insurance company managed separate account's policies and procedures with respect to disclosure of portfolio holdings information would be minimal, because the required description of a fund's policies and procedures with respect to the disclosure of the fund's portfolio securities to any person and any ongoing arrangements to make available information about the fund's portfolio securities will be required in the fund's SAI, which is delivered to investors upon request.[77]

We request comment on the nature and magnitude of our estimates of the costs of the additional disclosure that would be required if our proposals were adopted.

C. Request for Comments

We request comments on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed amendments. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VI. Consideration of Effects on Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act [15 U.S.C. 80a–2(c)] and section 2(b) of the Securities Act [15 U.S.C. 77(b)] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The proposed amendments are intended to provide greater transparency for mutual fund shareholders regarding a fund's policies and procedures with respect to frequent purchases and redemptions of fund shares (or frequent transfers of contract value among sub-accounts, in the case of insurance company separate accounts offering variable insurance contracts), and selective disclosure of portfolio holdings information. These changes may improve efficiency. The enhanced disclosure requirements are intended to enable shareholders to make a more informed assessment as to whether a particular fund is in line with shareholders' investment objectives, which could promote more efficient allocation of investments by investors and more efficient allocation of assets among competing funds. The proposed amendments may also improve competition, as enhanced disclosure may prompt funds to compete to provide investors with policies and procedures that effectively protect long-term investors from harmful market timing, and from the misuse of portfolio holdings information through selective disclosure. Finally, the effects of the proposed amendments on capital formation are unclear.

Although, as noted above, we believe that the proposed amendments would benefit investors, the magnitude of the effect of the proposed amendments on efficiency, competition, and capital formation, and the extent to which they would be offset by the costs of the proposals, are difficult to quantify. We note that, with respect to our proposals regarding funds' policies and procedures with respect to frequent purchases and redemptions (or frequent transfers among sub-accounts), in many cases funds currently provide disclosure in their prospectuses or elsewhere of the limitations that they place on frequent trading in order to discourage market timing.

We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (''Analysis'') has been prepared in accordance with 5 U.S.C. 603, and relates to the Commission's proposed form amendments under the Securities Act and the Investment Company Act to require funds to provide additional disclosure about their policies and procedures with respect to frequent purchases and redemptions of mutual fund shares (or, with respect to insurance company separate accounts, frequent transfers among sub-accounts) and selective disclosure of fund portfolio holdings to any person. Specifically, the proposals would:

- Require a mutual fund to describe in its prospectus the risks, if any, that frequent purchases and redemptions of fund shares may present for other shareholders;
- Require a mutual fund to state in its prospectus whether or not the fund's board of directors has adopted policies and procedures with respect to frequent purchases and redemptions of fund shares and, if the board has not adopted any such policies and procedures, state the specific basis for the view of the board that it is appropriate for the fund not to have such policies and procedures;
- Require a mutual fund to describe any policies and procedures for

[74] We note that, with respect to our proposals regarding mutual funds' policies and procedures with respect to frequent purchases and redemptions and insurance company separate accounts' policies and procedures with respect to frequent transfers among sub-accounts, in many cases funds currently provide disclosure in their prospectuses or elsewhere of the limitations that they place on frequent trading in order to discourage market timing.

[75] This would represent 30,998 additional hours for Form N–1A, 728 additional hours for Form N–3, 3,269 additional hours for Form N–4, and 550 additional hours for Form N–6.

[76] These figures are based on a Commission estimate that approximately 3,800 investment companies would be subject to the proposed amendments and an estimated hourly wage rate of $45.25. The estimate of the number of investment companies is based on data derived from the Commission's EDGAR filing system. The estimated wage figure is based on published compensation for compliance attorneys outside New York City ($37.60) and programmers ($29.44), and the estimate that attorneys and programmers would divide time equally on compliance with the proposed disclosure requirements, yielding a weighted wage rate of $33.52 (($37.60 × .50) + (29.44 × .50)) = $33.52). *See* Securities Industry Association, Report on Management & Professional Earnings in the Securities Industry 2002 (Sept. 2002). This weighted wage rate was then adjusted upward by 35% for overhead, reflecting the costs of supervision, space, and administrative support, to obtain the total per hour internal cost of $45.25 (33.52 × 1.35) = $45.25.

