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# Presidential Documents

**Title 3—**

**The President**

**Proclamation 7757 of February 26, 2004**

## Expanding the Scope of the National Emergency and Invocation of Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels into Cuban Territorial Waters

**By the President of the United States of America**

**A Proclamation**

By the authority vested in me by the Constitution and the laws of the United States of America, in order to expand the scope of the national emergency declared in Proclamation 6867 of March 1, 1996, based on the disturbance or threatened disturbance of the international relations of the United States caused by actions taken by the Cuban government, and in light of steps taken over the past year by the Cuban government to worsen the threat to United States international relations, and,

WHEREAS the United States has determined that Cuba is a state-sponsor of terrorism and it is subject to the restrictions of section 6(j)(1)(A) of the Export Administration Act of 1979, section 620A of the Foreign Assistance Act of 1961, and section 40 of the Arms Export Control Act;

WHEREAS the Cuban government has demonstrated a ready and reckless willingness to use excessive force, including deadly force, against U.S. citizens, in the ostensible enforcement of its sovereignty, including the February 1996 shoot-down of two unarmed U.S.-registered civilian aircraft in international airspace, resulting in the deaths of three American citizens and one other individual;

WHEREAS the Cuban government has demonstrated a ready and reckless willingness to use excessive force, including deadly force, against U.S. citizens and its own citizens, including on July 13, 1995, when persons in U.S.-registered vessels that entered into Cuban territorial waters suffered injury as a result of the reckless use of force against them by the Cuban military, and including the July 1994 sinking of an unarmed Cuban-registered vessel, resulting in the deaths of 41 Cuban citizens;

WHEREAS the Cuban government has impounded U.S.-registered vessels in Cuban ports and forced the owners, as a condition of release, to violate U.S. law by requiring payments to be made to the Cuban government;

WHEREAS the entry of any U.S.-registered vessels into Cuban territorial waters could result in injury to, or loss of life of, persons engaged in that conduct, due to the potential use of excessive force, including deadly force, against them by the Cuban military, and could threaten a disturbance of international relations;

WHEREAS the unauthorized entry of vessels subject to the jurisdiction of the United States into Cuban territorial waters is in violation of U.S. law and contrary to U.S. policy;

WHEREAS the objectives of U.S. policy regarding Cuba are the end of the dictatorship and a rapid, peaceful transition to a representative democracy respectful of human rights and characterized by an open market economic system;

WHEREAS a critical initiative by the United States to advance these U.S. objectives is to deny resources to the repressive Cuban government, resources that may be used by that government to support terrorist activities and carry out excessive use of force against innocent victims, including U.S. citizens;

WHEREAS the unauthorized entry of U.S.-registered vessels into Cuban territorial waters is detrimental to the foreign policy of the United States, which is to deny monetary and material support to the repressive Cuban government, and, therefore, such unauthorized entries threaten to disturb the international relations of the United States by facilitating the Cuban government's support of terrorism, use of excessive force, and continued existence;

WHEREAS the Cuban government has over the course of its 45-year existence repeatedly used violence and the threat of violence to undermine U.S. policy interests. This same regime continues in power today, and has since 1959 maintained a pattern of hostile actions contrary to U.S. policy interests. Among other things, the Cuban government established a military alliance with the Soviet Union, and invited Soviet forces to install nuclear missiles in Cuba capable of attacking the United States, and encouraged Soviet authorities to use those weapons against the United States; it engaged in military adventurism in Africa; and it helped to form and provide material and political support to terrorist organizations that sought the violent overthrow of democratically elected governments in Central America and elsewhere in the hemisphere allied with the United States, thereby causing repeated disturbances of U.S. international relations;

WHEREAS the Cuban government has recently and over the last year taken a series of steps to destabilize relations with the United States, including threatening to abrogate the Migration Accords with the United States and to close the U.S. Interests Section, and Cuba's most senior officials repeatedly asserting that the United States intended to invade Cuba, despite explicit denials from the U.S. Secretaries of State and Defense that such action is planned, thereby causing a sudden and worsening disturbance of U.S. international relations;

WHEREAS U.S. concerns about these unforeseen Cuban government actions that threaten to disturb international relations were sufficiently grave that on May 8, 2003, the United States warned the Cuban government that political manipulations that resulted in a mass migration would be viewed as a ''hostile act;''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States of America, including section 1 of title II of Public Law 65–24, ch. 30, June 15, 1917, as amended (50 U.S.C. 191), sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code, in order to expand the scope of the national emergency declared in Proclamation 6867 of March 1, 1996, and to secure the observance of the rights and obligations of the United States, hereby authorize and direct the Secretary of Homeland Security (the ''Secretary'') to make and issue such rules and regulations as the Secretary may find appropriate to regulate the anchorage and movement of vessels, and authorize and approve the Secretary's issuance of such rules and regulations, as authorized by the Act of June 15, 1917.

**Section 1.** The Secretary may make rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States, which may be used, or is susceptible of being used, for voyage into Cuban territorial waters and that may create unsafe conditions, or result in unauthorized transactions, and thereby threaten a disturbance of international relations. Any rule or regulation issued pursuant to this proclamation may be effective immediately upon issuance as such rule or regulation shall involve a foreign affairs function of the United States.

**Sec. 2.** The Secretary is authorized to inspect any vessel, foreign or domestic, in the territorial waters of the United States, at any time; to place guards on any such vessel; and, with my consent expressly hereby granted, take full possession and control of any such vessel and remove the officers and crew and all other persons not specifically authorized by the Secretary to go or remain on board the vessel when necessary to secure the rights and obligations of the United States.

**Sec. 3.** The Secretary may request assistance from such departments, agencies, officers, or instrumentalities of the United States as the Secretary deems necessary to carry out the purposes of this proclamation. Such departments, agencies, officers, or instrumentalities shall, consistent with other provisions of law and to the extent practicable, provide requested assistance.

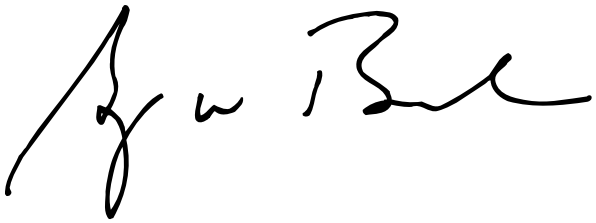
**Sec. 4.** The Secretary may seek assistance from State and local authorities in carrying out the purposes of this proclamation. Because State and local assistance may be essential for an effective response to this emergency, I urge all State and local officials to cooperate with Federal authorities and to take all actions within their lawful authority necessary to prevent the unauthorized departure of vessels intending to enter Cuban territorial waters.

**Sec. 5.** All powers and authorities delegated by this proclamation to the Secretary may be delegated by the Secretary to other officers and agents of the United States Government unless otherwise prohibited by law.

**Sec. 6.** Any provisions of Proclamation 6867 that are inconsistent with the provisions of this proclamation are superseded to the extent of such inconsistency.

**Sec. 7.** This proclamation shall be immediately transmitted to the Congress and published in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of February, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



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# Rules and Regulations

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

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Parts 400 and 457

### Crop Insurance Regulations, Removal of Miscellaneous Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) is removing outdated provisions in 7 CFR chapter IV that are no longer applicable in the administration of the Federal crop insurance program.

**EFFECTIVE DATE:** March 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** Louise Narber, Risk Management Specialist, Product Development Division, Federal Crop Insurance Corporation, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO, 64133–4676, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

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

**Paperwork Reduction Act of 1995**

This rule does not contain information collection requirements that would require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

**Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Executive Order 13132**

The rule 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. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

**Regulatory Flexibility Act**

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees, and compute premium amounts, or a notice of loss and production information to determine an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

**Federal Assistance Program**

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

**Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. *See* the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

**Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 or 7 CFR 400.169, as applicable, must be exhausted before any action for judicial review of any determination or action by FCIC may be brought.

**Environmental Evaluation**

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

*Background*

FCIC has reviewed its regulations published at 7 CFR chapter IV and determined that § 400.29 at 7 CFR part 400, subpart C; § 400.57 at 7 CFR part 400, subpart G; § 400.127 at 7 CFR part 400, subpart K; § 400.210 at 7 CFR part 400, subpart M; § 400.413 at 7 CFR part 400, subpart Q; § 400.500 at 7 CFR part 400, subpart R; § 400.676 at 7 CFR part 400, subpart U; and 7 CFR part 400 subpart H—Information Collection Requirements Under the Paperwork Reduction Act, OMB Control Numbers are no longer applicable. The provisions for the information collection requirements relating to the collection and displaying of OMB control number by form are obsolete. The OMB numbers listed are not applicable and FCIC does not develop or distribute forms. FCIC only establishes standards used by insurance companies for such purposes. Each insurance company reinsured by FCIC is responsible for their own forms and those forms do not have OMB control numbers. The regulations listed in § 400.51 are removed from 7 CFR except for part 457. Section 457.114 at

7 CFR part 457 is no longer applicable because the nursery provisions that are currently in effect are located in § 457.162. In addition, § 457.115 at 7 CFR part 457 is obsolete.

Since the purpose of this rule is simply to remove the provisions that are obsolete and no longer applicable in the administration of the Federal crop insurance program, this rule is considered a rule of agency practice or procedure. Therefore, under section 553(b) of the Administrative Procedures Act, this rule does not need to be published for notice and comment.

**List of Subjects in 7 CFR Parts 400 and 457**

Crop insurance.

**Final Rule**

■ Accordingly, under the authority of 7 U.S.C. 1506(1) and 1506(p), the Federal Crop Insurance Corporation hereby amends 7 CFR chapter IV as follows:

## PART 400—GENERAL ADMINISTRATIVE REGULATIONS

■ 1. The authority citiation for part 400 continues to read as follows:

**Authority:** 7 U.S.C. 1506(1), 1506(p).

## PART 400—[AMENDED]

■ 2. In part 400, remove and reserve §§ 400.29, 400.57, 400.65, 400.66, 400.127, 400.210, 400.413, 400.500, and 400.676.

### § 400.51 [Amended]

■ 3. In § 400.51, in the first sentence, remove the listed regulations following the colon ''**:**'' through ''7 CFR part 446—Walnut Crop Insurance.''

## PART 457—[AMENDED]

■ 4. In part 457, remove and reserve §§ 457.114 and 457.115.

Signed in Washington, DC, on February 25, 2004.

**Ross J. Davidson, Jr.,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 04–4456 Filed 2–27–04; 8:45 am]

BILLING CODE 3410–08–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NE–41–AD; Amendment 39–13490; AD 2004–04–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Pratt & Whitney Canada JT15D–1, –1A, and –1B Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for Pratt & Whitney Canada (PWC) JT15D–1, –1A, and –1B turbofan engines with certain impellers part number (P/N) 3020365. This AD requires a one-time borescope inspection of the rear face of certain impellers for evidence of a machined groove or step, and repair or replacement of the impeller if a groove or step is found. This AD results from three reports of uncontained failure of the impeller. We are issuing this AD to prevent uncontained failure of the impeller and possible damage to the airplane.

**DATES:** This AD becomes effective April 5, 2004. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 5, 2004.

**ADDRESSES:** You can get the service information identified in this AD from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G1A1, telephone (800) 268–8000; fax (450) 647–2888.

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; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR Part 39 with a proposed airworthiness directive (AD). The proposed AD applies to PWC JT15D–1, –1A, and –1B turbofan engines with certain impellers part number (P/N) 3020365. We published the proposed AD in the **Federal Register** on November 13, 2003 (68 FR 64295). That action proposed to require a one-time borescope inspection of the rear face of certain impellers for evidence of a machined groove or step, and repair or replacement of the impeller if a groove or step is found.

**Comments**

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

**Conclusion**

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

**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.

**Costs of Compliance**

There are about 1,300 PWC JT15D–1, –1A, and –1B turbofan engines of the affected design in the worldwide fleet. We estimate that 740 of the PWC engines installed on airplanes of U.S. registry are affected by this AD. We also estimate that it will take about 2 work hours per engine to perform the inspection at a hot section inspection interval, and 30 work hours per engine to replace impellers found with a groove or a step in the rear face at shop visit. The average labor rate is $65 per work hour. Required parts will cost about $55,427 per engine. Based on these figures, we estimate that for impellers inspected at hot section inspections, the total labor cost of the AD to U.S. operators is $96,200. On the basis of 100 percent replacement, the total labor cost of the AD to U.S. operators is estimated to be $1,443,000 and the parts replacement cost is estimated to be $41,015,980 for a total replacement cost of $42,555,180.

**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–41–AD'' in your request.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

**2004–04–09 Pratt & Whitney Canada:** Amendment 39–13490. Docket No. 2003–NE–41–AD.

**Effective Date**

(a) This AD becomes effective April 5, 2004.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Pratt & Whitney Canada (PWC) JT15D–1, –1A, and –1B turbofan engines with certain impellers, part number (P/N) 3020365, installed. These engines are installed on, but not limited to, Cessna Aircraft Company Models 500 and 501 airplanes.

**Unsafe Condition**

(d) This AD results from three reports of uncontained failure of the impeller. The actions specified in this AD are intended to prevent uncontained failure of the impeller and possible 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.

(f) If you have already inspected the impeller, P/N 3020365, using PWC overhaul manual Revision 14, or if the impeller is listed in Appendix A of PWC Service Bulletin (SB) No. JT15D–72–7590, dated May 23, 2003, no further action is required.

**One-Time Borescope Inspection**

(g) Perform a one-time borescope inspection of the impeller rear face for evidence of a machined groove or step, using paragraph 3.B. of Accomplishment Instructions of PWC SB No. JT15D–72–7590, dated May 23, 2003, as follows:

(1) For engines with 5,000 or more cycles-since-new (CSN) on the effective date of this AD, inspect within 250 cycles-in-service (CIS) after the effective date of this AD.

(2) For engines with fewer than 5,000 CSN on the effective date of this AD, inspect before reaching 5,250 CSN.

**Disposition of Inspected Impellers**

(h) Before further flight, repair or replace impellers that do not pass the inspection requirements of paragraph 3.B.(8) of Accomplishment Instructions of PWC SB No. JT15D–72–7590, dated May 23, 2003.

**Alternative Methods of Compliance**

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

**Material Incorporated by Reference**

(j) You must use Pratt & Whitney Canada Service Bulletin No. JT15D–72–7590, dated May 23, 2003, to perform the one-time inspection required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G1A1, telephone (800) 268–8000; fax (450) 647–2888. You can review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Related Information**

(k) Transport Canada airworthiness directive No. CF–2003–17, dated June 23, 2003, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on February 18, 2004.

**Francis A. Favara,**

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

[FR Doc. 04–4100 Filed 2–27–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NM–30–AD; Amendment 39–13492; AD 2004–04–11]**

**RIN 2120–AA64**

## Airworthiness Directives; Dassault Model Mystere-Falcon 50 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Dassault Model Mystere-Falcon 50 series airplanes, that requires applying PR (fuel tank sealant) and installing PR patches over the internal side panel recesses of the left-hand and right-hand feeder tanks at certain frames and stringers. This action is necessary to prevent possible fuel ignition in the event of a lightning strike and consequent uncontained rupture of the fuel tank(s). This action is intended to address the identified unsafe condition.

**DATES:** Effective April 5, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 5, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from Dassault Falcon Jet, PO Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** 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:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dassault Model Mystere-Falcon 50 series airplanes was published in the **Federal Register** on November 18, 2003 (68 FR 65005). That action proposed to require applying PR (fuel tank sealant) and installing PR patches over the internal

side panel recesses of the left-hand and right-hand feeder tanks at certain frames and stringers.

**Comments**

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

**Request To Revise Statement of Unsafe Condition**

The commenter, the airplane manufacturer, requests that the wording of the unsafe condition in the Summary and Discussion sections of the proposed AD be changed. The commenter requests that the FAA change the wording to emphasize that the current design conforms to the certification basis, but that a design improvement has been developed. The French airworthiness directive which parallels the proposed AD states that the French airworthiness directive was issued because ''Analysis of an in-service incident has shown the need to improve the resistance of the feeder tank skins to direct lightning effects.'' The commenter acknowledges that an unsafe condition does exist.

The FAA partially agrees with the commenter. The unsafe condition as stated in the proposed AD is ''This action is necessary to prevent fuel ignition in the event of a lightning strike and consequent uncontained rupture of the fuel tank(s).'' We acknowledge that this statement could be interpreted to mean that each time the feeder tank panels were struck by lightning, the result would be fuel ignition and rupture of the fuel tanks(s) due to a problem with the current design of the fuel feeder tanks. We acknowledge that this result may not occur in all cases. However, conformity to the approved type design is not relevant in this situation. An unsafe condition has been identified based on an in-service event. The airworthiness authority for the state of design has issued an airworthiness directive mandating corrective action. We conclude that based on the authority's action the required corrective action is more than a design improvement. The unsafe condition statement in the Summary and body of this final rule will be changed to state that this action is necessary to ''prevent possible fuel ignition in the event of a lightning strike and consequent uncontained rupture of the fuel tank(s).'' The Discussion section is not restated in this final rule, so no change to the final rule is necessary in this regard.

**Request To Revise Cost Impact**

The same commenter states that the figures in the Cost Impact section of the proposed AD do not match the figures in Dassault Document DGT–DTF/NAV 89815, dated December 20, 2002.

From this comment we infer that the commenter is requesting that the Cost Impact section of the proposed AD be revised. We do not concur. The figures in Dassault Document DGT–DTF/NAV 89815 include work hours for preparing an airplane (including degreasing and cleaning) for the application of PR (fuel tank sealant) and installation of PR patches, and checking/testing the airplane after accomplishment of those actions. As stated in the proposed AD, ''the cost impact figures 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.'' Application of PR and installation of PR patches are the specific actions required by the proposed AD; the other actions are incidental. We have not changed this final rule regarding this issue.

**Conclusion**

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

**Cost Impact**

We estimate that 213 airplanes of U.S. registry will be affected by this AD, that it will take approximately 40 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $5,890 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,808,370, or $8,490 per airplane.

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

**Regulatory Impact**

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2004–04–11 Dassault Aviation:** Amendment 39–13492. Docket 2003–NM–30–AD

*Applicability:* Model Mystere-Falcon 50 series airplanes, certificated in any category, except those airplanes on which Dassault Modification M2491 or Dassault Modification M673 has been implemented.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent possible fuel ignition in the event of a lightning strike and consequent

uncontained rupture of the fuel tank(s), accomplish the following:

**Installation**

(a) Within 18 months from the effective date of this AD, apply PR (fuel tank sealant) and install PR patches over the internal side-panel recesses of the left-hand and right-hand feeder tanks between frame 28 and frame 31 and from stringer 5 to stringer 13, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F50–415, dated November 27, 2002. Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

**Alternative Methods of Compliance**

(b) 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.

**Incorporation by Reference**

(c) The actions shall be done in accordance with Dassault Service Bulletin F50–415, dated November 27, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dassault Falcon Jet, PO Box 2000, South Hackensack, New Jersey 07606. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 1:** The subject of this AD is addressed in French airworthiness directive, dated 2002–595(B), dated November 27, 2002.

**Effective Date**

(d) This amendment becomes effective on April 5, 2004.

Issued in Renton, Washington, on February 20, 2002.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–4254 Filed 2–27–04; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–CE–73–AD; Amendment 39–13493; AD 2004–05–01]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Inc. Model Otter DHC–3 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA adopts a new airworthiness directive (AD) for certain Bombardier Inc. (formerly deHavilland Inc.) Model Otter DHC–3 airplanes that have turbine engines installed per one of three supplemental type certificates (STC). This AD prohibits you from operating any affected airplane with these engine and propeller configurations unless a new STC for an elevator servo-tab with a redundant control linkage is installed. This AD is the result of reports of the control rod to the elevator servo-tab system detaching from the elevator servo-tab, which caused the elevator servo-tab to flutter on airplanes with a turbine engine installed. We are issuing this AD to prevent a single failure of the elevator servo-tab system, which could cause severe tab flutter. This failure could lead to possible loss of control of the airplane.

**DATES:** This AD becomes effective on April 20, 2004.

As of April 20, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

**ADDRESSES:** You may get the service information identified in this AD from:

- For STC No. SA3777NM: A.M. Luton 3025 Eldridge Avenue, Bellingham, Washington 98225; telephone (360) 671–7817; facsimile (360) 671–7820.
- For STC No. SA09866SC: Texas Turbine Conversions, Inc., 8955 CR 135, Celina, Texas 75009; telephone: (972) 382–4402; facsimile: (972) 382–4402.
- For STC No. SA09857SC: Canada Turbine Conversions, Inc., Lot 16, 105081 Highway 11, Pine Falls MB ROE 1MO, Canada.
- For STC No. SA01059SE: American Aeromotives, Inc. (American Aeromotives), 3025 Eldridge Avenue, Bellingham, Washington 98225, telephone: (360) 671–7817; facsimile: (360) 671–7820.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–73–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

- For STC No. SA3777NM or STC No. SA01059SE: Richard Simonson, Aerospace Engineer, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98055; telephone: (425) 917–6507; facsimile: (425) 917–6590.
- For STC No. SA09866SC: Richard Karanian, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, Special Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0190; telephone: (817) 222–5195; facsimile: (817) 222–5959.
- For STC No. SA09857SC: Peter W. Hakala, Aerospace Engineer, FAA, Special Certification Office, Rotorcraft Directorate, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0190; telephone: (817) 222–5145; facsimile: (817) 222–5785.

**SUPPLEMENTARY INFORMATION:**

### Discussion

*What events have caused this AD?* The FAA has received several reports of situations where pilots of Bombardier Inc. Model Otter DHC–3 airplanes with installed turbine engines have experienced buffeting of the elevators. All pilots declared an emergency and safely landed their aircraft.

Investigation found that the control rod to the elevator servo-tab system detached from the elevator servo-tab and caused the elevator servo-tab to flutter. In all cases, the aircraft had been modified with a Pratt and Whitney PT6A–135 or a PT6A–34 turbine engine per STC No. SA3777NM.

The certification basis for STC SA3777NM includes freedom from flutter and control reversal and divergence, required by 14 CFR 23.629(f)(1). Further review reveals that this requirement was not complied with when the STC was issued. Subsequent to the issuance of the STC, single failures of the control system for the servo-tab began causing the servo-tab to flutter. The failures were attributed to the increased velocity and airflow over the servo-tab caused by the turbine conversion.

As a method of compliance with 14 CFR 23.629(f)(1), American Aeromotives has identified the installation of STC No. SA01059SE (a new elevator servo-tab and redundant control linkage) on aircraft modified with a Pratt and Whitney PT6A–34/–135 turbine engine per STC No. SA3777NM.

FAA has inspected affected airplanes with STC No. SA09866SC or STC No. SA09857SC installed and confirmed that the same unsafe condition exists. At this time, neither of these two STC holders has identified a method of compliance with 14 CFR 23.629(f)(1).

As a method of compliance with 14 CFR 23.629(f)(1), FAA has identified the installation of STC No. SA01059SE (a new elevator servo-tab and redundant control linkage) on aircraft modified with STC No. SA09866SC or STC No. SA09857SC.

*What is the potential impact if FAA took no action?* A single failure of the elevator servo-tab system could cause severe tab flutter and lead to possible loss of control of the airplane.

*Has FAA taken any action to this point?* We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Bombardier Inc. (formerly deHavilland Inc.) Model Otter DHC–3 airplanes that have turbine engines installed per one of three supplemental type certificates (STC). This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 5, 2003 (68 FR 62454). The NPRM proposed to prohibit you from operating any affected airplane that incorporates STC No. SA3777NM, STC No. SA09866SC, or STC No. SA09857SC without incorporation of STC No. SA01059SE.

**Comments**

*Was the public invited to comment?* We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

**Comment Issue No. 1: Remove the Link Between STCs SA01059SE and ST01243NY**

*What is the commenter's concern?* One commenter requests removing the link between STCs SA01059SE and ST01243NY. The STC SA01059SE references STC ST01243NY by permitting a combined installation of both. The STC ST01243NY is an FAA version of the Canadian STC SA99–129.

The STC SA99–129 introduced a mass-balance servo-tab which experienced failures until corrected in STC SA99–129, Revision 3, which required structural modifications to attach the mass-balance servo-tab (which does not exist in that model).

The use of dissimilar actuators increases the risk of ''force fighting'' and an additional loading unaccounted for in STC SA99–129, Revision 3.

*What is FAA's response to the concern?* We do not believe it is necessary to remove any link between STCs SA01059SE and ST01243NY since a link is not discussed in the proposed AD. The proposed AD requires only the installation of STC SA01059SE.

During testing, FAA investigated the interaction of STC SA01059SE with STC ST01243NY and found that the STCs are compatible. The link is noted in STC SA01059SE only to assist the installer in establishing the compatibility between the two STCs.

The risk of ''force fighting'' was addressed during the development of STC SA01059SE. The geometry differences are not significant and, during the flight test program, the mass-balance servo-tab was demonstrated to work smoothly throughout the elevator control travel.

We are not making any changes to the final rule AD action.

**Comment Issue No. 2: Identify STC ST01243NY (Canadian STC SA99–129, Revision 3) as an Approved Alternative Method of Compliance**

*What is the commenter's concern?* Two commenters request that FAA identify STC ST01243NY (STC SA99–129, Revision 3) as an approved alternative method of compliance since this STC has been demonstrated to prevent the elevator servo-tab from fluttering when the control rod to the servo-tab system becomes detached.

*What is FAA's response to the concern?* We agree that Canadian STC SA99–129, Revision 3, is an acceptable method of compliance to the AD. However, FAA has not determined if the latest version of STC ST01243NY (amended March 18, 2002) corresponds to the Canadian STC SA99–216, Revision 3. Aircraft that have been modified under STC ST01243NY will be evaluated under paragraph (f), alternative method of compliance, of the AD and the procedures in 14 CFR 39.19 to determine if the modification corresponds to the Canadian STC SA99–216, Revision 3.

We are not making any changes to the final rule AD action.

**Comment Issue No. 3: Inspection and Maintenance of the New Mass-Balance Servo-tab and the Servo-tab System**

*What is the commenter's concern?* One commenter notes that one cause of the problems with the first version of STC ST01243NY (STC SA99–129) was the retrofit of the existing mass-balance servo-tab. Therefore, the use of a completely new mass-balance servo-tab is fundamental. The commenter recommends that maintenance and inspection requirements include the critical points in the design.

*What is FAA's response to the concern?* We agree with the commenter's suggestion. The STC SA01059SE requires a completely new mass-balance servo-tab, reinforced at the second attachment. In addition, the trailing edge is an extrusion and the outboard end block is one-piece aluminum. The Instructions for Continuing Airworthiness (ICA) for STC SA01059SE require periodic inspection and maintenance of the new mass-balance servo-tab and the servo-tab system.

Since the commenter's recommendation is in effect, we are not making any changes to the final rule AD action.

**Comment Issue No. 4: Carefully Review Any Proposed Structural Modification to the Tab and Elevator**

*What is the commenter's concern?* There have been several reports of servo-tab failures on piston-powered Model DHC–3 airplanes. At least one reported failure involved a severed servo-tab and distressed elevator in the region where the second actuator is installed following STC SA01059SE. Although the failure progression for the severed servo and distressed elevator is not known, one commenter suggests a cautious approach to any proposed structural modifications to the servo-tab and elevator.

*What is FAA's response to the concern?* The FAA agrees with the suggestion of taking a cautious approach to any proposed structural modifications to the servo-tab and elevator. We considered this failure mode during the design of the completely new servo-tab installed following STC SA01059SE. The structural modifications to the rear spar of the horizontal stabilizer for mounting of the second control rod acts to strengthen the rear spar area. The new servo-tab is designed to handle a conservative aerodynamic load with only the second rod attached. The new servo-tab is considerably stronger in bending than the original servo-tab.

We are not making any changes to the final rule AD action.

**Comment Issue No. 5: Lack of a Dual Actuator for the Rudder Tab**

*What is the commenter's concern?* One commenter requests that the proposed AD also address the lack of a dual actuator for the rudder tab. The commenter explains that although only the elevator servo-tab has displayed service difficulties in the past, strict application of 14 CFR 39.13 would also require modifying the rudder tab to either a dual actuator or a mass balanced configuration.

There is no reference to modifying the rudder trim system in STC SA01059SE. In this context, the rudder is less affected by the increased swirl of the propeller stream since the rudder is already in the turbulent body flow region, whereas, the servo-tab actuator is more exposed to the increased propeller tip effects. Therefore, the lack of reference to the rudder trim system is not contentious as there have been no reports of increased difficulties in this area.

*What is FAA's response to the concern?* We disagree with the

recommendation that the proposed AD address the lack of a dual actuator for the rudder tab. Since the rudder is less affected by the increased swirl of the propeller stream and due to the lack of reported service difficulties with the rudder trim system, we will not require a dual actuator for the rudder trim system in this AD.

We are not making any changes to the final rule AD action.

**Comment Issue No. 6: Use Correct and Consistent Terminology**

*What is the commenter's concern?* One commenter requests that we change the term ''Servo trim tab'' to ''elevator servo-tab'' and ''elevator flutter'' to ''tab flutter''. These changes are for consistency and correctness.

*What is FAA's response to the concern?* We agree and will make these changes throughout the AD.

**Conclusion**

*What is FAA's final determination on this issue?* We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

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

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

**Costs of Compliance**

*How many airplanes does this AD impact?* We estimate that this AD affects 32 airplanes in the U.S. registry.

*What is the cost impact of this AD on owners/operators of the affected airplanes?* We estimate the following costs to do the modification (on Model DHC–3 airplanes with a turbine engine) for installing STC No. SA01059SE, a new elevator servo-tab and redundant control linkage. We have no way of determining the number of airplanes that may need such modification:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 20 workhours × $65 per hour = $1,300 | $3,000 | $1,300 + $3,000 = $4,300. |

**Compliance Time of This AD**

*What will be the compliance time of this AD?* The compliance time of this AD is within 3 calendar months or 250 hours time-in-service (TIS) after the effective date of this AD, whichever occurs first.

*Why is the compliance time of this AD presented in both hours TIS and calendar time?* A single failure of the elevator servo-tab system is a direct result of airplane operation with a turbine engine installed. For example, a single failure of the elevator servo-tab system could occur on an affected airplane within a short period of airplane operation while you could operate another affected airplane for a considerable amount of time without experiencing a single failure of the elevator servo-tab system. Therefore, to assure that a single failure of the elevator servo-tab system is detected and corrected in a timely manner without inadvertently grounding any of the affected airplanes, we are using a compliance time based upon both hours TIS and calendar time.

**Regulatory Findings**

*Will this AD impact various entities?* We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

*Will this AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2000–CE–73–AD'' in your request.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2004–05–01 Bombardier Inc.:** Amendment 39–13493; Docket No. 2000–CE–73–AD.

**When Does This AD Become Effective?**

(a) This AD becomes effective on April 20, 2004.

**What Other ADs Are Affected by This Action?**

(b) None.

**What Airplanes Are Affected by This AD?**

(c) This AD affects any Model Otter DHC–3 airplane (all serial numbers) that:

(1) Has a turbine engine installed per:

(i) Supplemental Type Certificate (STC) No. SA3777NM (A.M. Luton installation of Pratt and Whitney PT6A–34/–135 engine);

(ii) STC No. SA09866SC (Texas Turbines Conversions, Inc. installation of Honeywell TPE–331 engine); or

(iii) STC No. SA09857SC (Canada Turbine Conversions, Inc. installation of Walter M601E–11 engine); and

(2) Is certificated in any category.

**What Is the Unsafe Condition Presented in This AD?**

(d) This AD is the result of reports that the control rod to the elevator servo-tab system detached from the elevator servo-tab causing the elevator servo-tab to flutter on airplanes

with a turbine engine installed. The actions specified in this AD are intended to prevent a single failure of the elevator servo-tab system causing severe tab flutter. This failure could lead to possible loss of control of the airplane.

**What Must I Do To Address This Problem?**

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Do not operate any airplane that has a turbine engine installed per: STC No. SA3777NM, SA09866SC, or SA09857SC and DOES NOT have a new elevator servo-tab and redundant control linkage per STC No. SA01059SE. | As of 3 calendar months or 250 hours time-in-service (TIS) after April 20, 2004 (the effective date of this AD), whichever occurs first. | Not Applicable. |
| (2) You may install at the same time a turbine engine per STC No. SA3777NM, SA09866SC, or SA09857SC and a new elevator servo-tab and redundant control linkage per STC No. SA01059SE. | Before further flight as of April 20, 2004 (the effective date of this AD). | Follow American Aeromotives, Inc. DHC–3 Otter Service Letter No. AAI–DHC3–01.01, Revision No. IR, dated April 9, 2002. |
| (3) You may operate an affected airplane installed with a turbine engine per STC No. SA777NM, SA09866SC, or SA09857SC if you install a new elevator servo-tab and redundant contol linkage per STC No. SA01059SE. | Within 3 calendar months or 250 hours TIS after April 20, 2004 (the effective date of this AD), whichever occurs first. | Follow American Aeromotives, Inc. DHC–3 Otter Service Letter No. AAI–DHC3–02.01, Revision No. IR, dated April 9, 2002. |
| (4) Do not install a turbine engine per STC No. SA3777NM, SA09866SC, or SA09857SC, unless you have installed a new elevator servo-tab and redundant control linkage per STC No. SA01059SE. | As of April 20, 2004 (the effective date of this AD). | No Applicable. |

**May I Request an Alternative Method of Compliance?**

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Seattle Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact:

(1) For STC No. SA3777NM or STC No. SA01059SE: Richard Simonson, Aerospace Engineer, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98055; telephone: (425) 917–6507; facsimile: (425) 917–6590.

(2) For STC No. SA09866SC: Richard Karanian, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, Special Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0190; telephone: (817) 222–5195; facsimile: (817) 222–5959.

(3) For STC No. SA09857SC: Peter W. Hakala, Aerospace Engineer, FAA, Special Certification Office, Rotorcraft Directorate, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0190; telephone: (817) 222–5145; facsimile: (817) 222–5785.

**Does This AD Incorporate Any Material by Reference?**

(g) You must do the actions required by this AD following the instructions in American Aeromotives, Inc. DHC–3 Otter Service Letter No. AAI–DHC3–02.01, Revision No. IR, dated April 9, 2002. The Director of the Federal Register approved the incorporation by reference of this service letter in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from American Aeromotives, Inc., 3025 Eldridge Avenue, Bellingham, Washington 98225, telephone: (360) 671–7817; facsimile: (360) 671–7820. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Issued in Kansas City, Missouri, on February 20, 2004.

**Dorenda D. Baker,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–4373 Filed 2–27–04; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–CE–09–AD; Amendment 39–13496; AD 2001–13–18 R1]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Aircraft Corporation Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is revising Airworthiness Directive (AD) 2001–13–18, which applies to Raytheon Aircraft Corporation (Raytheon) Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) airplanes. AD 2001–13–18 currently requires you to repetitively inspect the wing spar assembly for cracks and replace any wing spar assembly found cracked (unless the spar assembly has a crack indication in the filler strip where the direction of the crack is toward the outside edge of the filler strip). AD 2001–13–18 also requires you to report the results of the initial inspection and maintain the flight and operating restrictions required by AD 99–12–02 until the initial inspection is done. We approved alternative methods of compliance (AMOCs) to AD 2001–13–18. We have since determined that those AMOCs do not address all critical areas in the wing spar assemblies and should no longer be valid. We are issuing this revision to AD 2001–13–18 for the purpose of eliminating the AMOCs to AD 2001–13–18. The actions of this AD are intended to prevent wing spar failure caused by fatigue cracks in the wing spar assemblies and ensure the operational safety of the above-referenced airplanes.

**DATES:** This AD becomes effective on March 15, 2004.

On August 16, 2001 (66 FR 34802, July 2, 2001), the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

We must receive any comments on this AD by April 26, 2004.

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

- *By mail:* FAA, Central Region, Office of the Regional Counsel,

Attention: Rules Docket No. 2000–CE–09–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

- *By fax:* (816) 329–3771.
- *By e-mail: 9–ACE–7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2000–CE–09–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–09–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4107.

**SUPPLEMENTARY INFORMATION:**

*Has FAA Taken Any Action to This Point?*

In-flight separation of the right wing on a Raytheon Beech Model A45 (T34A) airplane caused FAA to issue AD 99–12–02, Amendment 39–11193 (64 FR 31689, June 14, 1999) against Raytheon Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) airplanes. This AD requires:

—Incorporating flight and operating limitations that restrict the airplanes to normal category operation and prohibit them from acrobatic and utility category operations;
—Limiting the flight load factor to 0 to 2.5 G; and
—Limiting the maximum airspeed to 175 miles per hour (mph) (152 knots).

AD 99–12–02 was issued as an interim action until the development of FAA-approved inspection procedures.

Those procedures were developed and FAA superseded AD 99–12–12 with AD 2001–13–18, Amendment 39–12300 (66 FR 34802, July 2, 2001). AD 2001–13–18 contains the following provisions:

—Requires you to repetitively inspect the wing spar assemblies for cracks and replace any cracked wing spar assembly. A crack indication in the filler strip is allowed if the direction of the crack is toward the outside edge of the filler strip;
—Requires you to report the results of the initial inspection;
—Requires you to maintain the flight and operating restrictions that AD 99–12–02 currently requires until you do the initial inspection and possible replacement specified in this AD; and
—Allows you to change the flight and operating restrictions that AD 99–12–02 currently requires after the wing spar assemblies are inspected and the wing spar assembly either is replaced, is crack free, or only has a crack indication in the filler strip where the direction of the crack is toward the outside of the filler strip.

You are required to do the inspections of AD 2001–13–18 following the procedures of Raytheon Mandatory Service Bulletin No. SB 57–3329, Issued: February, 2000.

*What Has Happened Since AD 2001–13–18 To Initiate This AD Action?*

In November 2003, a Raytheon Beech Model A45 (T34A) airplane crashed after the right wing failed at Wing Station (WS) 34 on the forward spar and WS 66.00 on the rear spar. AD 2001–13–18 was established to inspect the wing spar assemblies at four locations:

1. Nine fasteners at the WS 34 forward spar.
2. The lower rear bathtub fitting.
3. One fastener at WS 64 on the forward spar.
4. Two fasteners at WS 66.00 on the rear spar.

The FAA has approved and issued different alternative methods of compliance (AMOCs) for the inspections of AD 2001–13–18. These AMOCs consist of a combination of modifications and inspections to address the condition.

None of the AMOCs issued under AD 2001–13–18 address all four locations of the wing spar assemblies.

## FAA's Determination and Requirements of This AD

*What Has FAA Decided?*

We have evaluated all pertinent information including all information from the November 2003 accident and determined that the AMOCs approved under AD 2001–13–18 do not address all critical areas in the wing spar assemblies and should no longer be valid in order to prevent wing spar failure caused by fatigue cracks in the wing spar assemblies and ensure the operational safety of the above-referenced airplanes.

Therefore, we have determined that AD 2001–13–18 should be revised for the purpose of eliminating the AMOCs to AD 2001–13–18.

*What Does This AD Require?*

This AD revises AD 2001–13–18 by retaining all actions (including compliance times) of AD 2001–13–18, but not retaining the AMOCs approved through that AD. The requirements of the actual AD portion of AD 2001–13–18 will remain the same.

In preparing this rule, we contacted type clubs and aircraft operators to get technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included a discussion of any information that may have influenced this action in the rulemaking docket.

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

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

## Comments Invited

*Will I Have the Opportunity To Comment Before You Issue the Rule?*

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2000–CE–09–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

## Regulatory Findings

*Will This AD Impact Various Entities?*

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

*Will This AD Involve a Significant Rule or Regulatory Action?*

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2000–CE–09–AD'' in your request.

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2001–13–18, Amendment 39–12300 (66 FR 34802, July 2, 2001), and by adding a new AD to read as follows:

**2001–13–18 R1 Raytheon Aircraft Company:** Amendment 39–13496; Docket No. 2000–CE–09–AD; Revises AD 2001–13–18, Amendment 39–12300.

*When Does This AD Become Effective?*

(a) This AD becomes effective on March 15, 2004.

*What Airplanes Are Affected by This AD?*

(b) This AD applies to Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) airplanes, all serial numbers, that are certificated in any category.

*What Is the Unsafe Condition Presented in This AD?*

(c) We are issuing this AD to detect and correct cracks in the wing spar assemblies and ensure the operational safety of the above-referenced airplanes.

*What Must I Do To Address This Problem?*

(d) To address this problem, you must maintain the actions of AD 99–12–02 that are outlined in paragraphs (d)(1), (d)(2), and (d)(3) of this AD, including all subparagraphs, until you accomplish the initial inspection required in paragraph (d)(5) of this AD (paragraphs (d)(1) through (d)(4) are actions retained from AD 99–12–02, and paragraphs (d)(5) through (d)(7) are actions new to this AD):

| Action | When | In accordance with |
|---|---|---|
| (1) Accomplish the following placard requirements: | All actions required prior to further flight after July 9, 1999 (the effective date of AD 99–12–02), unless already accomplished. | Not Applicable. |
| (i) Fabricate two placards using letters of at least 1/10-inch in height with each consisting of the following words: ''Never exceed speed, Vne-175 MPH (152 knots) IAS; Normal Acceleration (G) Limits—0, and +2.5; ACROBATIC MANEUVERS PROHIBITED.'' | | |
| (ii) Install these placards on the airplane instrument panels (one on the front panel and one on the rear panel) next to the airspeed indicators within the pilot's clear view. | | |
| (iii) Insert a copy of this AD into the Limitations Section of the Airplane Flight Manual (AFM). | | |
| (2) Modify each airspeed indicator glass by accomplishing the following: | All actions required within 10 hours time-in-service (TIS) after July 9, 1999 (the effective date of AD 99–12–02), unless already accomplished. | Not Applicable. (i) Place a red radial line on each indicator glass at 175 miles per hour (mph) (152 knots). |
| (ii) Place a white slippage index mark between each airspeed indicator glass and case to visually verify that the glass has not rotated. | | |
| (3) Mark the outside surface of the ''g'' meters with lines of approximately 1/16-inch by 3/16-inch, as follows: | All actions required within 10 hours time-in-service (TIS) after July 9, 1999 (the effective date of AD 99–12–02), unless already accomplished. | Not Applicable. |
| (i) A red line at 0 and 2.5; and | | |
| (ii) A white slippage mark between each ''g'' meter glass and case to visually verify that the glass has not rotated. | | |
| (4) The actions required by paragraphs (d)(1), (d)(2), and (d)(3) are no longer required after the initial inspection required in paragraph (d)(5) of this AD is accomplished. | Upon accomplishment of the initial inspection required in paragraph (d)(5) of this AD, unless already accomplished. | Raytheon Aircraft Mandatory Service Bulletin No. SB 57–3329, Issued: February, 2000. |

| Action | When | In accordance with |
|---|---|---|
| (5) Inspect the wing spar assemblies for cracks | Initially inspect within the next 80 hours time-in-service (TIS) after August 16, 2001 (the effective date of AD 2001–13–18) or within 12 months after August 16, 2001 (the effective date of AD 2001–13–18), whichever occurs later, unless already accomplished. Inspect thereafter at intervals not to exceed 80 hours TIS. | Raytheon Aircraft Mandatory Service Bulletin No. SB 57–3329, Issued: February, 2000. |
| (6) Replace any cracked wing spar assembly. A crack indication in the filler strip is allowed if the direction of the crack is toward the outside edge of the filler strip. If the direction of the crack is toward the inside edge of the filler strip or any crack is found in any other area, you must replace the cracked wing spar assembly. | Prior to further flight after the required inspection where the cracked wing spar assembly is found. | The applicable maintenance manual. |
| (7) Submit a report to FAA that describes the damage found on the wing spar. Use the chart on pages 58 through 60 of Raytheon Aircraft Mandatory Service Bulletin No. SB 57–3329, Issued: February, 2000.<br>(i) Submit this report even if no cracks are found.<br>(ii) Submit this report to FAA at the address found in paragraph (g) of this AD. | Within 10 days after the initial inspection or within 10 days after August 16, 2001 (the effective date of AD 2001–13–18), whichever occurs later, unless already accomplished. | Pages 58 through 60 of Raytheon Aircraft Mandatory Service Bulletin No. SB 57–3329, Issued: February, 2000. |

*Are Any Other ADs Affected by This Action?*

(e) This AD revises AD 2001–13–18, Amendment 39–12300.

*What About Alternative Methods of Compliance?*

(f) As of March 15, 2004 (the effective date of this AD), all alternative methods of compliance approved under AD 2001–13–18 are not approved for this AD and are no longer valid. Any alternative method of compliance must reference ''AD 2001–13–18 R1'' in order to be valid.

(g) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance for this AD, contact Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4107.

*Does This AD Incorporate Any Material by Reference?*

(h) You must do the actions required by this AD following the instructions in Raytheon Aircraft Mandatory Service Bulletin No. SB 57–3329, Issued: February, 2000. On August 16, 2001 (66 FR 34802, July 2, 2001), the Director of the Federal Register previously approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Issued in Kansas City, Missouri, on February 23, 2004.

**Dorenda D. Baker,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–4372 Filed 2–27–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 9115]**

**RIN 1545–BC27**

## Depreciation of MACRS Property That Is Acquired in a Like-Kind Exchange or as a Result of an Involuntary Conversion

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains regulations relating to the depreciation of property subject to section 168 of the Internal Revenue Code (MACRS property). Specifically, these temporary regulations provide guidance on how to depreciate MACRS property acquired in a like-kind exchange under section 1031 or as a result of an involuntary conversion under section 1033 when both the acquired and relinquished property are subject to MACRS in the hands of the acquiring taxpayer. These temporary regulations will affect taxpayers involved in a like-kind exchange under section 1031 or an involuntary conversion under section 1033. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the proposed rules section in this issue of the **Federal Register.**

**DATES:** *Effective Dates:* These regulations are effective March 1, 2004.

*Applicability Dates:* For dates of applicability, *see* §§ 1.168(a)–1T(b) and (c), 1.168(b)–1T(b), 1.168(d)–1T(d), 1.168(i)–1T(l), 1.168(i)–6T(k), and 1.168(k)–1T(g).

**FOR FURTHER INFORMATION CONTACT:** Charles J. Magee, (202) 622–3110 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains amendments to 26 CFR part 1 under section 168 of the Internal Revenue Code (Code). Section 168 has been modified by several Acts, including section 201 of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085, 2121), section 101 of the Job Creation and Worker Assistance Act of 2002, Public Law 107–147 (116 Stat. 21), and section 201 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, Public Law 108–27 (117 Stat. 752). Section 168 provides the depreciation deduction for tangible property generally placed in service after December 31, 1986.

**Explanation of Provisions**

*Background*

Section 167 allows as a depreciation deduction a reasonable allowance for the exhaustion, wear, and tear of property used in a trade or business or held for the production of income. The depreciation allowable for depreciable tangible property placed in service after 1986 generally is determined under section 168 (MACRS property). Under section 1031(a)(1), no gain or loss is recognized on an exchange of property held for productive use in a trade or business or for investment if the property is exchanged solely for property of like kind that is to be held either for productive use in a trade or business or for investment. Section 1031(b) provides that if an exchange would be within the provision of section 1031(a) were it not for the fact that the property received in the exchange consists not only of property permitted to be received in such an exchange, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property. Under section 1031(c), no loss from such a transaction is recognized. Under section 1031(d), the basis of property acquired in an exchange described in section 1031 is the same as that of the property exchanged, decreased by the amount of any money received by the taxpayer and increased by the amount of gain (or decreased by the amount of loss) that was recognized on such exchange.

Section 1033(a)(1) provides that if property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, no gain is recognized. Under section 1033(b)(1), the basis of property acquired by the taxpayer in such a transaction is the basis of the converted property. Under section 1033(a)(2)(A), if property is compulsorily or involuntarily converted into money or into property not similar or related in service or use to the converted property, and, within the time frame described in section 1033(a)(2)(B), the taxpayer purchases property that is related in service or use to the converted property or purchases stock in the acquisition of control of a corporation owning such property, then the taxpayer may elect to recognize gain only to the extent that the amount realized upon such conversion exceeds the cost of such other property. Under section 1033(b)(2), if such an election is made, the basis of the replacement property acquired by the taxpayer generally is the cost of that property decreased by any gain not recognized by reason of section 1033(a)(2).

The IRS became aware of inconsistent depreciation treatment by taxpayers of property that has a basis determined under section 1031(d) or section 1033(b) (replacement property). Certain taxpayers were depreciating the replacement property using the same depreciation method, recovery period, and convention as the exchanged or involuntarily converted property (relinquished property) while other taxpayers were depreciating the replacement property as if it were newly placed in service.

In response, the IRS and Treasury issued Notice 2000–4 (2000–1 C.B. 313), published January 18, 2000. Notice 2000–4 instructed taxpayers how to depreciate MACRS property that has a basis determined under section 1031(d) or section 1033(b) (replacement MACRS property), provided that the exchanged or involuntarily converted property was also MACRS property (relinquished MACRS property). The notice stated that replacement MACRS property placed in service after January 3, 2000, is depreciated over the remaining recovery period of, and using the same depreciation method and convention as, the relinquished MACRS property and that any excess of the basis in the replacement MACRS property over the adjusted basis in the relinquished MACRS property is treated as newly purchased MACRS property. Notice 2000–4 also stated that the IRS and Treasury intended to issue regulations to address these transactions. Public comments on the nature and scope of these temporary regulations were requested.

*Scope*

The temporary regulations instruct taxpayers how to determine the annual depreciation allowance under section 168 for replacement MACRS property. Generally, MACRS property, which is defined in § 1.168(b)–1T(a)(2), is tangible property of a character subject to the allowance for depreciation provided in section 167(a) that is placed in service after December 31, 1986, and subject to section 168. The temporary regulations also apply to a transaction to which section 1031(a), (b), or (c) applies (like-kind exchange) or a transaction in which gain or loss is not recognized pursuant to section 1033 (involuntary conversion) involving MACRS property that is replaced with other MACRS property in a transaction between members of the same affiliated group.

Property acquired in a like-kind exchange or involuntary conversion to replace property whose depreciation allowance is computed under a depreciation system other than MACRS, or to replace property for which a taxpayer made a valid election under section 168(f)(1) to exclude it from the application of section 168 (MACRS), is not within the scope of the temporary regulations. Additionally, this regulation does not provide guidance for a taxpayer acquiring property in an exchange for property that the taxpayer depreciated under the Accelerated Cost Recovery System (ACRS) or for a taxpayer acquiring an automobile for another automobile for which the taxpayer used the Standard Mileage Rate method of deducting expenses. Comments are requested on the depreciation treatment of like-kind exchange or involuntary conversion transactions described above and whether the depreciation treatment of these transactions should fall within the scope of this regulation.

The depreciation treatment used by previous owners in determining depreciation allowances for the replacement MACRS property is not relevant. For example, a taxpayer exchanging MACRS property for property that was depreciated under ACRS by the person relinquishing the property may use this regulation (because the acquired property will become MACRS property in the hands of the acquiring taxpayer). In addition, elections made by previous owners in determining depreciation allowances of the replacement MACRS property have no effect on the acquiring taxpayer. For example, a taxpayer exchanging MACRS property that the taxpayer depreciates under the general depreciation system for other MACRS property that the previous owner elected to depreciate under the alternative depreciation system pursuant to section 168(g)(7) does not have to continue using the alternative depreciation system for the replacement MACRS property.

Finally, the IRS has learned that some taxpayers question whether Notice 2000–4 allows depreciation of land, if the land is acquired in a like-kind exchange or involuntary conversion for MACRS property. As explained in further detail below, neither the temporary regulations nor Notice 2000–4 allow taxpayers to depreciate land or other nondepreciable property.

*General Rule*

Exchanged Basis

The temporary regulations provide rules for determining the applicable recovery period, depreciation method, and convention used to determine the depreciation allowances for the replacement MACRS property with respect to so much of the taxpayer's basis (as determined under section 1031(d) and the regulations under section 1031(d) or section 1033(b) and the regulations under section 1033(b)) in the replacement MACRS property as does not exceed the taxpayer's adjusted depreciable basis in the relinquished MACRS property (exchanged basis). In general, the exchanged basis is depreciated over the remaining recovery period of, and using the depreciation method and convention of, the relinquished MACRS property (general rule).

This general rule applies if the replacement MACRS property has the same or a shorter recovery period or the same or a more accelerated depreciation method than the relinquished MACRS property. Under certain circumstances, this rule could adversely affect taxpayers engaging in like-kind exchanges or involuntary conversions. For example, under the general rule, a taxpayer must depreciate replacement MACRS property with a shorter recovery period over the longer recovery period of the relinquished MACRS property even if the taxpayer could depreciate the replacement MACRS property over a shorter recovery period by treating such property as newly acquired MACRS property. Accordingly, the temporary regulations provide an election not to apply the temporary regulations and to treat the replacement MACRS property as MACRS property placed in service by the acquiring taxpayer at the time of replacement. Taxpayers may use this election to ameliorate the possible adverse effects of applying the general rule to this type of transaction.

The general rule does not apply if the replacement MACRS property has a longer recovery period or less accelerated depreciation method than the relinquished property. If the recovery period of the replacement MACRS property is longer than that of the relinquished MACRS property, the taxpayer's exchanged basis in the relinquished MACRS property is depreciated beginning in the year of replacement over the remainder of the recovery period that would have applied to the replacement MACRS property if the replacement MACRS property had originally been placed in service when the relinquished MACRS property was placed in service by the acquiring taxpayer. Similarly, if the depreciation method of the replacement MACRS property is less accelerated than that of the relinquished MACRS property, then the taxpayer's exchanged basis in the relinquished MACRS property is depreciated beginning in the year of replacement using the less accelerated depreciation method of the replacement MACRS property that would have applied to the replacement MACRS property if the replacement MACRS property had originally been placed in service when the relinquished MACRS property was placed in service by the acquiring taxpayer.

For taxpayers who wish to use the optional depreciation tables to determine the depreciation allowances for the replacement MACRS property instead of the formulas (for example, *see* section 6 of Rev. Proc. 87–57 (1987–2 C.B. 687, 692)), the temporary regulations provide guidance on choosing the applicable optional table as well as how to modify the calculation for computing the depreciation allowances for the replacement MACRS property.

Excess Basis

Any excess of the taxpayer's basis in the replacement MACRS property over the taxpayer's exchanged basis in the relinquished MACRS property is referred to as the excess basis. Generally, the excess basis in the replacement MACRS property is treated as property that is placed in service by the acquiring taxpayer in the taxable year in which the replacement MACRS property is placed in service by the acquiring taxpayer or, if later, the taxable year of the disposition of the relinquished MACRS property (time of replacement). The depreciation allowances for the excess basis are determined by using the applicable recovery period, depreciation method, and convention prescribed under section 168 for the replacement MACRS property at the time of replacement. In addition, the excess basis may be taken into account for purposes of computing the deduction allowed under section 179.

*Special Rules*

Deferred Exchanges

Because of the complex nature of certain like-kind exchange and involuntary conversion transactions, the temporary regulations provide special rules for certain circumstances. If a taxpayer disposes of the relinquished MACRS property prior to the acquisition of the replacement MACRS property, the temporary regulations do not allow the taxpayer to take depreciation on the relinquished MACRS property during the period between the disposition of the relinquished MACRS property and the acquisition of the replacement MACRS property. This results because, in a deferred exchange under § 1.1031(k)–1, or if a taxpayer does not replace converted property until after the taxpayer no longer owns the converted property, the taxpayer has no property to depreciate during that intervening period. Accordingly, the recovery period for the replacement MACRS property is suspended during this period. The temporary regulations do not address the issue of whether an intermediary (such as an exchange accommodation titleholder) is entitled to depreciation.

Acquisition Prior to Disposition

When replacement MACRS property is acquired and placed in service by a taxpayer before the relinquished MACRS property is disposed of by the taxpayer (for example, under threat of condemnation), the regulations allow the taxpayer to depreciate the unadjusted depreciable basis of the replacement MACRS property until the time of disposition of the relinquished MACRS property by the taxpayer. The taxpayer must include in taxable income in the year of disposition of the relinquished MACRS property the excess of the depreciation allowable on the unadjusted depreciable basis of the replacement MACRS property over the depreciation that would be allowable on the excess basis of the replacement MACRS property from the date the replacement MACRS property was placed in service by the taxpayer to the time of disposition of the relinquished MACRS property. The depreciation of the depreciable excess basis of the replacement MACRS property continues to be depreciated by the taxpayer. The IRS and Treasury may consider providing additional future guidance with respect to this issue and request comments relating thereto. The IRS and Treasury also invite taxpayers to comment on whether the allowance of depreciation for the replacement MACRS property should be followed by basis reduction at the time of disposition of the relinquished MACRS property, or whether some other approach should be taken.

*Transactions Involving Nondepreciable Property*

Because land or other nondepreciable property acquired in a like-kind

exchange or involuntary conversion for MACRS property is not depreciable, such property is not within the scope of the temporary regulations. Further, if MACRS property or both MACRS property and land or other nondepreciable property are acquired in a like-kind exchange or involuntary conversion for land or other nondepreciable property, the basis of the replacement MACRS property is treated as property placed in service by the acquiring taxpayer in the year of replacement.

*Automobiles*

The IRS received many comments concerning the like-kind exchange of automobiles. In response, the temporary regulations contain detailed rules regarding the annual allowable depreciation for automobiles acquired in a like-kind exchange or involuntary conversion. The temporary regulations provide that if the replacement MACRS property consists of a passenger automobile that is subject to the depreciation limitations of section 280F(a), then the depreciation limitation that applies for the taxable year is based on the date the replacement MACRS automobile is placed in service by the acquiring taxpayer. In allocating the depreciation limitation, the depreciation allowance for the exchanged basis in the replacement MACRS automobile generally is limited to the amount that would have been allowable under section 280F(a) for the relinquished MACRS automobile had the transaction not occurred. The depreciation allowance for the excess basis is generally limited to the section 280F(a) limitation that applies for that taxable year less the amount of the depreciation allowance for the exchanged basis.

*Election Not To Apply Temporary Regulations*

Commentators suggested that implementing the general rule for all depreciable property was burdensome because taxpayers would have onerous computational and administrative difficulties due to the possibility of having to track different depreciation components of one asset. Responding to these comments, the temporary regulations include a provision by which taxpayers may elect not to apply these temporary regulations. If a taxpayer elects not to apply the temporary regulations, the taxpayer must treat the entire basis (*i.e.*, both the exchanged and excess basis) of the replacement MACRS property as being placed in service by the acquiring taxpayer at the time of replacement. Consistent with this treatment, the taxpayer treats the relinquished MACRS property as disposed of at the time of the disposition of the relinquished MACRS property. The election must be made by typing or legibly printing at the top of Form 4562, *Depreciation and Amortization,* ''ELECTION MADE UNDER SECTION 1.168(i)–6T(i),'' or in the manner provided for on Form 4562 and its instructions.

*Additional First Year Depreciation*

Temporary regulations issued under §§ 1.168(k)–1T and 1.1400L(b)–1T (TD 9091, 68 FR 52986 (September 8, 2003)) provide that the exchanged basis (referred to as the ''carryover basis'' in such regulations) and the excess basis, if any, of the replacement MACRS property (referred to as the ''acquired MACRS property'' in such regulations) is eligible for the additional first year depreciation deduction provided under section 168(k) or 1400L(b) if the replacement MACRS property is qualified property under section 168(k)(2), 50-percent bonus depreciation property under section 168(k)(4), or qualified New York Liberty Zone property under section 1400L(b)(2). However, if qualified property, 50-percent bonus depreciation property, or qualified New York Liberty Zone property is placed in service by the taxpayer and then disposed of by that taxpayer in a like-kind exchange or involuntary conversion in the same taxable year, the relinquished MACRS property (referred to as the ''exchanged or involuntarily converted MACRS property'' in such regulations) is not eligible for the additional first year depreciation deduction under section 168(k) or 1400L(b), as applicable. However, the exchanged basis (and excess basis, if any) of the replacement MACRS property may be eligible for the additional first year depreciation deduction under section 168(k) or 1400L(b), as applicable, subject to the requirements of section 168(k) or 1400L(b), as applicable. The rules provided under §§ 1.168(k)–1T and 1.1400L(b)–1T apply even if the taxpayer elects not to apply these temporary regulations.

These temporary regulations amend the definition of time of replacement in § 1.168(k)–1T(f)(5)(ii)(F) to be consistent with the definition of that term under these temporary regulations. In addition, these temporary regulations modify the like-kind exchange or involuntary conversion examples contained in § 1.168(k)–1T(f)(5)(v) to reflect the placed in service date (taking into account the convention as determined under these temporary regulations) for the relinquished MACRS property and the replacement MACRS property in the year of disposition and year of replacement.

Since the publication of § 1.168(k)–1T and 1.1400L(b)–1T, we have received comments regarding the application of the additional first year depreciation deduction rules in §§ 1.168(k)–1T(f)(5) and 1.1400L(b)–1T(f)(5) to qualified property, 50-percent bonus depreciation property, or qualified New York Liberty Zone property acquired in a like-kind exchange or an involuntary conversion. We will consider these comments when §§ 1.168(k)–1T and 1.1400L(b)–1T are finalized.

*General Asset Accounts*

Some commentators questioned how the general rule set forth in Notice 2000–4 affects the tax treatment of like-kind exchanges or involuntary conversions involving MACRS assets contained in general asset accounts as described in § 1.168(i)–1.

Section 1.168(i)–1(e)(2) treats like-kind exchanges or involuntary conversions as dispositions of the relinquished MACRS property and acquisitions of the replacement MACRS property. As a result, any amount realized on a like-kind exchange or involuntary conversion is recognized as ordinary income and the basis of the relinquished MACRS property in the general asset account continues to be depreciated. However, § 1.168(i)–1(e)(3)(iii) allows a taxpayer to elect to terminate general asset account treatment for the relinquished MACRS property, and, as a result, the tax treatment of the like-kind exchange or involuntary conversion is determined under section 1031 or section 1033, as applicable.

These temporary regulations amend the final regulations under section 168(i)(4) (TD 8566, 59 FR 51369 (1994)) to address the like-kind exchange or involuntary conversion of MACRS property contained in a general asset account. Under the temporary regulations, general asset account treatment terminates for the relinquished MACRS property as of the first day of the year of disposition. Because this rule would require taxpayers to track each property in a general asset account, the IRS and Treasury request comments on alternative methods to account for a like-kind exchange or involuntary conversion involving MACRS property contained in a general asset account when the replacement MACRS property has a longer recovery period or less accelerated depreciation method than the relinquished MACRS property or when the basis of the general asset

account would change as a result of the like-kind exchange or involuntary conversion.

*Exchanges of Multiple Properties*

The determination of the basis of property acquired in a like-kind exchange involving multiple properties is described in § 1.1031(j)–1 and the determination of the basis of multiple properties acquired as a result of an involuntary conversion is described in § 1.1033(b)–1. Commentators question how the rules set forth in Notice 2000–4 affects the depreciation treatment of a like-kind exchange or an involuntary conversion involving multiple properties. At this time, taxpayers may apply the principles of this temporary regulation to determine the depreciation treatment of MACRS property acquired in these transactions. The IRS and Treasury may consider providing future guidance with respect to this issue and request comments relating thereto. Specifically, comments are requested on the depreciation treatment of these transactions when the depreciation methods or recovery periods of the replacement MACRS properties differ from those of the relinquished MACRS properties.

**Effect on Other Documents**

The following publication is obsolete after February 27, 2004: Notice 2000–4 (2000–1 C.B. 313).

Taxpayers who have either relinquished or an acquired MACRS property in a like-kind exchange or involuntary conversion between January 3, 2000, and February 27, 2004, may rely on Notice 2000–4.

**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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the proposed rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be 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 Alan H. Cooper, Office of the Chief Counsel (Small Business/Self Employed), and Charles J. Magee, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Temporary Amendments to the Regulations**

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

## PART 1—INCOME TAXES

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

**Authority:** 26 U.S.C. 7805 * * * § 1.168(i)–1T also issued under 26 U.S.C. 168(i)(4).

■ **Par. 2.** Sections 1.168(a)–1T and 1.168(b)–1T are added to read as follows:

**§ 1.168(a)–1T Modified accelerated cost recovery system (temporary).**

(a) Section 168 determines the depreciation allowance for tangible property that is of a character subject to the allowance for depreciation provided in section 167(a) and that is placed in service after December 31, 1986 (or after July 31, 1986, if the taxpayer made an election under section 203(a)(1)(B) of the Tax Reform Act of 1986; 100 Stat. 2143). Except for property excluded from the application of section 168 as a result of section 168(f) or as a result of a transitional rule, the provisions of section 168 are mandatory for all eligible property. The allowance for depreciation under section 168 constitutes the amount of depreciation allowable under section 167(a). The determination of whether tangible property is property of a character subject to the allowance for depreciation is made under section 167 and the regulations under section 167.

(b) This section is applicable on and after February 27, 2004.

(c) The applicability of this section expires on or before February 27, 2007.

**§ 1.168(b)–1T Definitions (temporary).**

(a) *Definitions.* For purposes of section 168 and the regulations under section 168, the following definitions apply:

(1) *Depreciable property* is property that is of a character subject to the allowance for depreciation as determined under section 167 and the regulations under section 167.

(2) *MACRS property* is tangible, depreciable property that is placed in service after December 31, 1986 (or after July 31, 1986, if the taxpayer made an election under section 203(a)(1)(B) of the Tax Reform Act of 1986; 100 Stat. 2143) and subject to section 168, except for property excluded from the application of section 168 as a result of section 168(f) or as a result of a transitional rule.

(3) *Unadjusted depreciable basis* is the basis of property for purposes of section 1011 without regard to any adjustments described in section 1016(a)(2) and (3). This basis reflects the reduction in basis for the percentage of the taxpayer's use of property for the taxable year other than in the taxpayer's trade or business (or for the production of income), for any portion of the basis the taxpayer properly elects to treat as an expense under section 179, and for any adjustments to basis provided by other provisions of the Internal Revenue Code and the regulations under the Code (other than section 1016(a)(2) and (3)) (for example, a reduction in basis by the amount of the disabled access credit pursuant to section 44(d)(7)). For property subject to a lease, see section 167(c)(2).

(4) *Adjusted depreciable basis* is the unadjusted depreciable basis of the property, as defined in § 1.168(b)–1T(a)(3), less the adjustments described in section 1016(a)(2) and (3).

(b) *Effective date.* (1) This section is applicable on February 27, 2004.

(2) The applicability of this section expires on or before February 27, 2007.

■ **Par. 3.** Section 1.168(d)–1 is amended by:

■ 1. Revising paragraph (b)(3).

■ 2. Adding paragraph (d)(3).

*The addition and revision read as follows:*

**§ 1.168(d)–1 Applicable conventions—half-year and mid-quarter conventions.**

* * * * *

(b) * * *

(3) * * * (i) and (ii) [Reserved] For further guidance, *see* § 1.168(d)–1T(b)(3)(i) and (ii).

* * * * *

(d) * * *

(3) *Like-kind exchanges and involuntary conversions.* [Reserved] For further guidance, *see* § 1.168(d)–1T(d)(3)(i).

■ **Par. 4.** Section 1.168(d)–1T is amended by:

■ 1. Revising paragraphs (a) through (b)(3)(ii).

■ 2. Adding paragraph (d)(3).

The addition and revisions read as follows:

**§ 1.168(d)–1T Applicable conventions—half-year and mid-quarter conventions (temporary).**

(a) through (b)(2) [Reserved]. For further guidance, *see* § 1.168(d)–1(a) through (b)(2).

(b)(3) *Property placed in service and disposed of in the same taxable year*—(i) Under section 168(d)(3)(B)(ii), the depreciable basis of property placed in service and disposed of in the same taxable year is not taken into account in determining whether the 40-percent test is satisfied. However, the depreciable basis of property placed in service, disposed of, subsequently reacquired, and again placed in service, by the taxpayer in the same taxable year must be taken into account in applying the 40-percent test, but the basis of the property is only taken into account on the later of the dates that the property is placed in service by the taxpayer during the taxable year. Further, *see* § 1.168(i)–6T(c)(4)(v)(B) and § 1.168(i)–6T(f) for rules relating to property placed in service and exchanged or involuntarily converted during the same taxable year.

(ii) The applicable convention, as determined under this section, applies to all depreciable property (except nonresidential real property, residential rental property, and any railroad grading or tunnel bore) placed in service by the taxpayer during the taxable year, excluding property placed in service and disposed of in the same taxable year. However, *see* § 1.168(i)–6T(c)(4)(v)(A) and § 1.168(i)–6T(f) for rules relating to MACRS property that has a basis determined under section 1031(d) or section 1033(b). No depreciation deduction is allowed for property placed in service and disposed of during the same taxable year. However, *see* § 1.168(k)–1T(f)(1) for rules relating to qualified property or 50-percent bonus depreciation property, and § 1.1400L(b)–1T(f)(1) for rules relating to qualified New York Liberty Zone property, that is placed in service by the taxpayer in the same taxable year in which either a partnership is terminated as a result of a technical termination under section 708(b)(1)(B) or the property is transferred in a transaction described in section 168(i)(7).

* * * * *

(d)(2) * * *

(3) *Like-kind exchanges and involuntary conversions.* (i) The last sentence in paragraph (b)(3)(i) and the second sentence in paragraph (b)(3)(ii) of this section apply to exchanges to which section 1031 applies, and involuntary conversions to which section 1033 applies, of MACRS property for which the time of disposition and the time of replacement both occur after February 27, 2004.

(ii) The applicability of this section expires on or before February 27, 2007.

■ **Par. 5.** In § 1.168(i)–0, the entries for § 1.168(i)–1(d)(2), (e)(3)(i), (f), (f)(1), (f)(2), (f)(2)(i), (i), (j) and (l) are revised, the entry for (e)(3)(v) is removed and a new entry for (e)(3)(v) and (vi) is added.

**§ 1.168(i)–0 Table of contents for the general asset account rules.**

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**§ 1.168(i)–1 General asset accounts.**

* * * * *

(d) * * *

(2) [Reserved]. For further guidance *see* the entry for § 1.168(i)–1T(d)(2).

* * * * *

(e) * * *

(3) * * *

(i) [Reserved]. For further guidance *see* the entry for § 1.168(i)–1T(e)(3)(i).

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(v) and (vi) [Reserved]. For further guidance *see* the entries for § 1.168(i)–1T(e)(3)(v) and (vi).

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(f) through (f)(2)(i) [Reserved]. For further guidance *see* the entries for § 1.168(i)–1T(f) through (f)(2)(i).

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(i) and (j). [Reserved]. For further guidance, *see* the entries for § 1.168(i)–1T(i) and (j).

* * * * *

(l) [Reserved]. For further guidance, *see* the entry for § 1.168(i)–1T(l).

■ **Par. 6.** Section 1.168(i)–0T is added to read as follows:

**§ 1.168(i)–0T Table of contents for the general asset account rules (temporary).**

This section lists the major paragraphs contained in § 1.168(i)–1T.

**§ 1.168(i)–1T General asset accounts (temporary).**

(a) through (d)(1) [Reserved]. For further guidance, *see* the entries for § 1.168(i)–1(a) through (d)(1).

(2) Special rule for passenger automobiles.

(e) through (e)(3) [Reserved]. For further guidance, *see* the entries for § 1.168(i)–1(e) through (e)(3).

(i) In general.

(e)(3)(ii) through (e)(3)(iv) [Reserved]. For further guidance, *see* the entries for § 1.168(i)–1(e)(3)(ii) through (iv).

(v) Transactions subject to section 1031 or 1033.

(vi) Anti-abuse rule.

(f) Assets generating foreign source income.

(1) In general.

(2) Source of ordinary income, gain, or loss.

(i) Source determined by allocation and apportionment of depreciation allowed.

(f)(2)(ii) through (h)(2) [Reserved]. For further guidance, *see* the entries for § 1.168(i)–1(f)(2)(ii) through (h)(2).

(i) Identification of disposed or converted asset.

(j) Effect of adjustments on prior dispositions.

(k)(1) through (k)(3) [Reserved]. For further guidance, *see* the entries for § 1.168(i)–1 (k)(1) through (k)(3).

(l) Effective date.

(l)(1) through (l)(3) [Reserved]. For further guidance, *see* the entries for § 1.168(i)–1(l)(1) through (l)(3).

■ **Par. 7.** Section 1.168(i)–1 is amended by:

■ 1. Redesignating paragraph (e)(3)(v) as paragraph (e)(3)(vi).

■ 2. Adding paragraphs (c)(2)(ii)(E) and (e)(3)(v).

■ 3. Revising paragraphs (d)(2), (e)(3)(i), (e)(3)(iii)(B)(*4*), newly designated (e)(3)(vi), (f)(1), (f)(2)(i), (i), (j), and (l).

The additions and revisions read as follows:

**§ 1.168(i)–1 General asset accounts.**

* * * * *

(c) * * *

(2) * * * (ii) * * *

(E) [Reserved]. For further guidance, *see* § 1.168(i)–1T(c)(2)(ii)(E).

(d) * * *

(2) [Reserved]. For further guidance, *see* § 1.168(i)–1T(d)(2).

(e) * * *

(3) * * *

(i) [Reserved]. For further guidance, *see* § 1.168(i)–1T(e)(3)(i).

* * * * *

(iii) * * *

(B) * * *

(*4*) [Reserved]. For further guidance, *see* § 1.168(i)–1T(e)(3)(iii)(B)(*4*).

* * * * *

(e)(3)(v) [Reserved]. For further guidance, *see* § 1.168(i)–1T(e)(3)(v).

(vi) *Anti-abuse rule*—[Reserved]. For further guidance, *see* § 1.168(i)–1T(e)(3)(vi).

(f) * * * (1) *In general.* [Reserved]. For further guidance, *see* § 1.168(i)–1T(f)(1).

(*2*) * * *(i) [Reserved]. For further guidance, *see* § 1.168(i)–1T(f)(2)(i).

* * * * *

(i) *Identification of disposed or converted asset.* [Reserved]. For further guidance, see § 1.168(i)–1T(i).

(j) *Effect of adjustments on prior dispositions.* [Reserved]. For further guidance, *see* § 1.168(i)–1T(j).

* * * * *

(l) Effective date—[Reserved]. For further guidance, *see* § 1.168(i)–1T(l).

■ **Par. 8.** Section 1.168(i)–1T is added to read as follows:

**§ 1.168(i)–1T General asset accounts (temporary).**

(a) through (c)(2)(ii)(D) [Reserved]. For further guidance, *see* § 1.168(i)–1(a) through (c)(2)(ii)(D).

(c)(2)(ii)(E) [Reserved].

(d)(1) [Reserved]. For further guidance, *see* § 1.168(i)–1(d)(1).

(d)(2) *Special rule for passenger automobiles.* For purposes of applying section 280F(a), the depreciation allowance for a general asset account established for passenger automobiles is limited for each taxable year to the amount prescribed in section 280F(a) multiplied by the excess of the number of automobiles originally included in the account over the number of automobiles disposed of during the taxable year or in any prior taxable year in a transaction described in paragraph (e)(3)(iii) (disposition of an asset in a qualifying disposition), (e)(3)(iv) (transactions subject to section 168(i)(7)), (e)(3)(v) (transactions subject to section 1031 or 1033), (e)(3)(vi) (anti-abuse rule), (g) (assets subject to recapture), or (h)(1) (conversion to personal use) of this section.

(e)(1) through (e)(2) [Reserved]. For further guidance, *see* § 1.168(i)–1(e)(1) through (e)(2).

(e)(3) *Special rules*—(i) *In general.* This paragraph (e)(3) provides the rules for terminating general asset account treatment upon certain dispositions. While the rules under paragraphs (e)(3)(ii) and (iii) of this section are optional rules, the rules under paragraphs (e)(3)(iv), (v), and (vi) of this section are mandatory rules. A taxpayer applies paragraph (e)(3)(ii) or (iii) of this section by reporting the gain, loss, or other deduction on the taxpayer's timely filed Federal income tax return (including extensions) for the taxable year in which the disposition occurs. For purposes of applying paragraph (e)(3)(iii) through (vi) of this section, *see* paragraph (i) of this section for identifying the unadjusted depreciable basis of a disposed asset.

(e)(3)(ii) through (e)(3)(iii)(B)(*3*) [Reserved]. For further guidance, *see* § 1.168(i)–1(e)(3)(ii) through (e)(3)(iii)(B)(*3*).

(e)(3)(iii)(B)(*4*) A transaction, other than a transaction described in paragraph (e)(3)(iv) of this section (pertaining to transactions subject to section 168(i)(7)) and (e)(3)(v) of this section (pertaining to transactions subject to section 1031 or 1033), to which a nonrecognition section of the Code applies (determined without regard to this section).

(e)(3)(iii)(C) through (e)(3)(iv) [Reserved]. For further guidance, *see* § 1.168(i)–1(e)(iii)(C) through (e)(3)(iv).

(e)(3)(v) *Transactions subject to section 1031 or section 1033*—(A) *Like-kind exchange or involuntary conversion of all assets remaining in a general asset account.* If all the assets, or the last asset, in a general asset account are transferred by a taxpayer in a like-kind exchange (as defined under § 1.168–6T(b)(11)) or in an involuntary conversion (as defined under § 1.168–6T(b)(12)), the taxpayer must apply this paragraph (e)(3)(v)(A) (instead of applying paragraph (e)(2), (e)(3)(ii), or (e)(3)(iii) of this section). Under this paragraph (e)(3)(v)(A), the general asset account terminates as of the first day of the year of disposition (as defined in § 1.168(i)–6T(b)(5)) and—

(*1*) The amount of gain or loss for the general asset account is determined under section 1001(a) by taking into account the adjusted depreciable basis of the general asset account at the time of disposition (as defined in § 1.168(i)–6T(b)(3)). The depreciation allowance for the general asset account in the year of disposition is determined in the same manner as the depreciation allowance for the relinquished MACRS property (as defined in § 1.168(i)–6T(b)(2)) in the year of disposition is determined under § 1.168(i)–6T. The recognition and character of gain or loss are determined in accordance with paragraph (e)(3)(ii)(A) of this section (notwithstanding that paragraph (e)(3)(ii) of this section is an optional rule); and

(*2*) The adjusted depreciable basis of the general asset account at the time of disposition is treated as the adjusted depreciable basis of the relinquished MACRS property.

(B) *Like-kind exchange or involuntary conversion of less than all assets remaining in a general asset account.* If an asset in a general asset account is transferred by a taxpayer in a like-kind exchange or in an involuntary conversion and if paragraph (e)(3)(v)(A) of this section does not apply to this asset, the taxpayer must apply this paragraph (e)(3)(v)(B) (instead of applying paragraph (e)(2), (e)(3)(ii), or (e)(3)(iii) of this section). Under this paragraph (e)(3)(v)(B), general asset account treatment for the asset terminates as of the first day of the year of disposition (as defined in § 1.168(i)–6T(b)(5)), and—

(*1*) The amount of gain or loss for the asset is determined by taking into account the asset's adjusted basis at the time of disposition (as defined in § 1.168(i)–6T(b)(3)). The adjusted basis of the asset at the time of disposition equals the unadjusted depreciable basis of the asset less the depreciation allowed or allowable for the asset, computed by using the depreciation method, recovery period, and convention applicable to the general asset account in which the asset was included. The depreciation allowance for the asset in the year of disposition is determined in the same manner as the depreciation allowance for the relinquished MACRS property (as defined in § 1.168(i)–6T(b)(2)) in the year of disposition is determined under § 1.168(i)–6T. The recognition and character of the gain or loss are determined in accordance with paragraph (e)(3)(iii)(A) of this section (notwithstanding that paragraph (e)(3)(iii) of this section is an optional rule); and

(*2*) As of the first day of the year of disposition, the taxpayer must remove the relinquished asset from the general asset account and make the adjustments to the general asset account described in paragraph (e)(3)(iii)(C)(*2*) through (*4*) of this section.

(e)(3)(vi) *Anti-abuse rule*—(A) *In general.* If an asset in a general asset account is disposed of by a taxpayer in a transaction described in paragraph (e)(3)(vi)(B) of this section, general asset account treatment for the asset terminates as of the first day of the taxable year in which the disposition occurs. Consequently, the taxpayer must determine the amount of gain, loss, or other deduction attributable to the disposition in the manner described in paragraph (e)(3)(iii)(A) of this section (notwithstanding that paragraph (e)(3)(iii)(A) of this section is an optional rule) and must make the adjustments to the general asset account described in paragraph (e)(3)(iii)(C)(*1*) through (*4*) of this section.

(B) *Abusive transactions.* A transaction is described in this paragraph (e)(3)(vi)(B) if the transaction is not described in paragraph (e)(3)(iv) or (e)(3)(v) of this section and the transaction is entered into, or made, with a principal purpose of achieving a tax benefit or result that would not be available absent an election under this section. Examples of these types of transactions include—

(*1*) A transaction entered into with a principal purpose of shifting income or deductions among taxpayers in a manner that would not be possible absent an election under this section in order to take advantage of differing effective tax rates among the taxpayers; or

(*2*) An election made under this section with a principal purpose of disposing of an asset from a general

asset account in order to utilize an expiring net operating loss or credit. The fact that a taxpayer with a net operating loss carryover or a credit carryover transfers an asset to a related person or transfers an asset pursuant to an arrangement where the asset continues to be used (or is available for use) by the taxpayer pursuant to a lease (or otherwise) indicates, absent strong evidence to the contrary, that the transaction is described in this paragraph (e)(3)(vi)(B).

(f) *Assets generating foreign source income*—(1) *In general.* This paragraph (f) provides the rules for determining the source of any income, gain, or loss recognized, and the appropriate section 904(d) separate limitation category or categories for any foreign source income, gain, or loss recognized, on a disposition (within the meaning of paragraph (e)(1) of this section) of an asset in a general asset account that consists of assets generating both United States and foreign source income. These rules apply only to a disposition to which paragraph (e)(2) (general disposition rules), (e)(3)(ii) (disposition of all assets remaining in a general asset account), (e)(3)(iii) (disposition of an asset in a qualifying disposition), (e)(3)(v) (transactions subject to section 1031 or 1033), or (e)(3)(vi) (anti-abuse rule) of this section applies.

(*2*) *Source of ordinary income, gain or loss*—(i) *Source determined by allocation and apportionment of depreciation allowed.* The amount of any ordinary income, gain, or loss that is recognized on the disposition of an asset in a general asset account must be apportioned between United States and foreign sources based on the allocation and apportionment of the—

(A) Depreciation allowed for the general asset account as of the end of the taxable year in which the disposition occurs if paragraph (e)(2) of this section applies to the disposition;

(B) Depreciation allowed for the general asset account as of the time of disposition if the taxpayer applies paragraph (e)(3)(ii) of this section to the disposition of all assets, or the last asset, in the general asset account, or if all the assets, or the last asset, in the general asset account are disposed of in a transaction described in paragraph (e)(3)(v)(A) of this section; or

(C) Depreciation allowed for the disposed asset for only the taxable year in which the disposition occurs if the taxpayer applies paragraph (e)(3)(iii) of this section to the disposition of the asset in a qualifying disposition, if the asset is disposed of in a transaction described in paragraph (e)(3)(v)(B) of this section (like-kind exchange or involuntary conversion), or if the asset is disposed in a transaction described in paragraph (e)(3)(vi) of this section (anti-abuse rule).

(f)(2)(ii) through (h) [Reserved]. For further guidance, *see* § 1.168(i)–1(f)(2)(ii) through (h).

(i) *Identification of disposed or converted asset.* A taxpayer may use any reasonable method that is consistently applied to the taxpayer's general asset accounts for purposes of determining the unadjusted depreciable basis of a disposed or converted asset in a transaction described in paragraph (e)(3)(iii) (disposition of an asset in a qualifying disposition), (e)(3)(iv) (transactions subject to section 168(i)(7)), (e)(3)(v) (transactions subject to section 1031 or 1033), (e)(3)(vi) (anti-abuse rule), (g) (assets subject to recapture), or (h)(1) (conversion to personal use) of this section.

(j) *Effect of adjustments on prior dispositions.* The adjustments to a general asset account under paragraph (e)(3)(iii), (e)(3)(iv), (e)(3)(v), (e)(3)(vi), (g), or (h)(1) of this section have no effect on the recognition and character of prior dispositions subject to paragraph (e)(2) of this section.

(k) [Reserved]. For further guidance, *see* § 1.168(i)–1(k).

(l) *Effective date*—(1) *In general.* Except as provided in paragraphs (l)(2) and (l)(3) of this section, this section applies to depreciable assets placed in service in taxable years ending on or after October 11, 1994. For depreciable assets placed in service after December 31, 1986, in taxable years ending before October 11, 1994, the Internal Revenue Service will allow any reasonable method that is consistently applied to the taxpayer's general asset accounts.

(2) [Reserved].

(3) *Like-kind exchanges and involuntary conversions.* (i) This section applies for an asset transferred by a taxpayer in a like-kind exchange (as defined under § 1.168–6T(b)(11)) or in an involuntary conversion (as defined under § 1.168–6T(b)(12)) for which the time of disposition (as defined in § 1.168(i)–6T(b)(3)) and the time of replacement (as defined in § 1.168(i)–6T(b)(4)) both occur after February 27, 2004. For an asset transferred by a taxpayer in a like-kind exchange or in an involuntary conversion for which the time of disposition, the time of replacement, or both occur on or before February 27, 2004, *see* § 1.168(i)–1 in effect prior to February 27, 2004, (§ 1.168(i)–1 as contained in 26 CFR part 1 edition revised as of April 1, 2003).

(ii) The applicability of this section expires on or before February 27, 2007.

■ **Par. 9.** Section 1.168(i)–5T is added to read as follows:

**§ 1.168(i)–5T Table of contents (temporary).**

This section lists the major paragraphs contained in § 1.168(i)–6T.

**§ 1.168(i)–6T Like-kind exchanges and involuntary conversions (temporary).**

(a) Scope.
(b) Definitions.
(1) Replacement MACRS property.
(2) Relinquished MACRS property.
(3) Time of disposition.
(4) Time of replacement.
(5) Year of disposition.
(6) Year of replacement.
(7) Exchanged basis.
(8) Excess basis.
(9) Depreciable exchanged basis.
(10) Depreciable excess basis.
(11) Like-kind exchange.
(12) Involuntary conversion.
(c) Determination of depreciation allowance.
(1) Computation of the depreciation allowance for depreciable exchanged basis beginning in the year of replacement.
(i) In general.
(ii) Applicable recovery period, depreciation method, and convention.
(2) Effect of depreciation treatment of the replacement MACRS property by previous owners of the acquired property.
(3) Recovery period and/or depreciation method of the properties are the same, or both are not the same.
(i) In general.
(ii) Both the recovery period and the depreciation method are the same.
(iii) Either the recovery period or the depreciation method is the same, or both are not the same.
(4) Recovery period or depreciation method of the properties is not the same.
(i) Longer recovery period.
(ii) Shorter recovery period.
(iii) Less accelerated depreciation method.
(iv) More accelerated depreciation method.
(v) Convention.
(A) In general.
(B) Mid-quarter convention.
(5) Year of disposition and year of replacement.
(i) Relinquished MACRS property.
(ii) Replacement MACRS property.
(A) Year of replacement is 12 months.
(B) Year of replacement is less than 12 months.
(iii) Deferred transactions.
(A) In general.
(B) Allowable depreciation for a qualified intermediary.
(iv) Remaining recovery period.
(6) Examples.
(d) Special rules for determining depreciation allowances.
(1) Excess basis.
(i) In general.
(ii) Example.
(2) Depreciable and nondepreciable property.
(3) Depreciation limitations for automobiles.
(i) In general.

(ii) Order in which limitations on depreciation under section 280F(a) are applied.
(iii) Depreciation allowance for depreciable excess basis.
(iv) Examples.
(4) Replacement MACRS property acquired and placed in service before disposition of relinquished MACRS property.
(e) Use of optional depreciation tables.
(1) Taxpayer not bound by prior use of table.
(2) Determination of the depreciation deduction.
(i) Relinquished MACRS property.
(ii) Replacement MACRS property.
(A) Determination of the appropriate optional depreciation table.
(B) Calculating the depreciation deduction for the replacement MACRS property.
(iii) Unrecovered basis.
(3) Excess basis.
(4) Examples.
(f) Mid-quarter convention.
(1) Exchanged basis.
(2) Excess basis.
(3) Depreciable property acquired for nondepreciable property.
(g) Section 179 election.
(h) Additional first year depreciation deduction.
(i) Election not to apply this section.
(j) Time and manner of making elections.
(1) In general.
(2) Time for making election.
(3) Manner of making election.
(4) Revocation.
(k) Effective date.
(1) In general.
(2) Application to pre-effective date like-kind exchanges and involuntarily conversions.

■ **Par. 10.** Section 1.168(i)–6T is added to read as follows:

**§ 1.168(i)–6T Like-kind exchanges and involuntary conversions (temporary).**

(a) *Scope.* This section provides the rules for determining the depreciation allowance for MACRS property acquired in a like-kind exchange or an involuntary conversion, including a like-kind exchange or an involuntary conversion of MACRS property that is exchanged or replaced with other MACRS property in a transaction between members of the same affiliated group. The allowance for depreciation under this section constitutes the amount of depreciation allowable under section 167(a) for the year of replacement and any subsequent taxable year for the replacement MACRS property and for the year of disposition of the relinquished MACRS property. The provisions of this section apply only to MACRS property to which § 1.168(h)–1 (like-kind exchanges of tax-exempt use property) does not apply. Additionally, paragraphs (c) through (f) of this section apply only to MACRS property for which an election has not been made under paragraph (i) of this section.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Replacement MACRS property* is MACRS property (as defined in § 1.168(b)–1T(a)(2)) in the hands of the acquiring taxpayer that is acquired for other MACRS property in a like-kind exchange or an involuntary conversion.

(2) *Relinquished MACRS property* is MACRS property that is transferred by the taxpayer in a like-kind exchange, or in an involuntary conversion.

(3) *Time of disposition* is when the disposition of the relinquished MACRS property takes place under the convention, as determined under § 1.168(d)–1T, that applies to the relinquished MACRS property.

(4) *Time of replacement* is the later of:

(i) When the replacement MACRS property is placed in service under the convention, as determined under this section, that applies to the replacement MACRS property; or

(ii) The time of disposition of the exchanged or involuntarily converted property.

(5) *Year of disposition* is the taxable year that includes the time of disposition.

(6) *Year of replacement* is the taxable year that includes the time of replacement.

(7) *Exchanged basis* is determined after the depreciation deductions for the year of disposition are determined under paragraph (c)(5)(i) of this section and is the lesser of—

(i) The basis in the replacement MACRS property, as determined under section 1031(d) and the regulations under section 1031(d) or section 1033(b) and the regulations under section 1033(b); or

(ii) The adjusted depreciable basis (as defined in § 1.168(b)–1T(a)(4)) of the relinquished MACRS property.

(8) *Excess basis* is any excess of the basis in the replacement MACRS property, as determined under section 1031(d) and the regulations under section 1031(d) or section 1033(b) and the regulations under section 1033(b), over the exchanged basis as determined under paragraph (b)(7) of this section.

(9) *Depreciable exchanged basis* is the exchanged basis as determined under paragraph (b)(7) of this section reduced by—

(i) The percentage of such basis attributable to the taxpayer's use of property for the taxable year other than in the taxpayer's trade or business (or for the production of income); and

(ii) Any adjustments to basis provided by other provisions of the Internal Revenue Code and the regulations under the Code (including section 1016(a)(2) and (3), for example, depreciation deductions in the year of replacement allowable under section 168(k) or 1400L(b)).

(10) *Depreciable excess basis* is the excess basis as determined under paragraph (b)(8) of this section reduced by—

(i) The percentage of such basis attributable to the taxpayer's use of property for the taxable year other than in the taxpayer's trade or business (or for the production of income);

(ii) Any portion of the basis the taxpayer properly elects to treat as an expense under section 179; and

(iii) Any adjustments to basis provided by other provisions of the Internal Revenue Code and the regulations under the Code (including section 1016(a)(2) and (3), for example, depreciation deductions in the year of replacement allowable under section 168(k) or 1400L(b)).

(11) *Like-kind exchange* is an exchange of property for other property (or money) in a transaction to which section 1031(a)(1), (b), or (c) applies.

(12) *Involuntary conversion* is a transaction described in section 1033(a)(1) or (2) that resulted in the nonrecognition of any part of the gain realized as the result of the conversion.

(c) *Determination of depreciation allowance*—(1) *Computation of the depreciation allowance for depreciable exchanged basis beginning in the year of replacement*—(i) *In general.* This paragraph (c) provides rules for determining the applicable recovery period, the applicable depreciation method, and the applicable convention used to determine the depreciation allowances for the depreciable exchanged basis beginning in the year of replacement. *See* paragraph (c)(5) of this section for rules relating to the computation of the depreciation allowance for the year of disposition and for the year of replacement. *See* paragraph (d)(1) of this section for rules relating to the computation of the depreciation allowance for depreciable excess basis. *See* paragraph (d)(4) of this section if the replacement MACRS property is acquired before disposition of the relinquished MACRS property in a transaction to which section 1033 applies. *See* paragraph (e) of this section for rules relating to the computation of the depreciation allowance using the optional depreciation tables.

(ii) *Applicable recovery period, depreciation method, and convention.* The recovery period, depreciation method, and convention determined under this paragraph (c) are the only permissible methods of accounting for

MACRS property within the scope of this section unless the taxpayer makes the election under paragraph (i) of this section not to apply this section.

(2) *Effect of depreciation treatment of the replacement MACRS property by previous owners of the acquired property.* If replacement MACRS property is acquired by a taxpayer in a like-kind exchange or an involuntary conversion, the depreciation treatment of the replacement MACRS property by previous owners has no effect on the determination of depreciation allowances for the replacement MACRS property in the hands of the acquiring taxpayer. For example, a taxpayer exchanging, in a like-kind exchange, MACRS property for property that was depreciated under ACRS by the previous owner must use this section because the replacement property will become MACRS property in the hands of the acquiring taxpayer. In addition, elections made by previous owners in determining depreciation allowances for the replacement MACRS property have no effect on the acquiring taxpayer. For example, a taxpayer exchanging, in a like-kind exchange, MACRS property that the taxpayer depreciates under the general depreciation system for other MACRS property that the previous owner elected to depreciate under the alternative depreciation system (ADS) pursuant to section 168(g)(7) does not have to continue using the ADS for the replacement MACRS property.

(3) *Recovery period and/or depreciation method of the properties are the same, or both are not the same*—(i) *In general.* For purposes of paragraphs (c)(3) and (c)(4) of this section in determining whether the recovery period and the depreciation method prescribed under section 168 for the replacement MACRS property are the same as the recovery period and the depreciation method prescribed under section 168 for the relinquished MACRS property, the recovery period and the depreciation method for the replacement MACRS property are considered to be the recovery period and the depreciation method that would have applied, taking into account any elections made by the acquiring taxpayer under section 168(b)(5) or 168(g)(7), had the replacement MACRS property been placed in service by the acquiring taxpayer at the same time as the relinquished MACRS property.

(ii) *Both the recovery period and the depreciation method are the same.* If both the recovery period and the depreciation method prescribed under section 168 for the replacement MACRS property are the same as the recovery period and the depreciation method prescribed under section 168 for the relinquished MACRS property, the depreciation allowances for the replacement MACRS property beginning in the year of replacement are determined by using the same recovery period and depreciation method that were used for the relinquished MACRS property. Thus, the replacement MACRS property is depreciated over the remaining recovery period (taking into account the applicable convention), and by using the depreciation method, of the relinquished MACRS property. Except as provided in paragraph (c)(5) of this section, the depreciation allowances for the depreciable exchanged basis for any 12-month taxable year beginning with the year of replacement are determined by multiplying the depreciable exchanged basis by the applicable depreciation rate for each taxable year (for further guidance, for example, see section 6 of Rev. Proc. 87–57 (1987–2 C.B. 687, 692) and § 601.601(d)(2)(ii)(*b*) of this chapter).

(iii) *Either the recovery period or the depreciation method is the same, or both are not the same.* If either the recovery period or the depreciation method prescribed under section 168 for the replacement MACRS property is the same as the recovery period or the depreciation method prescribed under section 168 for the relinquished MACRS property, the depreciation allowances for the depreciable exchanged basis beginning in the year of replacement are determined using the recovery period or the depreciation method that is the same as the relinquished MACRS property. *See* paragraph (c)(4) of this section to determine the depreciation allowances when the recovery period or the depreciation method of the replacement MACRS property is not the same as that of the relinquished MACRS property.

(4) *Recovery period or depreciation method of the properties is not the same.* If the recovery period prescribed under section 168 for the replacement MACRS property (as determined under paragraph (c)(3)(i) of this section) is not the same as the recovery period prescribed under section 168 for the relinquished MACRS property, the depreciation allowances for the depreciable exchanged basis beginning in the year of replacement are determined under this paragraph (c)(4). Similarly, if the depreciation method prescribed under section 168 for the replacement MACRS property (as determined under paragraph (c)(3)(i) of this section) is not the same as the depreciation method prescribed under section 168 for the relinquished MACRS property, the depreciation method used to determine the depreciation allowances for the depreciable exchanged basis beginning in the year of replacement is determined under this paragraph (c)(4).

(i) *Longer recovery period.* If the recovery period prescribed under section 168 for the replacement MACRS property (as determined under paragraph (c)(3)(i) of this section) is longer than that prescribed for the relinquished MACRS property, the depreciation allowances for the depreciable exchanged basis beginning in the year of replacement are determined as though the replacement MACRS property had originally been placed in service by the acquiring taxpayer in the same taxable year the relinquished MACRS property was placed in service by the acquiring taxpayer, but using the longer recovery period of the replacement MACRS property (as determined under paragraph (c)(3)(i) of this section) and the convention determined under paragraph (c)(4)(v) of this section. Thus, the depreciable exchanged basis is depreciated over the remaining recovery period (taking into account the applicable convention) of the replacement MACRS property.

(ii) *Shorter recovery period.* If the recovery period prescribed under section 168 for the replacement MACRS property (as determined under paragraph (c)(3)(i) of this section) is shorter than that of the relinquished MACRS property, the depreciation allowances for the depreciable exchanged basis beginning in the year of replacement are determined using the same recovery period as that of the relinquished MACRS property. Thus, the depreciable exchanged basis is depreciated over the remaining recovery period (taking into account the applicable convention) of the relinquished MACRS property.

(iii) *Less accelerated depreciation method*—(A) If the depreciation method prescribed under section 168 for the replacement MACRS property (as determined under paragraph (c)(3)(i) of this section) is less accelerated than that of the relinquished MACRS property at the time of disposition, the depreciation allowances for the depreciable exchanged basis beginning in the year of replacement are determined as though the replacement MACRS property had originally been placed in service by the acquiring taxpayer at the same time the relinquished MACRS property was placed in service by the acquiring taxpayer, but using the less accelerated depreciation method. Thus, the depreciable exchanged basis is

depreciated using the less accelerated depreciation method.

(B) Except as provided in paragraph (c)(5) of this section, the depreciation allowances for the depreciable exchanged basis for any 12-month taxable year beginning in the year of replacement are determined by multiplying the adjusted depreciable basis by the applicable depreciation rate for each taxable year. If, for example, the depreciation method of the replacement MACRS property in the year of replacement is the 150-percent declining balance method and the depreciation method of the relinquished MACRS property in the year of replacement is the 200-percent declining balance method, and neither method had been switched to the straight line method in the year of replacement or any prior taxable year, the applicable depreciation rate for the year of replacement and subsequent taxable years is determined by using the depreciation rate of the replacement MACRS property as if the replacement MACRS property was placed in service by the acquiring taxpayer at the same time the relinquished MACRS property was placed in service by the acquiring taxpayer, until the 150-percent declining balance method has been switched to the straight line method. If, for example, the depreciation method of the replacement MACRS property is the straight line method, the applicable depreciation rate for the year of replacement is determined by using the remaining recovery period at the beginning of the year of disposition (as determined under this paragraph (c)(4) and taking into account the applicable convention).

(iv) *More accelerated depreciation method*—(A) If the depreciation method prescribed under section 168 for the replacement MACRS property (as determined under paragraph (c)(3)(i) of this section) is more accelerated than that of the relinquished MACRS property at the time of disposition, the depreciation allowances for the replacement MACRS property beginning in the year of replacement are determined using the same depreciation method as the relinquished MACRS property.

(B) Except as provided in paragraph (c)(5) of this section, the depreciation allowances for the depreciable exchanged basis for any 12-month taxable year beginning in the year of replacement are determined by multiplying the adjusted depreciable basis by the applicable depreciation rate for each taxable year. If, for example, the depreciation method of the relinquished MACRS property in the year of replacement is the 150-percent declining balance method and the depreciation method of the replacement MACRS property in the year of replacement is the 200-percent declining balance method, and neither method had been switched to the straight line method in the year of replacement or any prior taxable year, the applicable depreciation rate for the year of replacement and subsequent taxable years is the same depreciation rate that applied to the relinquished MACRS property in the year of replacement, until the 150-percent declining balance method has been switched to the straight line method. If, for example, the depreciation method is the straight line method, the applicable depreciation rate for the year of replacement is determined by using the remaining recovery period at the beginning of the year of disposition (as determined under this paragraph (c)(4) and taking into account the applicable convention).

(v) *Convention*—(A) *In general.* The applicable convention for the exchanged basis is determined under this paragraph (c)(4)(v). The applicable convention for the exchanged basis is deemed to be the mid-month convention for replacement MACRS property that is nonresidential real property, residential rental property, or any railroad grading or tunnel bore. Thus, if the relinquished MACRS property was depreciated using the mid-month convention, then the replacement MACRS property is deemed to have been placed in service by the acquiring taxpayer in the same month as the relinquished MACRS property and must continue to be depreciated using the mid-month convention. If nonresidential real property, residential rental property, or any railroad grading or tunnel bore is received as a result of an exchange or an involuntarily conversion of MACRS property that was depreciated using the mid-quarter convention, the replacement MACRS property is deemed to have been placed in service by the acquiring taxpayer in the month that includes the mid-point of the quarter that the relinquished MACRS property was placed in service and must be depreciated using the mid-month convention. If nonresidential real property, residential rental property, or any railroad grading or tunnel bore is received as a result of an exchange or an involuntarily conversion of MACRS property that was depreciated using the half-year convention, the replacement MACRS property is deemed to have been placed in service by the acquiring taxpayer in the month that includes the mid-point of the placed-in-service year and must be depreciated using the mid-month convention (for example, for a calendar-year taxpayer with a full 12-month taxable year, the mid-point is the first day of the second half of the taxable year (the seventh month)). For all other replacement MACRS property, the applicable convention is the half-year convention, unless the applicable convention for the relinquished MACRS property is the mid-quarter convention, in which case the mid-quarter convention is applied to the replacement MACRS property.

(B) *Mid-quarter convention. See* paragraph (f) of this section for purposes of applying the 40-percent test of section 168(d)(3) to any replacement MACRS property.

(5) *Year of disposition and year of replacement.* No depreciation deduction is allowable for MACRS property disposed of by a taxpayer in a like-kind exchange or involuntary conversion in the same taxable year that such property was placed in service by the taxpayer. If replacement MACRS property is disposed of by a taxpayer during the same taxable year that the relinquished MACRS property is placed in service by the taxpayer, no depreciation deduction is allowable for either MACRS property. Otherwise, the depreciation allowances for the year of disposition and for the year of replacement are determined as follows:

(i) *Relinquished MACRS property.* Except as provided in paragraphs (e) and (i) of this section, the depreciation allowance in the year of disposition for the relinquished MACRS property is computed by multiplying the allowable depreciation deduction for the property for that year by a fraction, the numerator of which is the number of months (including fractions of months) the property is deemed to be placed in service during the year of disposition (taking into account the applicable convention of the relinquished MACRS property), and the denominator of which is 12. However, if the year of disposition is less than 12 months, the depreciation allowance determined under this paragraph (c)(5)(i) must be adjusted for a short taxable year (for further guidance, for example, *see* Rev. Proc. 89–15 (1989–1 C.B. 816) and § 601.601(d)(2)(ii)(*b*) of this chapter). In the case of termination under § 1.168(i)–1T(e)(3)(v) of general asset account treatment of an asset, or of all the assets remaining, in a general asset account, the allowable depreciation deduction in the year of disposition for the asset or assets for which general asset account treatment is terminated is determined

using the depreciation method, recovery period, and convention of the general asset account. This allowable depreciation deduction is adjusted to account for the period the asset or assets is deemed to be in service in accordance with this paragraph (c)(5)(i).

(ii) *Replacement MACRS property*—(A) *Year of replacement is 12 months.* Except as provided in paragraphs (c)(5)(iii), (e), and (i) of this section, the depreciation allowance in the year of replacement for the depreciable exchanged basis is determined by—

(*1*) Calculating the applicable depreciation rate for that taxable year by taking into account the recovery period and depreciation method prescribed for the replacement MACRS property under paragraph (c)(3) or (4) of this section;

(*2*) Calculating the depreciable exchanged basis of the replacement MACRS property, and adding to that amount the amount determined under paragraph (c)(5)(i) of this section for the year of disposition; and

(*3*) Multiplying the product of the amounts determined under § 1.168(i)–6T(c)(5)(ii)(A)(*1*) and (A)(*2*) by a fraction, the numerator of which is the number of months (including fractions of months) the property is deemed to be in service during the year of replacement (in the year of replacement the replacement MACRS property is deemed to be placed in service by the acquiring taxpayer at the time of replacement under the convention determined under paragraph (c)(4)(v) of this section), and the denominator of which is 12.

(B) *Year of replacement is less than 12 months.* If the year of replacement is less than 12 months, the depreciation allowance determined under paragraph (c)(5)(ii)(A) of this section must be adjusted for a short taxable year (for further guidance, for example, *see* Rev. Proc. 89–15 (1989–1 C.B. 816) and § 601.601(d)(2)(ii)(*b*) of this chapter).

(iii) *Deferred transactions*—(A) *In general.* If the replacement MACRS property is not acquired until after the disposition of the relinquished MACRS property, depreciation is not allowable during the period between the disposition of the relinquished MACRS property and the acquisition of the replacement MACRS property. The recovery period for the replacement MACRS property is suspended during this period. For purposes of paragraph (c)(5)(ii) of this section, only the depreciable exchanged basis of the replacement MACRS property is taken into account for calculating the amount in paragraph (c)(5)(ii)(A)(2) of this section if the year of replacement is a taxable year subsequent to the year of disposition.

(B) *Allowable depreciation for a qualified intermediary.* [Reserved].

(iv) *Remaining recovery period.* The remaining recovery period of the replacement MACRS property is determined as of the beginning of the year of disposition of the relinquished MACRS property. For purposes of determining the remaining recovery period of the replacement MACRS property, the replacement MACRS property is deemed to have been originally placed in service under the convention determined under paragraph (c)(4)(v) of this section but at the time the relinquished MACRS property was deemed to be placed in service under the convention that applied to it when it was placed in service.

(6) *Examples.* The application of this paragraph (c) is illustrated by the following examples:

*Example 1.* A1, a calendar-year taxpayer, exchanges Building M, an office building, for Building N, a warehouse in a like-kind exchange. Building M is relinquished in July 2004 and Building N is acquired and placed in service in October 2004. A1 did not make any elections under section 168 for either Building M or Building N. The unadjusted depreciable basis of Building M was $4,680,000 when placed in service in July 1997. Since the recovery period and depreciation method prescribed under section 168 for Building N (39 years, straight line method) are the same as the recovery period and depreciation method prescribed under section 168 for Building M (39 years, straight line method), Building N is depreciated over the remaining recovery period of, and using the same depreciation method and convention as that of, Building M. Thus, Building N will be depreciated using the straight line method over a remaining recovery period of 32 years beginning in October 2004 (the remaining recovery period of 32 years and 6.5 months at the beginning of 2004, less the 6.5 months of depreciation taken prior to the disposition of the exchanged MACRS property (Building M) in 2004). For 2004, the year in which the transaction takes place, the depreciation allowance for Building M is ($120,000)(6.5/12) which equals $65,000. The depreciation allowance for Building N for 2004 is ($120,000)(2.5/12) which equals $25,000. For 2005 and subsequent years, Building N is depreciated over the remaining recovery period of, and using the same depreciation method and convention as that of, Building M. Thus, the depreciation allowance for Building N is the same as Building M, namely $10,000 per month.

*Example 2.* B, a calendar-year taxpayer, placed in service Bridge P in January 1998. Bridge P is depreciated using the half-year convention. In January 2004, B exchanges Bridge P for Building Q, an apartment building, in a like-kind exchange. B did not make any elections under section 168 for either Bridge P or Building Q. Since the recovery period prescribed under section 168 for Building Q (27.5 years) is longer than that of Bridge P (15 years), Building Q is depreciated as if it had originally been placed in service in July 1998 and disposed of in July 2004 using a 27.5 year recovery period. Additionally, since the depreciation method prescribed under section 168 for Building Q (straight line method) is less accelerated than that of Bridge P (150-percent declining balance method), then the depreciation allowance for Building Q is computed using the straight line method. Thus, when Building Q is acquired and placed in service in 2004, its basis is depreciated over the remaining 21.5 year recovery period using the straight line method of depreciation and the mid-month convention beginning in July 2004.