[77] A fund would be required to state in its prospectus that a description of its policies and procedures is available in the fund's SAI, and on the fund's Web site, if applicable.

deterring frequent purchases and redemptions of fund shares, and any arrangements to permit frequent purchases and redemptions of fund shares; and

• Require similar disclosure in prospectuses for insurance company separate accounts offering variable insurance contracts, with respect to frequent transfers among sub-accounts.

The Commission is also proposing amendments to clarify instructions to our registration forms for mutual funds and insurance company managed separate accounts that offer variable annuities to require that all such funds (other than money market funds) explain in their prospectuses both the circumstances under which they will use fair value pricing and the effects of using fair value pricing.

As noted above, the Commission also is proposing to require mutual funds, and insurance company managed separate accounts that offer variable annuities, to disclose their policies with respect to disclosure of portfolio holdings information. The proposals would:

• Require a fund to describe in its SAI any policies and procedures with respect to the disclosure of the fund's portfolio securities to any person and any ongoing arrangements to make available information about the fund's portfolio securities to any person; and

• Require a fund to state in its prospectus that a description of the policies and procedures is available in the fund's SAI, and on the fund's Web site, if applicable.

A. Reasons for, and Objectives of, Proposed Amendments

Recent allegations regarding late trading, abusive market timing, and other abuses point to instances where it appears that some in the mutual fund industry, and some intermediaries that sell fund shares, have lost sight of their obligations to investors. The proposed amendments include disclosure reforms intended to shed more light on market timing and selective disclosure of portfolio holdings information. The proposals are intended to require mutual funds to describe with specificity the restrictions they place on frequent purchases and redemptions, if any, and the circumstances under which any such restriction will not apply. The proposals would require similar disclosure by insurance company separate accounts that offer variable insurance contracts, with respect to the restrictions, if any, that they place on frequent transfers among sub-accounts. This additional disclosure would enable investors to assess mutual funds' and insurance company separate accounts' risks, policies, and procedures in this area and determine if the policies and procedures are in line with their expectations. The proposed amendments also are intended to provide greater transparency of mutual fund and insurance company managed separate account practices with respect to the disclosure of a fund's portfolio holdings, and to reinforce funds' and advisers' obligations to prevent the misuse of material, non-public information. The proposals are part of a package of rule amendments intended to address abuses that have surfaced in the areas of late trading, market timing, and selective disclosure.

B. Legal Basis

The Commission is proposing amendments to Forms N–1A, N–3, N–4, and N–6 pursuant to authority set forth in sections 5, 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a)], and sections 8, 22, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–22, 80a–24(a), 80a–29, and 80a–37].

C. Small Entities Subject to the Rule

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[78] Approximately 145 investment companies registered on Form N–1A meet this definition.[79] We estimate that few, if any, registered separate accounts registered on Form N–3, N–4, or N–6 are small entities.[80]

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments would require a mutual fund to disclose in its prospectus both the risks to shareholders of the frequent purchase and redemption of fund shares, and the fund's policies and procedures with respect to frequent purchases and redemptions of fund shares. The proposals would require similar prospectus disclosure for insurance company separate accounts issuing variable insurance contracts. The proposed amendments would also clarify that all mutual funds and insurance company managed separate accounts that issue variable annuities, other than money market funds, are required to explain both the circumstances under which they will use fair value pricing, and the effects of using fair value pricing. Finally, the proposals would require mutual funds and insurance company managed separate accounts that issue variable annuities to disclose their policies and procedures with respect to the disclosure of their portfolio securities to any person and any ongoing arrangements to make available information about their portfolio securities.