*Example 3.* C, a calendar-year taxpayer, placed in service Building R, a restaurant, in January 1996. In January 2004, C exchanges Building R for Tower S, a radio transmitting tower, in a like-kind exchange. C did not make any elections under section 168 for either Building R or Tower S. Since the recovery period prescribed under section 168 for Tower S (15 years) is shorter than that of Building R (39 years), Tower S is depreciated over the remaining recovery period of Building R. Additionally, since the depreciation method prescribed under section 168 for Tower S (150% declining balance method) is more accelerated than that of Building R (straight line method), then the depreciation allowance for Tower S is also computed using the same depreciation method as Building R. Thus, Tower S is depreciated over the remaining 31 year recovery period of Building R using the straight line method of depreciation and the mid-month convention. Alternatively, C may elect under paragraph (i) of this section to treat Tower S as though it is placed in service in January 2004. In such case, C uses the applicable recovery period, depreciation method, and convention prescribed under section 168 for Tower S.

*Example 4.* (i) In February 2001, D, a calendar-year taxpayer and manufacturer of rubber products, acquired for $60,000 and placed in service Asset T (a special tool) and depreciated Asset T using the straight line method election under section 168(b)(5) and the mid-quarter convention over its 3-year recovery period. In June 2004, D exchanges Asset T for Asset U (not a special tool) in a like-kind exchange. D elected not to deduct the additional first year depreciation for 7-year property placed in service in 2004. Since the recovery period prescribed under section 168 for Asset U (7 years) is longer than that of Asset T (3 years), Asset U is depreciated as if it had originally been placed in service in February 2001 using a 7-year recovery period. Additionally, since the depreciation method prescribed under section 168 for Asset U (200-percent declining balance method) is more accelerated than that of Asset T (straight line method) at the time of disposition, the depreciation allowance is computed using the straight line method. Asset U is depreciated over its remaining recovery period of 3.75 years using the straight line method of depreciation and the mid-quarter convention.

(ii) The 2004 depreciation allowance for Asset T is $938 ($2,500 allowable depreciation deduction ($60,000 original basis minus $17,500 depreciation deduction for 2001 minus $20,000 depreciation deduction for 2002 minus $20,000 depreciation deduction for 2003) × 4.5 months ÷ 12).

(iii) The depreciation rate in 2004 for Asset U is 0.2424 (1 ÷ 4.125 years (the length of the applicable recovery period remaining as of the beginning of 2004)). Therefore, the depreciation allowance in 2004 is $379 (0.2424 × $2,500 (the sum of the $1,562 depreciable exchanged basis of Asset U ($2,500 basis at the beginning of 2004 for Asset T, less the $938 depreciation allowable for Asset T for 2004) and the $938 depreciation allowable for Asset T for 2004) × 7.5 months ÷ 12).

*Example 5.* On January 1, 2004, E, a calendar-year taxpayer, acquired and placed in service Canopy V, a gas station canopy. The purchase price of Canopy V was $60,000. On August 1, 2004, Canopy V was destroyed in a hurricane and was therefore no longer usable in E's business. On October 1, 2004, as part of the involuntary conversion, E acquired and placed in service Canopy W with the insurance proceeds E received due to the loss of Canopy V. E elected not to deduct the additional first year depreciation for 5-year property placed in service in 2004. E depreciates both canopies under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. No depreciation deduction is allowable for Canopy V. The depreciation deduction allowable for Canopy W for 2004 is $12,000 ($60,000 × the annual depreciation rate of .40 × ½ year).

*Example 6.* Same facts as in *Example 5,* except that E did not make the election out of the additional first year depreciation for 5-year property placed in service in 2004. E depreciates both canopies under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. No depreciation deduction is allowable for Canopy V. For 2004, E is allowed a 50-percent additional first year depreciation deduction of $30,000 for Canopy W (the unadjusted depreciable basis of $60,000 multiplied by .50), and a regular MACRS depreciation deduction of $6,000 for Canopy W (the depreciable exchanged basis of $30,000 multiplied by the annual depreciation rate of .40 × ½ year). For 2005, E is allowed a regular MACRS depreciation deduction of $9,600 for Canopy W (the depreciable exchanged basis of $24,000 ($30,000 minus regular 2003 depreciation of $6,000) multiplied by the annual depreciation rate of .40).

(d) *Special rules for determining depreciation allowances*—(1) *Excess basis*—(i) *In general.* Any excess basis in the replacement MACRS property is treated as property that is placed in service by the acquiring taxpayer in the year of replacement. Thus, the depreciation allowances for the depreciable excess basis are determined by using the applicable recovery period, depreciation method, and convention prescribed under section 168 for the property at the time of replacement. However, if replacement MACRS property is disposed of during the same taxable year the relinquished MACRS property is placed in service by the acquiring taxpayer, no depreciation deduction is allowable for either MACRS property. *See* paragraph (g) of this section regarding the application of section 179. *See* paragraph (h) of this section regarding the application of section 168(k) or 1400L(b).

(ii) *Example.* The application of this paragraph (d)(1) is illustrated by the following example:

*Example.* In 1989, G placed in service a hospital. On January 16, 2004, G exchanges this hospital plus $2,000,000 cash for an office building in a like-kind exchange. On January 16, 2004, the hospital has an adjusted depreciable basis of $1,500,000. After the exchange, the basis of the office building is $3,500,000. The depreciable exchanged basis of the office building is depreciated in accordance with paragraph (c) of this section. The depreciable excess basis of $2,000,000 is treated as being placed in service by G in 2004 and, as a result, is depreciated using the applicable depreciation method, recovery period, and convention prescribed for the office building under section 168 at the time of replacement.

(2) *Depreciable and nondepreciable property*—(i) If land or other nondepreciable property is acquired in a like-kind exchange for, or as a result of an involuntary conversion of, depreciable property, the land or other nondepreciable property is not depreciated. If both MACRS and nondepreciable property are acquired in a like-kind exchange for, or as part of an involuntary conversion of, MACRS property, the basis allocated to the nondepreciable property (as determined under section 1031(d) and the regulations under section 1031(d) or section 1033(b) and the regulations under section 1033(b)) is not depreciated and the basis allocated to the replacement MACRS property (as determined under section 1031(d) and the regulations under section 1031(d) or section 1033(b) and the regulations under section 1033(b)) is depreciated in accordance with this section.

(ii) If MACRS property is acquired, or if both MACRS and nondepreciable property are acquired, in a like-kind exchange for, or as part of an involuntary conversion of, land or other nondepreciable property, the basis in the replacement MACRS property that is attributable to the relinquished nondepreciable property is treated as though the replacement MACRS property is placed in service by the acquiring taxpayer in the year of replacement. Thus, the depreciation allowances for the replacement MACRS property are determined by using the applicable recovery period, depreciation method, and convention prescribed under section 168 for the replacement MACRS property at the time of replacement. *See* paragraph (g) of this section regarding the application of section 179. *See* paragraph (h) of this section regarding the application of section 168(k) or 1400L(b).

(3) *Depreciation limitations for automobiles*—(i) *In general.* Depreciation allowances under section 179 and section 167 (including allowances under sections 168 and 1400L(b)) for a passenger automobile, as defined in section 280F(d)(5), are subject to the limitations of section 280F(a). The depreciation allowances for a passenger automobile that is replacement MACRS property (replacement MACRS passenger automobile) generally are limited in any taxable year to the replacement automobile section 280F limit for the taxable year. The taxpayer's basis in the replacement MACRS passenger automobile is treated as being comprised of two separate components. The first component is the exchanged basis and the second component is the excess basis, if any. The depreciation allowances for a passenger automobile that is relinquished MACRS property (relinquished MACRS passenger automobile) for the taxable year generally are limited to the relinquished automobile section 280F limit for that taxable year. For purposes of this paragraph (d)(3), the following definitions apply:

(A) *Replacement automobile section 280F limit* is the limit on depreciation deductions under section 280F(a) for the taxable year based on the time of replacement of the replacement MACRS passenger automobile (including the effect of any elections under section 168(k) or section 1400L(b), as applicable).

(B) *Relinquished automobile section 280F limit* is the limit on depreciation deductions under section 280F(a) for the taxable year based on when the relinquished MACRS passenger automobile was placed in service by the taxpayer.

(ii) *Order in which limitations on depreciation under section 280F(a) are applied.* Generally, depreciation deductions allowable under section 280F(a) reduce the basis in the relinquished MACRS passenger automobile and the exchanged basis of

the replacement MACRS passenger automobile, before the excess basis of the replacement MACRS passenger automobile is reduced. The depreciation deductions for the relinquished MACRS passenger automobile in the year of disposition and the replacement MACRS passenger automobile in the year of replacement and each subsequent taxable year are allowable in the following order:

(A) The depreciation deduction allowable for the relinquished MACRS passenger automobile as determined under paragraph (c)(5)(i) of this section for the year of disposition to the extent of the smaller of the replacement automobile section 280F limit and the relinquished automobile section 280F limit, if the year of disposition is the year of replacement. If the year of replacement is a taxable year subsequent to the year of disposition, the depreciation deduction allowable for the relinquished MACRS passenger automobile for the year of disposition is limited to the relinquished automobile section 280F limit.

(B) The additional first year depreciation allowable on the remaining exchanged basis (remaining carryover basis as determined under § 1.168(k)–1T(f)(5) or § 1.1400L(b)–1T(f)(5), as applicable) of the replacement MACRS passenger automobile, as determined under § 1.168(k)–1T(f)(5) or § 1.1400L(b)–1T(f)(5), as applicable, to the extent of the excess of the replacement automobile section 280F limit over the amount allowable under paragraph (d)(3)(ii)(A) of this section.

(C) The depreciation deduction allowable for the taxable year on the depreciable exchanged basis of the replacement MACRS passenger automobile determined under paragraph (c) of this section to the extent of any excess of the sum of the amounts allowable under paragraphs (d)(3)(ii)(A) and (B) of this section over the smaller of the replacement automobile section 280F limit and the relinquished automobile section 280F limit.

(D) Any section 179 deduction allowable in the year of replacement on the excess basis of the replacement MACRS passenger automobile to the extent of the excess of the replacement automobile section 280F limit over the sum of the amounts allowable under paragraphs (d)(3)(ii)(A), (B), and (C) of this section.

(E) The additional first year depreciation allowable on the remaining excess basis of the replacement MACRS passenger automobile, as determined under § 1.168(k)–1T(f)(5) or § 1.1400L(b)–1T(f)(5), as applicable, to the extent of the excess of the replacement automobile section 280F limit over the sum of the amounts allowable under paragraphs (d)(3)(ii)(A), (B), (C), and (D) of this section.

(F) The depreciation deduction allowable under paragraph (d) of this section for the depreciable excess basis of the replacement MACRS passenger automobile to the extent of the excess of the replacement automobile section 280F limit over the sum of the amounts allowable under paragraphs (d)(3)(ii)(A), (B), (C), (D), and (E) of this section.

(iii) *Examples.* The application of this paragraph (d)(3) is illustrated by the following examples:

*Example 1.* H, a calendar-year taxpayer, acquired and placed in service Automobile X in January 2000 for $30,000 to be used solely for H's business. In December 2003, H exchanges, in a like-kind exchange, Automobile X plus $15,000 cash for new Automobile Y that will also be used solely in H's business. Automobile Y is 50-percent bonus depreciation property for purposes of section 168(k)(4). Both automobiles are depreciated using the double declining balance method, the half-year convention, and a five-year recovery period. The relinquished automobile section 280F limit for 2003 for Automobile X is $1,775. The replacement automobile section 280F limit for Automobile Y is $10,710. The exchanged basis for Automobile Y is $17,315 ($30,000 less total depreciation allowable of $12,685 (($3,060 for 2000, $4,900 for 2001, $2,950 for 2002, and $1,775 for 2003)). Without taking section 280F into account, the additional first year depreciation deduction for the remaining exchanged basis is $8,658 ($17,315 × 0.5). Because this amount is less than $8,935 ($10,710 (the replacement automobile section 280F limit for 2003 for the Automobile Y) − $1,775 (the depreciation allowable for Automobile X for the 2003)) the additional first year depreciation deduction for the exchanged basis is $8,658. No depreciation deduction is allowable in 2003 for the depreciable exchanged basis because the depreciation deductions taken for Automobile X and the remaining exchanged basis exceed the exchanged automobile section 280F limit. An additional first year depreciation deduction of $278 is allowable for the excess basis of $15,000 in Automobile Y. Thus at the end of 2003 the adjusted depreciable basis in Automobile Y is $23,379 comprised of adjusted depreciable exchanged basis of $8,657 ($17,315 (exchanged basis) − $8,658 (additional first year depreciation for exchanged basis)) and of an adjusted depreciable excess basis of $14,722 ($15,000 (excess basis) − $278 (additional first year depreciation for 2003)).

*Example 2.* Same facts as in *Example 1,* except that H placed in service Automobile X in January 2002, and H elected not to claim the additional first year depreciation deduction for 5-year property placed in service in 2002 and 2003. The relinquished automobile section 280F limit for Automobile X for 2003 is $4,900. Because the replacement automobile section 280F limit for 2003 for Automobile Y ($3,060) is less than the relinquished automobile section 280F limit for Automobile X for 2003 and is less than $5,388 (($30,000 (cost) − $3,060 (depreciation allowable for 2002)) × 0.4 × 6/12), the depreciation allowable that would be allowable for Automobile X (determined without regard to section 280F) in the year of disposition, the depreciation for Automobile X in the year of disposition is limited to $3,060. For 2003 no depreciation is allowable for the excess basis and the exchanged basis in Automobile Y.

*Example 3.* AB, a calendar-year taxpayer, purchased and placed in service Automobile X1 in February 2000 for $10,000. X1 is a passenger automobile subject to section 280F(a) and is used solely for AB's business. AB depreciated X1 using a five year recovery period, the double declining balance method and the half-year convention. As of January 1, 2003, the adjusted basis of X1 was $2,880 ($10,000 original cost minus $2,000 depreciation deduction for 2000, minus $3,200 depreciation deduction for 2001, and $1,920 depreciation deduction for 2002). In November 2003, AB exchanges, in a like-kind exchange, Automobile X1 plus $14,000 cash for new Automobile Y1 that will be used solely in AB's business. Automobile Y1 is 50-percent bonus depreciation property for purposes of section 168(k)(4) and qualifies for the expensing election under section 179. Pursuant to paragraph § 1.168(k)–1T(g)(3)(ii) and paragraph (k)(2)(i) of this section, AB decided to apply § 1.168(i)–6T to the exchange of Automobile X1 for Automobile Y1, the replacement MACRS property. AB also makes the election under section 179 for the excess basis of Automobile Y1. AB depreciates Y1 using a five-year recovery period, the double declining balance method and the half-year convention. For 2003, the relinquished automobile section 280F limit for Automobile X1 is $1,775 and the replacement automobile section 280F limit for 2003 for Automobile Y1 is $10,710.

(i) The 2003 depreciation deduction for Automobile X1 is $576. The depreciation deduction calculated for X1 is $576 (the adjusted depreciable basis of Automobile X1 at the beginning of 2003 of $2,880 × 40% × ½ year), which is less than the relinquished automobile section 280F limit and the replacement automobile section 280F limit.

(ii) The additional first year depreciation deduction for the exchanged basis is $1,152. The additional first year depreciation deduction of $1,152 (remaining exchanged basis of $2,304 ($2,880 adjusted basis of Automobile X1 at the beginning of 2003 minus $576) × 0.5)) is less than the replacement automobile section 280F limit minus $576.

(iii) AB's MACRS depreciation deduction allowable in 2003 for the remaining exchanged basis of $1,152 is $47 (the relinquished automobile section 280F limit of $1,775 less the depreciation deduction of $576 taken for Automobile X1 less the additional first year depreciation deduction of $1,152 taken for the exchanged basis) which is less than the depreciation deduction calculated for the depreciable exchanged basis.

(iv) For 2003, AB takes a $1,400 section 179 deduction for the excess basis of

Automobile Y1. AB must reduce the excess basis of $14,000 by the section 179 deduction of $1,400 to determine the remaining excess basis of $12,600.

(v) For 2003, AB is allowed a 50-percent additional first year depreciation deduction of $6,300 (the remaining excess basis of $12,600 multiplied by .50).

(vi) For 2003, AB's depreciation deduction for the depreciable excess basis is limited to $1,235. The depreciation deduction computed without regard to the replacement automobile section 280F limit is $1,260 ($6,300 depreciable excess basis x 0.4 × 6/12). However the depreciation deduction for the depreciable excess basis is limited to $1,235 ($10,710 (replacement automobile section 280F limit) − $576 (depreciation deduction for Automobile X1) − $1,152 (additional first year depreciation deduction for the exchanged basis) − $47 (depreciation deduction for exchanged basis) − $1,400 (section 179 deduction) − $6,300 (additional first year depreciation deduction for remaining excess basis)).

(4) *Replacement MACRS property acquired and placed-in-service before disposition of relinquished MACRS property.* If, in an involuntary conversion, a taxpayer acquires and places in service the replacement MACRS property before the date of disposition of the relinquished MACRS property, the taxpayer depreciates the unadjusted depreciable basis of the replacement MACRS property under section 168 beginning in the taxable year when the replacement MACRS property is placed in service by the taxpayer and by using the applicable depreciation method, recovery period, and convention prescribed under section 168 for the replacement MACRS property at the placed-in-service date. However, at the time of disposition of the relinquished MACRS property, the taxpayer determines the exchanged basis and the excess basis of the replacement MACRS property and begins to depreciate the depreciable exchanged basis of the replacement MACRS property in accordance with paragraph (c) of this section. The depreciable excess basis of the replacement MACRS property continues to be depreciated by the taxpayer in accordance with the first sentence of this paragraph (d)(4). Further, in the year of disposition of the relinquished MACRS property, the taxpayer must include in taxable income the excess of the depreciation deductions allowable on the unadjusted depreciable basis of the replacement MACRS property over the depreciation deductions that would have been allowable to the taxpayer on the depreciable excess basis of the replacement MACRS property from the date the replacement MACRS property was placed in service by the taxpayer (taking into account the applicable convention) to the time of disposition of the relinquished MACRS property.

(e) *Use of optional depreciation tables*—(1) *Taxpayer not bound by prior use of table.* If a taxpayer used an optional depreciation table for the relinquished MACRS property, the taxpayer is not required to use an optional table for the depreciable exchanged basis of the replacement MACRS property. Conversely, if a taxpayer did not use an optional depreciation table for the relinquished MACRS property, the taxpayer may use the appropriate table for the depreciable exchanged basis of the replacement MACRS property. If a taxpayer decides not to use the table for the depreciable exchanged basis of the replacement MACRS property, the depreciation allowance for this property for the year of replacement and subsequent taxable years is determined under paragraph (c) of this section. If a taxpayer decides to use the optional depreciation tables, no depreciation deduction is allowable for MACRS property placed in service by the acquiring taxpayer and subsequently exchanged or involuntarily converted by such taxpayer in the same taxable year, and, if, during the same taxable year, MACRS property is placed in service by the acquiring taxpayer, exchanged or involuntarily converted by such taxpayer, and the replacement MACRS property is disposed of by such taxpayer, no depreciation deduction is allowable for either MACRS property.

(2) *Determination of the depreciation deduction*—(i) *Relinquished MACRS property.* In the year of disposition, the depreciation allowance for the relinquished MACRS property is computed by multiplying the unadjusted depreciable basis (less the amount of the additional first year depreciation deduction allowed or allowable, whichever is greater, under section 168(k) or section 1400L(b), as applicable) of the relinquished MACRS property by the annual depreciation rate (expressed as a decimal equivalent) specified in the appropriate table for the recovery year corresponding to the year of disposition. This product is then multiplied by a fraction, the numerator of which is the number of months (including fractions of months) the property is deemed to be placed in service during the year of the exchange or involuntary conversion (taking into account the applicable convention) and the denominator of which is 12. However, if the year of disposition is less than 12 months, the depreciation allowance determined under this paragraph (e)(2)(i) must be adjusted for a short taxable year (for further guidance, for example, *see* Rev. Proc. 89–15 (1989–1 C.B. 816) and § 601.601(d)(2)(ii)(b) of this chapter).

(ii) *Replacement MACRS property*—(A) *Determination of the appropriate optional depreciation table.* If a taxpayer chooses to use the appropriate optional depreciation table for the depreciable exchanged basis, the depreciation allowances for the depreciable exchanged basis beginning in the year of replacement are determined by choosing the optional depreciation table that corresponds to the recovery period, depreciation method, and convention of the replacement MACRS property determined under paragraph (c) of this section.

(B) *Calculating the depreciation deduction for the replacement MACRS property*—(*1*) The depreciation deduction for the taxable year is computed by first determining the appropriate recovery year in the table identified under paragraph (e)(2)(ii)(A) of this section. The appropriate recovery year for the year of replacement is the same as the recovery year for the year of disposition, regardless of the taxable year in which the replacement property is acquired. For example, if the recovery year for the year of disposition would have been Year 4 in the table that applied before the disposition of the relinquished MACRS property, then the recovery year for the year of replacement is Year 4 in the table identified under paragraph (e)(2)(ii)(A) of this section.

(*2*) Next, the annual depreciation rate (expressed as a decimal equivalent) for each recovery year is multiplied by a transaction coefficient. The transaction coefficient is the formula $(1/(1-x))$ where x equals the sum of the annual depreciation rates from the table identified under paragraph (e)(2)(ii)(A) of this section (expressed as a decimal equivalent) corresponding to the replacement MACRS property (as determined under paragraph (e)(2)(ii)(A) of this section) for the taxable years beginning with the placed-in-service year of the relinquished MACRS property through the taxable year immediately prior to the year of disposition. The product of the annual depreciation rate and the transaction coefficient is multiplied by the depreciable exchanged basis (taking into account paragraph (e)(2)(i) of this section). In the year of replacement, this product is then multiplied by a fraction, the numerator of which is the number of months (including fractions of months) the property is deemed to be placed in service by the acquiring taxpayer during the year of replacement (taking into account the applicable convention) and the denominator of

which is 12. However, if the year of replacement is the year the relinquished MACRS property is placed in service by the acquiring taxpayer, the preceding sentence does not apply. In addition, if the year of replacement is less than 12 months, the depreciation allowance determined under paragraph (e)(2)(ii) of this section must be adjusted for a short taxable year (for further guidance, for example, *see* Rev. Proc. 89–15 (1989–1 C.B. 816) and § 601.601(d)(2)(ii)(*b*) of this chapter).

(iii) *Unrecovered basis.* If the replacement MACRS property would have unrecovered depreciable basis after the final recovery year (for example, due to a deferred exchange), the unrecovered basis is an allowable depreciation deduction in the taxable year that corresponds to the final recovery year unless the unrecovered basis is subject to a depreciation limitation such as section 280F.

(3) *Excess basis.* As provided in paragraph (d)(1) of this section, any excess basis in the replacement MACRS property is treated as property that is placed in service by the acquiring taxpayer at the time of replacement. Thus, if the taxpayer chooses to use the appropriate optional depreciation table for the depreciable excess basis in the replacement MACRS property, the depreciation allowances for the depreciable excess basis are determined by multiplying the depreciable excess basis by the annual depreciation rate (expressed as a decimal equivalent) specified in the appropriate table for each taxable year. The appropriate table for the depreciable excess basis is based on the depreciation method, recovery period, and convention applicable to the depreciable excess basis under section 168 at the time of replacement. However, if the year of replacement is less than 12 months, the depreciation allowance determined under this paragraph (e)(3) must be adjusted for a short taxable year (for further guidance, for example, *see* Rev. Proc. 89–15 (1989–1 C.B. 816) and § 601.601(d)(2)(ii)(*b*) of this chapter).

(4) *Examples.* The application of this paragraph (e) is illustrated by the following examples:

*Example 1.* J, a calendar-year taxpayer, acquired 5-year property for $10,000 and placed it in service in January 2001. J uses the optional tables to depreciate the property. J uses the half-year convention and did not make any elections for the property. In December 2003, J exchanges the 5-year property for used 7-year property in a like-kind exchange. The depreciable exchanged basis of the 7-year property equals the adjusted depreciable basis of the 5-year property at the time of disposition of the relinquished MACRS property, namely $3,840 ($10,000 less $2,000 depreciation in 2001, $3,200 depreciation in 2002, and $960 depreciation in 2003). J must first determine the appropriate optional depreciation table pursuant to paragraph (c) of this section. Since the replacement MACRS property has a longer recovery period and the same depreciation method as the relinquished MACRS property, J uses the optional depreciation table corresponding to a 7-year recovery period, the 200% declining balance method, and the half-year convention (because the 5-year property was depreciated using a half-year convention). Had the replacement MACRS property been placed in service in the same taxable year as the placed-in-service year of the relinquished MACRS property, the depreciation allowance for the replacement MACRS property for the year of replacement would be determined using recovery year 3 of the optional table. The depreciation allowance equals the depreciable exchanged basis ($3,840) multiplied by the annual depreciation rate for the current taxable year (.1749 for recovery year 3) as modified by the transaction coefficient [1 / (1 − (.1429 + .2449))] which equals 1.6335. Thus, J multiplies $3,840, its depreciable exchanged basis in the replacement MACRS property, by the product of .1749 and 1.6335, and then by one-half, to determine the depreciation allowance for 2003, $549. For 2004, J multiplies its depreciable exchanged basis in the replacement MACRS property determined at the time of replacement of $3,840 by the product of the modified annual depreciation rate for the current taxable year (.1249 for recovery year 4) and the transaction coefficient (1.6335) to determine its depreciation allowance of $783.

*Example 2.* K, a calendar-year taxpayer, acquired used Asset V for $100,000 and placed it in service in January 1999. K depreciated Asset V under the general depreciation system of section 168(a) by using a 5-year recovery period, the 200-percent declining balance method of depreciation, and the half-year convention. In December 2003, as part of the involuntary conversion, Asset V is involuntarily converted due to an earthquake. In October 2005, K purchases used Asset W with the insurance proceeds from the destruction of Asset V and places Asset W in service to replace Asset V. If Asset W had been placed in service when Asset V was placed in service, it would have been depreciated using a 7-year recovery period, the 200-percent declining balance method, and the half-year convention. K uses the optional depreciation tables to depreciate Asset V and Asset W. For 2003 (recovery year 5 on the optional table), the depreciation deduction for Asset V is $5,760 ((0.1152)($100,000)(1/2)). Thus, the adjusted depreciable basis of Asset V at the time of replacement is $11,520 ($100,000 less $20,000 depreciation in 1999, $32,000 depreciation in 2000, $19,200 depreciation in 2001, $11,520 depreciation in 2002, and $5,760 depreciation in 2003). Under the table that applied to Asset V, the year of disposition was recovery year 5 and the depreciation deduction was determined under the straight line method. The table that applies for Asset W is the table that applies the straight line depreciation method, the half-year convention, and a 7-year recovery period. The appropriate recovery year under this table is recovery year 5. The depreciation deduction for Asset W for 2005 is $1,646 (($11,520)(0.1429)(1/(1 − 0.5))(1/2)). Thus, the depreciation deduction for Asset W in 2006 (recovery year 6) is $3,290 ($11,520)(0.1428)(1/(1 − 0.5)). The depreciation deduction for 2007 (recovery year 7) is $3,292 (($11,520)(.1429)(1/(1 − .5))). The depreciation deduction for 2008 (recovery year 8) is $3292 ($11,520 less allowable depreciation for Asset W for 2005 through 2007 ($1,646 + $3,290 + $3,292)).

*Example 3.* L, a calendar-year taxpayer, placed in service used Computer X in January 2002 for $5,000. L depreciated Computer X under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. Computer X is destroyed in a fire in March 2004. For 2004, the depreciation deduction allowable for Computer X equals $480 ([($5,000)(.1920)] × (1/2)). Thus, the adjusted depreciable basis of Computer X was $1,920 when it was destroyed ($5,000 unadjusted depreciable basis less $1,000 depreciation for 2002, $1,600 depreciation for 2003, and $480 depreciation for 2004). In April 2004, as part of the involuntary conversion, L acquired and placed in service used Computer Y with insurance proceeds received due to loss of Computer X. Computer Y will be depreciated using the same depreciation method, recovery period, and convention as Computer X. L elected to use the optional depreciation tables to compute the depreciation allowance for Computer X and Computer Y. The depreciation deduction allowable for 2004 for Computer Y equals $384 ([$1,920 × (.1920)(1/(1 − .52))] × (1/2)).

(f) *Mid-quarter convention.* For purposes of applying the 40-percent test under section 168(d) and the regulations under section 168(d), the following rules apply:

(1) *Exchanged basis.* If, in a taxable year, MACRS property is placed in service by the acquiring taxpayer (but not as a result of a like-kind exchange or involuntary conversion) and—

(i) In the same taxable year, is disposed of by the acquiring taxpayer in a like-kind exchange or an involuntary conversion and replaced by the acquiring taxpayer with replacement MACRS property, the exchanged basis (determined without any adjustments for depreciation deductions during the taxable year) of the replacement MACRS property is taken into account in the year of replacement in the quarter the relinquished MACRS property was placed in service by the acquiring taxpayer; or

(ii) In the same taxable year, is disposed of by the acquiring taxpayer in a like-kind exchange or an involuntary conversion, and in a subsequent taxable

year is replaced by the acquiring taxpayer with replacement MACRS property, the exchanged basis (determined without any adjustments for depreciation deductions during the taxable year) of the replacement MACRS property is taken into account in the year of replacement in the quarter the replacement MACRS property was placed in service by the acquiring taxpayer; or

(iii) In a subsequent taxable year, disposed of by the acquiring taxpayer in a like-kind exchange or involuntary conversion, the exchanged basis of the replacement MACRS property is not taken into account in the year of replacement.

(2) *Excess basis.* Any excess basis is taken into account in the quarter the replacement MACRS property is placed in service by the acquiring taxpayer.

(3) *Depreciable property acquired for nondepreciable property.* Both the exchanged basis and excess basis of the replacement MACRS property described in paragraph (d)(2)(ii) of this section (depreciable property acquired for nondepreciable property), are taken into account for determining whether the mid-quarter convention applies in the year of replacement.

(g) *Section 179 election.* In applying the section 179 election, only the excess basis, if any, in the replacement MACRS property is taken into account. If the replacement MACRS property is described in paragraph (d)(2)(ii) of this section (depreciable property acquired for nondepreciable property), only the excess basis in the replacement MACRS property is taken into account.

(h) *Additional first year depreciation deduction. See* § 1.168(k)–1T(f)(5) (for qualified property or 50-percent bonus depreciation property) and § 1.1400L(b)–1T(f)(5) (for qualified New York Liberty Zone property).

(i) *Election not to apply this section.* A taxpayer may elect not to apply this section for any MACRS property involved in a like-kind exchange or involuntary conversion. An election under this paragraph (i) applies only to the taxpayer making the election and the election applies to both the relinquished MACRS property and the replacement MACRS property. If an election is made under this paragraph (i), the depreciation allowances for the replacement MACRS property beginning in the year of replacement and for the relinquished MACRS property in the year of disposition are not determined under this section. Instead, for depreciation purposes, the exchanged basis and excess basis, if any, in the replacement MACRS property are treated as being placed in service by the taxpayer at the time of replacement and the adjusted depreciable basis of the relinquished MACRS property is treated as being disposed of by the taxpayer at the time of disposition. Paragraphs (c)(5)(i) (determination of depreciation for relinquished MACRS property in the year of disposition), (c)(5)(iii) (rules for deferred transactions), (g) (section 179 election), and (h) (additional first year depreciation deduction) of this section apply to property to which this paragraph (i) applies. *See* paragraph (j) of this section for the time and manner of making the election under this paragraph (i).

(j) *Time and manner of making elections*—(1) *In general.* The election provided in paragraph (i) of this section is made separately by each person acquiring replacement MACRS property. The election is made for each member of a consolidated group by the common parent of the group, by the partnership (and not by the partners separately) in the case of a partnership, or by the S corporation (and not by the shareholders separately) in the case of an S corporation. A separate election under paragraph (i) of this section is required for each like-kind exchange or involuntary conversion. The election provided in paragraph (i) of this section must be made within the time and manner provided in paragraph (j)(2) and (3) of this section and may not be made by the taxpayer in any other manner (for example, the election cannot be made through a request under section 446(e) to change the taxpayer's method of accounting), except as provided in paragraph (k)(2) of this section.

(2) *Time for making election.* The election provided in paragraph (i) of this section is made by the due date (including extensions) of the taxpayer's Federal tax return for the year of replacement.

(3) *Manner of making election.* The election provided in paragraph (i) of this section is made by typing or legibly printing at the top of Form 4562, *Depreciation and Amortization,* ''ELECTION MADE UNDER SECTION 1.168(i)–6T(i),'' or in the manner provided for on Form 4562 and its instructions. If Form 4562 is revised or renumbered, any reference in this section to that form is treated as a reference to the revised or renumbered form.

(4) *Revocation.* The election provided in paragraph (i) of this section, once made, may be revoked only with the consent of the Commissioner of Internal Revenue. Such consent will be granted only in extraordinary circumstances. Requests for consent are requests for a letter ruling and must be filed with the Commissioner of Internal Revenue, Washington, DC 20224. Requests for consent may not be made in any other manner (for example, through a request under section 446(e) to change the taxpayer's method of accounting).

(k) *Effective date*—(1) *In general.* (i) This section applies to a like-kind exchange or an involuntary conversion of MACRS property for which the time of disposition and the time of replacement both occur after February 27, 2004.

(ii) The applicability of this section expires February 27, 2007.

(2) *Application to pre-effective date like-kind exchanges and involuntary conversions.* For a like-kind exchange or an involuntary conversion of MACRS property for which the time of disposition, the time of replacement, or both occur on or before February 27, 2004, a taxpayer may:

(i) Apply the provisions of this section. If a taxpayer's applicable federal income tax return has been filed on or before February 27, 2004, and the taxpayer has treated the replacement MACRS property as acquired, and the relinquished MACRS property as disposed of, in a like-kind exchange or an involuntary conversion, the taxpayer changes its method of accounting for depreciation of the replacement MACRS property and relinquished MACRS property in accordance with this paragraph (k)(2)(i) by following the applicable administrative procedures issued under § 1.446–1T(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in method of accounting (for further guidance, *see* Rev. Proc. 2002–9 (2002–1 C.B. 327) and § 601.601(d)(2)(ii)(*b*) of this chapter); or

(ii) Rely on prior guidance issued by the Internal Revenue Service for determining the depreciation deductions of replacement MACRS property and relinquished MACRS property (for further guidance, for example, *see* Notice 2000–4 (2001–1 C.B. 313) and § 601.601(d)(2)(ii)(*b*) of this chapter). In relying on such guidance, a taxpayer may use any reasonable, consistent method of determining depreciation in the year of disposition and the year of replacement. If a taxpayer's applicable federal income tax return has been filed on or before February 27, 2004, and the taxpayer has treated the replacement MACRS property as acquired, and the relinquished MACRS property as disposed of, in a like-kind exchange or an involuntary conversion, the taxpayer changes its method of accounting for depreciation of the replacement MACRS property and relinquished MACRS property in accordance with this

paragraph (k)(2)(ii) by following the applicable administrative procedures issued under § 1.446–1T(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in method of accounting (for further guidance, *see* Rev. Proc. 2002–9 (2002–1 C.B. 327) and § 601.601(d)(2)(ii)(*b*) of this chapter).

■ **Par. 11.** Section 1.168(k)–1T is amended by:

■ 1. Revising paragraphs (f)(5)(ii)(F)(*2*) and (f)(5)(v).

■ 2. Redesignating paragraph (g)(1) as paragraph (g)(1)(i).

■ 3. Revising the last sentence in newly designated paragraph (g)(1)(i) and redesignating as new paragraph (g)(1)(ii).

■ 4. Redesignating paragraph (g)(3) as paragraph (g)(3)(i).

■ 5. Adding paragraph (g)(3)(ii).

The addition and revisions read as follows:

**§ 1.168(k)–1T Additional first year depreciation (temporary).**

* * * * *

(f) * * *

(5) * * *

(ii) * * *

(F) * * *

(*2*) The time of disposition of the exchanged or involuntarily converted property.

* * * * *

(v) *Examples.* The application of this paragraph (f)(5) is illustrated by the following examples:

*Example 1.* (i) In December 2002, EE, a calendar-year corporation, acquired for $200,000 and placed in service Canopy V1, a gas station canopy. Canopy V1 is qualified property under section 168(k)(1) and is 5-year property under section 168(e). EE depreciated Canopy V1 under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. EE elected to use the optional depreciation tables to compute the depreciation allowance for Canopy V1. On January 1, 2003, Canopy V1 was destroyed in a fire and was no longer usable in EE's business. On June 1, 2003, in an involuntary conversion, EE acquired and placed in service Canopy W1 with all of the $160,000 of insurance proceeds EE received due to the loss of Canopy V1. Canopy W1 is 50-percent bonus depreciation property under section 168(k)(4) and is 5-year property under section 168(e). Pursuant to paragraph (g)(3)(ii) of this section and § 1.168(i)–6T(k)(2)(i), EE decided to apply § 1.168(i)–6T to the involuntary conversion of Canopy V1 with the replacement of Canopy W1, the acquired MACRS property.

(ii) For 2002, EE is allowed a 30-percent additional first year depreciation deduction of $60,000 for Canopy V1 (the unadjusted depreciable basis of $200,000 multiplied by .30), and a regular MACRS depreciation deduction of $28,000 for Canopy V1 (the remaining adjusted depreciable basis of $140,000 multiplied by the annual depreciation rate of .20 for recovery year 1).

(iii) For 2003, EE is allowed a regular MACRS depreciation deduction of $22,400 for Canopy V1 (the remaining adjusted depreciable basis of $140,000 multiplied by the annual depreciation rate of .32 for recovery year 2 × ½ year).

(iv) Pursuant to paragraph (f)(5)(iii)(A) of this section, the additional first year depreciation deduction allowable for Canopy W1 equals $44,800 (.50 of Canopy W1's remaining carryover basis at the time of replacement of $89,600 (Canopy V1's remaining adjusted depreciable basis of $140,000 minus 2002 regular MACRS depreciation deduction of $28,000 minus 2003 regular MACRS depreciation deduction of $22,400).

*Example 2.* (i) Same facts as in *Example 1,* except EE elected not to deduct the additional first year depreciation for 5-year property placed in service in 2002. EE deducted the additional first year depreciation for 5-year property placed in service in 2003.

(ii) For 2002, EE is allowed a regular MACRS depreciation deduction of $40,000 for Canopy V1 (the unadjusted depreciable basis of $200,000 multiplied by the annual depreciation rate of .20 for recovery year 1).

(iii) For 2003, EE is allowed a regular MACRS depreciation deduction of $32,000 for Canopy V1 (the unadjusted depreciable basis of $200,000 multiplied by the annual depreciation rate of .32 for recovery year 2 × ½ year).

(iv) Pursuant to paragraph (f)(5)(iii)(A) of this section, the additional first year depreciation deduction allowable for Canopy W1 equals $64,000 (.50 of Canopy W1's remaining carryover basis at the time of replacement of $128,000 (Canopy V1's unadjusted depreciable basis of $200,000 minus 2002 regular MACRS depreciation deduction of $40,000 minus 2003 regular MACRS depreciation deduction of $32,000)).

*Example 3.* (i) In December 2001, FF, a calendar-year corporation, acquired for $10,000 and placed in service Computer X2. Computer X2 is qualified property under section 168(k)(1) and is 5-year property under section 168(e). FF depreciated Computer X2 under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. FF elected to use the optional depreciation tables to compute the depreciation allowance for Computer X2. On January 1, 2002, FF acquired Computer Y2 by exchanging Computer X2 and $1,000 cash in a like-kind exchange. Computer Y2 is qualified property under section 168(k)(1) and is 5-year property under section 168(e). Pursuant to paragraph (g)(3)(ii) of this section and § 1.168(i)–6T(k)(2)(i), FF decided to apply § 1.168(i)–6T to the exchange of Computer X2 for Computer Y2, the acquired MACRS property.

(ii) For 2001, FF is allowed a 30-percent additional first year depreciation deduction of $3,000 for Computer X2 (unadjusted basis of $10,000 multiplied by .30), and a regular MACRS depreciation deduction of $1,400 for Computer X2 (the remaining adjusted depreciable basis of $7,000 multiplied by the annual depreciation rate of .20 for recovery year 1).

(iii) For 2002, FF is allowed a regular MACRS depreciation deduction of $1,120 for Computer X2 (the remaining adjusted depreciable basis of $7,000 multiplied by the annual depreciation rate of .32 for recovery year 2 × ½ year).

(iv) Pursuant to paragraph (f)(5)(iii)(A) of this section, the 30-percent additional first year depreciation deduction for Computer Y2 is allowable for the remaining carryover basis at the time of replacement of $4,480 (Computer X2's unadjusted depreciable basis of $10,000 minus additional first year depreciation deduction allowable of $3,000 minus 2001 regular MACRS depreciation deduction of $1,400 minus 2002 regular MACRS depreciation deduction of $1,120) and for the remaining excess basis at the time of replacement of $1,000 (cash paid for Computer Y2). Thus, the 30-percent additional first year depreciation deduction for the remaining carryover basis at the time of replacement equals $1,344 ($4,480 multiplied by .30) and for the remaining excess basis at the time of replacement equals $300 ($1,000 multiplied by .30), which totals $1,644.

*Example 4.* (i) In September 2002, GG, a June 30 year-end corporation, acquired for $20,000 and placed in service Equipment X3. Equipment X3 is qualified property under section 168(k)(1) and is 5-year property under section 168(e). GG depreciated Equipment X3 under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. GG elected to use the optional depreciation tables to compute the depreciation allowance for Equipment X3. In December 2002, GG acquired Equipment Y3 by exchanging Equipment X3 and $5,000 cash in a like-kind exchange. Equipment Y3 is qualified property under section 168(k)(1) and is 5-year property under section 168(e). Pursuant to paragraph (g)(3)(ii) of this section and § 1.168(i)–6T(k)(2)(i), GG decided to apply § 1.168(i)–6T to the exchange of Equipment X3 for Equipment Y3, the acquired MACRS property.

(ii) Pursuant to paragraph (f)(5)(iii)(B) of this section, no additional first year depreciation deduction is allowable for Equipment X3 and, pursuant to § 1.168(d)–1T(b)(3)(ii), no regular depreciation deduction is allowable for Equipment X3, for the taxable year ended June 30, 2003.

(iii) Pursuant to paragraph (f)(5)(iii)(A) of this section, the 30-percent additional first year depreciation deduction for Equipment Y3 is allowable for the remaining carryover basis at the time of replacement of $20,000 (Equipment X3's unadjusted depreciable basis of $20,000) and for the remaining excess basis at the time of replacement of $5,000 (cash paid for Equipment Y3). Thus, the 30-percent additional first year depreciation deduction for the remaining carryover basis at the time of replacement equals $6,000 ($20,000 multiplied by .30) and for the remaining excess basis at the time of replacement equals $1,500 ($5,000 multiplied by .30), which totals $7,500.

*Example 5.* (i) Same facts as in *Example 4.* GG depreciated Equipment Y3 under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. GG elected to use the optional depreciation tables to compute the depreciation allowance for Equipment Y3. On July 1, 2003, GG acquired Equipment Z1 by exchanging Equipment Y3 in a like-kind exchange. Equipment Z1 is 50-percent bonus depreciation property under section 168(k)(4) and is 5-year property under section 168(e). Pursuant to paragraph (g)(3)(ii) of this section and § 1.168(i)–6T(k)(2)(i), GG decided to apply § 1.168(i)–6T to the exchange of Equipment Y3 for Equipment Z3, the acquired MACRS property.

(ii) For the taxable year ending June 30, 2003, the regular MACRS depreciation deduction allowable for the remaining carryover basis at the time of replacement (after taking into account the additional first year depreciation deduction) of Equipment Y3 is $2,800 (the remaining carryover basis at the time of replacement of $20,000 minus the additional first year depreciation deduction of $6,000, multiplied by the annual depreciation rate of .20 for recovery year 1) and for the remaining excess basis at the time of replacement (after taking into account the additional first year depreciation deduction) of Equipment Y3 is $700 (the remaining excess basis at the time of replacement of $5,000 minus the additional first year depreciation deduction of $1,500, multiplied by the annual depreciation rate of .20 for recovery year 1), which totals $3,500.

(iii) For the taxable year ending June 30, 2004, the regular MACRS depreciation deduction allowable for the remaining carryover basis (after taking into account the additional first year depreciation deduction) of Equipment Y3 is $2,240 (the remaining carryover basis at the time of replacement of $20,000 minus the additional first year depreciation deduction of $6,000, multiplied by the annual depreciation rate of .32 for recovery year 2 × ½ year) and for the remaining excess basis (after taking into account the additional first year depreciation deduction) of Equipment Y3 is $560 (the remaining excess basis at the time of replacement of $5,000 minus the additional first year depreciation deduction of $1,500, multiplied by the annual depreciation rate of .32 for recovery year 2 × ½ year), which totals $2,800.

(iv) For the taxable year ending June 30, 2004, pursuant to paragraph (f)(5)(iii)(A) of this section, the 50-percent additional first year depreciation deduction for Equipment Z1 is allowable for the remaining carryover basis at the time of replacement of $11,200 (Equipment Y3's unadjusted depreciable basis of $25,000 minus the total additional first year depreciation deduction of $7,500 minus the total 2003 regular MACRS depreciation deduction of $3,500 minus the total 2004 regular depreciation deduction (taking into account the half-year convention) of $2,800). Thus, the 50-percent additional first year depreciation deduction for the remaining carryover basis at the time of replacement equals $5,600 ($11,200 multiplied by .50).

* * * * *

(g) * * * (1) * * * (i) * * *

(ii) Except as provided in paragraph (g)(3)(ii) of this section, the applicability of this section expires on or before September 4, 2006.

(2) * * *

(3) * * *—(i). * * *

(ii) Paragraph (f)(5)(ii)(F)(*2*) of this section and paragraph (f)(5)(v) of this section apply to a like-kind exchange or an involuntary conversion of MACRS property and computer software for which the time of disposition and the time of replacement both occur after February 27, 2004. For a like-kind exchange or an involuntary conversion of MACRS property for which the time of disposition, the time of replacement, or both occur on or before February 27, 2004, *see* § 1.168(i)–6T(k)(2)(ii). For a like-kind exchange or involuntary conversion of computer software for which the time of disposition, the time of replacement, or both occur on or before February 27, 2004, a taxpayer may rely on prior guidance issued by the Internal Revenue Service for determining the depreciation deductions of the acquired computer software and the exchanged or involuntarily converted computer software (for further guidance, *see* § 1.168(k)–1T(f)(5) published in the **Federal Register** on September 8, 2003 (68 FR 53000)). In relying on such guidance, a taxpayer may use any reasonable, consistent method of determining depreciation in the year of disposition and the year of replacement. The applicability of paragraph (f)(5) of this section expires on or before February 27, 2007.

* * * * *

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: February 17, 2004.

**Pamela F. Olson,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 04–3992 Filed 2–27–04; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD07–03–088]**

**RIN 1625–AA09**

## Drawbridge Operation Regulations; Miami River, North Fork, Miami, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the operating regulations and the name of the Seaboard System Railroad Bridge, across the Miami River, mile 5.3, Miami, Florida. This rule requires the bridge to open only after a 48-hour advance notice to the owner. In addition, the Coast Guard is changing the name from Seaboard System Railroad Bridge to the FDOT Railroad Bridge, to reflect the current owner.

**DATES:** This rule is effective March 31, 2004.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD07–03–088) and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, Florida 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Barry Dragon, Project Manager, Seventh Coast Guard District, Bridge Branch, (305) 415–6743.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

On August 5, 2003, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Miami River, North Fork, Miami, Florida in the **Federal Register** (68 FR 46139). We received 1 comment on this notice of proposed rulemaking (NPRM). No public hearing was requested, and none was held.

### Background and Purpose

The Seaboard System Railroad Bridge across the Miami River, mile 5.3, is a railroad bridge with a vertical clearance of 6 feet at mean high water and a horizontal clearance of 60 feet. The current operating regulations published in 33 CFR 117.307 require the bridge to open on signal from 8:30 a.m. to 5:30 p.m., Monday through Friday. All other times the draw must open on signal if

at least three hours notice is given. The last time the bridge was opened for vessel traffic, however, was December 2, 2001, though a full time bridge tender is on site. This rule will improve the efficiency of the bridge system and meet the reasonable needs of navigation by providing for openings with a 48-hour advance notice to the CSX System Operating Headquarters, at (800) 232–0144. In addition, the owner is requesting that the Coast Guard change the name of the bridge, which has been sold, from the Seaboard System Railroad Bridge to the FDOT Railroad Bridge.

**Discussion of Comments and Changes**

We received 1 comment on the notice of proposed rulemaking (NPRM) advising us that the current owner is Florida Department of Transportation (FDOT) and not CSX Railroad. CSX Railroad is under contract to FDOT to operate and maintain the bridge.

We have carefully considered the comment and made the ownership correction to the rule. Under this rule the bridge would open only with a 48-hour advance notice to the CSX System Operating Headquarters, at (800) 232–0144. This bridge is the last moveable structure on the river approximately 1000 yards from a salinity dam, which marks the end of navigability on the Miami River. The bridge has not opened for navigation since December 2, 2001, and, except for normal maintenance, experienced the same pattern of no openings for the year 2002. Accordingly, this schedule will meet the reasonable needs of navigation. Moreover, in order to accurately refer to the bridge, this rule will change the name from Seaboard System Railroad Bridge to the FDOT Railroad Bridge.

**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).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary, because the rule will only affect a small percentage of vessels that travel through this bridge and openings are available with 48-hour advance notice.

**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, because the past few years of the bridge's history indicates that it rarely opens. The rule provides for openings and meets the reasonable needs of navigation.

**Assistance for Small Entities**

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

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 the 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 would not create an environmental risk to health or risk to safety that might 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. It has not been designated by the

Administrator of the Office of Information and Regulatory Affairs 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 M16475.1D, 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.

**List of Subjects in 33 CFR Part 117**

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. § 117.307 is revised to read as follows:

**§ 117.307 Miami River, North Fork.**

The draw of the FDOT Railroad Bridge, mile 5.3 at Miami, shall open on signal if at least 48-hour notice is given to CSX System Operating Headquarters (800) 232–0144.

Dated: February 13, 2004.

**Harvey E. Johnson, Jr.,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 04–4487 Filed 2–27–04; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD08–04–008]**

## Drawbridge Operation Regulations; Gulf Intracoastal Waterway—Black Bayou, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Black Bayou Pontoon Bridge across the Gulf Intracoastal Waterway, mile 237.5 west of Harvey Lock, in Calcasieu Parish, LA. This deviation allows the bridge to remain closed to navigation during daylight hours during weekdays only for four weeks. The deviation is necessary to repair and replace damaged portions of the fender system.

**DATES:** This deviation is effective from 7 a.m. on Wednesday, March 17, 2004 through 5 p.m. on Wednesday, April 14, 2004.

**ADDRESSES:** Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 500 Poydras Street, New Orleans, Louisiana 70130–3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** David Frank, Bridge Administration Branch, telephone (504) 589–2965.

**SUPPLEMENTARY INFORMATION:** The Louisiana Department of Transportation and Development (LDOTD) has requested a temporary deviation in order to remove and replace damaged portions of the fender system of the Black Bayou Pontoon Bridge across the Gulf Intracoastal Waterway, mile 237.5 west of Harvey Lock, in Calcasieu Parish, LA. The repairs are necessary to ensure the safety of the bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 7 a.m. until 11 a.m. and from 1 p.m. until 5 p.m. Monday through Friday from March 17, 2004 through April 14, 2004.

As the bridge has no vertical clearance in the closed-to-navigation position, vessels will not be able to transit through the bridge sight when the bridge is closed. Navigation at the site of the bridge consists mainly of tows with barges and some recreational pleasure craft. Due to prior experience, as well as coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels. The bridge normally opens to pass navigation an average of 878 times per month. The bridge opens on signal as required by 33 CFR 117.5. The bridge will be able to open for emergencies during the closure period with proper notice. Alternate routes are not available.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 18, 2004.

**Marcus Redford,**

*Bridge Administrator.*

[FR Doc. 04–4488 Filed 2–27–04; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD01–04–014]**

## Drawbridge Operation Regulations: Newtown Creek, Dutch Kills, English Kills, and Their Tributaries, NY

**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 Metropolitan Avenue Bridge, mile 3.4, across English Kills at New York City, New York. Under this temporary deviation the bridge may remain closed from 7 a.m. on March 8, 2004 through 4 p.m. on March 9, 2004, and from 7 a.m. on April 2, 2004 through 4 p.m. on April 4, 2004, to facilitate necessary bridge maintenance.

**DATES:** This deviation is effective from March 8, 2004 through April 4, 2004.

**FOR FURTHER INFORMATION CONTACT:** Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7069.

**SUPPLEMENTARY INFORMATION:** The New York City Department of Transportation (NYCDOT) Metropolitan Avenue Bridge has a vertical clearance in the closed position of 10 feet at mean high water and 15 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.801(e).

NYCDOT, requested a temporary deviation from the drawbridge operation regulations to facilitate repairs to the electrical controls at the bridge. The bridge must remain in the closed position to perform these repairs.

Under this temporary deviation the NYCDOT Metropolitan Avenue Bridge may remain in the closed position from 7 a.m. on March 8, 2004 through 4 p.m. on March 9, 2004, and from 7 a.m. on

April 2, 2004 through 4 p.m. on April 4, 2004.

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: February 17, 2004.

**John L. Grenier,**

*Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.*

[FR Doc. 04–4491 Filed 2–27–04; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD07–03–072]**

**RIN 1625–AA09**

## Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Boca Grande, Charlotte County, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the operating regulations and the name of the Gasparilla Island Causeway Bridge, across the Gulf Intracoastal Waterway, mile 34.3, in Boca Grande, Florida. This rule requires the bridge to open only two times an hour during the weekdays and four times an hour during certain times on the weekends and Federal holidays. This action will improve vehicular traffic movement, while not unreasonably interfering with navigation.

**DATES:** This rule is effective March 31, 2004.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–03–072] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Barry Dragon, Project Manager, Seventh Coast Guard District, Bridge Branch, (305) 415–6743.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

On July 17, 2003, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Boca Grande, Charlotte County, Florida in the **Federal Register** (68 FR 42331). We received 10 comments on this NPRM. No public hearing was requested, and none was held.

### Background and Purpose

The Gasparilla Island Bridge Authority requested a change in the regulations governing the operation and the name of the Gasparilla Island Causeway Bridge. This is a swingbridge with a vertical clearance of 9 feet at mean high water and a horizontal clearance of 81 feet. The existing regulation for this bridge is published in 33 CFR 117.287(a–1), and requires the bridge to open on signal; except that from January 1 to May 31, from 7 a.m. to 5 p.m., the bridge need open only on the hour, quarter hour, half hour and three quarter hour. The owner requested a change to the bridge operating schedule so that the bridge would open on signal, except that from 7 a.m. to 6 p.m., Monday through Friday, except Federal holidays, the bridge need open only on the hour and half hour, and, from 7 a.m. to 6 p.m. on weekends and Federal holidays, the bridge need open only on the hour, quarter hour, half hour and three quarter hour. Tugs with tows, public vessels of the United States and vessels in distress shall pass at any time. This regulation will ease vehicular traffic congestion while providing for the reasonable needs of navigation. The bridge currently opens less than two times per hour on both weekends and weekdays.