The Commission estimates some one-time formatting and ongoing costs and burdens that would be imposed on all funds, including funds that are small entities. We note, however, that in many cases funds currently provide disclosure in their prospectuses of the limitations that they place on frequent trading in order to discourage market timing. For purposes of the Paperwork Reduction Act, we have estimated that the proposed new disclosure requirements would increase the hour burden per portfolio per filing of an initial registration statement on Form N–1A by 10 hours and would increase the hour burden per portfolio per filing of a post-effective amendment to a registration statement by 4 hours. We estimate that this additional burden would increase total internal costs of an initial filing by $452.50 per mutual fund portfolio annually, and would increase total costs of filing a post-effective amendment by $181 per mutual fund portfolio annually.[81]

The external costs of providing the new prospectus disclosure relating to frequent purchases and redemptions of mutual fund shares and frequent transfers among sub-accounts of insurance company separate accounts that issue variable insurance contracts may or may not be significant, depending on the complexity of a fund's policies and procedures in these areas, the extent to which restrictions on frequent purchases and redemptions or frequent transfers among sub-accounts apply uniformly in all cases or will not be imposed under certain circumstances, and the extent to which a fund currently provides specific

[78] 17 CFR 270.0–10.

[79] This estimate is based on analysis by the Division of Investment Management staff of information from databases compiled by third-party information providers, including Morningstar, Inc. and Lipper.

[80] This estimate is based on figures compiled by Division of Investment Management staff regarding separate accounts registered on Forms N–3, N–4, and N–6. In determining whether an insurance company separate account is a small entity for purposes of the Regulatory Flexibility Act, the assets of insurance company separate accounts are aggregated with the assets of their sponsoring insurance companies. Rule 0–10(b) under the Investment Company Act [17 CFR 270.0–10(b)].

[81] These figures are based on an estimated hourly wage rate of $45.25. *See supra* note 76.

disclosure in this area. We expect that the external costs of providing the new disclosure relating to a mutual fund's or insurance company managed separate account's policies and procedures with respect to disclosure of portfolio holdings information would be minimal, because the required description of a fund's policies and procedures with respect to the disclosure of the fund's portfolio securities to any person and any ongoing arrangements to make available information about the fund's portfolio securities will be required in the fund's SAI, which is delivered to investors upon request.

The Commission solicits comment on the effect the proposed amendments would have on small entities.

E. Duplicative, Overlapping or Conflicting Federal Rules

There are no rules that duplicate, overlap, or conflict with the proposed amendments.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small issuers. In connection with the proposed amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The proposed disclosure amendments would provide shareholders with greater transparency of mutual funds' policies and procedures with respect to frequent purchases and redemptions of fund shares (and, with respect to insurance company separate accounts that issue variable insurance contracts, frequent transfers among sub-accounts) and mutual funds' and insurance company managed separate accounts' policies and procedures with respect to selective disclosure of their portfolio holdings. Different disclosure requirements for funds that are small entities may create the risk that the shareholders in these funds would not be as able as investors in larger funds to assess a fund's risks, policies, and procedures with respect to frequent purchases and redemptions of fund shares, as well as a fund's practices with respect to the disclosure of its portfolio holdings. We believe it is important for the disclosure that would be required by the proposed amendments to be provided to shareholders by all funds, not just funds that are not considered small entities.

We have endeavored through the proposed amendments to minimize the regulatory burden on all funds, including small entities, while meeting our regulatory objectives. Small entities should benefit from the Commission's reasoned approach to the proposed amendments to the same degree as other investment companies. Further clarification, consolidation, or simplification of the proposals for funds that are small entities would be inconsistent with the Commission's concern for investor protection. Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context.

G. Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of this Analysis. Comment is specifically requested on the number of small entities that would be affected by the proposed amendments and the likely impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–26–03; this file number should be included on the subject line if e-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters also will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[82]

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Enforcement Fairness Act of 1996,[83] a rule is ''major'' if it results or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

The Commission requests comment on the potential impact of the proposed amendments on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

IX. Statutory Authority

The Commission is proposing amendments to Forms N–1A, N–3, N–4, and N–6 pursuant to authority set forth in sections 5, 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a)] and sections 8, 22, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–22, 80a–24(a), 80a–29, and 80a–37].

List of Subjects

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II, of the Code of Federal Regulations as follows.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

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

[83] Pub. L. 104–21, Title II, 110 Stat. 857 (1996).

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

2. The authority citation for part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

Note: The text of Forms N–1A, N–3, N–4, and N–6 do not, and these amendments will not, appear in the Code of Federal Regulations.

3. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. In Instruction 6 to Item 1(b)(1), revising the reference ''Item 7(f)'' to read ''Item 7(g)'';

b. In Instruction 6 to Item 1(b)(1), revising the reference ''Item 7(f)(3)'' to read ''Item 7(g)(3)'';

c. In Item 4, revising the title and adding new paragraph (d);

d. In Item 7, revising the Instruction to paragraph (a)(1);

e. In Item 7, redesignating paragraphs (e) and (f) as paragraphs (f) and (g), respectively;

f. In Item 7, adding paragraph (e);

g. In newly redesignated Item 7(f)(2)(i), revising the reference ''paragraph (e)(1)'' to read ''paragraph (f)(1)'';

h. In newly redesignated paragraph (g) of Item 7, revising the introductory text;

i. In paragraph (a)(2) of Item 8, revising the reference ''Item 7(f)'' to read ''Item 7(g)''; and

j. In Item 12, adding paragraph (f).

The additions and revisions read as follows:

Form N–1A

* * * * *

Item 4. Investment Objectives, Principal Investment Strategies, Related Risks, and Disclosure of Portfolio Holdings

* * * * *

(d) *Portfolio Holdings.* State that a description of the Fund's policies and procedures with respect to the disclosure of the Fund's portfolio securities is available (i) in the Fund's SAI; and (ii) on the Fund's Web site, if applicable.

* * * * *

Item 7. Shareholder Information

(a) * * *

(1) * * *

Instruction. A Fund (other than a Money Market Fund) must provide a brief explanation of the circumstances under which it will use fair value pricing and the effects of using fair value pricing.

* * * * *

(e) *Frequent Purchases and Redemptions of Fund Shares.*

(1) Describe the risks, if any, that frequent purchases and redemptions of Fund shares by Fund shareholders may present for other shareholders of the Fund.

(2) State whether or not the Fund's board of directors has adopted policies and procedures with respect to frequent purchases and redemptions of Fund shares by Fund shareholders.

(3) If the Fund's board of directors has not adopted any such policies and procedures, provide a statement of the specific basis for the view of the board that it is appropriate for the Fund not to have such policies and procedures.

(4) If the Fund's board of directors has adopted any such policies and procedures, describe those policies and procedures, including:

(i) Whether or not the Fund discourages frequent purchases and redemptions of Fund shares by Fund shareholders;

(ii) Whether or not the Fund accommodates frequent purchases and redemptions of Fund shares by Fund shareholders;

(iii) Any policies and procedures of the Fund for deterring frequent purchases and redemptions of Fund shares by Fund shareholders, including any restrictions imposed by the Fund to prevent or minimize frequent purchases and redemptions. Describe each of these policies, procedures, and restrictions with specificity. Indicate whether each of these restrictions applies uniformly in all cases or whether the restriction will not be imposed under certain circumstances. Describe with specificity the circumstances under which any restriction will not be imposed. Include a description of the following restrictions, if applicable:

(A) Any restrictions on the volume or number of purchases, redemptions, or exchanges that a shareholder may make within a given time period;

(B) Any exchange fee or redemption fee;

(C) Any costs or administrative or other fees or charges that are imposed on shareholders deemed to be engaged in frequent purchases and redemptions of Fund shares, together with a description of the circumstances under which such costs, fees, or charges will be imposed;

(D) Any minimum holding period that is imposed before an investor may make exchanges into another Fund;

(E) Any restrictions imposed on exchange or purchase requests submitted by overnight delivery, electronically, or via facsimile or telephone; and

(F) Any right of the Fund to reject, limit, delay, or impose other conditions on exchanges or purchases or to terminate or otherwise limit accounts based on a history of frequent purchases and redemptions of Fund shares, including the circumstances under which such right will be exercised; and

(iv) Any policies and procedures of the Fund for detecting frequent purchases and redemptions of Fund shares, including any arrangements for detecting frequent purchases and redemptions of Fund shares through intermediaries, such as investment advisers, broker-dealers, transfer agents, and third party administrators.