In addition, the owner requested that the name of the bridge be changed to the Boca Grande Swingbridge, as it is locally known. The local name is more descriptive of the bridge's swingbridge design.

### Discussion of Comments and Changes

We received 10 comments on the NPRM, 6 from the same company against the rule change, citing that the period of closure was too long for their vessels to wait and 4 from residents of Boca Grande in favor of the rule change.

We have carefully considered the comments and decided not to change the proposed rule. The bridge currently opens less than twice an hour, and vessels transiting the area have ample opportunity to adjust to the operating schedule. Additionally, there are numerous, sufficient safe waiting areas in the vicinity.

### 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).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The rule only affects a small percentage of vessel traffic through this bridge and provides approximately the same amount of openings that the bridge's current activity level exhibits.

### 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 may affect the following entities, some of which might be small entities: the owners or operators of vessels and vehicles intending to transit under and over the Gasparilla Bridge during the hours of 7 a.m. to 6 p.m., Monday through Friday, except Federal holidays, and 7 a.m. to 6 p.m., weekends and Federal holidays. The rule only affects a small percentage of vessel traffic through this bridge and provides approximately the same amount of openings that the bridge's current activity level exhibits.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking process. The Coast Guard offered small businesses, organizations, or governmental jurisdictions having questions concerning the rule's provisions or options for compliance, to contact the person listed in **FOR FURTHER INFORMATION CONTACT.**

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 the 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 would not create an environmental risk to health or risk to safety that might 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs 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 M16475.1D, 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 (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

**List of Subjects in 33 CFR Part 117**

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Section 117.287(a√1) is revised to read as follows:

**§ 117.287 Gulf Intracoastal Waterway.**

* * * * *

(a–1) The draw of the Boca Grande Swingbridge, mile 34.3, shall open on signal; except that, from 7 a.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need open only on the hour and half hour. On Saturday, Sunday and Federal holidays, from 7 a.m. to 6 p.m., the draw need open only on the hour, quarter hour, half hour and three quarter hour.

* * * * *

Dated: February 13, 2004.

**Harvey E. Johnson, Jr.,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 04–4492 Filed 2–27–04; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD01–04–007]**

## Drawbridge Operation Regulations; Passaic River, NJ

**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 that govern the Route 280 (Stickel) Bridge, at mile 5.8, across the Passaic River at Harrison, New Jersey. This temporary deviation will allow the bridge to remain in the closed position from 8 a.m. to 4 p.m. on March 1, 2004. This action is necessary to facilitate scheduled maintenance at the bridge.

**DATES:** This deviation is effective from 8 a.m. to 4 p.m. on March 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary Kassof, Project Officer, First Coast Guard District, (212) 668–7165.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

The Route 280 (Stickel) Bridge has a vertical clearance of 35 feet at mean high water and 40 feet at mean low water. The existing regulations listed at 33 CFR 117.739(h), require the draw to open on signal after at least a twenty four hour advance notice is given.

The bridge owner, the New Jersey Department of Transportation, requested a temporary deviation from the

drawbridge operation regulations to facilitate scheduled maintenance, testing for hazardous materials, at the bridge.

Under this temporary deviation the bridge may remain in the closed position from 8 a.m. to 4 p.m., on March 1, 2004.

The bridge has not opened for vessel traffic during the past ten years.

This deviation from the drawbridge operation 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: February 17, 2004.

**John L. Grenier,**

*Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.*

[FR Doc. 04–4490 Filed 2–27–04; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD05–04–019]**

**RIN 1625–AA00**

## Safety Zone; Ice Conditions, Upper Potomac River, Upper Chesapeake Bay and Chesapeake & Delaware Canal, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone encompassing a portion of the upper Potomac River, upper Chesapeake Bay and Chesapeake & Delaware Canal. This safety zone is necessary to provide for the safety of life, property and to facilitate commerce. Due to the threat of ice to navigation, this safety zone imposes shaft horsepower, intake, and hull restrictions on vessels that are operating within the safety zone.

**DATES:** This rule is effective from January 25, 2004, to March 15, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD05–04–019 and are available for inspection or copying at Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Dulani Woods, Coast Guard Activities Baltimore, at (410) 576–2513.

**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) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM and delaying its effective date would be contrary to public interest, since immediate action is needed to protect mariners against potential hazards associated with ice conditions on the upper Potomac River, upper Chesapeake Bay, and Chesapeake & Delaware Canal.

### Background and Purpose

During a moderate or severe winter, frozen waterways present numerous hazards to vessels. Ice in a waterway may hamper a vessel's ability to maneuver, and could cause visual aids to navigation to be submerged, destroyed or moved off station. Ice abrasions and ice pressure could also compromise a vessel's watertight integrity, and non-steel hulled vessels would be exposed to a greater risk of hull breach.

When ice conditions develop to a point where vessel operations become unsafe, it becomes necessary to impose operating restrictions to ensure the safe navigation of vessels. Captains of the Port have the authority (33 CFR part 160, subpart B) to restrict and manage vessel movement by implementing a safety zone. The Captain of the Port Baltimore is establishing a safety zone on a portion of the upper Potomac River, upper Chesapeake Bay, and the Chesapeake & Delaware Canal that will restrict access to the Canal to only those vessels with steel hulls, keel hull coolers or upper and lower intake. Also, on the Chesapeake and Delaware Canal, access will be restricted to vessels with a minimum of 3000 total shaft horsepower.

The purpose of this regulation is to promote maritime safety, and to protect the environment and mariners transiting the area from the potential hazards due to ice conditions that become a threat to navigation. This rule establishes a safety zone encompassing a portion of the upper Potomac River bounded by the Harry W. Nice Bridge (US 301) the Key Bridge, including the waters of the Anacostia River downstream from the Highway 50 Bridge. This rule also establishes a safety zone encompassing a portion of the upper Chesapeake Bay, and the Chesapeake & Delaware Canal, from a line drawn between Swan Point and North Point and the Maryland and Delaware state lines, near Chesapeake City, Maryland.

### Discussion of Temporary Final Rule

This rule limits access to the safety zone to those vessels authorized to enter and operate safely within the zone. Vessels not meeting the operating requirements established by this temporary rule will not be allowed to enter the safety zone. During an emergency situation, a vessel not meeting the operating requirements may obtain permission from the Captain of the Port Baltimore prior to entering the safety zone during the effective period. The Captain of the Port will notify the maritime community, via marine broadcasts, of the current ice conditions and the restrictions imposed under those conditions.

### Regulatory Evaluation

This temporary rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 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).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

### 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.

This will have virtually no impact on any small entities. Therefore, the Coast Guard certifies under section 605 (b) of the regulatory Flexibility Act (5 U.S.C 605(b)) that this rule will not have a significant impact on a substantial number of small entities.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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 (1–888–743–3247).

**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 this rule 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 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 concern 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. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

**Energy Effects**

We have analyzed this rule under Executive Order 12211, 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Environment**

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and record keeping 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 temporary § 165.T05–019 to read as follows:

**§ 165.T05–019 Safety zone; Ice Conditions, Upper Potomac River, Upper Chesapeake Bay, and Chesapeake & Delaware Canal, Maryland.**

(a) *Location.* (1) The following area is a safety zone: All waters located on the upper Chesapeake Bay and Chesapeake and Delaware Canal, from a line drawn between Swan Point (located at position latitude 39°08′42″ N, longitude 076°16′44″ W) and North Point (located at position latitude 39°11′43″ N, longitude 076°26′34″ W) and the Maryland and Delaware state lines (located along longitude 075°46′46″ W), near Chesapeake City, Maryland.

(2) All waters located on the upper Potomac River bounded by the Harry W. Nice Bridge (US 301) upstream to the Key Bridge, including the waters of the Anacostia River downstream from the Highway 50 Bridge to the confluence with the Potomac River.

(b) *Regulations.* (1) All vessels transiting the regulated area in the Upper Potomac River, except vessels with steel hulls are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(2) All vessels transiting the regulated area in the Upper Chesapeake Bay and the Chesapeake and Delaware Canal, except vessels with steel hulls, keel hull coolers or an upper and lower intake, and a minimum of 3000 total shaft horsepower are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(3) Coast Guard assets enforcing this safety zone can be contacted on VHF-FM marine band radio, channels 13 and 16. The Captain of the Port can be contacted on VHF–FM marine band radio channel 16 or at (410) 576–2693.

(c) *Definitions.*

*Captain of the Port* means the Commander, Coast Guard Activities Baltimore or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

*Shaft horsepower* means a measure of the actual mechanical energy per unit time delivered to a turning shaft.

*Steel Hull vessel* means only vessels with steel hulls.

(d) *Effective period.* This section is effective from January 25, 2004, to March 15, 2004.

Dated: January 25, 2004.

**Curtis A. Springer,**

*Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.*

[FR Doc. 04–4482 Filed 2–27–04; 8:45 am]

BILLING CODE 4910–15–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

**[SC–200409(a); FRL–7628–5]**

## Approval and Promulgation of State Plan for Designated Facilities and Pollutants: South Carolina

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving revisions to sections 111(d)/129 plan submitted by the South Carolina Department of Health and Environmental Control (SC DHEC) for the State of South Carolina on April 12, 2002, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Commercial and Industrial Solid Waste Incineration (CISWI) Units that Commenced Construction On or Before November 30, 1999.

**DATES:** This direct final rule is effective April 30, 2004 without further notice, unless EPA receives adverse comment by March 31, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Comments may be submitted by mail to: Joydeb Majumder, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in sections IV.B.1. through 3. of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Joydeb Majumder, at (404) 562–9121 or via electronic mail at *majumder.joydeb@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On December 1, 2000, pursuant to sections 111 and 129 of the Clean Air Act (Act), EPA promulgated new source performance standards (NSPS) applicable to new CISWIs and EG applicable to existing CISWIs. The NSPS and EG are codified at 40 CFR part 60, subparts CCCC and DDDD, respectively. Subparts CCCC and DDDD regulate the following: Particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

Section 129(b)(2) of the Act requires States to submit to EPA for approval of State Plans that implement and enforce the EG. State Plans must be at least as protective as the EG, and become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. EPA originally promulgated the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules.

This action approves the State Plan submitted by SC DHEC for the State of South Carolina to implement and enforce subpart DDDD, as it applies to existing CISWI units only.

### II. Discussion

SC DHEC submitted to EPA on April 12, 2002, the following in their 111(d)/129 State Plan for implementing and enforcing the EG for existing CISWIs under their direct jurisdiction in the State of South Carolina: An inventory of emissions for affected CISWI units; A compliance schedule, emissions limitations, operator training and qualification requirements, a management plan, performance testing, record keeping, and operating limits for affected CISWI units; Provision for State progress reports; South Carolina's legal authority to carry out section 111(d)/129 State Plan requirements and identification of enforcement mechanisms; A record of Public Hearing; and their Final Regulation for existing CISWI units.

The approval of the South Carolina State Plan is based on finding that: (1) SC DHEC provided adequate public notice of public hearings for the EG for existing CISWIs, and (2) SC DHEC also demonstrated legal authority to adopt emission standards and limitations; enforce applicable laws, regulations, and standards, and seek injunctive relief; abate pollutant emissions on an emergency basis; prevent construction or modification where emissions will prevent attainment or maintenance of a national standard; obtain information necessary to determine whether air pollution sources are in compliance, including authority to require record keeping and to make inspections and conduct tests of air pollution sources; and require owners or operators of stationary sources to install, maintain and use emission monitoring devices and to make periodic reports to the state, and to make such data available to the public.

SC DHEC cites the following references for the legal authority: The South Carolina Statues SC Code Secs. 48–1–20, –50(23) regarding adoption of emission standards and limitations; SC Code Sec. 48–1–50(1), (3), (4), (5), (11) and Secs. 48–1–120, –130, –210, –320, –330 regarding the enforcement of applicable laws, regulations, and standards, and seek injunctive relief; SC Code Sec. 48–1–290 regarding abatement of pollutant emissions on an emergency basis; SC Code Sec. 48–1–50(5), (10) and Secs. 48–1–100, –110 regarding the prevention of construction or modification where emissions will prevent attainment or maintenance of a national standard; SC Code Sec. 48–1–50(10), (20), (22), (24) regarding obtaining information necessary to determine whether air pollution sources are in compliance, including authority to require record keeping and to make inspections and conduct tests of air pollution sources; and SC Code Secs. 48–1–50(22), –270 regarding requirements for owners or operators of stationary sources to install, maintain and use emission monitoring devices and to make periodic reports to the state, and to make such data available to the public.

SC DHEC has adopted 40 CFR 60, subpart DDDD, by reference into R.61–62.60—South Carolina Designated Facility Plan and New Source Performance Standards, all emission standards and limitations applicable to existing CISWI units. These standards and limitations have been approved as being at least as protective as the Federal requirements contained in subpart DDDD for existing CISWI units.

SC DHEC submitted compliance schedule information including a note of clarification for existing CISWIs under their jurisdiction in the State of South Carolina. The clarification regarding the compliance schedule indicated that SC DHEC conducted an extensive review of its inventory of sources to determine whether or not any of these sources meet the applicability criteria set forth in the rules. The result of the review indicated that existing CISWI units in South Carolina that meet the definition of a CISWI are air curtain incinerators. The emissions guidelines, 40 CFR 60 subpart DDDD, have few requirements for air curtain incinerators. Among the most significant requirements of the rules

with respect to air curtain incinerators is a requirement to meet a 10 percent opacity limit. SC DHEC has confirmed that all air curtain incinerators readily achieve a 10 percent opacity limit by simply adopting good operating practices. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing CISWI units.

SC DHEC submitted an emissions inventory of all designated pollutants for existing CISWI units under their jurisdiction in the State of South Carolina. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing CISWI units.

SC DHEC includes its legal authority to require owners and operators of facilities to maintain records and report to their Agency the nature and amount of emissions and any other information that may be necessary to enable their Agency to judge the compliance status of the facilities in the State Plan. In the State Plan, SC DHEC also submits its legal authority to conduct periodic inspection and testing and provisions to report applicable emissions standards and emissions data to the general public.

The State Plan outlines the authority to meet the requirements of monitoring, record keeping, reporting, and compliance assurance. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing CISWI units.

SC DHEC will provide progress reports of plan implementation updates to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B. This portion of the plan has been reviewed and approved as meeting the Federal requirement for State Plan reporting.

## III. Final Action

This action approves the State Plan submitted by SC DHEC for the State of South Carolina to implement and enforce subpart DDDD, as it applies to existing CISWI units only. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective April 30, 2004 without further notice unless the Agency receives adverse comments by March 31, 2004.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 30, 2004 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## IV. General Information

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

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under SC–200409. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding Federal holidays.

2. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency. South Carolina Department of Health and Environmental Control, Bureau of Air Quality Control, 2600 Bull Street, Columbia, South Carolina 29201.

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

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 at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

### *B. How and To Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking SC–200409'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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

is placed in the official public docket. 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. *E-mail.* Comments may be sent by electronic mail (e-mail) to *majumder.joydeb@epa.gov* please include the text ''Public comment on proposed rulemaking SC–200409'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

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

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

2. *By Mail.* Send your comments to: Joydeb Majumder, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Please include the text ''Public comment on proposed rulemaking SC–200409'' in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Joydeb Majumder, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 9:00 to 3:30 excluding federal holidays.

*C. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically to EPA. 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 official public regional rulemaking file. 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 file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

*D. 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 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 your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

**V. Statutory and Executive Order Reviews**

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

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 30, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

**List of Subjects in 40 CFR Part 62**

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfuric acid plants, Waste treatment and disposal.

Dated: February 17, 2004.

**J. I. Palmer, Jr.,**

*Regional Administrator, Region 4.*

■ Chapter I, title 40 of the Code of Federal Regulation is amended as follows:

## PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

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

## Subpart PP—South Carolina

■ 2. Subpart PP is amended by adding an undesignated center heading and § 62.10190 to read as follows:

AIR EMISSIONS FROM COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATION (CISWI) UNITS—SECTION 111(d)/129 PLAN

**§ 62.10190 Identification of Sources.**

The Plan applies to existing Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999.

[FR Doc. 04–4461 Filed 2–27–04; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 70

**[Regional Docket Nos. II–2002–13–A; FRL–7627–6]**

## Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for the Al Turi Landfill

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final order on a petition to object to a State operating permit.

**SUMMARY:** This document announces that the EPA Administrator has responded to a citizen petition asking EPA to object to an operating permit issued to a facility by the New York State Department of Environmental Conservation (NYSDEC). Specifically, the Administrator has partially granted and partially denied the petition submitted by the New York Public Interest Research Group (NYPIRG) to object to the State operating permit issued to the following facility: Al Turi Landfill in Goshen, NY.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), Petitioner may seek judicial review of those portions of the petition which EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

**ADDRESSES:** You may review copies of the final order, the petition, and other supporting information at the EPA Region 2 Office, 290 Broadway, New York, New York 10007–1866. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final order for the Al Turi Landfill is available electronically at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/al_turi_decision2002.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Steven Riva, Chief, Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone (212) 637–4074.

**SUPPLEMENTARY INFORMATION:** The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to the State operating permit if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

On October 4, 2002, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit for Al Turi Landfill. The petition raises issues regarding the permit application, the permit issuance process, and the permit itself. NYPIRG asserts that: (1) the permit does not comply with 40 CFR part 70 because the permit's expiration limits the effective date of many permit conditions; and (2) the final permit fails to correct deficiencies noted in NYPIRG's comments to NYSDEC on the draft Al Turi permit, including that (i) the permit is based on an inadequate permit application in violation of 40 CFR 70.5(c); (ii) the permit is not supported by an adequate statement of basis as required by 40 CFR 70.7(a)(5); (iii) the permit fails to specify whether or not the facility must submit an accidental release plan under section 112(r) of the

CAA, 42 U.S.C. 7412(r); (iv) the permit distorts the annual compliance certification requirement of section 114(a)(3) of the CAA, 42 U.S.C. 7414(a)(3), and 40 CFR 70.6(c)(5); (v) the permit does not require prompt reporting of all deviations from permit requirements as mandated by 40 CFR 70.6(a)(3)(iii)(B); (vi) the permit's startup/shutdown, malfunction, maintenance, and upset provision violates 40 CFR part 70; (vii) the permit has an inadequate compliance schedule in violation of 40 CFR 70.5(c)(8) and 70.6(c)(3); and (viii) the permit does not assure compliance with all applicable requirements as mandated by 40 CFR 70.1(b) and 70.6(a)(1) because many individual permit conditions lack adequate periodic monitoring and are not practically enforceable.

On January 30, 2004, the Administrator issued an order partially granting and partially denying the petition on the Al Turi Landfill. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Include the New York State Implementation Plan (SIP) version of the provision that allows the NYSDEC Commissioner to excuse certain unavoidable start-up, maintenance, and malfunction violations per criteria set in 6 N.Y.C.R.R. section 201.5; (2) clarify how the requirement to maintain and repair emission control equipment applies to the equipment located at the neighboring gas conversion facility; (3) clarify how the requirement regarding reintroduction of air contaminants from an air control device to outside air applies to the control equipment at the neighboring gas conversion facility; and (4) clarify that the internal combustion engines serving as control devices are ''enclosed combustors'' rather than ''other control devices,'' that the requirements for the enclosed combustors apply to these engines, and that there are no ''other control devices'' in use for control of landfill gas emissions from this landfill. The order also explains the reasons for denying NYPIRG's remaining claims. In conjunction with the reopening, EPA has directed NYSDEC to add Maximum Achievable Control Technology (MACT) requirements and to re-examine whether or not the landfill and the gas conversion facility must be treated as a single source for non-attainment New Source Review, Prevention of Significant Deterioration, and title V applicability purposes.

Dated: February 20, 2004.

**Kathleen C. Callahan,**

*Acting Regional Administrator, Region 2.*

[FR Doc. 04–4463 Filed 2–27–04; 8:45 am]

BILLING CODE 6560–50–P

# Proposed Rules

Federal Register
Vol. 69, No. 40
Monday, March 1, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 101

**[Docket No. 2003N–0076]**

## Food Labeling: Trans Fatty Acids in Nutrition Labeling; Consumer Research to Consider Nutrient Content and Health Claims and Possible Footnote or Disclosure Statements; Reopening of the Comment Period

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Advanced notice of proposed rulemaking, reopening of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is reopening for 45 days the comment period for an advanced notice of proposed rule making (ANPRM) published in the **Federal Register** of July 11, 2003 (68 FR 41507), in which FDA is requesting information and data that potentially could be used to establish new nutrient content claims about trans fatty acids (trans fat); to establish qualifying criteria for trans fat in current nutrient content claims for saturated fatty acids and cholesterol, lean and extra lean claims, and health claims that contain a message about cholesterol-raising lipids; and, in addition, to establish disclosure and disqualifying criteria to help consumers make heart-healthy food choices. Since publication of the ANPRM on July 11, 2003, the Institute of Medicine of the National Academy of Science (IOM/NAS) issued a report entitled ''Dietary Reference Intakes: Guiding Principles for Nutrition Labeling and Fortification.'' FDA is reopening the comment period to receive comments that consider the information in the IOM/NAS report specific to this ANPRM and trans fat labeling. Information and data obtained from comments to this ANPRM may be used to help draft a proposed rule on trans fat.

**DATES:** Submit written or electronic comments by April 15, 2004.

**ADDRESSES:** Submit written comments 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*.

**FOR FURTHER INFORMATION CONTACT:** Julie Schrimpf, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1450, FAX: 301–436–2636.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of July 11, 2003 (68 FR 41507), FDA issued an ANPRM to solicit information and data that potentially could be used to establish new nutrient content claims about trans fatty acids (trans fat); to establish qualifying criteria for trans fat in current nutrient content claims for saturated fatty acids (saturated fat) and cholesterol, lean and extra lean claims, and health claims that contain a message about cholesterol-raising lipids; and, in addition, to establish disclosure and disqualifying criteria to help consumers make heart-healthy food choices. We (FDA) also requested comments on whether we should consider statements about trans fat, either alone or in combination with saturated fat and cholesterol, as a footnote in the nutrition facts panel or as a disclosure statement in conjunction with claims to enhance consumers understanding about such cholesterol-raising lipids and how to use the information to make healthy food choices. The comment period was open until October 9, 2003.

Since the end of the previous comment period, the IOM/NAS issued a report entitled ''Dietary Reference Intakes: Guiding Principles for Nutrition Labeling and Fortification'' (the 2003 report) in which the overarching goal is to have updated nutrition labeling that consumers can use to make informed dietary choices (Ref. 1). In response to requests received in this docket, we are reopening the comment period to allow interested persons the opportunity to consider the 2003 report and its discussion specific to trans fat labeling in comments submitted on the ANPRM. The IOM/NAS's dietary reference intake (DRI) 2002 report on macronutrients (Ref. 2) did not establish an estimated average requirement (EAR), an adequate intake (AI), or an acceptable macronutrient distribution range (AMDR) for trans fat because the presence in the diet meets no known nutritional need, hence there are no DRI values that can be readily used as the basis for a trans fat daily value (DV). Therefore, to establish a DV for trans fat, the 2003 report suggests the use of food composition data, menu modeling, and data from dietary surveys to estimate minimum intakes consistent with nutritionally adequate and health-promoting diets for diverse populations. It specifically suggests estimating minimal trans fat intake levels via menu modeling and then further evaluating them against achievable health-promoting diets (identified in dietary survey data) in order to arrive at appropriate recommendations for the intake of trans fat. We are requesting comment on the approach recommended in the 2003 report to estimate minimum trans fat intakes within a nutritionally adequate North American diet and use this value to establish a DV for trans fat.

The 2003 report also recommends that saturated fat and trans fat amounts be listed on separate lines, but that one numerical value for the percent DV be included in the nutrition facts panel for these two nutrients together. The 2003 report recognizes that trans fat and saturated fat are chemically distinct and acknowledges that research demonstrates different physiological effects among the fatty acids; however, both trans fat and saturated fat raise total and low density lipoprotein (LDL) cholesterol levels, which are potential contributors to coronary heart disease risk. We are requesting comment about the development of a joint DV for saturated and trans fats. If a joint DV for saturated and trans fats is pursued, we are requesting comment about the use of the same approach that the 2003 report recommended for establishing a DV for trans fat (noted previously) to establish a new DV for saturated fat that would then be added to the DV for trans fat to establish a new combined DV, or, alternatively, to directly establish a joint DV for saturated and trans fats. Additionally, we are requesting

comment about how either a DV for trans fat or a joint DV for saturated and trans fats may affect the qualifying criteria for trans fat in trans fat nutrient content claims and qualifying criteria for saturated and trans fats in current nutrient content claims for saturated fat and cholesterol, lean and extra lean claims, and health claims that contain a message about cholesterol-raising lipids as well as disclosure and disqualifying criteria for saturated and trans fats to help consumers make healthy food choices.

We are also requesting comment on whether a DV for trans fat or joint DV for saturated and trans fats would eliminate the necessity for considering a disclosure statement, in conjunction with nutrient content or health claims, concerning levels of saturated fat, trans fat, or cholesterol in a food or in the diet or a message about the role of such cholesterol-raising lipids in increasing the risk of CHD. Further, we are requesting comment on whether a DV for trans fat or a joint DV for saturated and trans fats would eliminate the need for a footnote about trans fat, either alone or in combination with saturated fat and cholesterol.

Information and data obtained from comments and from consumer studies may be used to help draft a proposed rule on trans fat to do the following: (1) Establish criteria for certain nutrient content or health claims; (2) require the use of a footnote, or other labeling approach, about one or more cholesterol-raising lipids in the nutrition facts panel; and (3) develop a DV for trans fat either alone or in combination with saturated fat for use with a joint percent DV for saturated and trans fat in the nutrition facts panel to assist consumers in maintaining healthy dietary practices. At a later date, we will solicit comment on the remaining parts of the 2003 report.

## II. How to Submit Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this ANPRM. Submit a single copy of electonic 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. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## III. Electronic Access

Persons with access to the Internet may obtain the ANPRM text or PDF at *http://www.gpoaccess.gov/fr/index.html* by browsing the ''Table of Contents from Back Issues'' and select the publication date of Friday, July 11, 2003.

## IV. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the Web site addresses, but is not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register**.

1. IOM/NAS 2003, ''Dietary Reference Intakes: Guiding Principles for Nutrition Labeling and Fortification,'' National Academy Press, Washington DC (Internet address: *http://www.iom.edu/report.asp?id=17117*).

2. IOM/NAS 2002, ''Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids,'' National Academy Press, Washington, DC (Internet address: *http://www.iom.edu/report.asp?id=4340*).

Dated: February 20, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04–4504 Filed 2–27–04; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[REG–106590–00, REG–138499–02]**

**RIN 1545–AX95; RIN 1545–BB05**

## Depreciation of MACRS Property That Is Acquired in a Like-Kind Exchange or as a Result of an Involuntary Conversion

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking; notice of proposed rule making by cross-reference to temporary regulations; notice of public hearing; and partial withdrawal of proposed regulations.

**SUMMARY:** In the rules and regulations section of this issue of the **Federal Register,** the IRS is issuing temporary regulations relating to the depreciation of property subject to section 168 of the Internal Revenue Code (MACRS property). Specifically, the temporary regulations provide guidance on how to depreciate MACRS property acquired in a like-kind exchange under section 1031 or as a result of an involuntary conversion under section 1033 when both the acquired and relinquished property are subject to MACRS in the hands of the acquiring taxpayer. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations and a partial withdrawal of proposed regulations (REG–139499–02) published July 21, 2003.

**DATES:** Written or electronic comments must be received by June 1, 2004. Outlines of topics to be discussed at the public hearing scheduled for June 3, 2004, at 10 a.m. must be received by May 13, 2004.

**ADDRESSES:** Send submissions to CC:PA:LPD:PR (REG–106590–00), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–106590–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs.* The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Charles J. Magee, (202) 622–3110; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Robin Jones, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

## Background

Temporary regulations in the rules and regulations section of this issue of the **Federal Register** amend 26 CFR part 1 relating to section 168 of the Internal Revenue Code (Code). The temporary regulations provide guidance under section 168 on how to depreciate MACRS property acquired in a like-kind exchange under section 1031 or as a result of an involuntary conversion under section 1033 when both the acquired and relinquished property are subject to MACRS in the hands of the acquiring taxpayer.

The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

## Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 3, 2004, beginning at 10 a.m. in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 13, 2004. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

## Drafting Information

The principal authors of these regulations are Alan H. Cooper, Office of the Chief Counsel (Small Business/Self Employed), and Charles J. Magee, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Partial Withdrawal of Proposed Regulations

Under the authority of 26 U.S.C. 7805, §§ 1.168(a)–1 and 1.168(b)–1 of the notice of proposed rulemaking (REG–138499–02) published in the **Federal Register** on July 21, 2003 (68 FR 43047) are withdrawn.

## Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 reads as follows:

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

§ 1.168(i)–1 also issued under 26 U.S.C. 168(i)(4).

**Par. 2.** Sections 1.168(a)–1 and 1.168(b)–1 are added to read as follows:

### § 1.168(a)–1 Modified accelerated cost recovery system.

(The text of this proposed section is the same as the text of § 1.168(a)–1T(a) and (b) published elsewhere in this issue of the **Federal Register**.)

### § 1.168(b)–1 Definitions.

(The text of this proposed section is the same as the text of § 1.168(b)–1T(a) and (b)(1) published elsewhere in this issue of the **Federal Register**.)

**Par. 3.** Section 1.168(d)–1 is amended to read as follows:

1. Revising paragraph (b)(3)(i) and (ii).
2. Adding paragraph (d)(3).

The revision and addition read as follows:

### § 1.168(d)–1 Applicable conventions—half-year and mid-quarter conventions.

* * * * *

(b) * * *

(3) * * *

(i) and (ii) (The text of the proposed amendment to § 1.168(d)–1(b)(3)(i) and (ii) is the same as the text of § 1.168(d)–1T(b)(3)(i) and (ii) published elsewhere in this issue of the **Federal Register.**)

* * * * *

(d) * * *

(3) (The text of the proposed amendment to § 1.168(d)–1(d)(3) is the same as the text of § 1.168(d)–1T(d)(3) published elsewhere in this issue of the **Federal Register**.)

Par. 4. Section 1.168(i)–0 is amended by revising the entries for § 1.168(i)–1(d)(2), (e)(3)(i), (e)(3)(v) and (vi), (f)(1), (f)(2), (f)(2)(i), (i), (j), and (l) to read as follows:

### § 1.168(i)–0 Table of contents for the general asset account rules.

* * * * *

### § 1.168(i)–1 General asset accounts.

* * * * *

(d) * * *

(2) (The text of the proposed entry for § 1.168(i)–1(d)(2) is the same as the entry for § 1.168(i)–1T(d)(2) published elsewhere in this issue of the **Federal Register**.)

* * * * *

(e) * * *

(3) * * *

(i) (The text of the proposed entry for § 1.168(i)–1(e)(3)(i) is the same as the entry for § 1.168(i)–1T(e)(3)(i) published elsewhere in this issue of the **Federal Register**.)

* * * * *

(vi) (The text of the proposed entries for § 1.168(i)–1(e)(3)(vi) is the same as the entries for § 1.168(i)–1T(e)(3)(vi) published elsewhere in this issue of the **Federal Register**.)

* * * * *

(f) * * *

(f)(1) through (f)(2)(i) (The text of the proposed entries for § 1.168(i)–1(f)(1) through (f)(2)(i) is the same as the text of the entries for § 1.168(i)–1T(f)(1) through (f)(2)(i) published elsewhere in this issue of the **Federal Register**.)

* * * * *

(i) and (j) (The text of the proposed entries for § 1.168(i)–1(i) and (j) is the same as the entries for § 1.168(i)–1T(i) and (j) published elsewhere in this issue of the **Federal Register**.)

* * * * *

(l) (The text of the proposed entry for § 1.168(i)–1(l) is the same as the entry for § 1.168(i)–1T(l) published elsewhere in this issue of the **Federal Register**.)

Par. 5. Section 1.168(i)–1 is amended by revising paragraphs (c)(2)(ii)(E), (d)(2), (e)(3)(i), (e)(3)(iii)(B)(4), (e)(3)(vi), (f)(1), (f)(2)(i), (i), (j), and (l) to read as follows:

### § 1.168(i)–1 General asset accounts.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(E) (The text of the proposed amendment to § 1.168(i)–1(c)(2)(ii)(E) is the same as the text of § 1.168(i)–1T(c)(2)(ii)(E) published elsewhere in this issue of the **Federal Register**.)

* * * * *

(d) * * *

(2) (The text of the proposed amendment to § 1.168(i)–1(d)(2) is the same as the text of § 1.168(i)–1T(d)(2) published elsewhere in this issue of the **Federal Register**.)

* * * * *

(e) * * *

(3) * * *

(i) (The text of the proposed amendment to § 1.168(i)–1(e)(3)(i) is the same as the text of § 1.168(i)–1T(e)(3)(i) published elsewhere in this issue of the **Federal Register**.)

* * * * *

(iii) * * *

(B) * * *

(4) (The text of the proposed amendment to § 1.168(i)–1(e)(3)(iii)(B)(4) is the same as the text of § 1.168(i)–1T(e)(3)(iii)(B)(4) published elsewhere in this issue of the **Federal Register**.)

* * * * *

(e)(3)(vi) (The text of the proposed amendment to § 1.168(i)–1(e)(3)(vi) is the same as the text of § 1.168(i)–1T(e)(3)(vi) published elsewhere in this issue of the **Federal Register**.)

* * * * *

(f)(1) and (2) (The text of the proposed amendment to § 1.168(i)–1(f)(1) and (2) is the same as the text of § 1.168(i)–1T(f)(1) and (2) published elsewhere in this issue of the **Federal Register**.)

* * * * *

(i) and (j) (The text of the proposed amendment to § 1.168(i)–1(i) and (j) is the same as the text of § 1.168(i)–1T(i) and (j) published elsewhere in this issue of the **Federal Register**.)

* * * * *

(l) (The text of the proposed amendment to § 1.168(i)–1(l) is the same as the text of § 1.168(i)–1T(l)(1) through (l)(3)(i) published elsewhere in this issue of the **Federal Register**.)

Par. 6. Section 1.168(i)–5 is added to read as follows:

**§ 1.168(i)–5 Table of contents.**

(The text of this proposed section is the same as the text of § 1.168(i)–5T published elsewhere in this issue of the **Federal Register**.)

Par. 7. Section 1.168(i)–6 is added to read as follows:

**§ 1.168(i)–6 Like-kind exchanges and involuntary conversions.**

(The text of this proposed section is the same as the text of § 1.168(i)–6T published elsewhere in this issue of the **Federal Register**.)

Par. 8. Section 1.168(k)–1 is added to read as follows:

**§ 1.168(k)–1 Additional first year depreciation deduction.**

(a) through (f)(5)(ii)(F)(*1*) [Reserved]. For further guidance, *see* § 1.168(k)–1T(a) through (f)(5)(ii)(F)(*1*).

(*2*) (The text of the proposed amendment to § 1.168(k)–1(f)(5)(ii)(F)(*2*) is the same as the text of § 1.168(k)–1T(f)(5)(ii)(F)(*2*) published elsewhere in this issue of the **Federal Register**.)

(f)(5)(ii)(G) through (f)(5)(iv) [Reserved]. For further guidance, *see* § 1.168(k)–1T(f)(5)(ii)(G) through (f)(5)(iv).

(v) (The text of the proposed amendment to § 1.168(k)–1(f)(5)(v) is the same as the text of § 1.168(k)–1T(f)(5)(v) published elsewhere in this issue of the **Federal Register**.)

(f)(6) through (f)(9) [Reserved]. For further guidance, *see* § 1.168(k)–1T (f)(6) through (f)(9).

(g) *Effective date.* (1) (The text of the proposed amendment to § 1.168(k)–1(g)(1) is the same as § 1.168(g)–1T(g)(1)(i) published elsewhere in this issue of the **Federal Register**.)

(2) [Reserved]. For further guidance, *see* § 1.168(k)–1T(g)(2).

(3)(i) and (ii) (The text of the proposed amendment to § 1.168(k)–1(g)(3)(i) and (ii) is the same as the text of § 1.168(k)–1T(g)(3)(i) and (ii) published elsewhere in this issue of the **Federal Register**.)

(g)(4) [Reserved]. For further guidance, *see* § 1.168(k)–1T(g)(4).

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 04–3993 Filed 2–27–04; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD01–03–115]**

**RIN 1625–AA09**

## Drawbridge Operation Regulations; Mystic River, CT

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the drawbridge operating regulations for the U.S. 1 Bridge, mile 2.8, across the Mystic River at Mystic, Connecticut. This notice of proposed rulemaking would change the time the U.S. 1 Bridge must open from May 1 through October 31, from a quarter past the hour to twenty minutes before the hour and also removes obsolete language from the regulations. This action is expected to improve transits through the bridges across the Mystic River at Mystic, Connecticut.

**DATES:** Comments must reach the Coast Guard on or before April 30, 2004.

**ADDRESSES:** You may mail comments to Commander (obr), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, New York, 10004, or deliver them to the same address between 7 a.m. and 3 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 rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–03–115), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time

and place announced by a later notice in the **Federal Register.**

**Background and Purpose**

The U.S. 1 Bridge has a vertical clearance of 4 feet at mean high water and 7 feet at mean low water in the closed position. The existing regulations, listed at 33 CFR 117.211(b), require the bridge to open on signal with a maximum delay of up to twenty minutes; except that: from May 1 through October 31, from 7:15 a.m. to 7:15 p.m., the draw need only open once an hour, at quarter past the hour. From November 1 through April 30, from 8 p.m. to 4 a.m., the draw must open on signal after a six-hour advance notice is given.

The Coast Guard received a complaint in the spring of 2003, from a mariner stating that the Mystic River U.S. 1 Bridge was not opening as required by the existing operation regulations at the designated 12:15 p.m. opening period.

The Coast Guard convened a meeting attended by the bridge owner, Connecticut Department of Transportation, the Mystic Connecticut Chamber of Commerce, and several commercial marine operators. It was discovered at that meeting that the bridge owner was not opening the U.S. 1 Bridge at 12:15 p.m. because they believed that the operation regulations had been changed in 1992; however, the Coast Guard only authorized a 90-day test deviation in 1992, to help determine if the elimination of the 12:15 p.m. opening was a reasonable proposal.

The Mystic Connecticut Chamber of Commerce told the Coast Guard at the 2003 meeting, that they believed that opening the U.S. 1 Bridge during the noontime period each day would cause severe vehicular traffic delays in downtown Mystic.

The Coast Guard decided to conduct another temporary deviation for 90 days to determine if opening the U.S. 1 Bridge during the noontime period would adversely affect vehicular traffic. That 90-day temporary deviation, published at (68 FR 41716), was in effect from July 18, 2003 through October 15, 2003.

In Addition, the Mystic Connecticut Chamber of Commerce, Marine Affairs Committee requested that the U.S. 1 Bridge opening times during the 2003 temporary test deviation be moved from a quarter past each hour to twenty minutes before each hour to help marine traffic transit better through the U.S. 1 Bridge and the downstream railroad bridge since the downstream railroad bridge is more frequently closed to marine traffic during the first half of each hour as a result of the rail traffic schedule.

Shifting the U.S. 1 Bridge opening period to twenty minutes before each hour instead of at a quarter past each hour was expected to permit marine traffic to transit through both bridges with fewer delays resulting from rail traffic.

After the 2003 test deviation concluded we reviewed the vehicular traffic counts, bridge opening logs, and all the on-scene observations taken by Coast Guard personnel. We determined, after review of all the above data, that the noontime bridge openings did not adversely affect vehicular traffic. However, shifting the U.S. 1 Bridge opening periods from a quarter past each hour to twenty minutes before each hour did produce very satisfactory results by permitting marine traffic to transit through the two bridges with fewer delays. As a result of the above information the Coast Guard determined that the U.S. 1 Bridge opening schedule should be changed to require the U.S. 1 Bridge to open on signal at twenty minutes before each hour, instead of a quarter past each hour during the summer months.

In addition, this proposed rule would also eliminate the provision in the existing regulations at § 117.211(b) that permits openings at the U.S. 1 Bridge to be delayed up to 20 minutes after a request is given. There is no present justification to delay marine traffic for up to twenty minutes. Also, the provision in the existing regulations at 33 CFR 117.211(a)(3), that requires the draw to open immediately for public vessels of the United States, state and local vessels used for public safety, and vessels in emergency situations, will be eliminated from the regulations because it is now listed at 33 CFR 117.31, Subpart (A), General Requirements.

However, the provision that allows commercial vessels to transit immediately at any time and the provision that allows bridge openings to be delayed up to eight minutes for the passage of rail traffic, shall remain in effect.

**Discussion of Proposal**

This proposed change would change the current operation schedule of the U.S. 1 Bridge at Mystic, Connecticut. Currently, the U.S. 1 Bridge is required to open on signal with a maximum delay of twenty minutes, with the exception of opening at a quarter past the hour from 7:15 a.m. to 7:15 p.m. from May 1 through October 31. These proposed changes would require the bridge to open on signal, without delay, with the exception of opening on signal only twenty minutes before the hour starting from 7:40 a.m. to 6:40 p.m. from May 1, through October 31.

Additionally, this proposed rule would eliminate portions of the current text of 33 CFR 117.211(a)(3) since the same requirement is stated in the regulations at 33 CFR 117.31.

The period from November 1 through April 30, (b)(2), will not be changed, and will continue to require at least a six-hour advance notice from 8 p.m. through 4 a.m. for bridge openings during the winter months.

**Regulatory Evaluation**

This proposed 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 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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under the regulatory policies and procedures of DHS, is unnecessary.

This conclusion is based on the fact that the U.S. 1 Bridge will continue to open for vessel traffic hourly at twenty minutes before the hour instead of quarter past each hour.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed 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 section 5 U.S.C. 605(b), that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the U.S. 1 Bridge will continue to open hourly for vessel traffic at twenty minutes before each hour instead of quarter past each hour.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it

qualifies and how and to what degree this rule would economically affect it.

**Collection of Information**

This proposed rule would call 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

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

**Indian Tribal Governments**

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Environment**

We have analyzed this proposed rule under Commandant Instruction M16475.1D, 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 (32)(e), of the Instruction, from further environment documentation because it has been determined that the promulgation of operating regulations or procedures for drawbridges are categorically excluded.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.211, revise paragraphs (a)(3), (b) introductory text and (b)(1) to read as follows:

**§ 117.211 Mystic River.**

(a) * * *

(3) Commercial vessels shall be passed immediately at any time; however, the opening may be delayed up to eight minutes to allow trains, which have entered the drawbridge block and are scheduled to cross the bridge without stopping, to clear the block.

* * * * *

(b) The draw of the U.S. 1 Bridge, mile 2.8, at Mystic, shall open on signal except:

(1) From May 1 through October 31, from 7:40 a.m. to 6:40 p.m., the draw need only open hourly at twenty minutes before the hour.

* * * * *

Dated: February 17, 2004.

**John L. Grenier,**

*Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.*

[FR Doc. 04–4489 Filed 2–27–04; 8:45 am]

BILLING CODE 4910–15–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 62

**[SC–200409(b); FRL–7628–6]**

## Approval and Promulgation of State Plan for Designated Facilities and Pollutants: South Carolina

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the section 111(d)/129 State Plan submitted by the South Carolina Department of Health and Environmental Control (SC DHEC) for the State of South Carolina on April 12, 2002, for implementing and enforcing the Emissions Guidelines applicable to existing Commercial and Industrial Solid Waste Incinerators. The Plan was submitted by SC DHEC to satisfy Federal Clean Air Act requirements. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second

comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments must be received on or before March 31, 2004.

**ADDRESSES:** Comments may be submitted by mail to: Joydeb Majumder, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, **SUPPLEMENTARY INFORMATION** (sections IV.B.1. through 3.) which is published in the Rules Section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Joydeb Majumder, at (404) 562–9121 or via electronic mail at *majumder.joydeb@epa.gov*.

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

Dated: February 17, 2004.

**J. I. Palmer, Jr.,**

*Regional Administrator, Region 4.*

[FR Doc. 04–4462 Filed 2–27–04; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

## 49 CFR Parts 172, 173, 174, 175, 176, 177, and 178

**[Docket No. RSPA–04–17167 (Notice No. 04–02)]**

## Regulatory Flexibility Act Section 610 and Plain Language Reviews

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Notice of regulatory review; request for comments.

**SUMMARY:** RSPA requests comments on the economic impact of its regulations on small entities. As required by the Regulatory Flexibility Act and as published in DOT's Semi-Annual Regulatory Agenda, we are analyzing the rules applicable to the transportation of explosives and of hazardous materials in cylinders to identify requirements that may have a significant economic impact on a substantial number of small entities. We also request comments on ways to make these regulations easier to read and understand.

**DATES:** Comments must be received by June 1, 2004.

**ADDRESSES:** Address written comments to the Dockets Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Identify the docket number RSPA–04–17167 at the beginning of your comments and submit two copies. If you want to receive confirmation of receipt of your comments, include a self-addressed, stamped postcard. You can also submit comments by e-mail by accessing the Dockets Management System on the Internet at *http://dms.dot.gov.* or by fax to (202) 366–3753.

The Dockets Management System is located on the Plaza Level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. In addition, you can review comments by accessing the Dockets Management System at *http://dms.dot.gov.*

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, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Susan Gorsky, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, telephone (202) 366–8553; or Donna O'Berry, Office of Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, telephone (202) 366–4400.

**SUPPLEMENTARY INFORMATION:**

### I. Section 610 of the Regulatory Flexibility Act

#### *A. Background and Purpose*

Section 610 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires agencies to conduct periodic reviews of rules that have a significant economic impact on a substantial number of small business entities. The purpose of the review is to determine whether such rules should be continued without change, amended, or rescinded, consistent with the objectives of applicable statutes, to minimize any significant economic impact of the rules on a substantial number of such small entities.

#### B. Review Schedule

The Department of Transportation (DOT) published its Semiannual Regulatory Agenda on December 9, 2002, listing in Appendix D (67 FR 74799) those regulations that each operating administration will review under section 610 during the next 12 months. Appendix D also contains DOT's 10-year review plan for all of its existing regulations.

The Research and Special Programs Administration (RSPA, we) has divided its Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) into 10 groups by subject area. Each group will be reviewed once every 10 years, undergoing a two-stage process—an Analysis Year and Section 610 Review Year. For purposes of the review announced in this notice, the Analysis year began in December 2002, coincident with the Fall 2002 publication of the Semiannual Regulatory Agenda, and will conclude in the fall of 2003.

During the Analysis Year, we will analyze each of the rules in a given year's group to determine whether any rule has a significant impact on a substantial number of small entities and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. In each fall's Regulatory Agenda, we will publish the results of the analyses we completed during the previous year. For rules that have a negative finding, we will provide a short explanation. For parts, subparts, or other discrete sections of rules that do have a significant impact on a substantial number of small entities, we will announce that we will be conducting a formal section 610 review during the following 12 months.

The section 610 review will determine whether a specific rule should be revised or revoked to lessen its impact on small entities. We will consider: (1) The continued need for the rule; (2) the nature of complaints or comments received from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other federal rules or with state or local government rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions,

or other factors have changed in the area affected by the rule. At the end of the Review Year, we will publish the results of our review.

The following table shows the 10-year analysis and review schedule:

RSPA SECTION 610 REVIEW PLAN—1999–2009

| Title | Regulation | Analysis year | Review year |
|---|---|---|---|
| Incident reports | §§ 171.15 and 171.16 | 1988 | N/A |
| Hazmat safety procedures | Parts 106 and 107 | 1999 | N/A |
| General Information, Regulations, and Definitions | Part 171. | | |
| Carriage by Rail and Highway | Parts 174 and 177 | 2000 | N/A |
| Carriage by Vessel | Part 176 | 2001 | N/A |
| Radioactive Materials | Parts 172, 173, 174, 175, 176, 177, 178 | 2002 | 2003 |
| Explosives | Parts 172, 173, 174, 176, 177 | 2003 | 2004 |
| Cylinders | Parts 172, 173, 174, 176, 177, 178, 180. | | |
| Shippers—General Requirements for Shipments and Packagings | Part 173 | 2004 | 2005 |
| Specifications for Non-bulk Packagings | Part 178 | 2005 | 2006 |
| Training and planning grants | Part 110. | | |
| Specifications for Bulk Packagings | Parts 178, 179, 180 | 2006 | 2007 |
| Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements. | Part 172 | 2007 | 2008 |
| Carriage by Aircraft | Part 175. | | |

*C. Regulations Under Analysis*

During Year 6 (2003–2004), the Analysis Year, we will conduct a preliminary assessment of the rules in 49 CFR Parts 172, 173, 174, 176, 177, 178, and 180 applicable to explosives transportation and to the transportation of hazardous materials in cylinders. The review will include the following parts and subparts applicable to the transportation of explosives:

| Subpart | Title |
|---|---|
| **Part 172** | |
| Subpart B | Table of Hazardous Materials and Special Provisions. |
| Subpart C | Shipping Papers. |
| Subpart D | Marking. |
| Subpart E | Labeling. |
| Subpart F | Placarding. |
| **Part 173** | |
| Subpart C | Definitions, Classification, and Packaging for Explosives. |
| **Part 174** | |
| Subpart E | Class 1 (Explosive) Materials. |
| **Part 176** | |
| Subpart G | Detailed Requirements for Class 1 (Explosive) Materials. |
| **Part 177** | |
| Subpart B: | Loading and Unloading: |
| § 177.835 | Class 1 (explosive) Materials. |

The review will include the following parts and subparts applicable to the transportation of hazardous materials in cylinders:

| Subpart | Title |
|---|---|
| **Part 172** | |
| Subpart B | Table of Hazardous Materials and Special Provisions. |
| Subpart C | Shipping Papers. |
| Subpart D | Marking. |
| Subpart E | Labeling. |
| Subpart F | Placarding. |

| Subpart | Title |
|---|---|
| **Part 173** | |
| Subpart B: | |
| § 173.40 | General packaging requirements for toxic materials packaged in cylinders. |
| Subpart E | Non-bulk Packaging for Hazardous Materials Other than Class 1 and Class 7. |
| Subpart G | Gases; Preparation and Packaging. |
| **Part 174** | |
| Subpart F | Detailed Requirements for Class 2 (Gases) Materials. |
| **Part 176** | |
| Subpart H | Detailed Requirements for Class 2 (Compressed Gas) Materials. |
| **Part 177** | |
| Subpart B: | Loading and Unloading: |
| § 177.840 | Class 2 (gases) Materials |
| § 177.841 | Division 6.1 (poisonous) and Division 2.3 (poisonous gas) materials. |
| **Part 178** | |
| Subpart C | Specifications for Cylinders. |
| **Part 180** | |
| Subpart C | Qualification, Maintenance, and Use of Cylinders. |

We are seeking comments on whether any requirements for explosives transportation or the transportation of hazardous materials in cylinders in Parts 172, 173, 174, 176, 177, and 178 have a significant impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. If your business or organization is a small entity and if any of the transportation requirements applicable to the transportation of explosives or cylinders in Parts 172, 173, 174, 176, 177, and 178 has a significant economic impact on your business or organization, please submit a comment explaining how and to what degree these rules affect you, the extent of the economic impact on your business or organization, and why you believe the economic impact is significant.

## II. Plain Language

### *A. Background and Purpose*

Plain language helps readers find requirements quickly and understand them easily. Examples of plain language techniques include:

(1) Undesignated center headings to cluster related sections within subparts.

(2) Short words, sentences, paragraphs, and sections to speed up reading and enhance understanding.

(3) Sections as questions and answers to provide focus.

(4) Personal pronouns to reduce passive voice and draw readers into the writing.

(5) Tables to display complex information in a simple, easy-to-read format.

For an example of a rule drafted in plain language, you can refer to RSPA's final rule entitled ''Revised and Clarified Hazardous Materials Safety Rulemaking and Program Procedures,'' which was published June 25, 2002 (67 FR 42948). This final rule revised and clarified the hazardous materials safety rulemaking and program procedures by rewriting 49 CFR Part 106 and Subpart A of Part 107 in plain language and creating a new part 105 that contains definitions and general procedures.

### *B. Review Schedule*

In conjunction with our section 610 reviews, we will be performing plain language reviews of the HMR over a 10-year period on a schedule consistent with the section 610 review schedule. Thus, our review of requirements in Parts 172, 173, 174, 176, 177, and 178 applicable to the transportation of explosives and of hazardous materials in cylinders will also include a plain language review to determine if the regulations can be reorganized and/or rewritten to make them easier to read, understand, and use. We encourage interested persons to submit draft regulatory language that clearly and simply communicates regulatory requirements, and other recommendations, such as putting information in tables or consolidating regulatory requirements, that may make the regulations easier to use.

Issued in Washington, DC on February 23, 2004 under authority delegated in 49 CFR Part 106.

**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety Research and Special Programs Administration.*

[FR Doc. 04–4401 Filed 2–27–04; 8:45 am]

BILLING CODE 4910–60–P

# Notices

Federal Register

Vol. 69, No. 40

Monday, March 1, 2004

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

### Submission for OMB Review; Comment Request; Correction

February 25, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

The following notice was inadvertently published in the **Federal Register** on February 24, 2004 (Volume 69, Number 36) pg. 8369–8376:

**Farm Service Agency**

*Title:* Request for Electronic Loan Deficiency Payment Services.

*OMB Control Number:* 0560–0220.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 04–4455 Filed 2–27–04; 8:45 am]

BILLING CODE 3410–01–M

## DEPARTMENT OF AGRICULTURE

### Cooperative State Research, Education, and Extension Service

### Decision Support, Education, and Workforce Development Through Geospatial Extension Specialists Program: Amendment to the Fiscal Year 2004 Request for Applications and Request for Input

**AGENCY:** Cooperative State Research, Education, and Extension Service, USDA.

**ACTION:** Notice of fiscal year 2004 request for applications; and request for input; correction and extension of deadline.

**SUMMARY:** This notice corrects the fiscal year (FY) 2004 Request for Applications and Request for Input for the Decision Support, Education, and Workforce Development through Geospatial Extension Specialists (GES) Program published at 68 FR 67133, December 1, 2003. This correction removes Ohio from the list of states that have already established GES Programs permitting eligible entities to receive GES Program funds to establish new GES positions in Ohio. Furthermore, this notice extends the deadline for receipt of applications to April 1, 2004.

**DATES:** This amendment extends the original deadline for receipt of applications as set forth previously in the RFA published on December 1, 2003 (68 FR 67133). Applications submitted in response to the FY 2004 RFA for the GES Program must be received by close of business on April 1, 2004 (5 p.m. eastern standard time). Applications received after this deadline will not be considered for funding.