(5) Describe any arrangements with any person to permit frequent purchases and redemptions of Fund shares, including the identity of the persons permitted to engage in frequent purchases and redemptions pursuant to such arrangements, and any compensation or other consideration received by the Fund, its investment adviser, or any other party pursuant to such arrangements.

Instruction. The consideration required to be disclosed by Item 7(e)(5) includes any agreement to maintain assets in the Fund or in other investment companies or accounts managed by the investment adviser or by any affiliated person of the investment adviser.

* * * * *

(g) *Separate Disclosure Document.* A Fund may omit from the prospectus information about purchase and redemption procedures required by Items 7(b)–(d) and 8(a)(2), other than information that is also required by Item 7(e), and provide it in a separate document if the Fund:

* * * * *

Item 12. Description of the Fund and Its Investments and Risks

* * * * *

(f) *Disclosure of Portfolio Holdings.*

(1) Describe the Fund's policies and procedures with respect to the disclosure of the Fund's portfolio securities to any person, including:

(i) How the policies and procedures apply to disclosure to different categories of persons, including individual investors, institutional investors, intermediaries that distribute the Fund's shares, third-party service providers, rating and ranking organizations, and affiliated persons of the Fund;

(ii) Any conditions or restrictions placed on the use of information about portfolio securities that is disclosed, including any requirement that the

information be kept confidential or prohibitions on trading based on the information, and any procedures to monitor the use of this information;

(iii) The frequency with which information about portfolio securities is disclosed, and the length of the lag, if any, between the date of the information and the date on which the information is disclosed;

(iv) Any policies and procedures with respect to the receipt of compensation or other consideration by the Fund, its investment adviser, or any other party in connection with the disclosure of information about portfolio securities;

(v) The persons who may authorize disclosure of the Fund's portfolio securities;

(vi) The procedures that the Fund uses to ensure that disclosure of information about portfolio securities is in the best interests of Fund shareholders, including procedures to address conflicts between the interests of Fund shareholders, on the one hand, and those of the Fund's investment adviser; principal underwriter; or any affiliated person of the Fund, its investment adviser, or its principal underwriter, on the other; and

(vii) The manner in which the board of directors exercises oversight of disclosure of the Fund's portfolio securities.

Instruction. Include any policies and procedures of the Fund's investment adviser, or any other third party, that the Fund uses, or that are used on the Fund's behalf, with respect to the disclosure of the Fund's portfolio securities to any person.

(2) Describe any ongoing arrangements to make available information about the Fund's portfolio securities to any person, including the identity of the persons who receive information pursuant to such arrangements. Describe any compensation or other consideration received by the Fund, its investment adviser, or any other party in connection with such arrangements, and provide the information described by paragraphs (f)(1)(ii), (iii), and (v) of Item 12 with respect to such arrangements.

Instruction. The consideration required to be disclosed by Item 12(f)(2) includes any agreement to maintain assets in the Fund or in other investment companies or accounts managed by the investment adviser or by any affiliated person of the investment adviser.

* * * * *

4. Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by:

a. In Item 5, adding paragraph (f).

b. In Item 8, adding paragraph (e).

c. In Item 11, adding an Instruction to paragraph (c).

d. In Item 19, adding paragraph (e).

The additions read as follows:

Form N–3

* * * * *

Item 5. General Description of Registrant and Insurance Company

* * * * *

(f) State that a description of the Registrant's policies and procedures with respect to the disclosure of the Registrant's portfolio securities is available (A) in the Registrant's Statement of Additional Information; and (B) on the Registrant's Web site, if applicable.

* * * * *

Item 8. General Description of Variable Annuity Contracts

* * * * *

(e)(i) Describe the risks, if any, that frequent transfers of contract value among sub-accounts of the Registrant may present for other contractowners and other persons (*e.g.*, participants, annuitants, or beneficiaries) who have material rights under the variable annuity contracts.

(ii) State whether or not the Registrant's board of managers has adopted policies and procedures with respect to frequent transfers of contract value among sub-accounts of the Registrant.

(iii) If the Registrant's board of managers has not adopted any such policies and procedures, provide a statement of the specific basis for the view of the board that it is appropriate for the Registrant not to have such policies and procedures.

(iv) If the Registrant's board of managers has adopted any such policies and procedures, describe those policies and procedures, including:

(A) Whether or not the Registrant discourages frequent transfers of contract value among sub-accounts of the Registrant;

(B) Whether or not the Registrant accommodates frequent transfers of contract value among sub-accounts of the Registrant;

(C) Any policies and procedures of the Registrant for deterring frequent transfers of contract value among sub-accounts of the Registrant, including any restrictions imposed by the Registrant to prevent or minimize frequent transfers. Describe each of these policies, procedures, and restrictions with specificity. Indicate whether each of these restrictions applies uniformly in all cases or whether the restriction will not be imposed under certain circumstances. Describe with specificity the circumstances under which any restriction will not be imposed. Include a description of the following restrictions, if applicable:

(*1*) Any restrictions on the volume or number of transfers that may be made within a given time period;

(*2*) Any transfer fee;

(*3*) Any costs or administrative or other fees or charges that are imposed on persons deemed to be engaged in frequent transfers of contract value among sub-accounts of the Registrant, together with a description of the circumstances under which such costs, fees, or charges will be imposed;

(*4*) Any minimum holding period that is imposed before a transfer may be made from a sub-account into another sub-account of the Registrant;

(*5*) Any restrictions imposed on transfer requests submitted by overnight delivery, electronically, or via facsimile or telephone; and

(*6*) Any right of the Registrant to reject, limit, delay, or impose other conditions on transfers or to terminate or otherwise limit contracts based on a history of frequent transfers among sub-accounts, including the circumstances under which such right will be exercised; and

(D) Any policies and procedures of the Registrant for detecting frequent transfers of contract value among sub-accounts of the Registrant.

(v) Describe any arrangements with any person to permit frequent transfers of contract value among sub-accounts of the Registrant, including the identity of the persons permitted to engage in frequent transfers pursuant to such arrangements, and any compensation or other consideration received by the Registrant, its investment adviser, the Insurance Company, or any other party pursuant to such arrangements.

Instruction:

The consideration required to be disclosed by Item 8(e)(v) includes any agreement to maintain assets in the Registrant or in other investment companies or accounts managed or sponsored by the investment adviser, the Insurance Company, or any affiliated person of the investment adviser or the Insurance Company.

* * * * *

Item 11. Purchases and Contract Value

* * * * *

(c) * * *

Instruction:

A Registrant (other than a money market fund or sub-account) must provide a brief explanation of the

circumstances under which it will use fair value pricing and the effects of using fair value pricing.

* * * * *

Item 19. Investment Objectives and Policies

* * * * *

(e)(i) Describe the Registrant's policies and procedures with respect to the disclosure of the Registrant's portfolio securities to any person, including:

(A) How the policies and procedures apply to disclosure to different categories of persons, including contractowners, participants, annuitants, beneficiaries, institutional investors, intermediaries that distribute the Registrant's contracts, third-party service providers, rating and ranking organizations, and affiliated persons of the Registrant;

(B) Any conditions or restrictions placed on the use of information about portfolio securities that is disclosed, including any requirement that the information be kept confidential or prohibitions on trading based on the information, and any procedures to monitor the use of this information;

(C) The frequency with which information about portfolio securities is disclosed, and the length of the lag, if any, between the date of the information and the date on which the information is disclosed;

(D) Any policies and procedures with respect to the receipt of compensation or other consideration by the Registrant, its investment adviser, the Insurance Company, or any other party in connection with the disclosure of information about portfolio securities;

(E) The persons who may authorize disclosure of the Registrant's portfolio securities;

(F) The procedures that the Registrant uses to ensure that disclosure of information about portfolio securities is in the best interests of contractowners, participants, annuitants, and beneficiaries, including procedures to address conflicts between the interests of such persons, on the one hand, and those of the Registrant's investment adviser or principal underwriter; the Insurance Company; or any affiliated person of the Registrant, its investment adviser or principal underwriter; or the Insurance Company, on the other; and

(G) The manner in which the board of managers exercises oversight of disclosure of the Registrant's portfolio securities.