**FOR FURTHER INFORMATION CONTACT:** Greg Crosby; National Program Leader; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2210; 1400 Independence Avenue, SW.; Washington, DC 20250–2210; Telephone: (202) 401–6050; Fax: (202) 401–1706; E-mail: *gcrosby@csrees.usda.gov*.

**Correction**

1. In the **Federal Register** of December 1, 2003, in FR Doc. 03–29761, on page 67135, in the third column, correct the paragraph entitled ''New Position'' to read:

1. New Position

This is an application from a state where a new Geospatial Extension Specialist position has been created (a state other than the ten listed in the Program Description portion of this notice). New Position applications may request a maximum of $100,000 per year for up to three (3) years.

2. On page 67136, in the second column, correct the first paragraph to read:

GES programs have been established in ten states over the last three years. These programs, in Alabama, Arizona, Connecticut, Mississippi, Nebraska, New Hampshire, North Dakota, Oklahoma, Utah and Virginia, are partnerships between land-grant institutions and the NASA SGC within the states. Geospatial Extension Specialist positions are located within the regular Cooperative Extension Service (CES) structure in each participating state, and provide technical support to CES agents and clients (as do other extension specialists). They are eligible for tenure or other comparable professional appointment, and are expected to draw on existing expertise available through the land-grant system, SGC, and the network of NASA Principal Investigators.

Done at Washington, DC, this 25th day of February 2004.

**Colien Hefferan,**

*Administrator, Cooperative State Research, Education, and Extension Service.*

[FR Doc. 04–4594 Filed 2–27–04; 8:45 am]

BILLING CODE 3410–22–P

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities: Proposed Collection; Comment Request; FNS–250, Food Coupon Accountability Report

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collection contained in form FNS–250, Food Coupon Accountability Report.

**DATES:** Written comments must be submitted on or before April 30, 2004.

**ADDRESSES:** Send comments and requests for copies of this information collection to: Lizbeth Silbermann, Branch Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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

**FOR FURTHER INFORMATION CONTACT:** Lizbeth Silbermann, (703) 305–2523.

**SUPPLEMENTARY INFORMATION:**

*Title:* Food Coupon Accountability Report.

*OMB Number:* 0584–0009.

*Form Number:* FNS–250.

*Expiration Date:* 08/31/2004.

*Type of Request:* Revision of a currently approved collection.

*Abstract:* Section 7(d) of the Food Stamp Act of 1977, as amended, (7 U.S.C.2016(d)) and 7 CFR 274.4(b)(1) of the Food Stamp Program regulations require that State agencies report on the coupon inventories of coupon issuers, bulk storage points, and claims collection points. The reporting is done on Form FNS–250, Food Coupon Accountability Report. These reports must be submitted to the Food and Nutrition Service monthly. State agencies must review the reports for accuracy, completeness and reasonableness. Supporting documentation must be included when appropriate and the reports must reach FNS no later than 90 days following the end of each report month. The FNS–250 report reflects beginning inventories, end-of-month inventories, receipt of coupons, transfers of coupons, coupons returned to inventory, and credits. Once all of the States become implemented in the EBT Program and coupons are phased out, this form will become obsolete.

*Affected Public:* State and local government employees or contractors.

*Estimated Number of Respondents:* 246.

*Estimated Number of Responses per respondent:* 12.

*Estimated Time per Response:* 3 hours.

*Estimated Total Annual Burden:* 8,856 hours annually.

Dated: February 18, 2004.

**Roberto Salazar,**

*Administrator.*

[FR Doc. 04–4442 Filed 2–27–04; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Lost Granite Squirrel, Colville National Forest, Pend Oreille and Stevens Counties, WA

**AGENCY:** Forest Service, USDA.

**ACTION:** Cancellation notice.

**SUMMARY:** On February 28, 2002, a Notice of Intent (NOI) to prepare an environmental impact statement for Lost Granite Squirrel was published in the **Federal Register** (67 FR 9248). Since the project proposed action has been postponed, and funding situations have changed, the 2002 NOI is hereby rescinded.

**FOR FURTHER INFORMATION CONTACT:** Lynn Kaney, District Ranger, or Amy Dillon, Interdisciplinary Team Leader, 315 North Warren, Newport, Washington 99156 (phone 509–447–7300).

Dated: February 3, 2004.

**Allen Garr,**

*Acting Forest Supervisor.*

[FR Doc. 04–4446 Filed 2–27–04; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Colville National Forest, WA; Growden Dam and Sherman Creek Restoration

**AGENCY:** Forest Service, USDA.

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

**SUMMARY:** The Forest Service, USDA, will prepare an environmental impact statement (EIS) on a proposal to remove Growden Dam and improve trout habitat on approximately 3 miles of Sherman Creek. Growden Dam was built in 1937 by the Civilian Conservation Corp as a recreational pond. It serves no irrigation, hydropower, or flood control purpose. The pond has filled in with sediment and poses a safety risk if it washes out. The Proposed Action will be in compliance with the 1988 Colville National Forest Land and Resource Management Plan (Forest Plan) as amended, which provides the overall guidance for management of this area. The Proposed Action is within the Sherman Creek drainage on the Three Rivers Ranger District. The project area would be located from 12 to 16 miles west of Kettle Falls, Ferry County, Washington along State Highway 20. Project implementation is scheduled for fiscal year 2005. The Colville National Forest invites written comments and suggestions on the scope of the analysis. The agency will give notice of the full environmental analysis and decision-making process so interested and affected people may be able to participate and contribute in the final decision.

**DATES:** Comments concerning the scope of the analysis must be received by March 26, 2004. The draft environmental impact statement is expected August, 2004 and the final environmental impact statement is expected November 2004.

**ADDRESSES:** Send written comments and suggestions concerning this proposal to Sherri Schwenke, District Ranger, Three Rivers District, 255 West 11th, Kettle Falls, WA 99141. Comments may be submitted electronically by sending them to *comments-pacificnorthwest-colville-threerivers@fs.fed.us.* Comments may also be sent by FAX (509–738–7701). Include your name and mailing address with your comments so

documents pertaining to this project may be mailed to you.

**FOR FURTHER INFORMATION CONTACT:** For further information, mail correspondence to Sherri Schwenke, District Ranger, Three Rivers District, 255 West 11th, Kettle Falls, WA 99141 (phone 509–738–7700), or to Karen Honeycutt, Project Leader, 765 South Main Street, Colville, WA 99114, (phone 509–684–7000 or e-mail *khoneycutt@fs.fed.us*). Information about the project will be kept up to date on the Colville National Forest Web site at *http://www.fs.fed.us/r6/colville/*.

**SUPPLEMENTARY INFORMATION:**

## Purpose and Need for Action

Growden Dam was built in 1937 as a recreational pond. By 1953, the pond had filled with sediment. The dam is not used for irrigation, flood control, or hydropower. The Growden Dam and Sherman Creek Restoration project is proposed to meet specific purposes and needs.

There is a need to reduce the safety risk from a dam failure. At the time of construction, the pond was 20 feet deep at the dam and approximately 6 acres. In the early 1950's, the Sherman Creek Highway was constructed. During construction of the highway, the dam filled with sediment in three years. This turned the pond into a wetland. The sediment buried the cleanout structure. The outlet structure is a drop structure. The dam has a high risk of failure and would cause severe downstream damage if it washed out.

The Washington Department of Ecology's Dam Safety Section surveyed the dam in 1991. Their analysis revealed that under extreme flood conditions, the dam does not meet current Dam Safety Section Standards. Should a dam failure occur, two permanent residences and several vacation cabins would be inundated. The dam almost washed out in the flood of 1998. This would have caused extensive damage to the channel and highway. Approximately 8 miles of stream would be affected. There are also 3 bridges that would probably wash out. There is a Washington State Department of Fish and Wildlife hatchery at the mouth of Sherman Creek. A dam breach would cause significant damage to the hatchery.

There is also a need to reduce downstream stream temperatures to meet Washington State Water Quality temperature standards. Currently as the stream flows through the wetland the maximum water temperatures exceed state standards. In 1999, the Washington Department of Ecology funded a temperature study on Sherman Creek. Two areas showed up as the main contributors to high temperatures. These are Growden Dam and the lower reach of the South Fork of Sherman Creek. Above the influence of the dam, the maximum water temperature was 15.5 degrees C in 1999. At the outlet of the dam the maximum water temperature was 18 degrees C during the same time. South Fork of Sherman Creek adds another 2 degrees C to this, which brought the maximum water temperature to 20 degrees C.

Removing the dam would restore sediment and bed load transport from above Growden to below Growden. The dam also blocks the bed load transport. This has caused portions of the downstream channel to degrade and detach from the floodplain. The stream is no longer able to store wood in these areas. The flows are faster through these areas, causing the debris to be washed out. Bank erosion is increasing in these areas because of the lack of woody debris and floodplain connectivity. Eroding banks are between 5 to 60 feet high. Even though there is sediment coming in from the banks, gravels for spawning are limited. The gravels are being either trapped by the dam or flushed through because of lack of structure to store the gravels.

There is a need to increase sediment storage downstream of Growden to accept new sediment and bedload. In 1998, Sherman Creek was surveyed for habitat parameters. Large woody debris and the number of pools were low. This was caused both by a stream cleanout in 1969 and 1970 and by the dam blocking bed load transport. The downstream channel has downcut and detached from the floodplain. The stream is no longer able to store wood and sediment in these areas. The flows are faster through these areas, causing the debris to be washed out. Without the debris the stream is not able to store sediment. The stream is also not able to reach the larger floodplain that existed before the channel downcut. The floodplain is the most desirable place for sediment deposition. Even with substantial efforts to remove the sediment and restore the historic channel, there will be a short term pulse of sediment delivered to the downstream reaches. The increase in flood plain and stream bank roughness created by LWD (large woody debris) placement will collect and facilitate routing of excess sediment generated by dam decommissioning.

Removal of the dam will restore fish passage through the Growden Reach. The drop structure is a barrier to fish movement. Redband trout and westslope cutthroat trout populations are present in the watershed. The Forest Service has listed these species as sensitive. One of the main populations occurs just below the dam in Lane Creek. This population does not have access to the prime habitat found above the dam.

This project is designed to maintain or restore fully functional and stable riparian and aquatic systems. The Forest Plan has goals of high quality aquatic habitat, water, and riparian resources (Forest Plan Record of Decision Page 4, and Forest Plan page 4–2). The INFISH Forest Plan Amendment has goals of maintaining or restoring stream channel integrity, channel processes, and sediment regime, and diversity and productivity of native and desired non-native plant communities (Inland Native Fish Strategy Attachment A, pages A–1, A–2).

## Proposed Action

The Growden Dam and Sherman Creek Restoration project is a proposal to remove the Growden Dam and restore approximately 3 miles of fish habitat downstream of the dam. These proposed actions include: removal of Growden Dam; restoring the channel and valley bottom behind the dam to pre-dam elevations; removing sediment deposits from behind the dam and creating a terrace with part of the sediment and taking the rest to the Lane Creek pit; restoration of Lane Creek pit with sediment from behind the dam; improving fish habitat and sediment storage on approximately 3 miles of stream below the dam; riparian vegetation thinning to get the material needed to the stream restoration.

## Possible Alternatives

Possible alternatives include alteration of the dam to allow for flow over the dam. This may include creating an emergency spillway on one side of the dam or reducing the height of the dam to the level of the current substrate.

## Lead and Cooperating Agencies

The Ferry Conservation District, the Washington Department of Ecology, and the U.S. Department of Transportation Federal Highway Administration are cooperating agencies for this project.

## Responsible Official

Sherri Schwenke, District Ranger, Three Rivers District, 255 West 11th, Kettle Falls, WA 99141 (phone 509–738–7700).

## Nature of Decision To Be Made

The responsible official will decide which, if any, of the alternatives will be implemented. This entails in what way

the Growden Dam will be decommissioned to meet the purpose and need. The responsible official will also decide what type of restoration will occur on the lower three miles of habitat. Her decision and rationale for the decision will be documented in the record of decision, which will be subject to Forest Service Appeal Regulations (36 CFR part 215).

**Scoping Process**

The scoping process will include the following: Identify and clarify issues; identify key issues to be analyzed in depth; explore alternatives based on themes which will be derived from issues recognized during scoping activities; and identify potential environmental effects of the Proposed Action and alternatives. A range of alternatives will be considered, including a No-Action alternative.

**Preliminary Issues**

The issues related to the Growden Dam and Sherman Creek Restoration project include safety, reducing stream temperatures, restoring bedload transport, cultural resource damage, fish passage, noxious weeds, tribal concerns, destruction of wetland and beaver habitat, and recreation.

Safety is the largest issue with the dam. The risk of dam failure must be reduced. The reduction in dam failure risk would be measured by the amount of dam removed.

Sherman Creek exceeds the state standard for temperature. Growden Dam is suspected to be one of two main causes. Removal of Growden Dam may bring temperatures back into state standards. This will be measured by the amount of stream channel improved and the amount of wetland remaining behind the dam.

Growden Dam has blocked most bedload from the lower reach of Sherman Creek. This has caused streambank erosion and stream degradation, which has led to poor fish habitat. Improvement will be measured by the amount of bedload allowed through the dam site and the amount of stream reconnected to the floodplain.

Growden Dam is located on a Civilian Conservation Corp (CCC) era site. The dam was built by the CCC. The dam is being evaluated for historical significance. The amount of alteration to the site is at issue.

There is no fish passage around the dam. The best fish habitat is found in the reaches above the dam. Opening this access up to the rest of the fish population will improve the fisheries.

Noxious weeds are a major concern; there appears to be agreement that noxious weeds are a problem and that weed spread should be prevented. In response to this concern, the Colville National Forest implemented a policy: ''Noxious Weeds Prevention Guidelines'' in November 1999. Because these guidelines will be incorporated into all action alternatives, there is not expected to be a need to develop alternatives that directly respond to this concern. Potential for noxious weed spread will be measured by the acres of bare soil and miles of roaded access created or closed.

The Confederated Tribes of the Colville Reservation have reserved hunting, fishing, and gathering rights on the ''North Half Reservation,'' which includes the Growden Dam and Sherman Creek Restoration project area. These rights are regarded by tribal members as cultural, ceremonial, and spiritual subsistence. The primary concern in the Sherman Creek watershed is the downstream fisheries as potentially affected by aquatic health. To date, there have been no public comments regarding Tribal concerns, other than those already listed above.

The Growden Dam and Sherman Creek Restoration project area is an important recreation area on the Three Rivers Ranger District. The area has one developed campground, paved access, two miles of paved hiking trails, and two developed trailhead/day use areas. The area is used for berry picking, hunting, dispersed camping, fishing, driving for pleasure, and a variety of other recreational activities.

**Permits or Licenses Required**

*Hydraulic Project Approval* from the Washington Department of Fish and Wildlife under 75.20 RCW is required since the project includes construction of other work, that: will use, divert, obstruct, or change the natural flow or bed of fresh water of the state. This includes all construction or other work waterward and over the ordinary high water line, including dry channels, and may include projects landward of the ordinary high water line (*e.g.,* activities outside the ordinary high water line that will directly impact fish life and habitat, falling trees into streams or lakes, *etc.*).

*Section 401 Water Quality Certification* from the Washington Department of Ecology under 33 U.S.C. 1341 is needed since a federal approval is required for a project by the Corps of Engineers.

*Approval to Allow Temporary Exceedance of Water Quality Standards* from the Washington Department of Ecology is required, under 90.48 RCW, since the project may result in a temporary exceedance of water quality criteria established by WAC 173–201A for in water work (*e.g.,* changes in turbidity from sediment disturbances).

*Section 404 Permit* from the Corps of Engineers under 33 U.S.C. 1344 is required since the project includes discharge or excavation of dredged or fill material waterward of the ordinary high water mark in waters of the United States, including wetlands; and mechanized land clearing in waters of the United States, including wetlands.

**Comment Requested**

The Forest Service is seeking information, comments, and assistance from other agencies, organizations, Indian Tribes, and individuals who may be interested in or affected by the Proposed Action. This input will be used in preparation of the draft EIS. Your comments are appreciated throughout the analysis process.

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

**Early Notice of Importance of Public Participation in Subsequent Environmental Review**

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings

related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

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

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: February 6, 2004.

**Rick Brazell,**

*Forest Supervisor.*

[FR Doc. 04–4447 Filed 2–27–04; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Northwest Sacramento Provincial Advisory Committee (SAC PAC)

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on March 31, 2004, at the Camden House in Whiskeytown National Park, California. The purpose of the meeting is to discuss issues relating to implementing the Northwest Forest Plan.

**DATES:** The meeting will be held March 31, 2004.

*Location:* The meeting will be held in the Camden House at Whiskeytown National Park, CA.

**FOR FURTHER INFORMATION CONTACT:** Julie Nelson, Committee Coordinator, USDA, Shasta-Trinity National Forest, 3644 Avtech Parkway, Redding CA, 96002 (530) 226–2429; or by e-mail: *jknelson@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Opportunity will be provided for public input and individuals will have the opportunity to address the Committee at that time.

Dated: February 23, 2004.

**J. Sharon Heywood,**

*Forest Supervisor.*

[FR Doc. 04–4511 Filed 2–27–04; 8:45 am]

**BILLING CODE 3410–FK–M**

## DEPARTMENT OF AGRICULTURE

**[03–03–S]**

### Grain Inspection, Packers and Stockyards Administration; Designation for the Champaign (IL), Detroit (MI), Eastern Iowa (IA), Enid (OK), Keokuk (IA), and Michigan (MI) Areas

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Notice.

**SUMMARY:** Grain Inspection, Packers and Stockyards Administration (GIPSA) announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act):

Champaign-Danville Grain Inspection Departments, Inc. (Champaign);

Detroit Grain Inspection Service, Inc. (Detroit);

Eastern Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa);

Enid Grain Inspection Company, Inc. (Enid);

Keokuk Grain Inspection Service (Keokuk); and

Michigan Grain Inspection Services, Inc. (Michigan).

**EFFECTIVE DATE:** April 1, 2004.

**ADDRESSES:** USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

**FOR FURTHER INFORMATION CONTACT:** Janet M. Hart at 202–720-8525, e-mail *Janet.M.Hart@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the September 2, 2003, **Federal Register** (68 FR 52178), GIPSA asked persons interested in providing official services in the geographic areas assigned to the official agencies named above to submit an application for designation. Applications were due by October 1, 2003.

Champaign, Detroit, Eastern Iowa, Enid, Keokuk, and Michigan were the sole applicants for designation to provide official services in the entire area currently assigned to them, so GIPSA did not ask for additional comments on them.

GIPSA evaluated all available information regarding the designation criteria in section 7(f)(l)(A) of the Act and, according to section 7(f)(l)(B), determined that Champaign, Detroit, Eastern Iowa, Enid, Keokuk, and Michigan are able to provide official services in the geographic areas specified in the September 2, 2003, **Federal Register**, for which they applied. Interested persons may obtain official services by calling the telephone numbers listed below.

| Official agency | Headquarters location and telephone | Designation start–end |
|---|---|---|
| Champaign | Champaign, IL—(217) 398–0723 | 4/01/2004–3/31/2007 |
| | Additional locations: Hoopston, IL, and Terre Haute, IN | |
| Detroit | Emmet, MI—(810) 395–2105 | 4/01/2004–3/31/2007 |
| Eastern Iowa | Davenport, IA—(563) 322–7140 | 4/01/2004–3/31/2007 |
| | Additional locations: Dubuque and Muscatine, IA; Gulfport, IL | |

| Official agency | Headquarters location and telephone | Designation start–end |
|---|---|---|
| Enid | Enid, OK—(580) 233–1121<br>Additional location: Catoosa, OK | 4/01/2004–3/31/2007 |
| Keokuk | Keokuk, IA—(319) 524–6482<br>Additional location: Havana, IL | 4/01/2004–3/31/2007 |
| Michigan | Marshall, MI—(269) 781–2711<br>Additional locations: Cairo, OH, and Carrollton, MI | 4/01/2004–3/31/2007 |

**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. 04–4416 Filed 2–27–04; 8:45 am]

**BILLING CODE 3410–EN–P**

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

**[04–01–A]**

### Opportunity for Designation in the Amarillo (TX), Cairo (IL), Louisiana, North Carolina, Belmond (IA), and Wisconsin Areas, and Request for Comments on the Official Agencies Serving These Areas

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Notice.

**SUMMARY:** The designations of the official agencies listed below will end in September 2004. Grain Inspection, Packers and Stockyards Administration (GIPSA) is asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. GIPSA is also asking for comments on the quality of services provided by these currently designated agencies: Amarillo Grain Exchange, Inc. (Amarillo); Cairo Grain Inspection Agency, Inc. (Cairo); Louisiana Department of Agriculture and Forestry (Louisiana); North Carolina Department of Agriculture (North Carolina); D. R. Schaal Agency, Inc. (Schaal); and Wisconsin Department of Agriculture, Trade and Consumer Protection (Wisconsin).

**DATES:** Applications and comments must be postmarked or electronically dated on or before April 1, 2004.

**ADDRESSES:** Submit applications and comments to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604; FAX 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications and comments will be made available for public inspection at Room 1647–S, 1400 Independence Avenue, SW., during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

1. CURRENT DESIGNATIONS BEING ANNOUNCED FOR RENEWAL

| Official agency | Main office | Designation start | Designation end |
|---|---|---|---|
| Amarillo | Amarillo, TX | 12/01/2001 | 9/30/2004 |
| Cairo | Cairo, IL | 10/01/2001 | 9/30/2004 |
| Louisiana | Baton Rouge, LA | 10/01/2001 | 9/30/2004 |
| North Carolina | Raleigh, NC | 10/01/2001 | 9/30/2004 |
| Schaal | Belmond, IA | 12/01/2001 | 9/30/2004 |
| Wisconsin | Madison, WI | 12/01/2001 | 9/30/2004 |

a. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of Oklahoma and Texas, is assigned to Amarillo.

In Texas:

Bounded on the North by the Texas-Oklahoma State line to the eastern Clay County line;

Bounded on the East by the eastern Clay, Archer, Throckmorton, Shackelford, and Callahan County lines;

Bounded on the South by the southern Callahan, Taylor, and Nolan County lines;

Bounded on the West by the western Nolan, Fisher, Stonewall, King, and Cottle County lines; the western Childress County line north to U.S. Route 287; U.S. Route 287 northwest to Donley County; the southern Donley and Armstrong County lines west to Prairie Dog Town Fork of the Red River; Prairie Dog Town Fork of the Red River northwest to State Route 217; State Route 217 west to FM 1062; FM 1062 west to U.S. Route 385; U.S. Route 385 north to Oldham County; the southern Oldham County line; the western Oldham, Hartley, and Dallam County lines.

Beaver, Beckham, Cimarron, Ellis, Harper, Roger Mills, and Texas Counties, Oklahoma.

b. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of Illinois, Kentucky, and Tennessee, is assigned to Cairo.

Randolph County (southwest of State Route 150 from the Mississippi River north to State Route 3); Jackson County (southwest of State Route 3 southeast to State Route 149; State Route 149 east to State Route 13; State Route 13 southeast to U.S. Route 51; U.S. Route 51 south to Union County); and Alexander,

Johnson, Hardin, Massac, Pope, Pulaski, and Union Counties, Illinois.

Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Livingston, Lyon, Marshall, McCracken, and Trigg Counties, Kentucky.

Benton, Dickson, Henry, Houston, Humphreys, Lake, Montgomery, Obion, Stewart, and Weakley Counties, Tennessee.

Cairo's assigned geographic area does not include the following grain elevator inside Cairo's area which has been and will continue to be serviced by the following official agency: Memphis Grain Inspection Service: Cargill, Inc., Tiptonville, Lake County, Tennessee.

c. Pursuant to section 7(f)(2) of the Act, the following geographic area, the entire State of Louisiana, except those export port locations within the State which are serviced by GIPSA, is assigned to Louisiana.

d. Pursuant to section 7(f)(2) of the Act, the following geographic area, the entire State of North Carolina, except those export port locations within the State which are serviced by GIPSA, is assigned to North Carolina.

e. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the State of Iowa, is assigned to Schaal.

Bounded on the North by the northern Kossuth County line from U.S. Route 169; the northern Winnebago, Worth, and Mitchell County lines;

Bounded on the East by the eastern Mitchell County line; the eastern Floyd County line south to B60; B60 west to T64; T64 south to State Route 188; State Route 188 south to C33;

Bounded on the South by C33 west to T47; T47 north to C23; C23 west to S56; S56 south to C25; C25 west to U.S. Route 65; U.S. Route 65 south to State Route 3; State Route 3 west to S41; S41 south to C55; C55 west to Interstate 35; Interstate 35 southwest to the southern Wright County line; the southern Wright County line west to U.S. Route 69; U.S. Route 69 to C54; C54 west to State Route 17; and

Bounded on the West by State Route 17 north to the southern Kossuth County line; the Kossuth County line west to U.S. Route 169; U.S. Route 169 north to the northern Kossuth County line.

Schaal's assigned geographic area does not include the following grain elevators inside Schaal's area which have been and will continue to be serviced by the following official agencies:

1. Central Iowa Grain Inspection Service, Inc.: Agvantage F.S., Chapin, Franklin County; and Farmers' Coop Society, Rockwell, Cerro Gordo County.

2. A. V. Tischer and Son, Inc.: West Bend Elevator Co., Algona, Kossuth County; Stateline Coop, Burt, Kossuth County; Gold-Eagle, Goldfield, Wright County; and North Central Coop, Holmes, Wright County.

f. Pursuant to section 7(f)(2) of the Act, the following geographic area, the entire State of Wisconsin, except those export port locations within the State, is assigned to Wisconsin.

2. *Opportunity for designation.* Interested persons, including Amarillo, Cairo, Louisiana, North Carolina, Schaal, and Wisconsin are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning October 1, 2004, and ending September 30, 2007. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information, or obtain applications at the GIPSA Web site, *http://www.usda.gov/gipsa/oversight/parovreg.htm.*

3. *Request for Comments.* GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the quality of services for the Amarillo, Cairo, Louisiana, North Carolina, Schaal, and Wisconsin official agencies. In commenting on the quality of services, commenters are encouraged to submit pertinent data including information on the timeliness, cost, and scope of services provided. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

**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. 04–4417 Filed 2–27–04; 8:45 am]

BILLING CODE 3410–EN–P

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

### Advisory Committee Meeting

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (5 U.S.C. App. II), this constitutes notice of the upcoming meeting of the Grain Inspection Advisory Committee (''the Committee'').

**DATES:** May 4, 2004, 7:30 a.m. to 5 p.m.; and May 5, 2004, 7:30 a.m. to 12 p.m.

**ADDRESSES:** The advisory committee meeting will take place at the Embassy Suites Hotel—Kansas City Country Club Plaza, 220 West 43rd Street, Kansas City, MO.

Requests to address the Committee at the meeting or written comments may be sent to:

Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 3601, Washington, DC 20250–3601. Requests and comments may also be faxed to (202) 205–9237.

**FOR FURTHER INFORMATION CONTACT:** Ms. Terri Henry, (202) 205–8281 (telephone); (202) 205–9237 (facsimile).

**SUPPLEMENTARY INFORMATION:** The purpose of the Committee is to provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*).

The agenda will include financial status, general program plans, and grain end-use functionality research.

Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Committee. The meeting will be open to the public.

Persons with disabilities who require alternative means of communication of program information or related accommodations should contact Terri Henry, at the telephone number listed above.

**Donna Reifschneider,**

*Administrator.*

[FR Doc. 04–4415 Filed 2–27–04; 8:45 am]

BILLING CODE 3410–EN–P

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Doña Ana Arroyo Watershed, Doña Ana County, NM

**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 Rules (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 rehabilitation of two dams (South and North Fork dams) and their disposal system in the Doña Ana Arroyo Watershed.

**FOR FURTHER INFORMATION CONTACT:** Rosendo Treviño III; State Conservationist; Natural Resources Conservation Service; 6200 Jefferson, NE.; Albuquerque, NM 87109–3734; telephone 505–761–4400.

**SUPPLEMENTARY INFORMATION:** The environmental assessment (EA) of this Federally assisted action indicates that the project will not cause significant local, regional, or national effects on the human environment. As a result of these findings, Rosendo Treviño III, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is flood damage prevention. The action includes the rehabilitation of two floodwater retaring dames and their common disposal system. The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency; various Federal, state, and local agencies; and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the EA are on file and may be reviewed by contacting Rosendo Treviño III. No administrative action on implementation of the proposed action will be taken until 30 days after the date of publication in the **Federal Register**.

Dated: February 20, 2004.

**Rosendo Treviño,**

*State Conservationist.*

[FR Doc. 04–4460 Filed 2–27–04; 8:45 am]

**BILLING CODE 3410–16–P**

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Notice of Availability of finding of no significant impact and Supplement to the environmental assessment for the Environmental Quality Incentives Program

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of availability of finding of no significant impact and Supplement to the environmental assessment for the Environmental Quality Incentives Program.

**SUMMARY:** The Natural Resources Conservation Service (NRCS), has prepared a Supplement to the Environmental Quality Incentives Program (EQIP) Environmental Assessment (EA) consistent with the National Environmental Policy Act of 1969, as amended. The Supplement was prepared as a means of amending the Final EQIP EA to correct the record and address comments received on the draft EQIP EA but not acknowledged in the final EQIP EA. Upon review of the information in the Supplement to the EQIP EA, the Chief of NRCS made a Finding of No Significant Impact (FONSI) and the determination was made that no environmental impact statement is required to support National implementation of EQIP.

**FOR FURTHER INFORMATION:** Copies of the Supplement to the EQIP EA and the FONSI, or additional information on matters related to this **Federal Register** Notice can be obtained by contacting one of the following individuals at the addresses and telephone numbers shown below:

Mr. Melvin Womack, Conservation Incentives Team Leader, Conservation Operations Division, NRCS, U.S. Department of Agriculture, PO Box 2890, Room 5239-S, Washington, DC 20013–2890. Telephone: (202) 720–0907.

Ms. André DuVarney, National Environmental Coordinator, Ecological Sciences Division, NRCS, U.S. Department of Agriculture, PO Box 2890, Room 6158-S, Washington, DC 20013–2890. Telephone: (202) 720–4925.

**SUPPLEMENTARY INFORMATION:** To implement EQIP, as amended by the Farm Security and Rural Investment Act of 2002, Pub. L. 107–71 (May 13, 2002) (''the 2002 Act''), the NRCS published in the **Federal Register** a proposed rule with requests for comments (68 FR 6655 (February 10, 2003). At the same time, NRCS made available to the public a Draft Environmental Assessment (EA) that analyzed the impacts of the proposed rule on the quality of the human environment. The Draft EA was prepared on a National Programmatic basis. NRCS was of the preliminary opinion, based on the results of the Draft EA, that implementation of EQIP would have no significant impact on the quality of the human environment, particularly when focusing on the significant adverse impacts which NEPA is intended to help decision makers avoid and mitigate; therefore, NRCS also made a Draft FONSI available to the public at that time. NRCS indicated that it would accept comments on the Draft EA and Draft FONSI through the mail or via the internet until March 12, 2003.

On May 30, 2003, NRCS published in the **Federal Register** the final rule implementing EQIP, as amended (68 FR 32337 (May 30, 2003)), and at that time provided the public with notice of the availability of the Final EA and FONSI.

In the Final EA, NRCS stated that it ''received no comments on the draft EA or draft FONSI.'' In fact, however, NRCS had received a comment letter on the Draft EA. NRCS misplaced these comments and they were not considered during formulation of the final EA that was prepared to comply with the National Environmental Policy Act of 1969, as amended (NEPA). The error was discovered after the EA and FONSI were made available to the public. To ensure the comments received appropriate consideration as part of the NEPA process, NRCS made a determination to correct the record and address the comments by issuing a supplement to the Final EQIP EA.

NEPA requires that Federal agencies prepare Environmental Impact Statements (EISs) for major Federal actions significantly affecting the quality of the human environment. In addition, the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500–1508) require Federal agencies to prepare EAs to assist in determining whether there is a need to prepare an EIS for actions that have not been categorically excluded from NEPA. NRCS has reviewed the comments on the Draft EQIP EA to determine whether the comments provide new information that would lead NRCS to find that publication of the final rule to implement EQIP on a National basis may result in the significant adverse impacts that NEPA is intended to help decision makers avoid and mitigate; and thus, whether an EIS should be prepared.

Upon review of the information in the Supplement to the EQIP EA, the Chief found that no new information was provided in the comments to indicate NRCS should address additional issues or alternatives in the EA or that alters discussions in the Final EA of the potential effects of the program from a National perspective. The Chief of NRCS further found, after considering the information in the comments and the Supplement, the program will not result in a significant impact on the quality of the human environment, particularly when focusing on the significant adverse impacts which NEPA is intended to help decisionmakers avoid and mitigate. Therefore, a FONSI was issued and the determination was made that no EIS is required to support National implementation of EQIP.

Copies of the Supplement to the EA and FONSI may be reviewed at the following location: Conservation Operations Division, NRCS, U.S. Department of Agriculture, Room 5239–S, Washington, DC 20013–2890. The documents may also be accessed on the Internet at *http://www.nrcs.usda.gov/programs/Env_Assess/EQIP/EQIP.html*

Signed in Washington, DC on February 9, 2004.

**Bruce I. Knight,**

*Chief, Natural Resources Conservation Service.*

[FR Doc. 04–4459 Filed 2–27–04; 8:45 am]

BILLING CODE 3410–16–P

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Announcement of Grant and Loan Application Deadlines and Funding Levels

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of solicitation of applications.

**SUMMARY:** The Rural Utilities Service (RUS) announces its Distance Learning and Telemedicine (DLT) Program grant application window for funding during fiscal year (FY) 2004. In addition, RUS announces the minimum and maximum amounts for DLT grants, combination loan-grants and loans applicable for the fiscal year. The DLT Program regulation (7 CFR 1703, subparts D, E, F and G) has not changed, but this Notice appears in a new format, as mandated by a policy directive issued by the Office of Federal Financial Management (OFFM) of the Office of Management and Budget (OMB), published in the **Federal Register** on June 23, 2003.

**DATES:** You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must be postmarked and mailed, shipped, or sent overnight no later than April 30, 2004, to be eligible for FY 2004 grant funding. Late applications are not eligible for FY 2004 grant funding.
- Electronic copies must be received by April 30, 2004, to be eligible for FY 2004 grant funding. Late applications are not eligible for FY 2004 grant funding.
- RUS will examine applications for items that would disqualify them from consideration if the applications are submitted on paper by March 31, 2004.

You may submit applications for FY 2004 combination loan-grants and loans at any time.

**ADDRESSES:** You may obtain application guides and materials for all DLT programs via the Internet at the DLT Web site: *http://www.usda.gov/rus/telecom/dlt/dlt.htm*. You may also request application guides and materials from RUS by contacting the DLT Branch at (202) 720–0413.

Submit completed paper applications for grants, combination loan-grants or loans to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 2845, STOP 1550, Washington, DC 20250–1550. Applications should be marked ''Attention: Director, Advanced Services Division, Telecommunications Program.''

Submit electronic grant or combination loan-grant applications at *http://www.grants.gov* (Grants.gov), following the instructions you find on that Web site.

**FOR FURTHER INFORMATION CONTACT:** Orren E. Cameron, III, Director, Advanced Services Division, Rural Utilities Service, U.S. Department of Agriculture, telephone: (202) 720–0413, fax: (202) 720–1051.

**SUPPLEMENTARY INFORMATION:**

### Overview

*Federal Agency:* Rural Utilities Service (RUS).

*Funding Opportunity Title:* Distance Learning and Telemedicine Loans and Grants.

*Announcement Type:* Initial announcement.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 10.855.

*Dates:* You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must be postmarked and mailed, shipped, or sent overnight no later than April 30, 2004, to be eligible for FY 2004 grant funding. Late applications are not eligible for FY 2004 grant funding.
- Electronic copies must be received by April 30, 2004, to be eligible for FY 2004 grant funding. Late applications are not eligible for FY 2004 grant funding.
- RUS will examine applications for items that would disqualify them from consideration if the applications are submitted on paper by March 31, 2004.

You may submit applications for FY 2004 combination loan-grants and loans at any time.

**Items in Supplementary Information**

I. Funding Opportunity: Brief Introduction to the DLT Program
II. Award Information: Available Funds, Minimum and Maximum Amounts
III. Eligibility Information: Who Is Eligible, What Kinds of Projects Are Eligible, What Criteria Determine Basic Eligibility
IV. Application and Submission Information: Where to Get Application Materials, What Constitutes a Completed Application, How and Where to Submit Applications, Deadlines, Items That Are Eligible
V. Application Review Information: Considerations and Preferences, Scoring Criteria, Review Standards, Selection Information
VI. Award Administration Information: Award Notice Information, Award Recipient Reporting Requirements
VII. Agency Contacts: Web, Phone, Fax, E-Mail, Contact Name

### I. Funding Opportunity

Distance learning and telemedicine loans and grants are specifically designed to provide access to education, training and health care resources for people in rural America. The Distance Learning and Telemedicine (DLT) Program (administered by the DLT Branch of the Rural Utilities Service (RUS)) funds the use of advanced telecommunications technologies to help communities meet those needs.

The grants, which are awarded through competitive process, may be used to fund telecommunications, computer networks and related advanced technologies.

Applications for loans and combination loan-grants are not competitively scored. In addition to the items listed for grants, loans and combination loan-grants may be used to fund construction of necessary transmission facilities on a technology-neutral basis. Examples of such facilities include satellite uplinks, microwave towers and associated structures, T–1 lines, DS–3 lines, and other similar facilities. Loan funds may also be used to obtain mobile units and for some building construction. Please see 7 CFR

1703, subparts D, E, F and G for specifics.

This notice has been formatted to conform to a policy directive issued by the Office of Federal Financial Management (OFFM) of the Office of Management and Budget (OMB), published in the **Federal Register** on June 23, 2003. This notice does not change the DLT Program regulation (7 CFR 1703, subparts D, E, F, and G).

## II. Award Information

*A. Available Funds*

1. General

The Administrator has determined that the following amounts are available for grants, combination loan-grants and loans in FY 2004 under 7 CFR 1703.101(g).

2. Grants

a. $15 million is available for grants. Under 7 CFR 1703.124, the Administrator has determined the maximum amount of an application for a grant in FY 2004 is $500,000 and the minimum amount of a grant is $50,000.

b. Assistance instrument: RUS will execute grant documents appropriate to the project prior to any advance of funds with successful applicants.

3. Combination Loan-Grants

a. $110 million is available for combination loan-grants ($100 million in loans paired with $10 million in grants, *i.e.*, $100 loan: $10 grant ratio). Under 7 CFR 1703.133, the Administrator has determined the maximum amount of an application for a combination loan-grant in FY 2004 is $10 million and the minimum amount of a combination loan-grant is $50,000.

b. RUS will execute grant and loan documents appropriate to the project prior to any advance of funds with successful applicants.

4. Loans

a. $200 million is available for loans. Under 7 CFR 1703.143, the Administrator has determined the maximum amount of an application for a loan in FY 2004 is $10 million and the minimum amount of a loan is $50,000.

b. RUS will execute loan documents appropriate to the project prior to any advance of funds with successful applicants.

B. DLT grants, combination loan-grants and loans cannot be renewed. Award documents specify the term of each award. Applications to extend existing projects are welcomed (grant applications must be submitted during the application window) and will be evaluated as new applications.

## III. Eligibility Information

*A. Who Is Eligible for Grants, Combination Loan-Grants and Loans? (See 7 CFR 1703.103)*

1. Only entities legally organized as one of the following are eligible for DLT financial assistance:

a. An incorporated organization or partnership,

b. An Indian tribe or tribal organization, as defined in 25 U.S.C. 450b (b) and (c),

c. A State or local unit of government,

d. A consortium, as defined in 7 CFR 1703.102, or

e. Other legal entity, including a private corporation organized on a for-profit or not-for profit basis.

2. Individuals are not eligible for DLT financial assistance directly.

3. Electric and telecommunications borrowers under the Rural Electrification Act of 1936 (7 U.S.C. 950aaa *et seq.*) are not eligible for grants or combination loan-grants. They are, however, eligible for loans (see 7 CFR 1703.101(f)).

*B. What Are the Basic Eligibility Requirements for a Project?*

1. Required matching contributions (grants only). See paragraphs IV.B.2.b and IV.B.2.g of this notice for information on documentation of matching contributions. Please see 7 CFR 1703.125(g) for the requirement.

a. Grant applicants must demonstrate a matching contribution, in cash or in kind (new, non-depreciated items), of at least fifteen (15) percent of the total amount of RUS financial assistance requested. Matching contributions must be used for eligible purposes of DLT grant assistance (see 7 CFR 1703.121 and paragraph IV.G of this notice). Greater amounts of eligible matching contributions may increase an applicant's score (see 7 CFR 1703.126(b)(4) and paragraph V.B.2.d of this notice).

b. Combination loan-grants and loans do not require matching contributions.

2. The DLT program is designed to flow the benefits of distance learning and telemedicine to residents of rural America (see 7 CFR 1703.103(a)(2)). Therefore, in order to be eligible, applicants must propose to use the financial assistance to:

a. Operate a rural community facility; or

b. Deliver distance learning or telemedicine services to entities that operate a rural community facility or to residents of rural areas, at rates calculated to ensure that the benefit of the financial assistance is passed through to such entities or to residents of rural areas.

3. If a loan applicant is a telecommunications or electric borrower under the Rural Electrification Act of 1936 (7 U.S.C. 901–950aa, *et seq.*), they may either pass the loan along to an entity that will fulfill paragraph III.B.2 of this notice; or acquire, install, extend or improve a distance learning or telemedicine facility. Please see 7 CFR 1703.101(f).

4. Rurality. a. All projects that applicants propose to fund with RUS financial assistance must meet a minimum rurality threshold, to ensure that benefits from the projects flow to rural residents. The minimum eligibility score is 20 points. Please see paragraphs IV.B.2.g and V.B.2 of this notice. In addition, please see 7 CFR 1703.126(a)(2) for an explanation of the rurality scoring and eligibility criterion.

b. Each application must apply the following criteria to each of its end-user sites, and hubs that are also proposed as end-user sites, in order to determine a rurality score. The rurality score is the average of all end-user sites' rurality scores.

| Criterion | Character | Population | DLT points |
|---|---|---|---|
| Exceptionally Rural Area | Area not within a city, village or borough | ≤5000 | 45 |
| Rural Area | Incorporated or unincorporated area | >5000 and ≤10,000 | 30 |
| Mid-Rural Area | Incorporated or unincorporated area | >10,000 and ≤20,000 | 15 |
| Urban Area | Incorporated or unincorporated area | >20,000 | 0 |

c. Grants only: The rurality score is also one of the competitive scoring criteria applied to grant applications.

5. Projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*) are not eligible for any financial assistance from the DLT Program. Please see 7 CFR 1703.123(a)(11) for grants, 7 CFR 1703.132(a)(5) for combination loan-

grants and 7 CFR 1703.142(b)(3) for loans.

C. See paragraph IV.B of this notice for a discussion of the items that make up a completed application. You may also refer to 7 CFR 1703.125 for completed grant application items, 7 CFR 1703.134 for completed combination loan-grant application items, and 7 CFR 1703.144 for completed loan application items.

## IV. Application and Submission Information

A. *Where to get application information.* Application guides, copies of necessary forms and samples, and the DLT Program regulation are available from these sources:

1. The Internet: *http://www.usda.gov/rus/telecom/dlt/dlt.htm,* or *http://www.grants.gov.*

2. The DLT Branch of RUS for paper copies of these materials: (202) 720–0413.

B. *What constitutes a completed application?* 1. Detailed information on each item in the table in paragraph IV.B.6 of this notice can be found in the sections of the DLT Program regulation listed in the table, and the appropriate DLT application guide(s). Applicants are strongly encouraged to read and apply both the regulation and the application guide(s). This notice does not change the requirements for a completed application for any form of DLT financial assistance specified in the DLT Program regulation.

a. When the table refers to a narrative, it means a written statement, description or other written material prepared by the applicant, for which no form exists. RUS recognizes that each project is unique and requests narratives of varying complexity to allow applicants to fully explain their request for financial assistance.

b. When documentation is requested, it means letters, certifications, legal documents or other third party documentation that provide evidence that the applicant meets the listed requirement. For example, to confirm Enterprise Zone (EZ) designations, applicants use various types of documents, such as letters from appropriate government bodies and copies of appropriate USDA Web pages. Leveraging documentation sometimes include letters of commitment from other funding sources, or other documents specifying in-kind donations. Evidence of legal existence is sometimes proven by applicants who submit articles of incorporation. None of the foregoing examples is intended to limit the types of documentation that may be submitted to fulfill a requirement. DLT program regulations and the application guides provide specific guidance on each of the items in the table.

2. The DLT application guides and ancillary materials provide all necessary forms and sample worksheets.

3. While the table in paragraph IV.B.6 of this notice includes all items of a completed application for each program, RUS may ask for additional or clarifying information if the submitted item(s) do not fully address a criterion or other provision. RUS will communicate with applicants if the need for additional information arises.

4. Submit the required application items in the listed order.

5. DUNS Number (new for FY 2004). As required by the OMB, all applicants for grants or combination loan-grants must now supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying. The Standard Form 424 (SF–424) contains a field for you to use when supplying your DUNS number. Obtaining a DUNS number costs nothing and requires a short telephone call to Dun and Bradstreet. Please see the DLT Web site or Grants.gov for more information on how to obtain a DUNS number or how to verify your organization's number.

6. Table of Required Elements of a Completed Application, by Program:

| Application item | Required items by application type | | |
|---|---|---|---|
| | Grants (7 CFR 1703.125 and CFR 1703.126) | Combination loan-grants (7 CFR 1703.134 and 7 CFR 1703.135) | Loans (7 CFR 1703.144 and 7 CFR 1703.145) |
| SF–424, completely filled out (Application for Federal Assistance form). | Yes | Yes | Yes. |
| Executive Summary (narrative) | Yes | Yes | Yes. |
| Objective Scoring Worksheet | Yes | No | No. |
| Rural Calculation Table | Yes | Yes | Yes. |
| National School Lunch Program Determination | Yes | No | No. |
| EZ/EC or Champion Communities designation | Yes (documentation) | No | No. |
| Documented Need for Services/Benefits Derived from Services. | Yes (narrative & documentation, if necessary). | No | No. |
| Innovativeness of the Project | Yes (narrative & documentation). | No | No. |
| Budget (table or other appropriate format) | Yes | Yes | Yes. |
| Leveraging Evidence and Funding Commitments from All Sources. | Yes (documentation) | Yes (no leveraging evidence required). | Yes (no leveraging evidence required). |
| Financial Information/Sustainability (narrative) | Yes | Yes | Yes. |
| Pro Forma Financial Data | No | Yes (documentation) | Yes (documentation). |
| Ability to execute a note with maturity > 1 year | No | Yes (documentation) | Yes (documentation). |
| Revenue/expense reports and balance sheet (table or other appropriate format). | No | Yes for educational institutions/consortia. (documentation). | Yes for educational institutions/consortia. (documentation). |
| Income statement and balance sheet (table or other appropriate format). | No | Yes for medical institutions/consortia. (documentation). | Yes for medical institutions/consortia. (documentation). |
| Balance sheet (table or other appropriate format) for a partnership, corporation, company, other entity; or consortia of such entities. | No | Yes (documentation) | Yes (documentation). |
| Property list (collateral)/adequate security | No | Yes (documentation) | Yes (documentation). |
| Depreciation schedule | No | Yes (documentation) | Yes (documentation). |
| Revenue Source(s) for each hub and end-user site | No | Yes (documentation) | Yes (documentation). |

| Application item | Required items by application type | | |
|---|---|---|---|
| | Grants (7 CFR 1703.125 and CFR 1703.126) | Combination loan-grants (7 CFR 1703.134 and 7 CFR 1703.135) | Loans (7 CFR 1703.144 and 7 CFR 1703.145) |
| Economic analysis of rates—if applicant proposes to provide services to another entity. | No | Yes (documentation) | Yes (documentation). |
| System/Project Cost Effectiveness (narrative & documentation). | Yes | No | No. |
| Telecommunications System Plan (narrative & documentation; maps or diagrams, if appropriate). | Yes | Yes | Yes. |
| Proposed Scope of Work (narrative or other appropriate format). | Yes | Yes | Yes. |
| Statement of Experience (narrative 3-page, single-spaced limit). | Yes | Yes | Yes. |
| Consultation with the USDA State Director, Rural Development (documentation). | Yes | No | No. |
| Application conforms with State Strategic Plan per USDA State Director, Rural Development, (if plan exists) (documentation). | Yes | No | No. |
| Certifications: | | | |
| Equal Opportunity and Nondiscrimination | Yes | Yes | Yes. |
| Architectural Barriers | Yes | Yes | Yes. |
| Flood Hazard Area Precautions | Yes | Yes | Yes. |
| Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. | Yes | Yes | Yes. |
| Drug-Free Workplace | Yes | Yes | Yes. |
| Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions. | Yes | Yes | Yes. |
| Lobbying for Contracts, Grants, Loans, and Cooperative Agreements. | Yes | Yes | Yes. |
| Non Duplication of Services | Yes | Yes | Yes. |
| Environmental Impact/Historic Preservation. | | | |
| Certification | Yes | Yes | Yes. |
| Questionnaire | No | Yes, if project involves construction. | Yes, if project involves construction. |
| Federal Obligations on Delinquent Debt | Yes | Yes | Yes. |
| Evidence of Legal Authority to Contract with the Government (documentation). | Yes | Yes | Yes. |
| Evidence of Legal Existence (documentation) | Yes | Yes | Yes. |
| Supplemental Information (if any) (narrative, documentation or other appropriate format). | Optional | Optional | Optional. |

C. *How many copies of an application are required?* 1. Applications submitted on paper (grants, combination loan-grants and loans): a. Submit the original application and two (2) copies to RUS. b. Submit one (1) additional copy to the State government point of contact (if one has been designated) at the same time as you submit the application to RUS. See *http://www.whitehouse.gov/omb/grants/spoc.html* for an updated listing of State government points of contact or contact the DLT branch.

2. Electronically submitted applications (grants and combination loan-grants):

a. The additional paper copies for RUS specified in 7 CFR 1703.128(c) and 7 CFR 1703.136(b) are not necessary if you submit the application electronically through Grants.gov.

b. Submit one (1) copy to the State government point of contact (if one has been designated) at the same time as you submit the application to RUS. See *http://www.whitehouse.gov/omb/grants/spoc.html* for an updated listing of State government points of contact.

D. *How and where to submit an application.* Grant and combination loan-grant applications may be submitted on paper or electronically. RUS cannot accept electronic loan applications at this time; please submit loan applications on paper.

1. Submitting applications on paper (grants, combination loan-grants or loans).

a. Address paper applications for grants, combination loan-grants or loans to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 2845, STOP 1550, Washington, DC 20250–1550. Applications should be marked ''Attention: Director, Advanced Services Division, Telecommunications Program.''

b. For grants only: paper applications must show proof of mailing or shipping consisting of one of the following:

(i) A legibly dated U.S. Postal Service (USPS) postmark;

(ii) A legible mail receipt with the date of mailing stamped by the USPS; or

(iii) A dated shipping label, invoice, or receipt from a commercial carrier. c. Due to screening procedures at the Department of Agriculture, packages arriving via the USPS are irradiated, which can damage the contents. RUS encourages applicants to consider the impact of this procedure in selecting their application delivery method.

2. Electronically submitted applications (applies only to grants and combination loan-grants).

a. Applications will not be accepted via facsimile machine transmission or electronic mail.

b. Electronic applications for grants or combination loan-grants will be accepted if submitted through the Federal government's Grants.gov initiative at *http://www.grants.gov.*

c. If you want RUS to review your application for items that would disqualify it for further consideration(see paragraph V.D of this notice), please do not use Grants.gov. Submit your application on paper.

Grants.gov does not yet support such pre-application reviews.

d. How to use Grants.gov: (i) Navigate your Web browser to *http://www.grants.gov.*

(ii) Follow the instructions on that Web site to find grant or combination loan-grant information.

(iii) Download a copy of an application package.

(iv) Complete the package off-line.

(v) Upload and submit the application via the Grants.gov Web site.

e. Grants.gov contains full instructions on all required passwords, credentialing and software.

f. RUS encourages applicants who wish to apply through Grants.gov to submit their applications in advance of the deadline, in the case of grants.

g. If a system problem occurs or you have technical difficulties with an electronic application, please use the customer support resources available at the Grants.gov Web site.

h. New information for FY 2004 grant and combination loan-grant applications. The Distance Learning and Telemedicine Branch of RUS now offers applicants the opportunity to submit grant (and combination loan-grant) applications online through Grants.gov (*http://www.grants.gov*). The Web site is part of the Government-wide e-Government project under the President's Management Agenda. In addition to online application submission, Grants.gov offers applicants a fully searchable database of Federal grant opportunities. All Federal grant-making organizations are required to post their grant opportunities at Grants.gov, beginning with FY 2004. You can find more information on e-grants at *http://www.usda.gov/rus/telecom/dlt/dlt.htm and http://www.grants.gov.*

(i) Central Contractor Registry. In addition to the DUNS number now required of all grant applicants, submitting an application through Grants.gov requires that you list your organization in the Central Contractor Registry (CCR). Setting up a CCR listing (a one-time procedure with annual updates) takes up to five business days, so RUS strongly recommends that you obtain your organization's DUNS number and CCR listing well in advance of the deadline specified in this notice.

(ii) Credentialing and authorization of applicants. Grants.gov will also require some one-time credentialing and online authentication procedures. These procedures may take several business days to complete, further emphasizing the need for early action to complete the sign-up, credentialing and authorization procedures at Grants.gov before you submit an application at that Web site.

E. *Deadlines.* 1. Grants only: Paper applications must be postmarked and mailed, shipped, or sent overnight no later than April 30, 2004, to be eligible for FY 2004 grant funding. Late applications are not eligible for FY 2004 grant funding.

2. Electronic grant applications must be received by April 30, 2004, to be eligible for FY 2004 funding. Late applications are not eligible for FY 2004 grant funding.

3. RUS will examine applications for items that would disqualify them from consideration if the applications are submitted on paper by March 31, 2004.

4. Applications for FY 2004 combination loan-grants (paper or electronic) and loans (paper only) may be submitted at any time.

F. *Intergovernmental Review.* All DLT programs are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' As stated in paragraph IV.C of this notice, a copy of a DLT grant or combination loan-grant application must be submitted to the State single point of contact if one has been designated. Please see *http://www.whitehouse.gov/omb/grants/spoc.html* to determine whether your state has a single point of contact.