Instruction:

Include any policies and procedures of the Registrant's investment adviser, or any other third party, that the Registrant uses, or that are used on the Registrant's behalf, with respect to the disclosure of the Registrant's portfolio securities to any person.

(ii) Describe any ongoing arrangements to make available information about the Registrant's portfolio securities to any person, including the identity of the persons who receive information pursuant to such arrangements. Describe any compensation or other consideration received by the Registrant, its investment adviser, the Insurance Company, or any other party in connection with such arrangements, and provide the information described by paragraphs (e)(i)(B), (C), and (E) of Item 19 with respect to such arrangements.

Instruction:

The consideration required to be disclosed by Item 19(e)(ii) includes any agreement to maintain assets in the Registrant or in other investment companies or accounts managed or sponsored by the investment adviser, the Insurance Company, or any affiliated person of the investment adviser or the Insurance Company.

* * * * *

5. Item 7 of Form N–4 (referenced in §§ 239.17b and 274.11c) is amended by adding paragraph (e), to read as follows:

Form N–4

* * * * *

Item 7. General Description of Variable Annuity Contracts

* * * * *

(e)(i) Describe the risks, if any, that frequent transfers of contract value among sub-accounts of the Registrant may present for other contractowners and other persons (*e.g.*, participants, annuitants, or beneficiaries) who have material rights under the variable annuity contracts.

(ii) State whether or not the Registrant or depositor has policies and procedures with respect to frequent transfers of contract value among sub-accounts of the Registrant.

(iii) If neither the Registrant nor the depositor has any such policies and procedures, provide a statement of the specific basis for the view of the depositor that it is appropriate for the Registrant and depositor not to have such policies and procedures.

(iv) If the Registrant or depositor has any such policies and procedures, describe those policies and procedures, including:

(A) Whether or not the Registrant or depositor discourages frequent transfers of contract value among sub-accounts of the Registrant;

(B) Whether or not the Registrant or depositor accommodates frequent transfers of contract value among sub-accounts of the Registrant;

(C) Any policies and procedures of the Registrant or depositor for deterring frequent transfers of contract value among sub-accounts of the Registrant, including any restrictions imposed by the Registrant or depositor to prevent or minimize frequent transfers. Describe each of these policies, procedures, and restrictions with specificity. Indicate whether each of these restrictions applies uniformly in all cases or whether the restriction will not be imposed under certain circumstances. Describe with specificity the circumstances under which any restriction will not be imposed. Include a description of the following restrictions, if applicable:

(*1*) Any restrictions on the volume or number of transfers that may be made within a given time period;

(*2*) Any transfer fee;

(*3*) Any costs or administrative or other fees or charges that are imposed on persons deemed to be engaged in frequent transfers of contract value among sub-accounts of the Registrant, together with a description of the circumstances under which such costs, fees, or charges will be imposed;

(*4*) Any minimum holding period that is imposed before a transfer may be made from a sub-account into another sub-account of the Registrant;

(*5*) Any restrictions imposed on transfer requests submitted by overnight delivery, electronically, or via facsimile or telephone; and

(*6*) Any right of the Registrant or depositor to reject, limit, delay, or impose other conditions on transfers or to terminate or otherwise limit contracts based on a history of frequent transfers among sub-accounts, including the circumstances under which such right will be exercised; and

(D) Any policies and procedures of the Registrant or depositor for detecting frequent transfers of contract value among sub-accounts of the Registrant.