G. *Funding Restrictions.* 1. *Eligible purposes.* a. End-user sites may receive financial assistance; hub sites (rural or non-rural) may also receive financial assistance if they are necessary to provide DLT services to end-user sites. Please see 7 CFR 1703.101(h).

b. To fulfill the policy goals laid out for the DLT Program in 7 CFR 1703.101, the following table lists purposes for financial assistance and whether each purpose is eligible for the assistance. Please consult the application guide(s) and the regulations (7 CFR 1703.102 for definitions, in combination with the portions of the regulation cited in the table for each type of financial assistance) for detailed requirements for the items in the table.

| | Grants (7 CFR 1703.121 and 7 CFR 1703.123) | Combination loan-grants (7 CFR 1703.131 and 7 CFR 1703.132) | Loans (7 CFR 1703.141) and 7 CFR 1703.142) |
|---|---|---|---|
| Lease or purchase of eligible DLT equipment and facilities. | Yes—equipment only | Yes | Yes. |
| Acquire instructional programming | Yes | Yes | Yes. |
| Technical assistance, develop instructional programming, engineering or environmental studies. | Yes, not to exceed 10% of the grant. | Yes, not to exceed 10% of the financial assistance. | Yes, not to exceed 10% of the financial assistance. |
| Medical or education equipment or facilities necessary to the project. | No | Yes | Yes. |
| Vehicles using distance learning or telemedicine technology to deliver services. | No | Yes | Yes. |
| Teacher-student links located at the same facility. | No, if this is the sole project objective. | Yes, if linking is part of a broader DLT network that meets other combination loan-grant purposes. | Yes, if linking is part of a broader DLT network that meets other loan purposes. |
| Links between medical professionals located at the same facility. | No, if this is the sole project objective. | Yes, if linking is part of a broader DLT network that meets other combination loan-grant purposes. | Yes, if linking is part of a broader DLT network that meets other loan purposes. |
| Site development or building alteration. | No | Yes, if the activity meets other combination loan-grant purposes. | Yes, if the activity meets other loan purposes. |
| Land or building purchase | No | Yes, if the activity meets other combination loan-grant purposes. | Yes, if necessary to the overall project and incidental to the loan amount. |

| | Grants (7 CFR 1703.121 and 7 CFR 1703.123) | Combination loan-grants (7 CFR 1703.131 and 7 CFR 1703.132) | Loans (7 CFR 1703.141) and 7 CFR 1703.142) |
|---|---|---|---|
| Building construction | No | Yes, if the activity meets other combination loan-grant purposes. | Yes, if necessary to the overall project and incidental to the loan amount. |
| Acquiring telecommunications transmission facilities. | No | Yes, if other telecommunications carriers will not install in a reasonable time period & at an economically viable cost to the project. | Yes, if other telecommunications carriers will not install in a reasonable time period & at an economically viable cost to the project. |
| Salaries, wages, benefits for medical or educational personnel. | No | No | No. |
| Salaries/administrative expenses of applicant or project. | No | No | No. |
| Recurring project costs or operating expenses. | No (equipment leases are eligible) | No (equipment & facility leases are eligible). | Yes, for the first two years after approval (leases are not recurring project costs). |
| Equipment to be owned by the LEC or other telecommunications service provider, if the provider is the applicant. | Yes | Yes | Yes. |
| Duplicate distance learning or telemedicine services. | No | No | No. |
| Any project that, for its success, depends on additional DLT financial assistance or other financial assistance that is not assured. | No | No | No. |
| Application preparation costs | No | No | No. |
| Other project costs not covered in regulation. | No | No | Yes, for the first two years of the operation. |
| Costs & facilities providing distance learning broadcasting. | No | No | Yes; financial assistance amount directly proportional to the distance learning portion of use. |
| Reimburse applicant or others for costs incurred prior to RUS'' receipt of completed application. | No | No | No. |

2. *Eligible Equipment & Facilities.* Please see 7 CFR 1703.102 for definitions of eligible equipment, eligible facilities and telecommunications transmission facilities as used in the table above.

## V. Application Review Information

### *A. Special Considerations or Preferences*

1. American Samoa, Guam, Virgin Islands, and Northern Mariana Islands applications are exempt from the matching requirement up to a match amount of $200,000 (see 48 U.S.C. 1469a; 91 Stat. 1164).

2. Related Preferences: 7 CFR 1703.112 directs that an RUS telecommunications borrower will receive expedited consideration and determination of a loan application or advance under the Rural Electrification Act of 1936 (7 U.S.C. 901–950aa, *et seq.*) if the loan funds in question are to be used in conjunction with a DLT grant, loan or combination loan-grant (See 7 CFR 1737 for loans and 7 CFR 1744 for advances).

### *B. Criteria*

1. Grant applications are scored competitively and subject to the criteria listed below. Combination loan-grants and loan applications are not scored competitively. However, they are evaluated on the basis of technical, financial, economic and other criteria. Please see paragraph IV.B.2.g of this notice for the items that will be evaluated for a combination loan-grant or loan application, and paragraph V.B.3.b. of this notice for a brief listing of evaluation standards.

2. Grant application scoring criteria (total possible points: 235) See 7 CFR 1703.125 for the items that will be reviewed during scoring, and 7 CFR 1703.126 for scoring criteria.

a. Need for services proposed in the application, and the benefits that will be derived if the application receives a grant (up to 55 points).

b. Rurality of the proposed service area (up to 45 points).

c. Percentage of students eligible for the National School Lunch Program (NSLP) in the proposed service area (demonstrates economic need of the area) (up to 35 points).

d. Leveraging resources above the required matching level (up to 35 points). Please see paragraph III.B.1.a of this notice for a brief explanation of matching contributions.

e. Level of innovation demonstrated by the project (up to 15 points).

f. System cost-effectiveness (up to 35 points).

g. Project overlap with Empowerment Zone, Enterprise Communities or Champion Communities designations (up to 15 points).

### *C. Review Standards*

1. *Grants.* In addition to the scoring criteria that rank applications against each other, RUS evaluates grant applications for possible awards on the following items, according to 7 CFR 1703.127:

a. Financial feasibility.

b. Technical considerations. If the application contains flaws that would prevent the successful implementation, operation or sustainability of a project, RUS will not award a grant.

c. Other aspects of proposals that contain inadequacies that would undermine the ability of the project to comply with the policies of the DLT Program.

2. *Combination loan-grants and loans.*

a. RUS evaluates applications' financial feasibility using the following information. Please see paragraph IV.B.g of this of this notice for the items that

constitute a completed combination loan-grant or loan application. Also, see 7 CFR 1703 Subpart F for combination loan-grants and 7 CFR 1703 Subpart G for loans:

(i) Applicant's financial ability to compete the project;

(ii) Project feasibility;

(iii) Applicant's financial information;

(iv) Projects sustainability;

(v) Ability to repay the loan portion of a combination loan-grant, including revenue sources;

(vi) Collateral for which the applicant has perfected a security interest; and

(vii) Adequate security for a loan or the loan portion of a combination loan-grant.

b. Services to be provided by the project.

c. Project cost.

d. Project design.

e. Other characteristics.

D. As a courtesy, RUS will examine, provide comment, and return applications that include items that would disqualify them from further consideration for modification, if the applications are submitted by March 31, 2004. If you want RUS to examine your application in this manner, please submit your application on paper. Grants.gov does not currently support this kind of pre-application review.

*E. Selection Process*

1. *Grants.* Grant applications are ranked by final score, and by application purpose (education or medical). RUS selects applications based on those rankings, subject to the availability of funds. RUS may allocate grant awards between medical and educational purposes, but is not required to do so. In addition, RUS has the authority to limit the number of applications selected in any one State during a fiscal year. See 7 CFR 1703.127.

2. *Combination loan-grants and loans.* Based on the review standards listed above and in the DLT Program regulation, RUS will process successful loan applications on a first-in, first-out basis, dependent upon the availability of funds. Please see 7 CFR 1703.135 for combination loan-grant application processing and selection; and 7 CFR 1703.145 for loan application processing and selection.

## VI. Award Administration Information

*A. Award Notices*

RUS recognizes that each funded project is unique, and therefore may attach conditions to different projects' award documents.

1. *Grants.* RUS generally notifies applicants whose projects are selected for awards by faxing an award letter. RUS follows the award letter with a grant agreement that contains all the terms and conditions for the grant. An applicant must execute and return the grant agreement, accompanied by any additional items required by the grant agreement, within 120 days of the selection date.

2. *Combination loan-grants and loans.*

a. RUS generally sends a letter defining the characteristics of a loan (or the loan portion of a combination loan-grant) such as the term, interest rate and any conditions on the loan. An applicant must communicate agreement with the characteristics of the loan to RUS before a loan or combination loan-grant moves into the approval process.

b. After receiving the applicant's agreement on the loan characteristics, RUS supplies an approval letter to the applicant. Loan documents (and a grant agreement, if applicable) are then sent by RUS. The applicant has 120 days to sign and return the documents, along with any additional material required by the loan or grant documents.

*B. Administrative and National Policy Requirements*

The items listed in paragraph IV.B.2.g of this notice, and the DLT Program regulation, application guides and accompanying materials implement the appropriate administrative and national policy requirements.

*C. Reporting*

1. *Performance reporting.* All recipients of DLT financial assistance must provide annual performance activity reports to RUS until the project is complete and the funds are expended. A final performance report is also required; the final report may serve as the last annual report. The final report must include an evaluation of the success of the project in meeting DLT Program objectives. See 7 CFR 1703.107.

2. *Financial reporting.* All recipients of DLT financial assistance must provide an annual audit, beginning with the first year a portion of the financial assistance is expended. Audits are governed by United States Department of Agriculture audit regulations. Please see 7 CFR 1703.108.

## VII. Agency Contacts

A. Web site: *http://www.usda.gov/rus/telecom/dlt/dlt.htm.* The RUS' DLT Web site maintains up-to-date resources and contact information for DLT programs.

B. Phone: 202–720–0413.

C. Fax: 202–720–1051.

D. E-mail: *dltinfo@usda.gov.*

E. Main point of contact: Orren E. Cameron, III, Director, Advanced Services Division, Rural Utilities Service, U.S. Department of Agriculture.

Dated: February 23, 2004.

**Hilda Gay Legg,**

*Administrator, Rural Utilities Service.*

[FR Doc. 04–4322 Filed 2–27–04; 8:45 am]

BILLING CODE 3410–15–P

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## DEPARTMENT OF COMMERCE

## Economic Development Administration

## Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration (EDA), Commerce.

**ACTION:** To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD JANUARY 22, 2004–FEBRUARY 20, 2004

| Firm name | Address | Date petition accepted | Product |
|---|---|---|---|
| Cord Master Engineering Co., Inc | 1544 Curran Highway, North Adams, MA 01247. | 1/28/2004 | Power supply cords. |
| Tillmann Tool & Die, Inc | 821 Buffalo Avenue, Breckenridge, MN 56520. | 1/29/2004 | Plastic injection molds and mold components. |
| Helena Industries, Inc | 1325 Helena Avenue, Helena, MT 59601. | 2/2/2004 | Briefcases. |

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD JANUARY 22, 2004–FEBRUARY 20, 2004—Continued

| Firm name | Address | Date petition accepted | Product |
|---|---|---|---|
| Denton Vacuum, LLC | 1259 North Church Street, Moorestown, NJ 08057. | 2/2/2004 | Self-contained cold & ultra-fine grain sputter coaters; evaporation, sputtering and high vacuum carbon evaporator systems; multi-cathode DC/RF magnetron sputter systems; and other thin film depositions systems. |
| Minnesota Dehydrated Vegetables, Inc | 915 Omland Avenue North, Fosston, MN 56542. | 2/2/2004 | Dried carrots. |
| Gourmet Foods, Inc | 367 Persimmon Hill Lane, Lampe, MO 65681. | 2/4/2004 | Berry and honey products. |
| Pro-Safe Professional Linens, Inc. dba ProSafe Products. | 1240 Pitkin Avenue, Grand Junction, CO 81501. | 2/6/2004 | Disposable infection control protective covers. |
| RAM Fabricating Corporation | 412 Wavel Street, Syracuse, NY 13206 | 2/9/2004 | Metal tubing assemblies and parts. |
| Chanticleer Pottery | 711 West Russell Street, Ironton, MO 63650. | 2/10/2004 | Hand made pottery. |
| Cornerstone Steel Inc | 925 Hastings Avenue, Searcy, AR 72145. | 2/10/2004 | Steel, bridge sections. |
| Eagle Electronics, Inc | 1735 Mitchell Boulevard, Schaumburg, IL 60193. | 2/10/2004 | Multi-layer printed circuit boards. |
| PlaySmart, Inc | 107 North Missouri Ave., Sedalia, MO 65301. | 2/10/2004 | Soft playground equipment. |
| Stern Leach Company | 49 Pearl Street, Attleboro, MA 02703 | 2/10/2004 | Silver flat, wire, and tubing stock and grains/solder. |
| Sunline Coach Company, Inc | 245 South Muddy Creek Rd., Denver, PA 17517. | 2/11/2004 | Towable travel trailers. |
| Billet Industries, Inc | 247 Campbell Road, York, PA 17402 | 2/17/2004 | Machinery parts for the pump and material handling industries. |
| MEKanize, Inc | 1420 Quail Lake Loop, Colorado Springs, CO 80906. | 2/19/2004 | Industrial robots. |
| Stylex, Inc | 740 Coopertown Road, Delanco, NJ 08075. | 2/19/2004 | Office seating including task, executive, conference and stack. |
| O'Neil & Associates, Inc | 495 Byers Road, Miamisburg, OH 45342. | 2/29/2004 | Technical, scientific and professional books. |

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: February 23, 2004.

**Anthony J. Meyer,**

*Coordinator, Trade Adjustment and Technical Assistance.*

[FR Doc. 04–4423 Filed 2–27–04; 8:45 am]

BILLING CODE 3510–24–P

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Docket 4–2004]**

## Foreign-Trade Zone 39—Dallas/Fort Worth, TX, Application for Subzone, Turbomeca U.S.A. (Helicopter Engine Repair and Maintenance); Grand Prairie, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Dallas/Fort Worth International Airport, grantee of FTZ 39, requesting special-purpose subzone status for the manufacturing and warehousing facilities of Turbomeca U.S.A. (Turbomeca), located in Grand Prairie, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 20, 2004.

The Turbomeca facility (11 acres, 200 employees) is located at 2709 Forum Drive, Grand Prairie, Texas. The facility will be used for the repair and maintenance of helicopter engines (HTS 8411.81 duty-free). Components and materials sourced from abroad (representing 100% of all parts used in the manufacturing process) include: O-Rings and seals, maintenance manuals, mechanical fittings, unions, sleeves and couplings, connection hardware, springs, tools for assembly, engines and engine kits, parts of engines, fuel and oil pumps, filters and filter elements, valves, gears, electrical switches, control boxes, electrical wiring and harness, measuring tools, fuel control units, pressure transmitters, parts of fuel control units, fire detectors, speed sensing devices, electrical test equipment (duty rate ranges from duty-free to 9%) and bearings (HTS 8482.10 and 8482.50, duty rate ranges from 5.8–9%). The application indicates that bearings would be admitted in privileged-foreign status.

FTZ procedures would exempt Turbomeca from Customs duty payments on the foreign components used in export production. Some 25 percent of the plant's shipments are exported. On its domestic sales, Turbomeca would be able to choose the duty rates during Customs entry procedures that apply to engines (duty-free) for the foreign inputs noted above. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

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

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

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is April 30, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 17, 2004).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce Export Assistance Center, 2000 E. Lamar Boulevard, Suite 430, Arlington, Texas 76006.

Dated: February 20, 2004.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 04–4495 Filed 2–27–04; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Special Comprehensive License

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before April 30, 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.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Dove, BISA ICB Liaison, Department of Commerce, Room 6622, 14th & Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The SCL Procedure authorizes multiple shipments of items from the U.S. or from approved consignees abroad who are approved in advance by BIS to conduct the following activities: servicing, support services, stocking spare parts, maintenance, capital expansion, manufacturing, support scientific data acquisition, reselling and reexporting in the form received, and other activities as approved on a case-by-case basis.

### II. Method of Collection

Submitted on forms.

### III. Data

*OMB Number:* 0694–0089.

*Form Number:* BIS–748P and BIS–752P.

*Type of Review:* Regular submission for extension of a currently approved collection.

*Affected Public:* Individuals, businesses or other for-profit and not-for-profit institutions.

*Estimated Number of Respondents:* 10.

*Estimated Time Per Response:* 27 hours per response.

*Estimated Total Annual Burden Hours:* 1,017.

*Estimated Total Annual Cost:* No start-up or capital expenditures.

### 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 will also become a matter of public record.

Dated: February 24, 2004.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–4419 Filed 2–27–04; 8:45 am]

BILLING CODE 3510–33–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

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

**ACTION:** Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

### Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with section 351.213(2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

### Opportunity to Request a Review

Not later than the last day of March 2004, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March for the following periods:

| | Period |
|---|---|
| **Antidumping Duty Proceeding** | |
| Bangladesh: Cotton Shop Towels, A–538–802 | 3/1/03–2/29/04 |
| Brazil: Certain Hot-Rolled Carbon Steel Flat Products, A–351–828 | 3/1/03–2/29/04 |
| Canada: Iron Construction Castings, A–122–503 | 3/1/03–2/29/04 |
| France: | |
| Brass Sheet & Strip, A–427–602 | 3/1/03–2/29/04 |
| Stainless Steel Bar, A–427–820 | 3/1/03–2/29/04 |
| Germany: | |
| Brass Sheet & Strip, A–428–602 | 3/1/03–2/29/04 |
| Stainless Steel Bar, A–428–830 | 3/1/03–2/29/04 |
| India: Sulfanilic Acid, A–533–806 | 3/1/03–2/29/04 |
| Italy: | |
| Brass Sheet & Strip, A–475–601 | 3/1/03–2/29/04 |
| Stainless Steel Bar, A–475–829 | 3/1/03–2/29/04 |
| Japan: Stainless Steel Butt-Weld Pipe Fittings, A–588–702 | 3/1/03–2/29/04 |
| Republic of Korea: Stainless Steel Bar, A–580–847 | 3/1/03–2/29/04 |
| Russia: Silicon Metal, A–821–817 | 6/22/02–2/29/04 |
| Spain: Stainless Steel Bar, A–469–805 | 3/1/03–2/29/04 |
| Taiwan: Light-Walled Welded Rectangular Carbon Steel Tubing, A–583–803 | 3/1/03–2/29/04 |
| Thailand: Circular Welded Carbon Steel Pipes & Tubes, A–549–502 | 3/1/03–2/29/04 |
| The People's Republic of China: | |
| Chloropicrin, A–570–002 | 3/1/03–2/29/04 |
| Glycine, A–570–836 | 3/1/03–2/29/04 |
| United Kingdom: Stainless Steel Bar, A–412–822 | 3/1/03–2/29/04 |
| **Countervailing Duty Proceeding** | |
| France: Brass Sheet and Strip, C–427–603 | 1/1/03–12/31/03 |
| India: Sulfanilic Acid, C–533–807 | 1/1/03–12/31/03 |
| Iran: In-Shell Pistachios Nuts, C–507–501 | 1/1/03–12/31/03 |
| Italy: Stainless Steel Bar, C–475–830 | 1/1/03–12/31/03 |
| Pakistan: Cotton Shop Towels, C–535–001 | 1/1/03–12/31/03 |
| Turkey: Welded Carbon Steel Pipes and Tubes, C–489–502 | 1/1/03–12/31/03 |
| **Suspension Agreements** | |
| None. | |

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 69 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration web site at *www.ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of March 2004. If the Department does not receive, by the last day of March 2004, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 23, 2004.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary, Group II for Import Administration.*

[FR Doc. 04–4493 Filed 2–27–04; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Initiation of Five-Year (''Sunset'') Reviews

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

**ACTION:** Notice of Initiation of Five-Year (''Sunset'') Reviews.

**SUMMARY:** In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year (''sunset'') reviews of the antidumping duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review,* which covers these same orders.

**FOR FURTHER INFORMATION CONTACT:** Hilary E. Sadler, Esq. or Martha Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce at (202) 482–4340 or 5050, or Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

**SUPPLEMENTARY INFORMATION:**

## Background

The Department's procedures for the conduct of sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

## Initiation of Reviews

In accordance with 19 CFR 351.218(c), we are initiating sunset reviews of the following antidumping duty orders:

| DOC Case No. | ITC Case No. | Country | Product |
|---|---|---|---|
| A–570–101 | 731–TA–101 | China | Greige Polyester Print Cloth. |
| A–570–002 | 731–TA–130 | China | Chloropicrin. |

## Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the Department's regulations regarding sunset reviews (19 CFR 351.218) and Sunset Policy Bulletin, the Department's schedule of sunset reviews, case history information (*i.e.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset Internet Web site at the following address: ''*http://ia.ita.doc.gov/sunset/*''.

All submissions in these sunset reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303. Also, we suggest that parties check the Department's sunset Web site for any updates to the service list before filing any submissions. The Department will make additions to and/or deletions from the service list provided on the sunset website based on notifications from parties and participation in these reviews. Specifically, the Department will delete from the service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

## Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102(b) and section 771(9)(C), (D), (E), (F), and (G) of the Act ) wishing to participate in these sunset reviews must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the sunset review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: February 24, 2004.

**James J. Jochum,**

*Assistant Secretary, Import Administration.*

[FR Doc. 04–4498 Filed 2–27–04; 8:45 am]

**BILLING CODE 3310–DS–P**

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**(A–588–046)**

## Notice of Initiation of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan

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

**ACTION:** Notice of Initiation of Antidumping Duty Changed Circumstances Review.

**SUMMARY:** In accordance with section 751(b) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.216 (2003), Showa Denko K.K. (SDK)

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation, 19 CFR 351.218(d)(4). Public comments can be viewed at *http://www.ia.ita.doc.gov/sunset/index.html.* As provided in 19 CFR 351.302(b), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

requested that the Department of Commerce (the Department) conduct an expedited changed circumstances review of the antidumping duty finding on polychloroprene rubber (PR) from Japan. In response to this request, the Department is initiating a changed circumstances review of the above–referenced finding.

**EFFECTIVE DATE:** March 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Zev Primor, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4114.

**SUPPLEMENTARY INFORMATION:**

## Background

On December 6, 1973, the Department of Treasury published in the **Federal Register** (38 FR 33593) the antidumping finding on PR from Japan. On January 14, 2004, SDK submitted a letter stating that they are the successor–in-interest to Showa DDE Manufacturing K.K. (SDEM) and DDE Japan Kabushiki Kaisha (DDE Japan) (collectively, SDEM/DDE Japan) and, as such, entitled to receive the same antidumping treatment as these companies have been accorded. Accordingly, SDK requested that the Department conduct an expedited changed circumstances review of the antidumping duty finding on PR from Japan pursuant to section 751(b)(1) of the Act and 19 CFR 351.221(c)(3)(ii) of the Department's regulations.

## Scope of Review

Imports covered by this review are shipments of PR, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 4002.41.00, 4002.49.00, 4003.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). HTSUS item numbers are provided for convenience and customs purpose. The Department's written description of the scope remains dispositive.

## Initiation of Antidumping Duty Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty finding which shows changed circumstances sufficient to warrant a review of the order. Information submitted by SDK regarding a change in ownership of the prior SDEM/DDE Japan joint venture shows changed circumstances sufficient to warrant a review. *See* 19 CFR 351.216(d).

In antidumping duty changed circumstances reviews involving a successor–in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) (*Canadian Brass*). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor company if the resulting operations are essentially the same as those of the predecessor company. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994), and *Canadian Brass*, 57 FR 20460. Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changes Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999). Although SDK submitted information indicating, allegedly, that with respect to subject merchandise, it operates in the same manner as its predecessor, SDEM/DDE Japan, the Department has determined that the submitted information is deficient and is currently in the process of collecting supplemental information.

Concerning SDK's request that the Department conduct an expedited antidumping duty changed circumstances review, the Department has determined that it would be inappropriate to expedite this action by combining the preliminary results of review with this notice of initiation, as permitted under 19 CFR 351.221(c)(3)(ii). Because the submitted record supporting SDK's claims is deficient, the Department finds that an expedited proceeding is impracticable. Therefore, the Department is not issuing the preliminary results of its antidumping duty changed circumstances review at this time.

The Department will publish in the **Federal Register** a notice of preliminary results of antidumping duty changed circumstances review, in accordance with 19 CFR 351.221(b)(4) and 19 CFR 351.221(c)(3)(i). This notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on those results. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its antidumping duty changed circumstances review not later than 270 days after the date on which the review is initiated.

During the course of this antidumping duty changed circumstances review, we will not change the cash deposit requirements for the merchandise subject to review. The cash deposit will only be altered, if warranted, pursuant to the final results of this review.

This notice of initiation is in accordance with sections 751(b)(1) of the Act and 19 CFR 351.221(b)(1).

Dated: February 23, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04–4496 Filed 2–27–04; 8:45 am]

**BILLING CODE 3510–DS–S**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–351–824]**

### Silicomanganese From Brazil: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

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

**ACTION:** Notice of extension of time limit for final results of antidumping duty administrative review.

**SUMMARY:** The Department of Commerce is extending the time limit for the final results of the administrative review of the antidumping duty order on silicomanganese from Brazil. The final results of this review are now due no later than March 16, 2004.

**EFFECTIVE DATE:** March 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Brian Ellman, (202) 482–4852, or Katja Kravetsky, (202) 482–0108, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 27, 2003, the Department of Commerce (the Deparment) published the preliminary results of the administrative review of the antidumping duty order on silicomanganese from Brazil. See *Silicomanganese from Brazil: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 61185. We invited parties to comment on our preliminary results. We received comments from both the petitioner and the respondent. Currently, the final results of this administrative review are due no later than February 24, 2004.

**Extension of Time Limit for Final Results of Review**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), provides that the Department will issue the final results of an administrative review within 120 days after the date on which the preliminary results were published. It provides further that, if it is not practicable to complete the review within the 120–day period, the Department may extend the period by 60 days.

This review involves complex cost issues, such as high inflation, and the Department needs additional time to consider the arguments raised by the parties after the preliminary results of review. For these reasons, the Department has determined that it is not practicable to complete the final results within the time limits mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with that section, the Department is extending the time limit for completion of the final results by 21 days. The final results of review are now due no later than March 16, 2004.

Dated: February 23, 2004.

**Jeffrey May,**

*Deputy Assistant Secretary for Import Administration, Group I.*

[FR Doc. 04–4494 Filed 2–27–02; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### Export Trade Certificate of Review

**ACTION:** Notice of issuance of an amended export trade certificate of review, application No. 87–17A04.

**SUMMARY:** The Department of Commerce has issued an amended Export Trade Certificate of Review (''Certificate'') to The Association for Manufacturing Technology. Notice of issuance of the original Certificate was published in the **Federal Register** on May 22, 1987 (52 FR 19371).

**FOR FURTHER INFORMATION CONTACT:** Jeffrey 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. The regulations implementing Title III are found at 15 CFR part 325 (2003).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

The Association for Manufacturing Technology's (''AMT'') original certificate was issued on May 19, 1987 (52 FR 19371, May 22, 1987) and lastly amended on March 1, 2002 (67 FR 12524 , March 19, 2002).

AMT's Certificate has been amended as follows:

(1) The following companies have been added as ''Members'' of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)):

A & A Manufacturing Company, Inc., New Berlin, WI;
Abbott Workholding Products, Manhattan, KS;
Action SuperAbrasive Products, Brimfield, OH;
Acu-Rite, Jamestown; NY;
Adept Technology Inc., Livermore, CA;
Agie Charmilles Group, Charlotte, NC;
Ahaus Tool and Engineering, Inc., Richmond, IN;
Airflow Systems, Inc., Dallas, TX;
Airtronics Gage & Machine Co., Elgin, IL;
Allen-Brady Co./Rockwell Automation, Milwaukee, WI;
Allied Machine & Engineering Corp., Dover, OH;
Aloris Tool Technology Co., Inc., Clifton, NJ;
AltaMAR Laser and Control, Fridley, MN;
Amada America Inc., Buena Park, CA;
Atlas Technologies Inc., Fenton, MI;
ATS Workholding, Inc., Anaheim, CA;
Automation Specialties, Inc., Howell, MI;
Automation Tool Company, Cookeville, TN;
Baublys Control Laser, Orlando, FL;
Beaumont Machine, Inc., Milford, OH;
Better Engineering, Mfg., Inc., Baltimore, MD;
Bock Workholding Inc., Mars, PA;
Bosch Rexroth-Electric Drives & Cntrls, Hoffman Estates, IL;
Brinkman International Group, Inc., Rochester, NY;
Buck Forkardt Inc., Portage, MI;
Carboloy Inc., Detroit, MI;
Cedarberg Industries, Inc., Eagan, MN;
Chick Workholding Solutions, Inc., Warrendale, PA;
Cincinnati Grinding Technologies, Middletown, OH;
CNC Engineering, Inc., Enfield, CT;
Coe Press Equipment Corp., Sterling Heights, MI;
Columbus McKinnon for the activities of its Positech Division, Laurens, IA;
Control Gaging, Inc., Ann Arbor, MI;
CRI, Centerless Rebuilders, Inc., Chesterfield Township, MI;
Curran Manu. Corp. for the activities of its Royal Products Division, Hauppauge, NY;
Cutting Edge Optronics, Inc., Saint Charles, MO;
Cyril Bath Company, Monroe, NC;
Daco Jaw Company, Milwaukee, WI;
Daewoo Heavy Industries, America Corp., West Caldwell, NJ;
Detroit Edge Tool Company, Detroit, MI;
DiManco, Inc., Utica, NY;
Dorian Tool International, East Bernard, TX;
Doringer Cold Saws, Inc., Gardena, CA;
DP Technology Corp. /ESPRIT, Camarillo, CA;
DS Technology (USA) Inc., Cincinnati, OH;
Eagle Machine Tools, Inc., Fort Lauderdale, FL;
Eimeldingen Corporation, Indianapolis, IN;
Eitel Presses, Inc., Orwigsburg, PA;
EMAG L.L.C., Farmington Hills, MI;
Enerpac., Milwaukee, WI;
Engis Corporation, Wheeling, IL;
Eriez Magnetics, Erie, PA;
ExxonMobil Lubricants & Petrol Spec Co., Fairfax, VA;
Fagor Automation Corporation, Elk Grove Village, IL;
FANUC Robotics America, Inc., Rochester Hills, MI;
Fred V. Fowler Co., Inc., Newton, MA;
GE Fanuc Automation Americas, Inc., Charlottesville VA;
Gibbs & Associates, Moorpark, CA;
Giddings & Lewis LLC, Fon DU Lac, WI;

Russell T. Gillman, Inc.—An SKF Co., Grafton, WI;
Gleason Corporation, Rochester, NY;
Govro-Nelson Company, St. Clair, MI;
Gudel Lineartec, Inc., Ann Arbor, MI;
Guhring, Inc., Brookfield, WI;
Hangsterfer's Laboratories, Inc., Mantua, NJ;
Hansford Parts And Products, Macedon, NY;
Heller Machine Tools, Troy, MI;
Helmel Engineering Products, Inc., Niagara Falls, NY;
Hines Industries, Inc., Ann Arbor, MI;
Hoffmann Filter Corporation, Brighton, MI;
Huron Machine Products, Inc., Fort Lauderdale, FL;
INA USA, Corp., Fort Mill, SC;
Inductoheat, Inc., Madison Heights, MI;
Ingersoll Cutting Tool Company, Rockford, IL;
Ingersoll Production Systems, Rockford, IL;
Innovative Products & Equip., Inc., Lowell, MA;
Intelitek, Manchester, NH;
Jensen Fabricating Engineers, Inc., Berlin, CT;
Jet Edge, Saint Michael, MN;
Kalamazoo Machine Tool, Portage, MI;
KAPP Technologies, Boulder, CO;
Kennametal Inc.—World Headquarters, Latrobe, PA;
Komet of America, Inc., Schaumburg, IL;
Koolant Koolers, Inc., Kalamazoo, MI;
KPT/Kaiser Precision Tooling, Inc., Elk Grove Village, IL;
Lexair/Production Dynamics, Lexington, KY;
Littell, Addison, IL;
LNS America, Inc., Cincinnati, OH;
Logansport Matsumoto Co., Inc., Logansport, IN;
Lovejoy Tool Company, Inc., Springfield, VT;
Mahr Federal Inc., Providence, RI;
Maintenance Service Corp., Milwaukee, WI;
Mass Finishing, Inc., Delano, MN;
Mastercam/CNC Software, Inc., Tolland, CT;
Master Chemical Corporation, Perrysburg, OH;
Master Work-Holding, Inc., Morganton, NC;
Mate Precision Tooling, Anoka, MN;
MDSI, Ann Arbor, MI;
Mestek Inc., Westfield, MA;
Michigan Custom Machines, Farmington Hills, MI;
Micro Centric Corporation, Plainview, NY;
MIDACO Corp., Elk Grove Village, IL;
M&M Precision Systems Corporation, West Carrollton, OH;
Monsanto Enviro-Chem Systems, Inc., Chesterfield, MO;
Nook Industries, Inc., Cleveland, OH;
Northfield Precision Instrument Corp., Island Park, NY;
NorthTech Workholding, Inc., Schaumburg, IL;
Norwalk Innovation, Inc., Shelton, CT;
Novellus Systems, Inc., Chandler, AZ;
Novi Precision Products, Inc., Brighton, MI;
NSK Precision America Inc., Bloomingdale, IL;
Nuvonyx Inc., Bridgeton, MO;
Penn United Technology, Inc., Saxonburg, PA;
Phillips Corporation, Columbia, MD;
PIA Group, Cincinnati, OH;
Pines Manufacturing, Westlake, OH;
Polymer Sealing Solutions for the activities of its Seals Division, Fort Wayne, IN;
Positrol, Inc., Cincinnati, OH;
PowerHold Incorporated, Middlefield, CT;
P R C Laser, Landing, NJ;
Precision Industries Corporation, Elkhart, IN;
Preco Laser Systems, LLC, Somerset, WI;
Premier Tooling Systems, Grand Blanc, MI;
Pressure Island, Davidson, NC;
PRIMA North America, Inc., Chicopee, MA;
QPAC-Quality Products & Concepts, Lansing, MI;
Quality Vision International Inc., Rochester, NY;
Quantronix Corporation, East Setauket, NY;
Ranshoff, Inc., Cincinnati, OH;
Raycon Corporation, Ann Arbor, MI;
Royal Machine & Tool Corporation, Berlin, CT;
Saint-Gobain Abrasives, Inc., Worcester, MA;
W.J. Savage Co. for the activities of its Savage Saws Division, Knoxville, TN;
Schunk, Inc., Morrisville, NC;
Scientific Technologies, Inc., Fremont, CA;
Sescoi USA, Inc., Southfield, MI;
SGS Tool Company, Munroe Falls, OH;
Siemens Energy & Automation, Inc., Elk Grove Village, IL;
SMW Systems, Inc., Santa Fe Springs, CA;
Sortimat Technology L.P., Schaumburg, IL;
Southwestern Industries, Inc., Rancho Dominguez, CA;
SSD Control Technology, Inc., South Bend, IN;
The L.S. Starrett Co., Athol, MA;
The Precise Corporation, Racine, WI;
Tyler Machinery Co., Inc., for the activities of its MBD Machines Div., Warsaw, IN;
Stellram, La Vergne, TN;
S-T Industries, Inc., St. James, MN;
Suburban Tool, Inc., Auburn Hills, MI;
Suhner Manufacturing Inc., Rome, GA;
Systems Engineering Company Inc., Milwaukee, WI;
T2K—Tooling 2000, Redmond, WA;
Telesis Technologies, Inc., Circleville, OH;
The Timken Company, Torrington, CT;
Thomson Industries, Inc., Port Washington, NY;
Tri-Cam, Inc., Rockford, IL;
Tri-Turn Technologies, Inc., Euclid, OH;
Troyke Manufacturing Co., Cincinnati, OH;
TRU TECH Systems, Inc., Mount Clemens, MI;
Ultra-Grip International, Inc., Walled Lake, MI;
Unist, Inc., Grand Rapids, MI;
Vektek, Inc., Elwood, KS;
Vermont Machine Tool Corp., Springfield, VT;
Vibro/Dynamics Corporation, Broadview, IL;
VX Corporation, Palm Bay, FL;
O. S. Walker Company, Worcester, MA;
Walter Waukesha, Inc., Waukesha, WI.

(2) The following companies have been deleted as ''Members'' of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)):

Alliance Automation Systems
ATS Carolina
ATS Michigan
ATS Ohio
ATS Oregon
ATS Southwest
BHS-Torin Inc.
Blue Valley Machine and Manufacturing Co.
Bridgeport Machines, Inc.
Cargill Detroit Corp.
Cone-Blanchard Machine Co.
Centro-Metalcut Inc.
Dustvent Inc.
Dynetics Corporation
Eagle Eaton Leonard Inc.
Edgetek Machine Corp.
Evana Automation Inc.
E.W. Bliss Company
Gallmeyer & Livingston Company
Goss & De Leeuw Machine Company, The
Grav-I-Flo Corp.
Griffin Automation
Hansvedt EDM Division
Hegenscheidt Corporation
Heim Corp.
Herman Williams Company, Inc.
Hertlein Special Tool Co., Inc.
Hitachi Seiki USA
HR Krueger Machine Tool Inc.
Hybco Products, Inc.
Hyd-Mech Inc.
Komatus Cutting Technologies
Manufacturing Technology, Inc. (California)

Masco Machine, Inc.
Morey Machinery Design & Manufacturing (used to be Morey Machinery Mfg. Corp.)
Motch Corporation
Onsrud Machine Corp.
P S Group
R & B Machine Tool Co.
Redin Corporation
Robert Bosch Corporation for the activities of its Surf/Tran Division
Sout Bend Lathe Corp.
Taurus Products, Inc.
TCE Corporation
The National Acme Company
Wesel Manufacturing Co.
Wisconsin Machine Tool Corp.
Xermac, Inc.

(3) The listings of the following ''Members'' have been changed:

''ABB Flexible Automation Systems, Inc.'' to ''ABB Inc.-Mfg & Consumer Industries Grp''; ''Advanced Assembly Automation, Inc.'' to ''DT Industries''; ''The Beckwood Corporation'' to ''Beckwood Press Company''; ''The Bodine Corporation'' to ''Bodine Assembly and Test Systems''; ''Broaching Machine Specialties'' to ''Broaching Machine Specialties Co.''; ''Brown & Sharpe Manufacturing Co.'' to ''Brown & Sharpe, Inc.''; ''Capco, Inc.'' to ''Capco Machinery Systems, Inc.''; ''Chas. G Allen Co.'' to ''Chas. G Allen Co., Inc.''; ''The Cincinnati Gilbert Mach. Tool Co. L.L.C.'' to ''The Cincinnati Gilbert Mach. Tool Co.''; ''Crankshaft Machine Group'' to ''CMG''; ''Dake'' to ''Dake-JSJ Corporation''; ''Denford Machine Tools, USA, Inc.'' to ''Denford Inc.''; ''DT Industries, Inc.'' to ''DT Industries''; ''ESAB L–TEC Cutting Systems'' to ''ESAB Cutting Systems''; ''Fayscott Co.'' to ''Fayscott LLC''; ''The Gem City Engineering Co.'' to ''GCE Technologies''; ''Hess Engineering, Inc.'' to ''Hess Industries, Inc.''; ''Industrial Metal Products Corp.'' to ''IMPCO Machine Tools''; ''Kingsbury Machine Tool Corporation'' to ''Kingsbury Corporation''; ''Kleer-Flo Company'' to ''KLEENTEC/KLEERFLO''; ''Lapmaster International'' to ''Lapmaster International-US''; ''Livernois Engineering'' to ''Outokumpu Livernois Engineering LLC''; ''Milacron, Inc.'' to ''Milicron, Inc.-Headquarters''; ''Miyano Machinery USA Inc.'' to ''Miyano Machinery Inc.''; ''Moline Tool Company, Inc.'' to ''Moline Tool''; ''Murata Wiedemann, Inc.'' to ''Murata Machinery USA, Inc.-Machine Tools''; ''National Broach & Machine Co.'' to ''Nachi Machining Technology Company''; ''Newcor, Inc.'' to ''Newcor Bay City''; ''New Nine Inc., d/b/a GWI Engineering'' to ''GWI Engineering, Inc.''; ''Okuma, Inc.'' to ''Okuma America Corporation (OAC)''; ''RMT Technologies'' to ''RMT Technology''; ''Seneca Falls Technology Group'' to ''Seneca Falls Tech Grp—Machine Blders Division''; ''SMS Group Inc.'' to ''Saginaw Machine Systems''; ''Strippit, Inc.'' to ''Strippit/LVD''; ''UNOVA Inc.'' to ''UNOVA Industrial Automation Systems''; ''Wilton Machinery'' to ''WMH Tool Group''.

Dated: February 18, 2004.

**Jeffrey Anspacher,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 04–4440 Filed 2–27–04; 8:45 am]

BILLING CODE 3510–DR–P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**A–475–824**

### Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy

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

**ACTION:** Notice of extension of time limit of the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

**SUMMARY:** The Department of Commerce (''the Department'') is extending the time limit of the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

**EFFECTIVE DATE:** March 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Herzog, AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–4271.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 2, 2003, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Italy. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 39511 (July 2, 2003). On July 31, 2003, Thyssen Krupp Acciai Speciali S.p.A. (''TKAST''), an Italian producer of subject merchandise requested that the Department conduct an administrative review. Additionally, on July 31, 2003, Petitioners requested that the Department conduct an administrative review of TKAST. On August 22, 2003, the Department published a notice of initiation of an administrative review of the antidumping duty order on stainless steel sheet and strip in coils, for the period July 1, 2002 through June 30, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 50750 (August 22, 2003). The preliminary results of this administrative review are currently due no later than April 1, 2004.

### Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations, the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days from the date on which the review was initiated. Due to the complexity of issues present in this administrative review, such as home market affiliated downstream sales, and complicated cost accounting issues, the Department has determined that it is not practicable to complete this review within the original time period provided in section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations. Therefore, we are extending the due date for the preliminary results by 60 days, until no later than May 31, 2003. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: February 9, 2004.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Import Administration, Group III.*

[FR Doc. 04–4497 Filed 2–27–04; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

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

**ACTION:** Notice of Consent Motion to Terminate the Panel Review of the final affirmative countervailing duty determination made by the International Trade Administration, respecting Carbon and Certain Alloy Steel Wire Rod from Canada (Secretariat File No. USA–CDA–2002–1904–08).

**SUMMARY:** Pursuant to the Notice of Consent Motion to Terminate the Panel Review by the complainants, the panel review is terminated as of February 25, 2004. A panel has been appointed to this panel review and has consented to this motion. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review,* this panel review is terminated.

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

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

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

Dated: February 24, 2004.

**Caratina L. Alston,**

*United States Secretary, NAFTA Secretariat.*

[FR Doc. 04–4422 Filed 2–27–04; 8:45 am]

**BILLING CODE 3510–GT–P**

## DEPARTMENT OF COMMERCE

### Minority Business Development Agency.

**[Docket No.: 000724217–4069–09]**

### Solicitation of Applications for the Minority Business Development Center (MBDC) Program

**AGENCY:** Minority Business Development Agency.

**ACTION:** Notice.

**SUMMARY:** The Minority Business Development Agency publishes this notice to clarify that the closing date for competitive applications for the Minority Business Development Center (MBDC) Program is March 12, 2004, as published in the original **Federal Register** Notice on February 11, 2004.

**DATES:** The closing date for applications for each MBDC project is March 12, 2004.

MBDA anticipates that awards for the MBDC program will be made with a start date of April 1, 2004. Completed applications for the MBDC program must be (1) mailed (USPS postmark) to the address below; or (2) received by MBDA no later than 5 p.m. Eastern Standard Time. Applications postmarked later than the closing date or received after the closing date and time will not be considered.

**ADDRESSES:** Applicants must submit one signed original plus two (2) copies of the application. Completed application packages must be submitted to: Office of Business Development, Minority Business Development Center Program Office, Office of Executive Secretariat, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

If the application is hand-delivered by the applicant or his/her representative, one signed original plus two (2) copies of the application must be delivered to Room 1874, which is located at Entrance #10, 15th Street, NW., between Pennsylvania and Constitution Avenues.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact the MBDA National Enterprise Center (NEC) for the geographic service area in which the project will be located or visit MBDA's Minority Business Internet Portal (MBDA Portal) at *http://www.mbda.gov.*

**SUPPLEMENTARY INFORMATION:** On February 19, 2004, MBDA published a **Federal Register** Notice revising the funding level for the MBDC program (69 FR 7725). Due to an inadvertent error, the February 19, 2004 notice incorrectly states the closing date for applications for the Minority Business Development Center (MBDC) program. MBDA publishes this notice to clarify that the closing date for competitive applications for the MBDC program is March 12, 2004, as published in the original **Federal Register** Notice on February 11, 2004 (69 FR 6642).

Dated: February 24, 2004.

**Glenn Clark,**

*Budget Officer, Minority Business Development Agency.*

[FR Doc. 04–4439 Filed 2–27–04; 8:45 am]

**BILLING CODE 3510–21–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

**[Docket No.: 04129029–4029–01]**

### Voluntary Product Standard (PS) 20–99, American Softwood Lumber Standard

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Request for Comments.

**SUMMARY:** The National Institute of Standards and Technology (NIST) is requesting comments on Voluntary Product Standard (PS) 20–99, American Softwood Lumber Standard. This standard serves the procurement and regulatory needs of numerous Federal, State, and local government agencies by providing for uniform, industry-wide grade-marking and inspection requirements for softwood lumber. The implementation of the standard also allows for uniform labeling and auditing of treated-wood panels and, through a Memorandum of Understanding with the U.S. Department of Agriculture, labeling and auditing of wood packaging materials for international trade. As part of a five year review process, NIST is seeking public comment and invites interested parties to review the standard and submit comments.

**DATES:** Written comments regarding PS 20–99 should be submitted to the Standards Coordination and Conformity Group, Standards Services Division, NIST, no later than May 17, 2004.

**ADDRESSES:** An electronic copy (in PDF) of the standard, PS 20–99, can be obtained at the following Web site *http://ts.nist.gov/docvps.* Printed copies may be obtained from the address below. Written comments on the standard should be submitted to Ms. JoAnne Overman, Standards Coordination and Conformity Group,

Standards Services Division, NIST, 100 Bureau Drive, Stop 2150, Gaithersburg, MD 20899–2150; fax (301) 975–5414. Electronic comments may be submitted via e-mail to *joanne.overman@nist.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ms. JoAnne Overman, Standards Coordination and Conformity Group, Standards Services Division, National Institute of Standards and Technology, telephone: (301) 975–4037; fax: (301) 975–5414, e-mail: *joanne.overman@nist.gov.*

**SUPPLEMENTARY INFORMATION:** Under Department of Commerce procedures established in Title 15 Code of Federal Regulations Part 10, Procedures for the Development of Voluntary Product Standards, and administered by NIST, the American Lumber Standard Committee acts as the Standing Committee for PS 20–99, American Softwood Lumber Standard, and is responsible for maintaining, revising, and interpreting the standard. The Committee is comprised of producers, distributors, users, and others with an interest in the standard.

Voluntary Product Standard (PS) 20–99 establishes standard sizes and requirements for developing and coordinating the lumber grades of the various species of softwood lumber, the assignment of design values, and the preparation of grading rules applicable to each species. Its provisions include implementation of the standard through an accreditation and certification program; establishment of principal trade classifications and lumber sizes for yard, structural, and factory/shop use; classification, measurement, grading, and grade-marking of lumber; definitions of terms and procedures to provide a basis for the use of uniform methods in the grading inspection, measurement, and description of softwood lumber; commercial names of the principal softwood species; definitions of terms used in describing standard grades of lumber; and commonly used industry abbreviations. The standard also includes the organization and functions of the American Lumber Standard Committee, the Board of Review, and the National Grading Rule Committee.

All public comments will be reviewed and considered. The American Lumber Standard Committee and NIST will revise the standard accordingly.

Dated: February 20, 2004.

**Hratch G. Semerjian,**

*Deputy Director.*

[FR Doc. 04–4443 Filed 2–27–04; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No. 030602141–4026–06; 061703A]**

**RIN 0648–ZB55**

### Availability of Grant Funds for Fiscal Year 2004; Republication

**Editorial Note:** Due to numerous errors, this document is being reprinted in its entirety. It was originally printed in the **Federal Register** on Thursday, February 12, 2004, at 69 FR 6942–6946.

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Omnibus Notice Announcing the Availability of Grant Funds for Fiscal Year 2004.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) announces a third availability of grant funds for Fiscal Year 2004. This notice provides the general public program and application information related to the Agency's competitive grant offerings, and it contains the information about those programs required to be published in the **Federal Register**. It should be noted that additional program initiatives unanticipated at the time of the publication of this notice may be announced through both subsequent **Federal Register** notices and the NOAA Web site: *http://www.ofa.noaa.gov/~amd/SOLINDEX.HTML.*

**DATES:** Proposals must be received by the date and time indicated under each program listing in the **SUPPLEMENTARY INFORMATION** section.

**ADDRESSES:** Proposals must be submitted to the addresses listed in the **SUPPLEMENTARY INFORMATION** section for each program.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the full funding opportunity announcement and/or application kit, please contact the person listed as the information contact under each program or access it via NOAA's Web site: *http://www.ofa.noaa.gov/~amd/SOLINDEX.HTML.*

**SUPPLEMENTARY INFORMATION:**

NOAA published its first omnibus notice announcing the availability of grant funds for both projects and fellowships/scholarships/internships for Fiscal Year 2004 in the **Federal Register** on June 30, 2003 (68 FR 38678). The evaluation criteria and selection procedures contained in the June 30, 2003, omnibus notice are applicable to this solicitation. For a copy of the June 30, 2003, omnibus notice, please go to: *http://www.ofa.noaa.gov/~amd/SOLINDEX.HTML.*

**Electronic Access**

The full funding announcement for each program is available via Web site *http://www.ofa.noaa.gov/~amd/SOLINDEX.HTML* or by contacting the program official identified below. These announcements will also be available through FedGrants at *http://www.fedgrants.gov.*

**NOAA Project Competitions**

This third omnibus notice describes funding opportunities for the following NOAA discretionary grant programs:

*National Marine Fisheries Service*

1. Right Whale Research Grants Program (RWRGP)

*Summary Description:* The North Atlantic right whale is among the world's most endangered cetaceans. The population is believed to number only about 300 individuals and appears to be declining. The lack of recovery is due in part to high mortality from human sources, notably fishing gear entanglements and vessel collisions. A Recovery Plan is in effect, and conservation of this species is a high priority for NOAA Fisheries. Research directed at facilitating such conservation or to provide monitoring of the population's status and health, is also a high priority for the agency. The RWRGP is conducted by NOAA to provide Federal assistance to eligible researchers for: (1) Detection and tracking of right whales; (2) behavior of right whales in relation to ships; (3) relationships between vessel speed, size or design with whale collisions; (4) modeling of ship traffic along the Atlantic coast; (5) population monitoring and assessment studies; (6) reproduction, health and genetic studies; (7) development of a Geographic Information System database or other system designed to investigate predictive modeling of right whale distribution in relation to environmental variables; (8) habitat quality studies including food quality and pollutant levels; and (9) any other work relevant to the recovery of North Atlantic right whales.

*Funding Availability:* This solicitation announces that a maximum of $2.0M may be available for distribution under the FY 2004 RWRGP, in award amounts to be determined by the proposals and available funds. Applicants are hereby given notice that funds have not yet been appropriated for this program. There is no guarantee that sufficient funds will be available to make awards

for all qualified projects. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. There is no set minimum or maximum amount for any award, and there is no limit on the number of applications that can be submitted by the same researcher during the 2004 competitive grant cycle. However, there are insufficient funds to award financial assistance to every applicant. If an application for a financial assistance award is selected for funding, NOAA/NMFS has no obligation to provide any additional funding in connection with that award in subsequent years.

*Statutory Authority:* 16 U.S.C. 1380.

*CFDA:* 11.472, Unallied Science Programs.

*Application Deadline:* Proposals must be postmarked by 5 p.m. eastern time on April 12, 2004.

*Address for Submitting Proposals:* NOAA Fisheries Right Whale Grants Program, Protected Species Branch, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543, 508–495–2316.

*Information Contact(s):* Dr. Phillip J. Clapham, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543, 508 495–2316, e-mail *rightwhalegrants@noaa.gov.*

*Eligibility:* Eligible applicants are individuals, institutions of higher education, other nonprofits, commercial organizations, international organizations, foreign governments, organizations under the jurisdiction of foreign governments, and State, local and Indian tribal governments. Federal agencies, or employees of Federal agencies are not eligible to apply.

*Cost Sharing Requirements:* No cost sharing is required under this program.

Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

*National Ocean Service*

1. Bay Watershed Education & Training (B–WET) Program, Hawaiian Islands

*Summary Description:* The B–WET grant program is a competitively based program that supports existing environmental education programs, fosters the growth of new programs, and encourages the development of partnerships among environmental education programs throughout the Hawaiian Islands. Funded projects provide ''meaningful'' outdoor experiences for students and professional development opportunities for teachers in the area of environmental education.

*Funding Availability:* This solicitation announces that approximately $400,000 may be available for FY 2004 in award amounts to be determined by the proposals and available funds. It is anticipated that approximately 10 grants will be awarded with these funds. About $200,000 will be for proposals that provide opportunities for students to participate in a ''meaningful'' outdoor experience. About $200,000 will be for proposals that provide opportunities for professional development in the area of environmental education for teachers. Proposals may be submitted for up to 3 years. However, funds will be made available for only a 12-month award period. The Pacific Services Center may review the grants funded under this announcement pending submission of successful proposals subject to technical and panel review, adequate progress on previous award(s) and/or site visits, and available funding.

*Statutory Authority:* 33 U.S.C. 883d, 15 U.S.C. 1540.

*CFDA:* 11.473, Coastal Services Center.

*Application Deadline:* Proposals must be received by 5 p.m. Pacific time on March 29, 2004.

*Address for Submitting Proposals:* Monterey Bay National Marine Sanctuary Office; 299 Foam Street, Monterey, CA 93940. Facsimile transmissions and electronic mail submission of proposals will not be accepted.

*Information Contact:* Seaberry Nachbar, phone 831–647–4201, fax 831–647–4250, Internet at *seaberry.nachbar@noaa.gov.*

*Eligibility:* Eligible applicants for both areas of interest (''meaningful outdoor experience'' and professional development in the area of environmental education for teachers) are K-through-12 public and independent schools and school systems, institutions of higher education, commercial and nonprofit organizations, State or local government agencies, and Indian tribal governments. Applicants that are not eligible are individuals and Federal agencies.

*Cost Sharing Requirements:* No cost sharing is required under this program; however, the Pacific Services Center strongly encourages applicants to share as much of the costs of the award as possible. Funds from other Federal awards may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the review process with cash being the preferred method of contribution.