(v) Describe any arrangements with any person to permit frequent transfers of contract value among sub-accounts of the Registrant, including the identity of the persons permitted to engage in frequent transfers pursuant to such arrangements, and any compensation or other consideration received by the Registrant, the depositor, or any other party pursuant to such arrangements.

Instruction:

The consideration required to be disclosed by Item 7(e)(v) includes any agreement to maintain assets in the Registrant or in other investment companies or accounts managed or sponsored by the depositor, any

investment adviser of a portfolio company, or any affiliated person of the depositor or of any such investment adviser.

* * * * *

6. Item 6 of Form N–6 (referenced in §§ 239.17c and 274.11d) is amended by adding paragraph (f), to read as follows:

Form N–6

* * * * *

Item 6. General Description of Contracts

* * * * *

(f) *Frequent Transfers among Sub-accounts of the Registrant.*

(1) Describe the risks, if any, that frequent transfers of Contract value among sub-accounts of the Registrant may present for other Contractowners and other persons (*e.g.*, the insured or beneficiaries) who have material rights under the Contract.

(2) State whether or not the Registrant or Depositor has policies and procedures with respect to frequent transfers of Contract value among sub-accounts of the Registrant.

(3) If neither the Registrant nor the Depositor has any such policies and procedures, provide a statement of the specific basis for the view of the Depositor that it is appropriate for the Registrant and Depositor not to have such policies and procedures.

(4) If the Registrant or Depositor has any such policies and procedures, describe those policies and procedures, including:

(i) Whether or not the Registrant or Depositor discourages frequent transfers of Contract value among sub-accounts of the Registrant;

(ii) Whether or not the Registrant or Depositor accommodates frequent transfers of Contract value among sub-accounts of the Registrant;

(iii) Any policies and procedures of the Registrant or Depositor for deterring frequent transfers of Contract value among sub-accounts of the Registrant, including any restrictions imposed by the Registrant or Depositor to prevent or minimize frequent transfers. Describe each of these policies, procedures, and restrictions with specificity. Indicate whether each of these restrictions applies uniformly in all cases or whether the restriction will not be imposed under certain circumstances. Describe with specificity the circumstances under which any restriction will not be imposed. Include a description of the following restrictions, if applicable:

(A) Any restrictions on the volume or number of transfers that may be made within a given time period;

(B) Any transfer fee;

(C) Any costs or administrative or other fees or charges that are imposed on persons deemed to be engaged in frequent transfers of Contract value among sub-accounts of the Registrant, together with a description of the circumstances under which such costs, fees, or charges will be imposed;

(D) Any minimum holding period that is imposed before a transfer may be made from a sub-account into another sub-account of the Registrant;

(E) Any restrictions imposed on transfer requests submitted by overnight delivery, electronically, or via facsimile or telephone; and

(F) Any right of the Registrant or Depositor to reject, limit, delay, or impose other conditions on transfers or to terminate or otherwise limit Contracts based on a history of frequent transfers among sub-accounts, including the circumstances under which such right will be exercised; and

(iv) Any policies and procedures of the Registrant or Depositor for detecting frequent transfers of Contract value among sub-accounts of the Registrant.

(5) Describe any arrangements with any person to permit frequent transfers of Contract value among sub-accounts of the Registrant, including the identity of the persons permitted to engage in frequent transfers pursuant to such arrangements, and any compensation or other consideration received by the Registrant, the Depositor, or any other party pursuant to such arrangements.

Instruction. The consideration required to be disclosed by Item 6(f)(5) includes any agreement to maintain assets in the Registrant or in other investment companies or accounts managed or sponsored by the Depositor, any investment adviser of a Portfolio Company, or any affiliated person of the Depositor or of any such investment adviser.

* * * * *

Dated: December 11, 2003.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–31070 Filed 12–16–03; 8:45 am]

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RULES GOING INTO EFFECT DECEMBER 17, 2003

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Federal Aviation Administration

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Correction; published 12-17-03

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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. 2417/P.L. 108–177

Intelligence Authorization Act for Fiscal Year 2004 (Dec. 13, 2003; 117 Stat. 2599)

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