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

2. Bay Watershed Education & Training (B–WET) Program, Monterey Bay Watershed

*Summary Description:* The B–WET grant program is a competitively based program that supports existing environmental education programs, fosters the growth of new programs, and encourages the development of partnerships among environmental education programs throughout the Monterey Bay watershed. Funded projects provide ''meaningful'' outdoor experiences for students and professional development opportunities for teachers in the area of environmental education.

*Funding Availability:* This solicitation announces that approximately $475,000 may be available in FY 2004 in award amounts to be determined by the proposals and available funds. It is anticipated that approximately 15 grants will be awarded with these funds. About $250,000 will be for proposals that provide opportunities for students to participate in a ''meaningful'' outdoor experience. About $225,000 will be for proposals that provide opportunities for professional development in the area of environmental education for teachers. Proposals may be submitted for up to 3 years. However, funds will be made available for only a 12-month award period and any renewal of the award period will depend on submission of a successful proposal subject to technical and panel review, adequate progress on previous award(s), and available funding to renew the award. The NMSP may renew the grants funded under this announcement pending submission of successful proposals subject to technical and panel reviews, adequate progress on previous award(s) and/or site visits, and available funding.

*Statutory Authority:* 15 U.S.C. 1440.

*CFDA:* 11.429, Marine Sanctuary Program.

*Application Deadline:* Proposals must be received by 5 p.m. Pacific time on March 29, 2004.

*Address for Submitting Proposals:* Monterey Bay National Marine Sanctuary Office; 299 Foam Street, Monterey, CA 93940. Facsimile transmissions and electronic mail submission of proposals will not be accepted.

*Information Contact:* Seaberry Nachbar, phone 831–647–4201, fax 831–647–4250, Internet at *seaberry.nachbar@noaa.gov.*

*Eligibility:* Eligible applicants for both areas of interest (''meaningful outdoor experiences'' and professional development in the area of environmental education for teachers) are K-through-12 public and independent schools and school systems, institutions of higher education, commercial and nonprofit organizations, State or local government agencies, and Indian tribal governments. Applicants that are not eligible are individuals and Federal agencies.

*Cost Sharing Requirements:* No cost sharing is required under this program; however, the National Marine Sanctuary Program strongly encourages applicants to share as much of the costs of the award as possible. Funds from other Federal awards may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the review process with cash being the preferred method of contribution.

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

3. FY2004 Coastal Services Center Technical Assistance for Coastal Managers Program

*Summary Description:* The Technical Assistance for Coastal Managers program represents an NOAA/CSC effort to improve the use of monitoring data and geospatial information and technology in coastal management through collaborative work with members of the coastal management community that have expertise in community planning and resource management. These activities will engage coastal managers from multiple organizations and levels of government and improve the management of coastal resources by applying geospatial knowledge, practices, and principles to new approaches for managing coastal resources. The Technical Assistance for Coastal Managers program contributes to other efforts at the NOAA/CSC and is designed to complement those efforts. Five program priorities will be targeted as a result of this announcement. They are:

(1) Increasing coordination and planning between local land trusts, State agencies, and regional planning agencies within New England.

(2) Development of a nationally consistent inventory system for geospatial data at the state level.

(3) Increasing education and research opportunities in the application of CIS and remote-sensing technologies to coastal resource management, with emphasis on recruiting under-represented minorities.

(4) Incorporation of seagrass into the monitoring of the health of special management areas.

(5) Pilot projects supporting the Data Management and Communications component of the Integrated Ocean Observing System.

NOAA/CSC will give sole attention to individual proposals that address one or more of the program priorities described above. Proposals must clearly specify which program priority is being addressed. A proposal must contain tasks that address each element listed for the priority chosen. All awards will be in the form of a cooperative agreement, which allows the NOAA/CSC to have substantial involvement in the projects in addition to providing funds. Applicants must propose a role for the NOAA/CSC that constitutes the substantial involvement listed for that priority.

The names, affiliations, and phone numbers of relevant NOAA/CSC personnel are provided below. Prospective applicants should communicate with these focal points to ensure the role specified for the NOAA/CSC is practicable. Focal points cannot assist in the conceptual design of the project nor can they help with the design of specific elements included in a proposal.

*Funding Availability for FY2004:* This funding opportunity announces that approximately $1,750,000 will be available through this announcement for fiscal year 2004 for cooperative agreements. Proposals should be prepared assuming a total budget of no more than $500,000 for priorities (1) and (4), and $125,000 for priorities (2), (3), and (5). It is expected that one award will be made for priority areas (1) through (4) and up to three awards for priority (5), depending on availability of funds.

*Statutory Authority:* 16 U.S.C. 1456c and 33 U.S.C 1442.

*CFDA:* 11.473, Coastal Services Center.

*Application Deadline:* Applicants applying for Federal assistance under the Technical Assistance for Coastal Managers Program, must submit their applications by 5 p.m. local time March 15, 2004.

*Address for Submitting Proposals:* Coastal Services Center, 2234 South Hobson Avenue, Charleston, South Carolina 29405–2413 to the attention of Violet Legette, room 218.

*Information Contact(s):* For administrative questions on all five program priorities, contact Violet Legette, NOAA CSC, 2234 South Hobson Avenue, Room 218, Charleston, South Carolina 29405–2413, or by phone at 843–740–1222, or by fax 843–740–1232, or via Internet at *Violet.Legette@noaa.gov*. For technical questions on program priorities (1), (2), and (3), contact Hamilton Smillie, NOAA CSC, 2234 South Hobson Avenue, Room 153, Charleston, South Carolina 29405–2413, or by phone at 843–740–1192, or by fax 843–740–1315, or via Internet at *Hamilton.Smillie@noaa.gov*. For technical questions on program priority (4), contact Pace Wilber, NOAA CSC, 2234 South Hobson Avenue, Room 234B, Charleston, South Carolina 29405–2413, or by phone at 843–740–1235, or by fax 843–740–1315, or via Internet at *Pace.Wilber@noaa.gov*. For technical questions on program priority (5), contact Anne Ball, NOAA CSC, 2234 South Hobson Avenue, Room 211, Charleston, South Carolina 29405–2413, or by phone at 843–740–1229, or by fax 843–740–1315, or via Internet at *Anne.Ball@noaa.gov*.

*Eligibility:* Eligible applicants are institutions of higher education, hospitals, other non-profits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, and State, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this announcement.

*Cost Sharing Requirements:* None.

*Intergovernmental Review:* Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

*Office of Oceanic and Atmospheric Research*

1. NOAA Educational Partnership Program With Minority Serving Institutions: Environmental Entrepreneurship Program

*Summary Description:* The goal of the National Oceanic and Atmospheric Administration Educational Partnership Program with Minority Serving Institutions (EPP/MSI) is to strengthen the capacity of Minority Serving Institutions to foster student careers, entrepreneurship opportunities and advanced academic degrees in sciences directly related to NOAA's mission. The

Environmental Entrepreneurship Program is designed to support education and training programs to engage students in applying the necessary skills, tools, methods and technologies in sciences directly related to NOAA's mission. This includes fostering educational opportunities in coastal, oceanic, atmospheric, environmental sciences, and remote sensing technology, coupled with training in economics, marketing, product development, and services to create jobs, businesses, and economic development opportunities. The Environmental Entrepreneurship Program promotes partnerships with MSIs, NOAA and the public-private sector.

*Funding Availability:* Subject to appropriations, approximately $3 million will be available for the Environmental Entrepreneurship Program competition in 2004. Proposals are limited to a total of $500,000 for a maximum of three years and approximately six proposals will be funded.

*Statutory Authority:* 15 U.S.C. 1540.

*CFDA:* 11.481 Educational Partnership Program with Minority Serving Institutions.

*Application Deadline:* Proposals must be received by 5 p.m. eastern time on March 15, 2004.

*Address for Submitting Applications:* NOAA EPP/MSI: Environmental Entrepreneurship Program, National Oceanic and Atmospheric Administration, Room 10725, SSMC3, 1315 East-West Highway, Silver Spring, MD 20910. Facsimile transmissions and electronic mail submission of proposals will not be accepted.

*Information Contact:* Jewel G. Linzey, Program Manager, Environmental Entrepreneurship Program, (301) 713–9437, ext. 118, facsimile (301) 713–9465, e-mail *Jewel.Griffin-Linzey@noaa.gov.*

*Eligibility:* Minority Serving Institutions eligible to submit proposals include institutions of higher education identified by the Department of Education as:

(i) Historically black colleges and universities,

(ii) Hispanic-serving institutions,

(iii) Tribal colleges and universities,

(iv) Alaska Native or Native Hawaiian serving institutions

on the most recent ''2003 United States Department of Education Accredited Post-Secondary Minority Institutions'' list: *http://www.ed.gov/about/offices/list/ocr/edlite-minorityinst.html.*

*Cost Sharing Requirements:* There is no cost-sharing requirement.

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

**Limitation of Liability**

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

**National Environmental Policy Act (NEPA)**

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA Federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/,* including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm.* Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (*e.g.*, the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems).

In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying and implementing feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for the denial of an application.

**The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements**

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

**Paperwork Reduction Act**

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 has been approved by Office of Management and Budget (OMB) under the respective control numbers (0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001). Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

**Executive Order 12866**

This notice has been determined to be not significant for purposes of Executive Order 12866.

**Executive Order 13132 (Federalism)**

It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

**Administrative Procedure Act/ Regulatory Flexibility Act**

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: February 5, 2004.

**John J. Kelly, Jr.,**

*Deputy Under Secretary of Commerce for Oceans and Atmosphere, National Oceanic and Atmospheric Administration.*

[FR Doc. 04–3083 Filed 2–11–04; 8:45 am]

**Editorial Note:** Due to numerous errors, this document is being reprinted in its entirety. It was originally printed in the

**Federal Register** on Thursday, February 12, 2004, at 69 FR 6942–6949.

[FR Doc. R4–3083 Filed 2–27–04; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 021904B]**

### Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT); Spring Species Working Group Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Advisory Committee to the U.S. Section to ICCAT announces its spring meeting from March 15 to 17, 2004. The Advisory Committee will hold a workshop on the first day of the spring meeting, March 15, 2004, to discuss the upcoming ICCAT intersessional meeting on integrated and coordinated management of Atlantic bluefin tuna. Following the workshop, the Advisory Committee will meet with its Species Working Group Technical Advisors on March 16 and 17, 2004.

**DATES:** The open sessions of the Committee meeting will be held on March 15, 2004, from 8:30 a.m. to 12 p.m., on March 16, 2004, from 8:30 a.m. to 12 p.m., and on March 17, 2004, from 8:30 a.m. to 9 a.m and from 10:30 a.m. to 12:30 a.m.. Closed sessions will be held on March 15, 2004, from 1:30 p.m. to approximately 6 p.m., on March 16, 2004, from 1:30 p.m. to approximately 6 p.m., and on March 17, 2004, from 9 a.m. to 10:30 p.m.

**ADDRESSES:** The meeting will be held at the Holiday Inn Hotel, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

**FOR FURTHER INFORMATION CONTACT:** Erika Carlsen at (301) 713–2276.

**SUPPLEMENTARY INFORMATION:** The Advisory Committee to the U.S. Section to ICCAT will meet in an open session on March 15, 2004, for a workshop to receive and discuss information on the upcoming ICCAT intersessional on integrated and coordinated management of Atlantic bluefin tuna, including Atlantic bluefin tuna stock composition; a historical review of Atlantic bluefin tuna management; and the 2001 ICCAT report on bluefin tuna mixing. In addition, the Committee will receive information on the results of the review of bluefin tuna and marlin landings estimates previously reported to ICCAT. The Advisory Committee will meet again in an open session on March 16 and 17, 2004, to receive and discuss information on (1) the 2003 ICCAT meeting results and U.S. implementation of ICCAT decisions; (2) 2003 ICCAT and NMFS research and monitoring activities; (3) 2004 Commission activities; (4) the Atlantic Tunas Convention Act required consultation on the identification of countries that are diminishing the effectiveness of ICCAT; (5) the results of the meetings of the Committee's Species Working Groups; and (6) other matters relating to the international management of ICCAT species. The public will have access to the open sessions of the meeting, but there will be no opportunity for public comment.

The Advisory Committee will go into executive session during part of the afternoon of March 15, 2004, to discuss sensitive information relating to upcoming international negotiations. In addition, the Committee will meet in its Species Working Groups for a portion of the afternoon of March 16 and morning of March 17, 2004. These sessions are not open to the public, but the results of the species working group discussions will be reported to the full Advisory Committee during the Committee's morning open session on March 17.

#### Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Erika Carlsen at (301) 713–2276 at least 5 days prior to the meeting date.

Dated: February 24, 2004.

**Bruce C. Morehead,**

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

[FR Doc. 04–4516 Filed 2–27–04; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 021804A]**

### Endangered Species; Permit File No. 1260

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

**ACTION:** Receipt of application for modification.

**SUMMARY:** Notice is hereby given that the NMFS, Southeast Region, 9721 Executive Center Drive, North, St. Petersburg, Florida 33702–2449, has requested a modification to scientific research Permit No. 1260.

**DATES:** Written comments or requests for a public hearing must be received on or before March 31, 2004.

**ADDRESSES:** The modification request and related documents are available for review upon written request or by appointment in the following offices:

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

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Written comments or requests for a public hearing must be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Comments may be submitted by facsimile to (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. They may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1260 Modification.

**FOR FURTHER INFORMATION CONTACT:** Patrick Opay, (301)713–1401 or Ruth Johnson, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The subject modification request to Permit No. 1260, issued on June 29, 2001 (66 FR 34621) is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 1260 authorizes the permit holder to take loggerhead (Caretta caretta), leatherback (*Dermochelys coriacea*), Kemp's ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), green (*Chelonia mydas*) and olive ridley (*Lepidochelys olivacea*) sea

turtles for scientific research. The permit holder requests authorization to increase the number of sea turtles that can be sampled after they are incidentally captured during separately authorized trawl, bottom longline and pelagic longline resource assessment cruises. The permit holder proposes to take an additional 14 loggerhead and six Kemp's ridley sea turtles and also requests authorization to take nine leatherback, six green and six hawksbill sea turtles during the cruises. The applicant proposes to handle, flipper tag, measure and release all turtles associated with these cruises. None of the activities authorized under this modification are expected to result in mortality. The research will be conducted in waters of the Atlantic Ocean and Gulf of Mexico during the remainder of the permit which expires June 30, 2006.

Dated: February 20, 2004.

**Carrie W. Hubard,**

*Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 04–4515 Filed 2–27–04; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 022504A]**

### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

**ACTION:** Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

**SUMMARY:** NMFS announces that the Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NOAA Fisheries (Assistant Regional Administrator), has determined that an application for EFPs contains all of the required information and warrants further consideration. The Assistant Regional Administrator is considering the impacts of the activities to be authorized under the EFPs with respect to the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Assistant Regional Administrator proposes to issue EFPs in response to an application submitted by the Maine Department of Marine Resources (Maine DMR). These EFPs would allow six commercial longline or tub trawl vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFPs would allow for exemptions from the FMP as follows: Six federally permitted vessels would be allowed to fish for, land, and possess Atlantic halibut (*Hippoglossus hippoglossus*) in excess of the allowable landing and possession limit specified at 50 CFR 648.86(c) within a portion of the Gulf of Maine Regulated Mesh Area (GOM RMA); these vessels would be allowed to possess temporarily Atlantic halibut less than the minimum size requirement of 36 inches (91.4 cm) specified at § 648.83(a)(1) for purposes of collecting scientific information; and these vessels would be granted access to GOM Rolling Closure Area IV (June 1–June 30).

Regulations under the Magnuson-Stevens Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

**DATES:** Comments on this notification must be received at the appropriate address or fax number (see **ADDRESSES**) on or before March 16, 2004.

**ADDRESSES:** Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is *DA367@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments on Maine Halibut EFP Proposal.'' Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Maine Halibut EFP Proposal.'' Comments may also be sent via facsimile to (978) 281–9135.

Copies of the Draft 2004 Amended Environmental Assessment (EA) Prepared for the Experimental Halibut Fishery in Groundfish Closed Areas in the Eastern Gulf of Maine are available from the Northeast Regional Office at the same address.

**FOR FURTHER INFORMATION CONTACT:** Susan Chinn, Fishery Management Specialist, 978–281–9218.

**SUPPLEMENTARY INFORMATION:** Maine DMR submitted an application on December 19, 2003, to conduct an experimental Atlantic halibut fishery using up to six commercial longline and tub trawl vessels in a portion of the GOM RMA. The proposed experiment is a continuation of experimental fisheries conducted by Maine DMR in 2000, 2001, 2002, and 2003 the fifth in a series of at least five anticipated studies aimed at collecting biological information to be used in the long-term management of this species. As with the prior studies, this year's application proposes to collect data on the distribution, relative abundance, migration, stock definition, mortality rates, stock size, yield, and other significant biological reference points for Atlantic halibut.

The proposed 2004 experimental fishery would take place from May 1 to June 30, 2004, or 60 days concurrent from the start date, in a portion of the GOM RMA defined as follows:

| Area point | N. Latitude | W. Latitude |
|---|---|---|
| HAL 1 | Mainland Maine Coastline | 69°00″ |
| HAL 2 | 43°12.3″ | 69°00″ |
| HAL 3 | 43°58.3″ | 67°21.5″ |
| HAL 4[1] | Mainland Maine Coastline and U.S./Canada Maritime Boundary | Mainland Maine Coastline and U.S./Canada Maritime Boundary |

[1]Between points HAL 3 and HAL 4, the area follows the U.S./Canada maritime boundary.

Participating vessels would be authorized to use only traditional longline or tub trawl gear during the experiment. These vessels would be limited to a maximum of 700 hooks per boat, and would be restricted to using only circle hooks no smaller than 14/0 in size.

Each of the six vessels would be limited to a total allowable catch (TAC) of 50 halibut, with no possession or landing limit prior to reaching this

amount. Once the TAC is reached by an individual vessel, that vessel would be restricted to possessing and landing no more than four legal-sized halibut per day. The maximum number of Atlantic halibut that could be harvested as part of this study would be 500, the same number authorized to be harvested in the 2003 experimental fishery.

The EA prepared for the 2002 halibut experimental fishery and the 2003 Supplement to the 2002 EA, prepared for the 2003 halibut experimental fishery, concluded that the activities conducted under the 2002 and 2003 EFPs were consistent with the goals and objectives of the FMP and would have no negative environmental impacts including impacts to Essential Fish Habitat, marine mammals, and protected species. A Draft 2004 Amended Environmental Assessment (EA) Prepared for the Experimental Halibut Fishery in Groundfish Closed Areas in the Eastern Gulf of Maine has been prepared that analyzes the impacts of the proposed 2004 experimental fishery on the human environment. The draft Amended EA determines that the proposed experimental fishery to collect biological and ecological information on Atlantic halibut will not significantly affect the quality of the human environment.

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

**Peter H. Fricke,**

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

[FR Doc. 04–4517 Filed 2–27–04; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### Wireless Sensor Technology Forum

**AGENCY:** National Telecommunications and Information Administration, United States Patent and Trademark Office, Technology Administration, U.S. Department of Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Department of Commerce's National Telecommunications and Information Administration (NTIA), United States Patent and Trademark Office (USPTO), and Technology Administration (TA) will host a half-day forum on sensor technologies, entitled ''From RFID to Smart Dust: The Expanding Market for Wireless Sensor Technologies.'' The first panel will address the future market for sensor technologies by examining a variety of wireless sensor technologies, along with the current and potential future uses by industry and government. Panelists will include researchers, market analysts, and industry and government users. The second panel will address public policy issues facing sensor technologies such as spectrum use, privacy and security, and intellectual property. Panelists will include representatives from companies and government, as well as public policy analysts.

**DATES:** The Wireless Sensor Technology Forum will be held from 9 a.m. to 1:15 p.m. on Thursday, April 1, 2004.

**ADDRESSES:** The forum on wireless sensor technologies will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Auditorium, Washington, DC. (Entrance to the Department of Commerce is on 14th Street between Constitution and Pennsylvania avenues.)

**FOR FURTHER INFORMATION CONTACT:** Wendy Lader, Office of Policy Analysis and Development, NTIA, at (202) 482–1880, or electronic mail: *wlader@ntia.doc.gov.* Please direct media inquiries to the Office of Public Affairs, NTIA, at (202) 482–7002.

**SUPPLEMENTARY INFORMATION:** Sensor applications stand to transform the way business is conducted by yielding greater efficiencies and by reducing costs for the retail, manufacturing, security, shipping and transportation industries by billions of dollars. These industries currently use limited radio frequency identification (RFID) technology in security systems, tollbooths, gasoline pumps, electronic ear tags for livestock, antitheft devices, toys and other products.[1] Market analysts project that sensor technologies will be the next billion-dollar market for the information technology industry, with current RFID projects and services generating $1 billion annually, but potentially growing to $7 billion by 2008.[2]

According to the RFID Journal, RFID is a generic term used to describe technologies that use radio waves to automatically identify objects and consumer goods and products. RFID uses several methods to identify such items. One such method employs an RFID reader, which can process serial numbers stored on a microchip attached to an antenna (collectively known as the RFID tag). The RFID chip transmits information about the product to the RFID reader via radio waves. [3]

The Department of Commerce's forum on wireless sensor technologies is being held at a critical time when companies are actively debating the design and implementation of sensor applications worldwide.[4] By holding this event, the Department of Commerce will increase awareness of sensor technology applications, their potential future economic impact, and public policy issues they may raise.

*Public Participation:* The panel discussions will be open to the public and press on a first-come, first-served basis. Space is limited. Due to security requirements and to facilitate entry to the Department of Commerce building, attendees must present photo identification and/or a U.S. Government building pass, if applicable, and should arrive at least one-half hour ahead of the panel sessions. The public meeting is physically accessible to people with disabilities. Any member of the public wishing to attend and requiring special services, such as sign language interpretation or other ancillary aids, should contact Wendy Lader at (202) 482–1880 or at *wlader@ntia.doc.gov* at least three (3) days prior to the meeting.

Dated: February 24, 2004.

**Kathy D. Smith,**

*Chief Counsel, National Telecommunications and Information Administration.*

[FR Doc. 04–4420 Filed 2–27–04; 8:45 am]

BILLING CODE 3510–60–P

[1] *See* Scientific American, ''RFID: A Key to Automating Everything,'' pp. 56–65 (January 2004).

[2] *See* ''RFID: Investing in the Next Multi-Billion Dollar I.T. Opportunity,'' Precursor Advisors (January 12, 2003).

[3] *See* RFID Journal, Frequently Asked Questions available at *http://www.rfidjournal.com/article/articleview/207.*

[4] In 2003, the Department of Defense and Wal-Mart Stores Inc. each announced requirements for suppliers to include passive-tracking RFID tags on product shipments by 2005. Wal-Mart projects the implementation of RFID tags to generate $8.4 billion in annual cost savings. *See* ''Case Study: Wal-Mart's Race for RFID,'' *CIO Insight* (January 8, 2004).

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0055, Privacy of Consumer Financial Information

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,*

Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for comment in response to the notice. This notice solicits comments on requirements relating to information collected to assist the Commission in the prevention of market manipulation.

**DATES:** Comments must be submitted on or before April 30, 2004.

**ADDRESSES:** Comments may be mailed to Tribue Bland, Division of Clearing and Intermediary Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

**FOR FURTHER INFORMATION CONTACT:** Tribue Bland, (202) 418–5466; FAX (202) 418–5536; e-mail: *tbland@cftc.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 Section 3506(c)(2)(A), requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality of, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Privacy of Consumer Financial Information OMB Control No. 3038–0055—Extension**

Section 124 of the Commodity Futures Modernization Act of 2000 (''CFMA'') amends the Commodity Exchange Act (the ''Act'') and adds a new section 5g to the Act to make the Commission a Federal functional regulator for purposes of applying the provisions of Title V, Subtitle A of the Gramm-Leach-Bliley Act (''GLB Act'') addressing consumer privacy to any futures commission merchant, commodity trading advisor, commodity pool operator or introducing broker that is subject to the Commission's jurisdiction with respect to any financial activity. In general, Title V requires financial institutions to provide notice to consumers about the institution's privacy policies and practices, to restrict the ability of a financial institution to share nonpublic personal information about consumers to non-affiliated third parties, and to permit consumers to prevent the institution from disclosing nonpublic personal information about them to certain non-affiliated third parties by ''opting out'' of that disclosure. This rule implements the mandates of Section 124 and Title V of the GLB Act.

The Commission estimates the burden of this collection of information as follows:

**Estimated Annual Reporting Burden**

*Number of Respondents:* 4,128.
*Total Annual Responses:* 317,414.
*Hours per Response:* .27.
*Total Annual Hours:* 85,690.

Dated: February 23, 2004.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 04–4445 Filed 2–27–04; 8:45 am]

BILLING CODE 6351–01–M

## CONSUMER PRODUCT SAFETY COMMISSION

### Submission for OMB Review; Comment Request—Residential Fire Survey

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** In the April 16, 2003, **Federal Register** (68 FR 18599), the Consumer Product Safety Commission (Commission or CPSC) published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–21) to announce the agency's intention to seek approval of a collection of information to evaluate (1) the causes of residential fires and (2) the role of smoke alarms, sprinklers, and fire extinguishers in those fires. The Commission now announces that it is submitting to the Office of Management and Budget a request for approval of that collection of information.

The collection of information consists of a random digit dialing telephone survey to identify households that had a fire within the previous three months. Data collection will take place over a 12-month period and will identify consumer products involved in fire causes. The information will help CPSC and its federal partners, the U.S. Fire Administration and the Centers for Disease Control and Prevention, to focus efforts to reduce residential fire losses.

**Additional Information About the Request for Approval of a Collection of Information**

*Agency address:* Consumer Product Safety Commission, Washington, DC 20207.

*Title of information collection:* Residential Fire Survey.

*Type of request:* Approval of a collection of information.

*General description of respondents:* Households that have had a fire within the previous three months.

*Estimated number of respondents:* 82,000.

*Estimated average number of hours per respondent:* 0.05 hours (3 minutes).

*Estimated number of hours for all respondents:* 4,400 hours.

*Comments:* Comments on this request for approval of an information collection should be sent within 30 days of publication of this notice to (1) Alex Hunt, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7860, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

Copies of this request for approval of an information collection and supporting documentation are available from Linda Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–7671, e-mail *lglatz@cpsc.gov.*

Dated: February 23, 2004.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 04–4414 Filed 2–27–04; 8:45 am]

BILLING CODE 6355–01–P

## DEPARTMENT OF DEFENSE

### Department of the Army

### Board of Visitors, United States Military Academy

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of open meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

*Name of Committee:* Board of Visitors, United States Military Academy.

*Date:* Wednesday, March 24, 2004.

*Place of Meeting:* Veteran Affairs Conference Room, Room 418, Senate Russell Office Building, Washington, DC.

*Start Time of Meeting:* Approximately 10 a.m.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Colonel Edward C. Clarke, United States Military Academy, West Point, NY 10996–5000, (845) 938–4200.

**SUPPLEMENTARY INFORMATION:** *Proposed Agenda:* Organizational Meeting of the Board of Visitors. Review of the Academic, Military and Physical Programs at the USMA. All proceedings are open.

**Luz D. Ortiz,**

*Army Federal Register Liaison Officer.*

[FR Doc. 04–4379 Filed 2–27–04; 8:45 am]

**BILLING CODE 3710–08–M**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before March 31, 2004.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 24, 2004.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

**Institute of Education Sciences**

*Type of Review:* New.

*Title:* Social and Character Development Research Program National Evaluation.

*Frequency:* On Occasion.

*Affected Public:*

Not-for-profit institutions; Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

Responses: 22,196.

Burden Hours: 15,339.

*Abstract:* The Social and Character Development (SACD) National Evaluation will evaluate the success of seven school-based interventions designed to promote positive social and character development among elementary school children. The research will determine, through randomized field trials, whether one or more program interventions produce meaningful effects. The study's three primary research questions are: (1) Do the SACD interventions affect social-emotional competence, school climate, positive and negative behavior, and academic achievement? (2) For whom, and under what conditions, are the interventions effective? and (3) What is the process by which the interventions affect children's behavior? Data collection activities will include the administration of surveys to children, teachers, principals, and primary caregivers; school observations, and school record abstractions over a three year period: from 2004–05 to 2006–07. Results from the evaluation will provide school districts and education professionals with information they need to make informed choices about which SACD interventions to adopt, and will offer policymakers rigorous evidence for use in making decisions about program funding.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2428. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

[FR Doc. 04–4501 Filed 2–27–04; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before March 31, 2004.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer,

Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 24, 2004.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

### Institute of Education Sciences

*Type of Review:* New.

*Title:* Integrated Postsecondary Education Data System (IPEDS) Minimum Data Set (MDS).

*Frequency:* One time.

*Affected Public:* Businesses or other for-profit; Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:* Responses: 13,000. Burden Hours: 1,827.

*Abstract:* IPEDS is a system of surveys designed to collect basic data from postsecondary institutions in the US. To date, the main focus of IPEDS has been Title IV institutions, but institutions that do not participate in these federal student financial aid programs are becoming an increasingly important source of educational opportunity in the country. But their scope and nature are not well known. This survey is designed to arrive at a statistical estimate of the number of non-Title IV institutions.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2432. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–4502 Filed 2–27–04; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by March 5, 2004. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before April 30, 2004.

**ADDRESSES:** Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: February 24, 2004.

**Angela C Arrington,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of Special Education and Rehabilitative Services

*Type of Review:* New.

*Title:* Assurances for the Protection and Advocacy for Assistive Technology (PAAT) Program.

*Abstract:* This document will be used by grantees to request funds to carry out the PAAT program. PAAT is mandated by the Assistive Technology Act of

1998, to provide protection and advocacy services to individuals with disabilities for the purposes of assisting in the acquisition, utilization, or maintenance of assistive technology or assistive technology services.

*Additional Information:* Section 102 of the Assistive Technology Act of 1998 (Act) requires that the Secretary make a grant to an entity in each State to support protection and advocacy services through the systems established to provide protection and advocacy services under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act), for the purposes of assisting in the acquisition, utilization, or maintenance of assistive technology or assistive technology services for individuals with disabilities.

*Frequency:* Periodically.

*Affected Public:* Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 56.

Burden Hours: 9.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2469. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–4503 Filed 2–27–04; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Privacy Act of 1974; System of Records; What Works Clearinghouse (18–13–06)

**AGENCY:** Institute of Education Sciences, Department of Education.

**ACTION:** Notice of a new system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (Privacy Act), the U.S. Department of Education (the Department or ED) publishes this notice of a new system of records for the Institute of Education Sciences (IES or the Institute) ''What Works Clearinghouse'' (WWC or Clearinghouse). The Clearinghouse is a web-based system that will maintain a national registry of educational interventions—educational programs, products, and practices that are claimed to enhance important student outcomes. In particular, the Clearinghouse will assess and report on the strength of research-based evidence of the effectiveness of these educational programs.

The Institute anticipates that the Clearinghouse will gather personal information in two ways. First, the Clearinghouse will be collecting identifying information from members of the public when—

1. The public voluntarily and anonymously suggests studies, interventions, and topics for WWC review, *and* provides optional contact information.

2. The public voluntarily subscribes to receive e-mail updates about new information on the WWC Web site.

In both cases, access to contact information will be restricted to authorized WWC staff on a need-to-know basis. In the case of e-mail addresses, this information will only be available to the Web site administrator.

Second, evaluators—individuals and organizations—may use the Web site to voluntarily submit contact information and information about their services and experience in evaluating educational programs. The purpose of this information is to create a public listing to assist people in identifying those evaluators who are potentially qualified to conduct rigorous studies of the effectiveness of education programs. Interested evaluators will sign a letter giving their written permission for this information to be used in the registry.

**DATES:** The Department seeks comment on the new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on or before March 31, 2004.

The Department filed a report describing the system of records covered by this notice with the Chair of the Senate Committee on Governmental Affairs, the Chair of the House Committee on Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, OMB, on February 25, 2004. This system of records will become effective at the later date of—(1) the expiration of the 40-day period for OMB review on April 5, 2004 or (2) March 31, 2004, unless the system of records needs to be changed as a result of public comment or OMB review.

**ADDRESSES:** Address all comments about this system of records to Nancy Loy, Ph.D., Contracting Officer's Technical Representative (COR), What Works Clearinghouse, U.S. Department of Education, Institute of Education Sciences, 555 New Jersey Avenue, NW., suite 504, Washington, DC 20208. If you prefer to send comments through the Internet, use the following address: *comments@ed.gov.* You must include the term ''What Works Clearinghouse'' in the subject line of the electronic comment.

During and after the comment period, you may inspect all public comments about this notice in suite 504, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

### Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Nancy Loy. Telephone: (202) 208–3680. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:**

## Introduction

The Privacy Act (5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to a record about an individual that contains individually identifiable information that is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a ''record'' and the system, whether manual or computer-based, is called a ''system of records.'' The Privacy Act requires each agency to publish notices of systems of records in the **Federal Register** and to prepare reports to OMB whenever the agency publishes a new or altered system of records. Each agency is also required to send copies to the Chair of the Senate Committee on Governmental Affairs and the Chair of the House Committee on Government Reform. These reports are intended to permit an evaluation of the probable or potential effect of the proposal on the privacy or other rights of individuals.

## Electronic Access to This Document

You may view this document, as well as other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll-free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 25, 2004.

**Grover J. Whitehurst,**

*Director, Institute of Education Sciences.*

For reasons discussed in the preamble, the Director of the Institute of Education Sciences (IES or the Institute) of the U.S. Department of Education (the Department or ED) publishes a notice of a new system of records to read as follows:

**18–13–06**

**SYSTEM NAME:**

What Works Clearinghouse (WWC) Database.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Aspen Systems Corporation, 2277 Research Boulevard, Rockville, MD 20850.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

This web-based system will maintain a national registry of educational interventions—educational programs, products, and practices that are claimed to enhance important student outcomes. In particular, the WWC will assess and report on the strength of research-based evidence of the effectiveness of these educational programs.

There are two categories of individuals covered by the system. First, the WWC will be collecting identifying information from members of the public if the public voluntarily and anonymously suggests studies, interventions, and topics for WWC review, *and* provides optional contact information. The WWC will also collect information from the public if an individual voluntarily subscribes to receive e-mail updates about new information on the WWC Web site.

Second, evaluators—individuals and organizations—may use the Web site to voluntarily submit contact information and information about their services and experience in evaluating educational programs. The purpose of this information is to create a public listing to assist people in identifying those evaluators who are potentially qualified to conduct rigorous studies of the effectiveness of education programs.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

For members of the public who suggest a study, intervention, or topic for WWC review, and choose to provide contact information, the form will include name, title, organization, mailing address, e-mail address, phone number, URL and comments. The individual will be able to choose whether or not to submit any contact information at all, provide just a contact name and e-mail address, or give more detailed contact information, including title, organization, mailing address, phone number, URL, or comments.

For members of the public who voluntarily subscribe to receive e-mail updates from the WWC Web site, an automated system will collect and retain the e-mail addresses of subscribers.

Finally, evaluators may use the Web site to voluntarily submit contact information—name, work mailing and e-mail addresses, phone number—together with information about their services and experience, if they would like this information to be included in the public-access, web-based registry of evaluators.

This notice does not cover records, including but not limited to letters, e-mails, and facsimiles, sent by individuals to the Secretary, Deputy Secretary, Senior Officers, such as the Director of IES, for whom the Department controls responses to these inquiries. Further, this notice does not cover the official correspondence files of IES, specifically the hard copies of official documents and electronic images of certain incoming and outgoing documents.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Education Sciences Reform Act of 2002, Pub. L. 107–279 (2002), sections 172(a)(2) and (3).

**PURPOSE(S):**

This system of records is maintained to provide the WWC with the means to:

1. Contact members of the public who suggest a study, intervention, or topic for review and who choose voluntarily to provide optional contact information, if their suggestions need clarification.

2. Send e-mail updates about new information on the WWC Web site to subscribers.

3. Provide contact information for evaluators who wish to have their services, experience, and contact information included in the public-access, web-based registry of evaluators.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

1. *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice (DOJ) and OMB if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

2. *Disclosure to the DOJ.* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

3. *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

4. *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties described in (a)(i) through (v) is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department, or any of its components; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her official capacity if the DOJ has agreed or been requested to provide or arrange for representation for the employee; or

(iv) Any Department employee in his or her individual capacity if the Department has agreed to represent the employee; or

(v) The United States if the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear or to an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the litigation or ADR, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsel, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness is relevant and necessary to the litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

5. *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

6. *Congressional Member Disclosure.* The Department may disclose information to a Member of Congress from the record of an individual in response to an inquiry from the Member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

7. *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive order, rule, regulation, or order issued pursuant thereto.

**DISCLOSURES TO CONSUMER REPORTING AGENCIES:**

Not applicable to this system of records.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:**

The information in the tracking system will be stored on a server maintained by the WWC subcontractor staff. Records generated by the system will be maintained electronically on the server.

**RETRIEVABILITY:**

The public will have access to the searchable, web-based registry of evaluators, containing information voluntarily submitted by evaluators about their services and experience, as well as contact information, after the evaluators have signed a letter giving their written permission for this information to be used in the registry.

The data are retrieved by searching by record number, type of suggestion, study author, title, reference type, publisher, topic, type of intervention, and organization.

The data for the evaluator registry will be searchable on the WWC public-access Web site by topic, type of research, geographic area, study title, intervention title, years of experience, and contact information.

**SAFEGUARDS:**

Access to this system will be restricted to authorized WWC contractors, subcontractors, consultants, and ED employees on a need-to-know basis. Authorized users of this system will enter a unique user ID as well as a password to enter the system. They will be required to change their passwords periodically, and they will not be allowed to repeat old passwords. Any individual who attempts to log in to the system three times and fails will be locked out of the system. Access after that time requires intervention by the system manager.

The computer system employed by the WWC offers a high degree of resistance to tampering and circumvention. This security system limits data access to authorized WWC staff and controls individual users' ability to access and alter records within the system.

All file servers, routers/hubs, tape back-up stations, and communications servers are located in secure rooms at the subcontractor's Headquarters site, and only authorized personnel have access via key or magnetic card.

All files will be password-protected and back-up files will be secured in a locked area. Access to the data files and software on the WWC site are controlled through the Microsoft NT Server operating system by providing all staff with user accounts (user IDs). All secure user accounts will require passwords that must be changed every six months. Passwords for ongoing data processing will be changed frequently, and users will be blocked from gaining access to certain types of data and programs based on their IDs and passwords.

**RETENTION AND DISPOSAL:**

Records in this system will be retained in accordance with the National Archives and Records Administration (NARA) General Records Schedule 20, Item 1.c which

provides disposal authorization for electronic files and hard-copy printouts created to monitor system usage. Records will be deleted or destroyed when the agency determines they are no longer needed for administrative, legal, audit, or other operational purposes.

**SYSTEM MANAGER AND ADDRESS:**

Contracting Officer's Representative (COR), What Works Clearinghouse, U.S. Department of Education, Institute of Education Sciences, 555 New Jersey Avenue, NW., suite 504, Washington, DC 20208.

**NOTIFICATION PROCEDURE:**

If you wish to determine whether a record exists about you in the system of records, provide the system manager with your name or e-mail address. Your request for notification must also meet the requirements of the regulations in 34 CFR 5b.5, including proof of identity. You may also present your request in person or make your request in writing to the system manager at the above address.

**RECORD ACCESS PROCEDURES:**

Request to access a record also must reasonably specify the record contents sought and otherwise meet the requirements of the regulations in 34 CFR 5b.5, including proof of identity.

**CONTESTING RECORD PROCEDURES:**

If you wish to change the content of a record in this system of records, you must contact the system manager at the above address and follow the steps outlined in the **NOTIFICATION PROCEDURE** section. Requests to amend a record must also reasonably identify the record, specify the information being contested, provide in writing your reasons for requesting the change, and otherwise meet the regulations in 34 CFR 5b.7.

**RECORD SOURCE CATEGORIES:**

Information in this system is obtained from members of the public and evaluators who voluntarily provide information. The primary way for the public and evaluators to contact the WWC is electronically through the WWC Web site, although they also could contact the WWC by telephone, by mail, or in person.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:**

None.

[FR Doc. 04–4514 Filed 2–27–04; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–173–000]**

### Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

February 24 2004.

Take notice that on February 20, 2004, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 1159, with an effective date of March 1, 2004.

DTI states that the purpose of this filing is to remove the five-year term matching cap from its right-of-first refusal tariff provisions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–429 Filed 2–27–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–110–001]**

### El Paso Natural Gas Company; Notice of Compliance Filing

February 24, 2004.

Take notice that on February 20, 2004, El Paso Natural Gas Company (El Paso) tendered for filing as part its FERC Gas Tariff, Second Revised Volume No. 1A, with an effective date of February 13, 2004:

Sub 1st Revised Original Sheet No. 287A
Substitute Original Sheet No. 287B
Substitute Second Revised Sheet No. 353

El Paso states that the tariff sheets are being filed to implement certain changes to the procedures for the re-designation of primary point changes in compliance with the Commission's February 5, 2004, Order in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the 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. E4–428 Filed 2–27–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP96–320–063]**

### Gulf South Pipeline Company, LP; Notice of Negotiated Rate Filing

February 24, 2004.

Take notice that on February 18, 2004, Gulf South Pipeline Company, LP (Gulf South) filed with the Commission a contract between Gulf South and The City of Vicksburg, MS, Contract No. 30336, for disclosure of a recently negotiated rate transaction. Gulf South requests an effective date of April 1, 2004.

Gulf South states that it has served copies of this filing upon all parties on the official service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–423 Filed 2–27–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–470–002]**

### Southern Star Central Gas Pipeline, Inc.; Notice of Compliance Filing

February 24, 2004.

Take notice that on February 20, 2004, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed below to become effective November 1, 2003:

Fourth Revised Sheet No. 244
Fourth Revised Sheet No. 246

Southern Star states that the tariff sheets filed herewith are being submitted to incorporate the approved alternative cash-out pricing index into the applicable currently effective tariff sheets. The alternative pricing mechanism was accepted as of May 15, 2003, by Commission Letter Order dated February 11, 2004.

Southern Star states that copies of the tariff sheets are being mailed to Southern Star's jurisdictional customers and interested State commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC 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. E4–426 Filed 2–27–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–172–000]**

### Tennessee Gas Pipeline Company; Notice of Discontinuation of Supply Area Volumetric Surcharge

February 23, 2004.

Take notice that on February 18, 2004, Tennessee Gas Pipeline Company (Tennessee) tendered for filing tariff sheets to discontinue its Supply Area Volumetric Surcharge. Tennessee requests an effective date of February 1, 2004.

Tennessee states that pursuant to Article XXV of the General Terms and Conditions of its FERC Gas Tariff, Fifth Revised Volume No. 1, Tennessee recovers take or pay transition costs through a combination of demand and volumetric surcharges. Tennessee explains that pursuant to Article XXV, section 4.3 of the Tariff, Tennessee is to discontinue the Supply Area Volumetric Surcharge at the end of a month in which the balance in the Supply Area Volumetric Transition Cost subaccount declines to zero. Tennessee states that during the production month of January 2004, the balance in the Supply Area Volumetric Transition Cost subaccount declined to zero. Consequently, Tennessee is discontinuing the Supply Area Volumetric Surcharge effective February 1, 2004. Tennessee indicates that, pursuant to Article XXV, section 4.3 of the Tariff, the surcharge will be reinstated if the balance in the subaccount later becomes positive.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at

*FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–420 Filed 2–27–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER04–220–002, et al.]**

## NEO California Power LLC, et al.; Electric Rate and Corporate Filings

February 23, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. NEO California Power LLC

[Docket No. ER04–220–002]

Take notice that on February 19, 2004, NEO California Power LLC (NEO California) tendered for filing corrected rate schedule sheets for the Must-Run Service Agreement (RMR Agreement) between NEO California and the California Independent System Operator Corporation (California ISO), which, according to NEO California, reflect the effective date approved by the Federal Energy Regulatory Commission's January 21, 2004, letter order.

*Comment Date:* March 11, 2004.

### 2. Dominion Retail, Inc.

[Docket No. ER04–249–001]

Take notice that on February 18, 2004, Dominion Retail, Inc. (Dominion Retail) filed a revised market-based rate tariff to incorporate the Market Behavior Rules established by the Commission in its order issued on November 17, 2003, in Docket No. EL01–118–000.

*Comment Date:* March 10, 2004.

### 3. Pure Energy

[Docket No. ER04–452–001]

Take notice that on February 18, 2004, Pure Energy submitted for filing a rate revised schedule conforming to the Commission's Order 614.

*Comment Date:* March 10, 2004.

### 4. Southern California Edison Company

[Docket No. ER04–566–000]

Take notice that on February 18, 2004, Southern California Edison Company (SCE) tendered for filing the Amended and Restated Radial Lines Agreement (Amended Agreement) between SCE and Reliant Energy Mandalay, Inc. (Reliant). SCE states that the Amended Agreement reflects the replacement of three Coupling Capacitor Voltage Transformers at SCE's Santa Clara Substation related to the radial line connecting Reliant's gas fired generating facility to the California Independent System Operator Controlled Grid at SCE's Santa Clara Substation.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Reliant.

*Comment Date:* March 10, 2004.

### 5. El Paso Electric Company

[Docket No. ER04–567–000]

Take notice that on February 18, 2004, El Paso Electric Company (EPE) pursuant to a November 6 Settlement Agreement between EPE and Public Service Company of New Mexico, EPE tendered for filing revisions to Schedule 7 of its Open Access Transmission Tariff to include hourly firm point-to-point transmission service. EPE seeks an effective date of April 19, 2004, for the proposed revisions.

*Comment Date:* March 10, 2004.

### 6. Florida Power & Light Company

[Docket No. ER04–568–000]

Take notice that on February 18, 2004, Florida Power & Light Company (FPL) tendered for filing an executed amendment to the Interconnection & Operation Agreement between FPL and Blue Heron Energy Center, LLC. FPL requests that this amendment be made effective February 6, 2004.

*Comment Date:* March 10, 2004.

### 7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–569–000]

Take notice that on February 18, 2004, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing Notices of Cancellation for the Adams-Columbia Electric Cooperative, Central Wisconsin Electric Cooperative, Kiel Electric Utility, Prairie du Sac Electric & Water Utility and Rock County Electric Cooperative Ancillary Service Agreements under the Midwest ISO FERC Electric Tariff, Second Revised, Volume No. 1, pursuant to sections 35.15 and 131.53 of the Commission's regulations, 18 CFR 35.15 and 131.53 (2002).

Midwest ISO states that a copy of this filing was served on all parties.

*Comment Date:* March 10, 2004.

### 8. Midwest Independent Transmission System Operator, Inc. and Ameren Services Company

[Docket No. ER04–571–000]

Take notice that on February 19, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and Ameren Services Company, as agent for Union Electric Company, d/b/a AmerenUE (AmerenUE), tendered for filing an Agreement for the Provision of Transmission Service to Bundled Retail Load between the Midwest ISO and AmerenUE (the Service Agreement). The Midwest ISO states that the Service Agreement establishes a contractual framework that allows AmerenUE to provide bundled electric service to its Missouri retail customers during a five-year transitional period while permitting the company to comply with Order No. 2000 through its participation in the Midwest ISO.

Midwest ISO states that copies of this filing were served upon all parties.

*Comment Date:* March 5, 2004.

### 9. Southern California Edison Company

[Docket No. ER04–572–000]

Take notice that on February 19, 2004, Southern California Edison Company (SCE) tendered for filing revised rate sheets to Rate Schedule FERC Nos. 112, 113, 421, and 342. The revisions to these rate sheets are made pursuant to a letter agreement (Letter Agreement) and various contract amendments between SCE and the State of California Department of Water Resources (CDWR (Parties, collectively)) which provide for a reduction to CDWR's loss obligation to SCE, and resolve a longstanding billing dispute between the Parties. SCE respectfully requests an effective date of January 1, 2002.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California, CDWR and the California Independent System Operator Corporation.

*Comment Date:* March 11, 2004.

### 10. Consolidated Edison Company of New York, Inc.

[Docket No. ER04–573–000]

Take notice that on February 19, 2004, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing on Open Access Transmission Tariff, FERC Electric Tariff, First Revised Volume No. 1 (superseding Original Volume No. 1). Con Edison states that the filing proposes non-substantive revisions to Con Edison's current Open Access Transmission Tariff, including reformatting in compliance with Order No. 614.

*Comment Date:* March 11, 2004.

**11. Basin Electric Power Cooperative**

[Docket No. NJ04–2–001]

Take notice that on February 18, 2004, Basin Electric Power Cooperative (Basin Electric) tendered for filing Substitute First Revised Sheet No. 7 in its non-jurisdictional open-access transmission reciprocity tariff, FERC Electric Tariff, Original Volume No. 1 (West-Side OATT) correcting errors in the table of contents that was contained in Basin Electric's January 20, 2004, filing (January 20th Filing) in compliance with Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, 104 FERC ¶ 61,103 (2003). Basin Electric respectfully requests that the Commission allow the revised sheet to become effective January 20, 2004, the same effective date that it requested in its January 20th Filing.

Basin Electric states that copies of the filing were served upon customers under the West-Side OATT, persons on the Commission's official service list in this proceeding, and upon the Public Service Company of Colorado, the Iowa Utilities Board, the Minnesota Public Utilities Commission, the Montana Public Service Commission, the Nebraska Public Service Commission, the North Dakota Public Utilities Commission, the South Dakota Public Utilities Commission, and the Wyoming Public Service Commission.

*Comment Date:* March 10, 2004.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–419 Filed 2–27–04; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER00–1857–002, et al.]**

## Split Rock Energy LLC, et al.; Electric Rate and Corporate Filings

February 20, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. Split Rock Energy LLC**

[Docket No. ER00–1857–002]

Take notice that on February 17, 2004, Split Rock Energy LLC (Split Rock) tendered for filing its triennial review in compliance with the Commission's Order dated June 20, 2000, in Docket No. ER00–1857–000.

*Comment Date:* March 9, 2004.

**2. Naniwa Energy LLC**

[Docket No. ER01–457–002]

Take notice that on February 17, 2004, Naniwa Energy LLC (Naniwa) tendered for filing (1) an updated market power analysis, and (2) an amendment to its market-based rate tariff to adopt the Commission's new Market Behavior Rules.

*Comment Date:* March 9, 2004.

**3. Wisconsin Electric Power Company**

[Docket No. ER03–1313–002]

Take notice that on February 17, 2004, Wisconsin Electric Power Company (Wisconsin Electric) tendered its refund report in compliance with the Commission's December 17, 2003, Letter Order, which accepted Wisconsin Electric's September 8, 2003 (hereinafter, September 8 filing), revision to Exhibit B of First [sic] Revised Power Sales Agreement (hereinafter, Exhibit B) between Wisconsin Electric and Wisconsin Public Power, Inc. (hereinafter, WPPI), as amended by Wisconsin Electric's October 22, 2003, supplemental filing (hereinafter, Supplemental filing). Additionally, Wisconsin Electric tendered for filing an original and six copies of an errata to the revised Exhibit B accepted in the Commission's December 17, 2003, Letter Order.

Wisconsin Electric states that the purpose of the *errata* is to modify an inadvertent/incorrect rate schedule designation contained in the tariff sheets submitted along with the September 8 filing, as well as a related reference to same contained in the transmittal letters submitted along with Wisconsin Electric's September 8 and Supplemental filings. Wisconsin Electric requests that the Commission allow Exhibit B's November 7, 2003, effective date, which was established in the Commission's December 17, 2003, Letter Order, to remain undisturbed.

*Comment Date:* March 4, 2004.

**4. PJM Interconnection L.L.C.**

[Docket No. ER04–46–001

Take notice that on February 17, 2004, PJM Interconnection L.L.C. (PJM) submitted for filing a substitute interconnection service agreement (ISA) among PJM, Motiva Enterprises, L.L.C., and Delmarva Power & Light Company d/b/a Connectiv Power Delivery pursuant to the Commission's Order dated November 24, 2003, in Docket No. ER04–46–000.

*Comment Date:* March 9, 2004.

**5. PJM Interconnection, L.L.C.**

[Docket No. ER04–302–001]

Take notice that on February 17, 2004, PJM Interconnection, L.L.C. (PJM) submitted for filing a substitute interconnection service agreement among PJM, U.S. General Services Administration, White Oak Federal Research Center, and Potomac Electric Power Company pursuant to the Commission's Order dated February 12, 2004, in Docket No. ER04–302–000. PJM states that copies of this filing were served upon persons designated on the official service list compiled by the Secretary in this proceeding and the parties to the agreements.

*Comment Date:* March 9, 2004.

**6. Metropolitan Edison Company Pennsylvania Electric Company**

[Docket No. ER04–372–001]

Take notice that on February 12, 2004, Metropolitan Edison Company and Pennsylvania Electric Company (collectively, MetEd/Penelec) tendered for filing a revised Original Sheet No. 1 to its proposed Market-Based Rate Power Sales Tariff (the Tariff), which was submitted on December 31, 2003. MetEd/Penelec also ask that the revised Original Sheet No. 1 be substituted for the one submitted on December 31,

2001, and that the Tariff, as so modified, be permitted to become effective on December 17, 2003.

*Comment Date:* March 4, 2004.

**7. Arizona Public Service Company**

[Docket No. ER04–560–000]

Take notice that on February 17, 2004, Arizona Public Service Company (APS) tendered a filing with the Commission a Notice of Cancellation of the transmission service agreement among Arizona Public Service Company, Southern California Edison Company, and United States of America, Bureau of Indian Affairs on Behalf of The Colorado River Indian Irrigation Project.

APS states that copies of this filing were supplied to Southern California Edison Company, and United States of America, Bureau of Indian Affairs on Behalf of The Colorado River Indian Irrigation Project, the Arizona Corporation Commission, and the California Public Utilities Commission.

*Comment Date:* March 9, 2004.

**8. Virginia Electric and Power Company**

[Docket No. ER04–561–000]

Take notice that on February 16, 2004, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing the following amended service agreements for Sempra Energy Trading Corp under the Company's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 5, to Eligible Purchasers dated June 7, 2000.

1. Eighth Amended Service Agreement for Firm Point-To-Point Transmission Service designated Eighth Revised Service Agreement No. 253 under the Company's FERC Electric Tariff, Second Revised Volume No. 5;

2. Eighth Amended Service Agreement for Non-Firm Point-To-Point Transmission Service designated Eighth Revised Service Agreement No. 49 under the Company's FERC Electric Tariff, Second Revised Volume No. 5;

3. Ninth Amended Service Agreement for Firm Point-To-Point Transmission Service designated Ninth Revised Service Agreement No. 253 under the Company's FERC Electric Tariff, Second Revised Volume No. 5;

4. Ninth Amended Service Agreement for Non-Firm Point-To-Point Transmission Service designated Ninth Revised Service Agreement No. 49 under the Company's FERC Electric Tariff, Second Revised Volume No. 5.

Dominion Virginia Power respectfully requests an effective date of January 17, 2003.

*Comment Date:* March 9, 2004.

**9. Michigan Electric Transmission Company LLC**

[Docket No. ER04–562–000]

Take notice that on February 17, 2004, Michigan Electric Transmission Company LLC (METC) tendered for filing an Interconnection Facilities Agreement (IFA) between METC and Wolverine Power Supply Cooperative, Inc. METC requests an effective date of IFA of January 21, 2004.

*Comment Date:* March 9, 2004.

**10. Southern Company Services, Inc.**

[Docket No. ER04–563–000]

Take notice that on February 17, 2004, Southern Company Services, Inc., (SCS) on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), submitted for filing one long-term firm transmission service agreement under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5) (Tariff) between Calpine Energy Services, LP and Southern Companies. The agreement is designated Service Agreement No. 466 under Southern Companies' Tariff.

*Comment Date:* March 9, 2004.

**11. Wayne White Counties Electric Cooperative**

[Docket No. ER04–564–000]

Take notice that on February 17, 2004, Wayne-White Counties Electric Cooperative (Wayne-White) tendered for filing two proposed rate changes to its Rate Schedule FERC No. 2, the Operations Agreement Between Wayne-White Counties Electric Cooperative and the City of Fairfield, Illinois (Fairfield). The first change reflects an agreed-upon alteration of the capacity charge billing determinant that was made on January 1, 2001, and which had the effect of reducing charges to Fairfield. The second change is a rate increase with a proposed effective date of January 1, 2004, that would increase revenues from jurisdictional sales and service by $656,786 based on the 12-month period ending December 31, 2003.

Wayne-White states that a copy of the filing has been served upon the City of Fairfield.

*Comment Date:* March 9, 2004.

**12. Southern Company Services, Inc..**

[Docket No. ER04–565–000]

Take notice that on February 17, 2004, Southern Electric Generating Company (SEGCO), Alabama Power Company (Alabama), and Georgia Power Company (Georgia) tendered for filing with the Commission an Amendment to the Power Contract Between SEGCO, Alabama, and Georgia (FERC Rate Schedule SEGCO No. 1) (Power Contract). The purpose of the Amendment is to revise the Power Contract to specifically address the parties' responsibilities regarding regulated emissions allowances (*e.g.*, Sulfur Dioxide (SO2) and Nitrous Oxide ($NO_X$) emissions allowances).

*Comment Date:* March 9, 2004.

**13. Alabama Electric Marketing, LLC**

[Docket No. ER04–570–000]

Take notice that on January 5, 2004, Alabama Electric Marketing, LLC (AEM) submitted for filing to the Commission revisions to its Rate Schedule FERC No. 1 including conforming provisions to the Commission's policy on affiliate transactions and reassignment of transmission.

*Comment Date:* February 27, 2004.

**14. International Transmission Company**

[Docket No. ES04–14–000]

Take notice that on February 13, 2004, International Transmission Company, (International Transmission) tendered for filing an application seeking authority to issue securities in the amount of $50 million, as more fully described in the application. International Transmission has requested an exemption from the Commission's competitive bidding and negotiated placement requirements. International Transmission has further requested the Commission to issue an order no later than March 31, 2004.

*Comment Date:* March 5, 2004.

**15. Morgan Energy Center, LLC**

[Docket Nos. QF01–84–001 and EL04–83–000]

Take notice that on February 17, 2004, Morgan Energy Center, LLC (Applicant) tendered for filing a petition for limited waiver of the Commission's efficiency standard for a topping-cycle cogeneration facility.

*Comment Date:* March 9, 2004.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party

must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–422 Filed 2–27–04; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 12062–001]**

## Symbiotics, LLC; Notice of Surrender of Preliminary Permit

February 23, 2004.

Take notice that Symbiotics, LLC, permittee for the proposed Sun River Diversion Hydroelectric Project, has requested that its preliminary permit be terminated. The permit was issued on September 28, 2001, and would have expired on August 31, 2004. The proposed project would have been located on an existing federally-owned dam administered by the U.S. Bureau of Reclamation, on the Sun River in Teton County, Montana.

The permittee filed the request on February 13, 2004, and the preliminary permit for Project No. 12062 shall remain in effect through the 30th day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–421 Filed 2–27–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 2474–004]**

## Oswego River Project; Notice of Settlement Agreement and Soliciting Comments

February 24, 2004.

Take notice that following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement agreement on resolution of issues related to licensing of the Oswego River Project.

b. *Project No.:* P–2474–004.

c. *Date filed:* February 19, 2004.

d. *Applicant:* Erie Boulevard, L.P.

e. *Name of Project:* Oswego River Project.

f. *Location:* On the Oswego River in Oswego County, New York.

g. *Filed Pursuant to:* Rule 602 of the Commission's rules of practice and procedure, 18 CFR 385.602

h. *Applicant Contact:* Jerry L. Sabattis, Reliant Energy, 225 Greenfield Parkway, Suite 201, Liverpool, New York, 13088, (315) 413–2787.

*FERC Contact:* John Costello, (202) 502–6119, *john.costello@ferc.gov*.

j. *Deadline for Filing Comments:* 20 days from the issuance date of this notice; reply comments are due 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all 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.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. Reliant Energy filed on behalf of Erie Boulevard, L.P. (Erie) and the Adirondack Mountain Club, Izaak Walton League, New York Rivers United, New York State Conservation Council, New York State Department of Environmental Conservation, Trout Unlimited, U.S. Department of the Interior, Fish and Wildlife Service, and U.S. Department of the Interior, National Park Service a settlement agreement on the resolution of issues related to the licensing proceeding for the Oswego River Project. The settlement includes measures for enhancing aquatic habitat, fish movement and fishing opportunities, riparian vegetation, wetland and wildlife, and recreational access. In addition, the settlement includes an agreement among the parties to modify the terms and conditions of the upstream Oswego Falls Project, No. 5984, license so that it will be compatible with the various protection, mitigation, and enhancement measures pertaining to the Oswego River Project. Erie intents to file an application to amend the license for the Oswego Falls Project within 90 days of the date of the settlement agreement.

l. A copy of the settlement agreement 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 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://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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–424 Filed 2–27–04; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 2194–020]**

## FPL Energy Maine Hydro LLC; Notice of Application Accepted for Filing a Soliciting Motions To Intervene and Protest

February 24, 2004.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* P–2194–020.

c. *Date Filed:* June 30, 2003.

d. *Applicant:* FPL Energy Maine Hydro LLC.

e. *Name of Project:* Bar Mills Hydroelectric Project.

f. *Location:* On the Saco River, in the Towns of Buxton and Hollis, York County, Maine. The project would use no Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. F. Allen Wiley, Vice President, FPL Energy Maine Hydro LLC, 160 Capitol Street, Augusta, Maine 04330, or call (207) 623–8413.

i. *FERC Contact:* Ed Lee, *ed.lee@ferc.gov* or call (202) 502–6082.

j. *Deadline for Filing Motions to Intervene and Protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice and procedure require all intervenors filing Docket No. P–2194–020 documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests and requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* CFR 385.200 (a)(1) (iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The Bar Mills Hydro Project consists of the following existing facilities: (1) A 400-foot-long by 25-foot-high dam, with 6.75 foot-high flashboards, and a 90 to 200 foot wide by 725 foot long power canal; (2) the 5.3 mile long impoundment, which has a surface area of 263 acres at the normal full pond elevation of 148.5 feet above mean sea level; (3) a powerhouse containing two 2.25 megawatts generating units with total installed generating capacity of 4.5 megawatts (MW); and (4) appurtenant facilities. The average annual generation is 18,850 MWh. The dam and existing project facilities are owned by the applicant.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the 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/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.

n. 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.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural Schedule and Final Amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in the EA.

Issue Acceptance Letter—February 2004
Additional Information Due—December 2004
Issue Scoping Document—January 2005
Notice that application is ready for environmental analysis—March 2005

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–430 Filed 2–27–04; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–625–000]**

### Chandeleur Pipe Line Company; Notice of Technical Conference

February 24, 2004.

Take notice that a technical conference will be held on Thursday, March 4, 2004 at 10 a.m., in a room to be designated at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The purpose of the conference is to address Chandeleur Pipe Line Company's (Chandeleur) Section 4 rate increase filed on September 30, 2003.[1] Chandeleur should be prepared to discuss all relevant cost and throughput issues, as well as its responses to staff's data request dated December 12, 2003.

All parties and staff are permitted to attend.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–427 Filed 2–27–04; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM98–1–000]**

### Records Governing Off-the-Record Communications; Public Notice

February 24, 2004.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who

[1] Order Accepting and Suspending Tariff Sheet Su.

make or receive an exempt or prohibited off-the-record communication relevant to the merit's of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

| Docket No. | Date filed | Presenter or requester |
|---|---|---|
| **Prohibited** | | |
| 1. Project No. 2342–000 | 2–19–04 | Rodney Parker. |
| 2. Project No. 2342–000 | 2–19–04 | Erika Parker. |
| 3. Project No. 2342–000 | 2–20–04 | Maureen Russell. |
| 4. RP00–469–004, *et al.* | 2–19–04 | David McCallum. |
| 5. RP00–469–004, *et al.* | 2–20–04 | David McCallum. |
| **Exempt** | | |
| 1. ER04–316–000 | 2–20–04 | Hon. Zoe Lofgren, Hon. Mike Honda, Hon. George Miller, Hon. Cal Dooley, Hon. Ellen Tauscher. |
| 2. ER04–316–000 | 2–20–04 | Hon. John Doolittle. |
| 3. Project Nos. 2576–022 and 2597–019 | 2–23–04 | Hon. Nancy L. Johnson. |

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–425 Filed 2–27–04; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OECA–2003–0035; FRL–7628–1]**

## Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Pharmaceuticals Production, EPA ICR Number 1781.03, OMB Control Number 2060–0358

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 29, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before March 31, 2004.

**ADDRESSES:** Submit your comments, referencing docket ID number OECA–2003–0035, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center (ECDIC), Mail Code 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003 (68 FR 27059), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0035, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is: (202) 566–1752. An electronic version of the

public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

*Title:* NESHAP for Pharmaceuticals Production (40 CFR part 63, subpart GGG), OMB Control Number 2060–0358, EPA ICR Number 1781.03.

*Abstract:* The National Emission Standards for Hazardous Air Pollutants (NESHAP), were proposed on April 2, 1997 and promulgated on September 21, 1998. These standards apply to the facilities in Pharmaceuticals Production that are major sources of hazardous air pollutants (HAP). The affected facility includes all pharmaceutical manufacturing operations, which includes process vents, storage tanks, equipment components, and wastewater systems commencing construction or reconstruction after the date of the proposal. In general, all NESHAP requires initial notifications, performance tests, and periodic reports.

Owners or operators are required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and in general, are required of all sources subject to NESHAP. The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated, and that the standard is being met.

Any owner or operator subject to the provisions of this part will maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records. Performance tests reports are needed as they are the Agency's record of a source's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance was achieved.

Any agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information are estimated to average 250 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to adjust the existing ways to comply with any previously applicable instructions and requirements; to train personnel to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Pharmaceuticals Production Plants.

*Estimated Number of Respondents:* 101.

*Frequency of Response:* Quarterly, semiannually and on occasion.

*Estimated Total Annual Hour Burden:* 158,179 hours.

*Estimated Total Annual Costs:* $10,015,020 which includes $4,400 annualized capital/startup costs, $4,158 annual O&M costs and $10,006,462 Labor costs for Respondents.

*Changes in the Estimates:* There is a decrease of 3,147 hours in the total estimated hour burden currently identified in the OMB Inventory of Approved ICR Burdens. The decrease in hour burden from the most recently approved ICR is due to a decrease in the number of sources. Our data indicates that there are approximately 101 sources, including one new source due to reconstruction.

Dated: February 19, 2004.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 04–4466 Filed 2–27–04; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[OECA–2003–0038; FRL–7627–9]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Secondary Brass and Bronze Production, Primary Copper Smelters, Primary Zinc Smelters, Primary Lead Smelters, Primary Aluminum Reduction Plants and Ferroalloy Production Facilities (40 CFR Part 60, Subparts M, P, Q, R, S and Z) (Renewal), EPA ICR Number 1604.07, OMB Control Number 2060–0110

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 29, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before March 31, 2004.

**ADDRESSES:** Submit your comments, referencing docket ID number OECA–2003–0038, to (1) EPA online using EDOCKET (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code

2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** María Malavé, Compliance Assessment and Media Programs Division, Mail Code 2223A, Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7027; fax number: (202) 564–0050; email address: *malave.maria@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003 (68 FR 27059), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0038, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

*Title:* NSPS for Secondary Brass and Bronze Production, Primary Copper Smelters, Primary Zinc Smelters, Primary Lead Smelters, Primary Aluminum Reduction Plants and Ferroalloy Production Facilities. (40 CFR part 60, subparts M, P, Q, R, S and Z) (Renewal)

*Abstract:* New Source Performance Standards (NSPS) for Secondary Brass and Bronze Production Plants, Primary Copper Smelters, Primary Lead Smelters, Primary Zinc Smelters, Primary Aluminum Reduction Plants and Ferroalloy Production Plants were developed to ensure that air emissions from these facilities do not cause ambient concentrations of particulate matter and certain gases to exceed levels that may reasonably be anticipated to endanger public health and the environment. Owners or operators of all affected facilities subject to NSPS must notify EPA of dates for startup, construction or modification, initial and repeat of performance tests, performance test results, demonstration of a continuous monitoring system (except for brass and bronze facilities), and of any physical or operational change that may increase the emission rate. In addition, primary copper, lead, and zinc smelters and ferroalloy plants are required to submit semiannually reports of excess emissions and monitoring system performance, and aluminum reduction plants must report excess emissions in each monthly performance test. Ferroalloy plants must also report any product change. Facilities must maintain records of performance test results, monitoring of operations and systems performance, and of any startup, shutdown, and malfunction. Specifically, primary smelters, aluminum reduction and ferroalloy production plants have daily or monthly recordkeeping requirements for certain operating parameters. In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information is required for all sources subject to NSPS standards and enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 169 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Secondary brass and bronze production plants, primary copper smelters, primary zinc smelters, primary lead smelters, primary aluminum reduction plants, and ferroalloy production facilities.

*Estimated Number of Respondents:* 18.

*Frequency of Response:* Semiannual and annual.

*Estimated Total Annual Hour Burden:* 4,914 hours.

*Estimated Total Annual Cost:* $443,000, includes $0 annualized capital, $132,000 annual O&M costs, and $311,000 annual labor costs.

*Changes in the Estimates:* There is a decrease of 437 hours in the total estimated burden currently identified in the OMB inventory of approved ICR burdens. This decrease in burden is due primarily to a decrease of the estimated total number of sources subject to several of the NSPS standards addressed by this ICR.

Dated: February 20, 2004.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 04–4467 Filed 2–27–04; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OAR–2003–0170, FRL–7627–8]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Invitation for Bids and Request for Proposals (IFBs and RFPs) EPA ICR Number 1038.11, OMB Control Number 2030–0006

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 29, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before March 31, 2004.

**ADDRESSES:** Submit your comments, referencing docket ID number OAR–2003–0170, to (1) EPA online using EDOCKET (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Patrick Murphy, OAM, 3802R, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; telephone number: (202) 564–4382; fax number (202) 565–2551; email address: *Murphy.Patrick@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 10, 2003, (68 FR 53368), EPA ICR No. 1038.11, EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0170, which is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

*Title:* Invitation for Bids and Request for Proposals (IFBs and RFPs).

*Abstract:* EPA requires contractors to submit information in order to be considered for the award of a contract. Information requested includes: prices for the supplies/services requested, information on past performance, technical and cost information, and general financial and organizational information. Information provided by vendors in response to an RFP/IFB is used to evaluate which vendor will provide the best product in terms of quality, timeliness and price. Response to IFBs/RFPs are required to be considered for a contract award. The legal authority for this collection is 41 U.S.C. 253, contractor confidential business information submitted in connection with an IFB or RFP response is protected from public release in accordance with 40 CFR 2.201 *et seq.*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and record keeping burden for this collection of information is estimated to average 8 hours per response for IFBs and 251 hours per response for RFPs. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Large and small businesses performing contracts for the agency.

*Estimated Number of Respondents:* 981.

*Frequency of Response:* On occasion.

*Estimated Total Annual Hour Burden:* 219,015.

*Estimated Total Annual Cost for IFBs and RFPs:* $14,251,635.00, includes $0 annualized capital or O&M costs.

*Changes in the Estimates:* There is a decrease of 27,512 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to a decrease in the number of proposals

anticipated as a result of Government-wide contract reform measures. There are also smaller adjustments in the time required to complete each submission due to increased use of and improvements in technology.

Dated: February 2, 2004.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 04–4468 Filed 2–27–04; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[RCRA–2003–0020, FRL–7627–7]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Land Disposal Restrictions (Renewal), EPA ICR Number 1442.18, OMB Control Number 2050–0085

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 29, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before March 31, 2004.

**ADDRESSES:** Submit your comments, referencing docket ID number RCRA–2003–0020, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *rcra-docket@epamail.epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, RCRA Docket Information Center, 5303T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Peggy Vyas, Office of Solid Waste, 5302W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703/308–5477, fax number: 703/308–8433, e-mail address: *vyas.peggy@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 28, 2003 (68 FR 51773), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. RCRA–2003–0020, which is available for public viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

*Title:* Land Disposal Restrictions (Renewal).

*Abstract:* Section 3004 of the Resource Conservation and Recovery Act (RCRA), as amended, requires that EPA develop standards for hazardous waste treatment, storage, and disposal as may be necessary to protect human health and the environment. Subsections 3004(d), (e), and (g) require EPA to promulgate regulations that prohibit the land disposal of hazardous waste unless it meets specified treatment standards described in subsection 3004(m).

The regulations implementing these requirements are codified in the *Code of Federal Regulations* (CFR) Title 40, part 268. EPA requires that facilities maintain the data outlined in this ICR so that the Agency can ensure that land-disposed waste meets the treatment standards. EPA strongly believes that the recordkeeping requirements are necessary for the agency to fulfill its congressional mandate to protect human health and the environment.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 6 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Business and government.

*Estimated Number of Respondents:* 129,584.

*Frequency of Response:* On occasion.

*Estimated Total Annual Hour Burden:* 822,708.

*Estimated Total Annual Cost:* $108,980,482 which includes $31,703 annualized capital and $59,851,735 O&M costs.

*Changes in the Estimates:* There is a decrease of 359,904 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to a decrease in the respondent universe, as well as decreases in the burden assumptions.

The assumptions for the burden associated with understanding the regulations, calculated when the regulations were new, have been revised after consultations with respondents.

Dated: February 20, 2004.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 04–4470 Filed 2–27–04; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2003–0004; FRL–7346–2]**

## Access to Confidential Business Information by Dyncorp Systems and Solutions LLC and its Successor, Computer Sciences Corporation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to inform the public that EPA has recently learned of a corporate merger/acquisition involving a contractor cleared for TSCA CBI access. EPA's contractor, Dyncorp Systems and Solutions LLC (DSS) requires access to CBI submitted to EPA under all sections of TSCA, to perform successfully the duties specified under existing contracts.

**FOR FURTHER INFORMATION CONTACT:** Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA–Hotline@.epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Notice Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under TSCA. 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 Documents?*

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0004. 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 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.

### II. What Action is the Agency Taking?

EPA has recently been informed that the parent company to EPA contractor Dyncorp Systems and Solutions LLC (DSS), finalized a merger agreement with Computer Sciences Corporation (CSC) of El Segundo, California.

In the coming months, the DSS contracts will be amended to reflect the change of status in the contractor. Until that time, EPA continues to hold DSS, and its successor, CSC, responsible for performance, including adherence to all rules and procedures providing for the access and protection of TSCA CBI under existing contracts.

DSS has stated that from a technical performance standpoint, no changes in support of management personnel are envisioned as a result of the merger. From a contractual point of view, Dyncorp represents that it will continue contracting with EPA as the same legal entity - DSS. The merger between DSS's parent company (Dyncorp) and CSC is intended to make Dyncorp a CSC company.

At all times during this corporate acquisition or merger, all contractor employees were trained and cleared for access to TSCA CBI. In addition, all employees had signed and remained subject to the standard non-disclosure agreements required of all such persons working with TSCA CBI.

Aside from providing this notice, EPA is not immediately engaging in any other action. In the next 6 months, EPA expects that there will be an effort to modify the existing contracts with EPA and when this occurs, there will be a series of actions intended to effectuate this, including notices, as required under existing regulations.

### List of Subjects

Environmental protection, Confidential business information.

Dated: February 23, 2004.

**Sandra Wilkins,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 04–4471 Filed 2–27–04; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2003–0004; FRL–7345–6]**

## Access to Confidential Business Information by Geologics Corporation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor Geologics Corporation, of Alexandria, VA, access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

**DATES:** Access to the confidential data will occur no sooner than March 8, 2004.

**FOR FURTHER INFORMATION CONTACT:** Colby Lintner, Regulatory Coordinator,

Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA–Hotline@.epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Notice Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under TSCA. 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 Documents?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0004. 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 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.

## II. What Action is the Agency Taking?

Under Contract Number GS00K97AFD2140, Order Number 4W–1277–YBSW, Geologics Corporation of 5285 Shawnee Road, Suite 210, Alexandria, VA will assist EPA in gathering data on the New Chemicals Program (NCP), that will help it to assess the Program in fulfillment of objectives set out in the Government Performance and Results Act (GPRA). The work will lead to the development of results-based performance goals and measures as opposed to output-based measures now used to monitor results obtained through the NCP.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Number GS00K97AFD2140, Order Number 4W–1277–YBSW, Geologics Corporation will require access to CBI submitted to EPA under all sections of TSCA, to perform successfully the duties specified under the contract.

Geologics personnel will be given information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA, that the Agency may provide Geologics Corporation access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters. Geologics personnel will be required to adhere to all provisions of EPA's *TSCA Confidential Business Information Security Manual.*

Clearance for access to TSCA CBI under Contract Number GS00K97AFD2140, Order Number 4W–1277–YBSW may continue until September 30, 2004. Access will commence no sooner than March 8, 2004.

Geologics personnel have signed nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

## List of Subjects

Environmental protection, Confidential business information.

Dated: February 23, 2004.

**Sandra Wilkins,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 04–4472 Filed 2–27–04; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7628–7]**

## Office of Environmental Justice Hazardous Substances Research Small Grants Program—Application Guidance for FY 2004

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The purpose of this grant program is to provide financial assistance to affected local community-based organizations to support projects that examine issues related to a community's exposure to multiple environmental harms and risks. Projects must be of a research nature only, *i.e.*, survey, research, collecting and analyzing data which will be used to expand scientific knowledge or understanding of the subject studied. The EPA's grant regulations define ''research'' as ''the systematic study directed toward fuller scientific knowledge or understanding of the subject studied,'' 40 CFR 30.2(dd). Research activities under this grant program do not include ''development'' as defined in 40 CFR 30.2 (dd). The EPA has interpreted ''research'' to include studies that extend to socioeconomic, institutional, and public policy issues, as well as the ''natural'' sciences. Research projects need not be limited to academic studies. EPA intends for the results of these research projects to be disseminated to members of the affected local community. Funds can be used to develop a new activity or substantially improve the quality of existing programs that have a direct impact on affected local community residents.

**DATES:** The application must be delivered by close of business Friday, April 30, 2004, to the appropriate EPA regional office (listed in section VII) or date stamped by courier service or postmarked by the U.S. Postal Service by midnight Friday, April 30, 2004.

**ADDRESSES:** For specific application delivery please contact the appropriate EPA regional office listed in section VII of the application guidance.

**FOR FURTHER INFORMATION CONTACT:** Sheila Lewis, Senior Program Analyst,

EPA Office of Environmental Justice, (202) 564–0152.

**SUPPLEMENTARY INFORMATION:**

I. Funding Opportunity Description
II. Award Information
III. Eligibility Information
IV. Application and Submission Information
V. Application Review Information
VI. Award Administration Information
VII. Agency Contact(s)
VIII. Other Information

## Translations Available

A Spanish translation of this application is available at 1–800–952–6215. It can also be downloaded from *http://www.epa.gov/complicance/recent/ej.html.*

## Section I—Funding Opportunity Description

*Scope of the Environmental Justice Hazardous Substances Research Small Grant Program*

In its 1992 report entitled, ''Environmental Equity: Reducing Risk for All Communities,'' the EPA found that minority and/or low-income populations may experience disproportionate exposure to environmental harms and risks. The EPA established the Office of Environmental Justice (OEJ) in 1992 to help, among other things, these communities identify and assess pollution sources, to implement environmental awareness and training programs for affected local community residents, and to work with community stakeholders to devise strategies for environmental and/or public improvements.

In June of 1993, OEJ was delegated grant authority to solicit, select, assist, and evaluate environmental justice-related projects, and to disseminate information on the projects' content and effectiveness. FY 1994 marked the first year of what is now called the Environmental Justice Hazardous Substances Research Small Grants Program. The chart below shows how the grant monies have been distributed since FY 1994.

| Fiscal year | Dollar amount | Number of awards |
|---|---|---|
| 1994 | 500,000 | 71 |
| 1995 | 3,000,000 | 175 |
| 1996 | 2,800,000 | 152 |
| 1997 | 2,700,000 | 139 |
| 1998 | 2,500,000 | 123 |
| 1999 | 1,455,000 | 95 |
| 2000 | 899,000 | 61 |
| 2001 | 1,300,000 | 88 |
| 2002 | 1,113,000 | 73 |
| 2003 | 920,000 | 55 |

*Environmental Justice Defined Under the Environmental Justice Hazardous Substances Research Small Grants Program*

Environmental justice is the *fair treatment* and *meaningful involvement* of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. *Fair treatment* means that no one group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of Federal, State, local, and tribal environmental programs and policies. *Meaningful involvement* means that: (a) The potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (b) the public's contribution can influence the regulatory agency's decision; (c) the concerns of all participants involved will be considered in the decision-making process; and (d) the decision-makers seek out and facilitate the involvement of those potentially affected.

*Purpose of the Environmental Justice Hazardous Substances Research Small Grants Program*

The purpose of this grant program is to provide financial assistance to eligible affected local community-based organizations that are working on or plan to carry out projects to address environmental and/or public health concerns. Funds can be used to develop a new activity or substantially improve the quality of existing programs that have a direct impact on affected local communities. All awards will be made in the form of a $25,000 grant not to exceed one year.

The OEJ, which manages the Agency's national Environmental Justice Hazardous Substances Research Small Grants Program, is soliciting grant applications for projects intended to examine issues related to a community's exposure to multiple environmental harms and risks. Issues of environmental justice often involve multiple sources of contamination, their cumulative impacts on the environment, and their effect on human health. Some of these sources may include multiple industrial facilities and the various contaminants they emit, environmental hazards at the workplace or home, transportation-related pollution, contamination from drinking water, or contamination resulting from the consumption of fish or other subsistence food. These situations may occur in urban, suburban, rural or tribal settings. A more holistic approach to environmental protection goes beyond setting limits for individual pollutants and facilities in isolation. Information must take into account the multiple impacts of all pollutants in the environment. In environmentally overburdened low-income, minority or tribal communities, a focus on the impacts from multiple environmental harms and risks can greatly assist the communities in understanding their environmental issues and developing more effective solutions to their environmental and/or public health concerns.

Grant funds shall be used to support research activities that examine issues related to a community's exposure to multiple environmental harms and risks. Projects must be of a research nature only, *i.e.*, survey, research, collecting and analyzing data which will be used to expand scientific knowledge or understanding of the subject studied. Research projects, however, need not be limited to academic studies. The EPA has interpreted ''research'' to include studies that extend to socioeconomic, institutional, and public policy issues and the ''natural'' sciences. Projects may include the following activities: (1) Research related to the detection, assessment, and evaluation of the effects on and risks to human health from hazardous substances and the detection of hazardous substances in the environment; (2) design and demonstrate field methods, practices, and techniques, including assessment of environmental and ecological conditions and analysis of environmental and public health problems; (3) identification and assessment of multiple environmental harms and risks and/or public health concerns in the community; (4) case studies on practices and techniques for detecting and effectively responding to hazardous substance contamination; and (5) identification of institutional and public policy barriers to detecting, assessing and evaluating hazardous substance contamination in communities. Research cannot relate to contamination from petroleum products in accordance with the definition of hazardous substances indicated in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), section 101(14). Projects that involve incidental petroleum

contamination that is ''mixed'' with other contaminants may be considered on a case-by-case basis. Any training activities must be limited to training in research techniques. Funding under this assistance program is not available for general organizational support, capacity building, program development or other activities unrelated to research.

*Goal for Research Projects*

In addition to the special research requirements for grants under CERCLA outlined above, the application must include a description of how the research projects will examine and address the issue of multiple environmental harms and risks.

*Please note:* A Quality Assurance Plan (QAP) must be submitted to your EPA Project Officer prior to the beginning of the research for projects that include scientific research and/or data collection.

*Anticipated Accomplishments (Performance Measures) for the Environmental Justice Hazardous Substances Research Small Grants Program*

As required by 40 CFR 30.60, anticipated accomplishments must be stated. The overarching goal of the Environmental Justice Hazardous Substances Research Small Grants Program is to build the capacity of the affected local communities to address strategically the multiple environmental harms and risks that impact the environment and/or health of the residents.

The following criteria will be used by EPA to measure the success of the overall program. These criteria are for the evaluation of the grant program as a whole and each grantee should consider these criteria as they develop their own project performance measures:

1. Documentation and identification of the local environmental and/or public health issues;
2. Development of mechanisms to share lessons learned from the process; and
3. Identification of tangible environmental and/or health benefits.

Consistent with the factors EPA will use, the following measures will be used to evaluate the success of the Environmental Justice Hazardous Substances Research Small Grants Program, including, but not limited to:

- Significant improvement in the quality of life issues for the affected local communities is achieved;
- Community capacity is significantly improved for program participants;
- Outcomes or lessons learned in affected local communities are transferred to other similarly situated communities; and
- Enhanced community understanding of environmental and public health information systems and general information on pollution in the community.

**Section II—Award Information**

The total amount of funding available for this program is approximately $500,000 in grant funds to eligible organizations (pending availability of funds). All awards will be made in the form of a Federal grant, each award in an amount of $25,000, to be used over a one-year period. Activities must be completed and funds spent within the one year period specified in the grant award. Project start dates will depend on the grant award date (most projects begin in August or September). The recipient organization is responsible for the successful completion of the project. EPA will consider only one application per applicant for any given project. However, applicants that previously received small grant funds may submit an application for a separate project. Additionally, the Environmental Justice Hazardous Substances Research Small Grants Program is a competitive grant program. Every application for FY 2004 will be evaluated based on the merits of the proposed project in comparison to other FY 2004 applications. Applicants *may not* receive Federal funding from more than one source for the same project.

**Section III—Eligibility Information**

*1. Eligible Applicants:* Affected local community-based community organizations. An affected local community-based organization (LCBO) is defined for this grant program as an entity/organization that is (1) at the most basic level of the organizational hierarchy such as a grassroots group/neighborhood organization that is not affiliated with a larger national, regional or state organization; (2) located in the same area as the environmental and/or public health problem that is described in the application and where the residents of the affected community reside; (3) focused primarily on addressing the environmental and/or public health problems of the residents of the affected community; and (4) comprised primarily of members of the affected community. ''Affected'' is defined as being in the locale which is influenced or altered by the environmental/public health problem. An applicant must meet all of the above requirements and must explain how it fits each of those requirements in the application. An applicant must be a nonprofit organization as demonstrated through designation by the Internal Revenue Service as a section 501(c)(3) organization or through incorporation as a nonprofit organization under applicable State law in order to receive Federal funds under this grant program. Individuals; universities; State, local, and tribal governments; water districts or similar entities; large non-governmental organizations such as national environmental groups; environmental justice networks; or organizations that are not located in the affected communities where the projects are located are not eligible to receive Federal funds under this grant program.

2. *Cost Sharing or Matching:* None required.

3. *Types of Projects Eligible for Funding:* The OEJ, which manages the Agency's national Environmental Justice Hazardous Substances Research Small Grants Program, is soliciting grant applications for projects intended to examine issues related to a community's exposure to multiple environmental harms and risks. Issues of environmental justice often involve multiple sources of contamination, their cumulative impacts on the environment, and their effect on human health. Some of these sources may include multiple industrial facilities and the various contaminants they emit, environmental hazards at the workplace or home, transportation-related pollution, contamination from drinking water, or contamination resulting from the consumption of fish or other subsistence food. These situations may occur in urban, suburban, rural or tribal settings. A more holistic approach to environmental protection goes beyond setting limits for individual pollutants and facilities in isolation. Information must take into account the multiple impacts of all pollutants in the environment. In environmentally overburdened low-income, minority or tribal communities, a focus on the impacts from multiple environmental harms and risks can greatly assist the communities in understanding their environmental issues and developing more effective solutions to their environmental and/or public health concerns.

Projects may include the following activities: (1) Research related to the detection, assessment, and evaluation of the effects on and risks to human health from hazardous substances and the detection of hazardous substances in the environment; (2) design and demonstrate field methods, practices, and techniques, including assessment of

environmental and ecological conditions and analysis of environmental and public health problems; (3) identification and assessment of multiple environmental harms and risks and/or public health concerns in the affected community; (4) case studies on practices and techniques for detecting and effectively responding to hazardous substance contamination; and (5) identification of institutional and public policy barriers to detecting, assessing and evaluating hazardous substance contamination in affected communities.

*Examples of Projects—Involving ''Multiple Environmental Harms and Risks'' in the Community*

The following projects are provided for illustrative purposes only and are not intended to reflect all of the possible types of projects eligible under this grant program.

Project Example No. 1

This project focuses on hazardous substances research. Youth project participants will: (1) Receive training to help them research what substances are being transported on trains; (2) identify hazardous substances through visual and video recordings of placards on trains and through contact with Union Pacific representatives; (3) analyze recorded data and input it into a computer database; (4) research the potential effects of a spill or accident involving each substance and what the implications are for the surrounding neighborhood; (5) research what actions community members should take in the event of a spill or accident; (6) compile results and make findings available for presentations; (7) publish the results in a bound report; and (8) keep a journal of activities that can be used as a model by youth organizations nationwide conducting research in their own neighborhoods.

Project Example No. 2

The project involves research, investigations, experiments, demonstrations, surveys and studies relating to the causes, extent, prevention, reduction and elimination or control of pollution of the water and air, which is impacted by urban industrialization and toxic wastes. Local high school and college students will learn how to conduct river research and report their findings. The purpose of the project is to teach students research techniques and how to communicate their findings. The project will provide information through community newsletters, river tours, and presentations to other stakeholders.

**Section IV—Application and Submission Information**

1. *Address to Request Applications:* Application guidance is available upon request by contacting your regional office listed in section VII or on the EPA's Web site at *http://www.epa.gov/compliance/environmentaljustice/grants/index.html.*

2. *Content and Form of Application Submission:* Proposals from eligible organizations *must* have the following:

(1) The Application for Federal Assistance (SF 424) is the official form required for all Federal grants that requests basic information about the grantee and the proposed project. The applicant must submit the original application form, and one copy, signed by a person duly authorized by the governing board of the applicant. Please complete part 10 of the SF 424 form, ''Catalog of Federal Domestic Assistance Number'' with the following information: 66.604—Environmental Justice Hazardous Substances Research Small Grants Program. Grant applicants are required to provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for Federal grants. Organizations can receive a DUNS number in one day, at no cost, by calling the dedicated toll-free DUNS Number request line at 1–866–705–0025.

The Web site where an organization can obtain a DUNS number is: *http://www.dnb.com.* This is a new requirement from the Office of Management and Budget for grants, effective October 1, 2003. See Appendix B for a copy of this form and a completed sample.

(2) The Federal Standard Form (SF 424A) which provides information on your budget. For the purposes of this grant program, complete only the non-shaded areas of SF 424A.

(3) Detailed Budget estimates should support your work plan narrative. See Appendix B for a sample of a budget detail.

(4) A work plan narrative of the proposal is not to exceed five (5) pages. A work plan narrative describes the applicant's proposed project. The pages of the work plan must be letter size (8½ × 11 inches), with normal type size (12 characters per inch), and at least 1 inch margins.

The work plan narrative is one of the most important aspects of your application and (assuming that all other required materials are submitted) will be used as the primary basis for selection. Work plans must be submitted as follows;

a. A one-page summary that *identifies the following:*

1. Environmental and/or public health concerns to be addressed by the project;

2. The community/target audience; and

3. The program goal(s) that the project will meet and how it will meet it.

b. A concise introduction that states:

1. The nature of the organization (*i.e.*, how long it has been in existence and how the applicant meets the definition of an affected local community-based organization);

2. How the organization has been successful in the past;

3. The purposes of the project;

4. Detailed characteristics of the affected community/target audience (racial, ethnic and socioeconomic);

5. Projects completion plans/time frames, and

6. Expected results.

C. A concise project description that describes the activities the organization will undertake to examine and address the issue of multiple environmental harms and risks in the target community.

d. A conclusion discussing how the applicant will evaluate and measure the success of the project, including anticipated benefits and challenges in implementing the project.

e. Anticipated accomplishments must be stated along with a set of performance measures for how you will determine the overall success of your project at meeting those accomplishments. (Refer to page 4 for a discussion of how EPA will measure the success of the overall grant program.)

(5) An appendix with resumes of up to three key personnel who will be significantly involved in the project.

(6) Nonprofit Status. The applicant must provide documentation of the organization's nonprofit status.

(7) Other Submission Requirements: Please list the title of the project and amount of funding provided by EPA for any other grants or cooperative agreements from EPA in the last three years.

Applications that do not include all applicable information listed above, will not be considered for an award. Applications that propose projects that are inconsistent with the EPA's statutory authority for this program or the activity for the program are ineligible for funding and will not be evaluated.

3. *Submission Dates and Times:* The full application package must be date stamped by courier service or postmarked by the U. S. Postal Service by midnight, Friday, April 30, 2004. Use the appropriate EPA regional office address listed in section VII.

4. *Confidentiality and Intergovernmental Review:*

*Confidentiality:* Please mark any information in the proposal that you consider confidential. EPA will follow the procedures at 40 CFR part 2 if information marked confidential is requested from the Agency under the Freedom of Information Act.

*Intergovernmental Review:* Your application to this EPA program may be subject to your State's intergovernmental review process and/or the consultation requirements of section 204, Demonstration Cities and Metropolitan Development Act. See 40 CFR part 29 for details. Check with your State's Single Point of Contact to determine your requirements. Some States do not require this review. Applicants from American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands should also check with their Single Point of Contact. A list of the States' Single Point of Contact is available at *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. *Are There Any Restrictions on the Use of the Federal Funds? Yes.* EPA grant funds can only be used for the purposes set forth in the grant agreement, and be consistent with the statutory authority for the award. Grant funds from this program cannot be used for matching funds for other Federal grants, lobbying, or intervention in Federal regulatory or adjudicatory proceedings. In addition, the recipient *may not* use these Federal assistance funds to sue the Federal government or any other government entity. Refer to 40 CFR 30.27, entitled ''Allowable Costs'' (*see* Appendix C). The scope of environmental justice grants *may not* include construction, promotional items (*e.g.*, T-shirts, buttons, hats), and furniture purchases. Applicants *may not* receive funding from more than one source for the same project.

**Section V—Application Review Information**

1. *Evaluation Criteria:* All applications will be reviewed and scored according to the following criteria:

A. *Threshold Criteria.* Applications that do not include all items list in section IV, 2. *Content and Form of Application Submission,* will not be considered for an award and will not be scored. Additionally, applications that propose projects that are inconsistent with the EPA's statutory authority for this program or the activity for the program are ineligible for funding and will not be scored. Regional offices will contact applicants whose proposals do not meet the threshold requirements to determine whether the proposal can be revised to meet the threshold requirements.

B. *Scoring Criteria.* Applications meeting the threshold criteria will be scored by an EPA Review Panel, consisting of regional staff, and selected according to the following criteria. The corresponding points next to each criterion are the weights EPA will use to score the applications. Points will range depending on how well the applicant meets the given criterium. Please note that certain sections are given greater weight than others. The application will be scored based on the following evaluation criteria:

(1) The extent to which the work plan narrative clearly and effectively describes the following: (35 points)

a. An environmental and/or public health concerns related to the multiple environmental harms and risks affecting a community. (20)

b. The target community being served (*e.g.*, demographics, socioeconomic characteristics, geographic location, etc.). (5)

c. The nature of the organization (*i.e.*, how the applicant meets the definition of an affected local community-based organization). (10)

(2) The extent to which the proposal includes the following: (40 points)

a. Specific realistic goals and objectives that deal with the environmental justice issue(s). (15)

b. A well-conceived strategy to achieve the goals and objectives. (15)

c. A description of partnering or participating community organizations, universities and local governments. Describe how they will participate in the project and explain the strategies for cooperation and communication with the identified organizations or governments. (10)

(3) The extent to which the project clearly and effectively discusses how the applicant will evaluate the success of the project including appropriate qualitative and quantitative measures. (15 points)

(4) The extent to which the project has participants who are well qualified to conduct the proposed project based on a demonstrated record of success in their area of expertise? (10 points)

(Attention: The qualifications of the recipient's Project Manager is subject to approval by the EPA Project Officer.)

2. *Review and Selection Process:* The EPA regional offices will review, evaluate, and select grant recipients. Applications will be screened to ensure that they meet all eligibility and threshold requirements described in sections II–IV. Applications which meet the threshold requirements will be scored by regional review panels based on the evaluation criteria outlined above.

After the individual projects are scored, the EPA regional officials will compare the best applications and make final recommendations. Additional factors that the EPA will take into account include geographic and socioeconomic balance, diverse nature of the projects, cost, past performance and projects whose benefits can be sustained after the grant is completed. Regional Administrators will select the final grants. Please note that this is a very competitive grant program. Limited funding is available and EPA expects to receive many grant applications. Therefore, the Agency cannot fund all applications. A listing of other EPA grant programs may be found in the Catalog of Federal Domestic Assistance. This publication is available on the Internet at *www.cfda.gov* and at local libraries, colleges, or universities.

3. *Anticipated Announcement and Award Dates:*

*February 27, 2004.* FY 2004 Environmental Justice Hazardous Substances Research Small Grants Program Application Guidance is available on *www.fedgrants.gov* and *http://www.epa.gov/compliance/environmentaljustice/grants/ej_smgrants.html.* Hard copies are available upon request.

February 27, 2004, to April 30, 2004. Eligible grant recipients develop and complete their applications.

April 30, 2004. The application must be date stamped by courier service or postmarked by the U.S. Postal Service by midnight, Friday, April 30, 2004.

May 4, 2004, to July 30, 2004. EPA program officials review and evaluate applications and select grant finalists.

July 30, 2004, to September 30, 2004. Applicants will be contacted by the Region if their applications are being considered for funding. Additional information may be required from the finalists, as indicated in section IV. The EPA regional grants offices will process grants and make awards.

September 30, 2004. EPA expects to announce the FY 2004 Environmental Justice Hazardous Substances Research Small Grants recipients.

**Section VI—Award Administration Information**

*1. Award Notices*

After all applications are received, acknowledgments will be mailed to applicants. Once applications have been recommended for funding, the EPA Regions will notify the finalists and request any additional information necessary to complete the award

process. The finalists will be required to complete additional government application forms before receiving a grant, such as the EPA Form SF–424B (Assurances—Non-Construction Programs) and EPA Form 5700–49, the Certification Regarding Debarment, Suspension, and Other Responsibility Matters. The Federal government requires all grantees to certify and assure that they will comply with all applicable Federal laws, regulations, and requirements. The designated EPA official or their designees will notify those applicants whose projects are not selected for funding.

*2. Reporting*

Unless specified in the award, all recipients must submit final reports for EPA approval within ninety (90) days of the end of the project period. Specific report requirements (*e.g.*, Quarterly or Semiannual Progress Reports, a Final Technical Report and a Financial Status Report) will be described in the award agreement. The EPA will collect, review, and disseminate grantees' final reports to serve as models.

For further information about this program, please visit the EPA's Web site at *http://www.epa.gov/compliance/environmentaljustice/grants/ej_smgrants.html.*

**Section VII—Agency Contact(s)**

*When and Where Must Applications Be Submitted?*

The applicant must submit/mail one signed *original* application with required attachments and *one copy* to the primary contact at the respective EPA regional office listed below. The application must be date stamped by courier service or postmarked by the U.S. Postal Service by midnight, Friday, April 30, 2004.

*Regional Contact Names and Addresses*

Region 1 Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

*Primary Contact:* Kathy Castagna (617) 918–1429, *castagna.kathleen@epa.gov,* USEPA Region 1 (RAA), One Congress Street—11th Floor, Boston, MA 02203–0001.

*Secondary Contact:* Davina Wysin (617) 918–1020, *wysin.davina@epa.gov.*

Region 2 New Jersey, New York, Puerto Rico, U.S. Virgin Islands

*Primary Contact:* Terry Wesley (212) 637–5027, *wesley.terry@epa.gov,* USEPA Region 2, 290 Broadway, 26th Floor, New York, NY 10007.

*Secondary:* Tasha Frazier (212) 637–3861, *frazier.tasha@epa.gov.*

Region 3 Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

*Primary Contact:* Reginald Harris (215) 814–2988, *harris.reggie@epa.gov,* USEPA Region 3 (3DA00), 1650 Arch Street, Philadelphia, PA 19103–2029.

Region 4 Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

*Primary Contact:* Elvie Barlow (404) 562–9650, *barlow.elvie@epa.gov,* USEPA Region 4, 61 Forsyth Street, Atlanta, GA 30303–8960.

*Secondary:* Cynthia Peurifoy (404) 562–9649, *peurifoy.cynthia@epa.gov.*

Region 5 Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

*Primary Contact:* Margaret Millard (312) 353–1440, *millard.margaret@epa.gov,* USEPA Region 5 (DM7J), 77 West Jackson Boulevard, Chicago, IL 60604–3507.

*Secondary:* Alan Walts (312) 353–8894, *walts.alan@epa.gov.*

Region 6 Arkansas, Louisiana, New Mexico, Oklahoma, Texas

*Primary Contact:* Shirley Quinones (214) 665–2713, *Quinones.shirley@epa.gov,* USEPA Region 6, Fountain Place, 13th Floor, 1445 Ross Avenue (RA–D), Dallas, Texas 75202–2733.

*Secondary Contact:* Nelda Perez (214) 665–2209, *perez.nelda@epa.gov.*

Region 7 Iowa, Kansas, Missouri, Nebraska

*Primary Contact:* Pamela K. Johnson (913) 551–7480, *johnson.pamelak@epa.gov,* USEPA Region 7, 901 North 5th Street (RGAD/ECO), Kansas City, KS 66101.

*Secondary:* Monica Espinosa (913) 551–7058, *espinosa.monica@epa.gov.*

Region 8 Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

*Primary Contact:* Nancy Reish (303) 312–6040, *reish.nancy@epa.gov,* USEPA Region 8 (8ENF–EJ), 999 18th Street, Suite 300, Denver, CO 80202–2466.

*Secondary:* Jean Belille (303) 312–6556, *belille.jean@epa.gov.*

Region 9 Arizona, California, Hawaii, Nevada, American Samoa, Guam

*Primary Contact:* Karen Henry (415) 972–3844, *henry.karen@epa.gov,* USEPA Region 9 CMD–1, 75 Hawthorne Street, San Francisco, CA 94105.

*Secondary:* Nate Lau (415) 972–3839, *lau.nate@epa.gov.*

Region 10 Alaska, Idaho, Oregon, Washington

*Primary Contact:* Cecilia A. Contreras (206) 553–2899, *contreras.cecilia@epa.gov,* USEPA Region 10 (CRE–164), 1200 Sixth Avenue, Seattle, WA 98101.

*Secondary:* Susanne Salcido (206) 553–1687, *salcido.susanne@epa.gov.*

**Section VIII—Other Information**

*How Can I Receive Information on the Fiscal Year 2005 (October 1, 2004 to September 30, 2005) Environmental Justice Hazardous Substances Research Small Grants Program?*

If you wish to be placed on the national mailing list to receive information on the FY 2005 Environmental Justice Hazardous Substances Research Small Grants Program, e-mail your request along with your name, organization, address, and phone number to *lewis.sheila@epa.gov* or mail your request along with your name, organization, address, and phone number to: U.S. Environmental Protection Agency, Environmental Justice Hazardous Substances Research Small Grants Program (2201A), FY 2005 Grants Mailing List, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, 1 (800) 962–6215.

If you wish to receive information on local Environmental Justice programs, you may mail or email your request along with your name, organization, address, and phone number to the appropriate regional office listed above.

Thank you for your interest in the Environmental Justice Hazardous Substances Research Small Grants Program.

Dated: February 24, 2004.

**Linda K. Smith,**

*Acting Director, Office of Environmental Justice.*

[FR Doc. 04–4465 Filed 2–27–04; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7628–4]**

## Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2002

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of document availability and request for comments.

**SUMMARY:** The Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks:

1990–2002 is available for public review. Annual U.S. emissions for the period of time from 1990–2002 are summarized and presented by source category and sector. The inventory contains estimates of carbon dioxide ($CO_2$), methane ($CH_4$), nitrous oxide ($N_2O$), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and sulfur hexafluoride ($SF_6$) emissions. The inventory also includes estimates of carbon sequestration in U.S. forests. The technical approach used in this report to estimate emissions and sinks for greenhouse gases is consistent with the methodologies recommended by the Intergovernmental Panel on Climate Change (IPCC) and reported in a format consistent with the United Nations Framework Convention on Climate Change (UNFCCC) reporting guidelines. The Inventory of U.S. Greenhouse Gas Emissions and Sinks is the latest in a series of annual U.S. submissions to the Secretariat of the UNFCCC.

**DATES:** To ensure your comments are considered for the final version of the document, please submit your comments by March 31, 2004. However, comments received after that date will still be welcomed and be considered for the next edition of this report.

**ADDRESSES:** Comments should be submitted to Mr. Leif Hockstad at: Environmental Protection Agency, Clean Air Markets Division (6204J), 1200 Pennsylvania Ave., NW., Washington, DC 20460, Fax: (202) 343–2356. You are welcome and encouraged to send an e-mail with your comments to *hockstad.leif@epa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Leif Hockstad, Environmental Protection Agency, Office of Air and Radiation, Office of Atmospheric Programs, Clean Air Markets Division, (202) 343–9432, *hockstad.leif@epa.gov*.

**SUPPLEMENTARY INFORMATION:** The draft report can be obtained by visiting the U.S. EPA's global warming site at *http://www.epa.gov/globalwarming/publications/emissions/*.

Dated: February 23, 2004.

**Jeff Holmstead,**

*Assistant Administrator, Office of Air and Radiation.*

[FR Doc. 04–4469 Filed 2–27–04; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2004–0074; FRL–7346–5]**

## Approval of Test Marketing Exemption for a Certain New Chemical

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–04–01. The test marketing conditions are described in the TME application and in this notice.

**DATES:** Approval of this TME is effective February 24, 2004. Comments, identified by docket ID number OPPT–2004–0074 and the TME number, must be received on or before March 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:** *For general information contact*: Colby Lintner, Regulatory Coordinator, 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*: Adella Watson, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9364; e-mail address: *watson.adella@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TMEs to EPA. This action may, however, be of interest to the public in general. 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 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–2004–0074. 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?*

The notice of receipt was published late in the 45–day review period; however, an opportunity to submit comments is being offered at this time.

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 the 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–2004–0074. 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–2004–0074 and the 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–2004–0074 and the 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 TME number in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

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

Section 5(h)(1) of TSCA and 40 CFR 720.38 authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

## III. What Action is the Agency Taking?

EPA has approved the above-referenced TME. EPA has determined that test marketing the new chemical substance, under the conditions set out in the TME application and in this notice, will not present any unreasonable risk of injury to health or the environment.

## IV. What Restrictions Apply to this TME?

The test market time period, production volume, number of customers, and use must not exceed specifications in the application and this notice. All other conditions and restrictions described in the application and in this notice must also be met.

**TME–04–01**

*Date of Receipt*: December 30, 2003.

*Notice of Receipt*: February 9, 2004 (69 FR 5980) (FRL–7344–2).

*Applicant*: CBI.

*Chemical*: (G) Soy polyol.

*Use*: (G) Polyurethanes market.

*Production Volume*: CBI.

*Number of Customers*: CBI.

*Test Marketing Period*: CBI.

The following additional restrictions apply to this TME. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

## V. What was EPA's Risk Assessment for this TME?

EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

## VI. Can EPA Change Its Decision on this TME in the Future?

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that these test marketing activities will not present any unreasonable risk of injury to human health or the environment.

## List of Subjects

Environmental protection, Test marketing exemptions.

Dated: February 24, 2004.

**Miriam Wiggins-Lewis,**

*Acting Chief, New Chemicals Prenotice Management Branch, Office of Pollution Prevention and Toxics.*

[FR Doc. 04–4473 Filed 2–27–04; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2004–0075; FRL–7347–5]**

## Approval of Test Marketing Exemption for a Certain New Chemical

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–04–02. The test marketing conditions are described in the TME application and in this notice.

**DATES:** Approval of this TME is effective February 24, 2004.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact*: Colby Lintner, Regulatory Coordinator, 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*: Adella Watson, CCD (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9364; e-mail address:*watson.adella@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TME to EPA. This action may, however, be of interest to the public in general. 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 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–2004–0075. 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.

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

Section 5(h)(1) of TSCA and 40 CFR 720.38 authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

## III. What Action is the Agency Taking?

EPA approves the above-referenced TME. EPA has determined that test marketing the new chemical substance, under the conditions set out in the TME application and in this notice, will not present any unreasonable risk of injury to health or the environment.

## IV. What Restrictions Apply to this TME?

The test market time period, production volume, number of customers, and use must not exceed specifications in the application and this notice. All other conditions and restrictions described in the application and in this notice must also be met.

**TME–04–02**

*Date of Receipt*: January 12, 2004.

*Notice of Receipt*: February 9, 2004 (69 FR 5980) (FRL–7344–2).

*Applicant*: Ilford Imaging USA.

*Chemical*: 1H-pyrazole-3-carboxylic acid, 4-[[5- [[4, 6-bis[(3 sulphopropyl)thio]-1,3,5-triazin-2-yl]amino] -2-sulphophenyl]azo]-1-(2,5-dichloro-4-sulphophenyl)-4,5-dihydro-5-oxo-,pentsodium salt.

*Use*: dye formulated in water-based ink for use in inkjet printer cartridges.

*Production Volume*: 500 kilograms/yr.

*Number of Customers*: 12.

*Test Marketing Period*: 5 months.

The following additional restrictions apply to this TME. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

## V. What was EPA's Risk Assessment for this TME?

EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

## VI. Can EPA Change Its Decision on this TME in the Future?

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

## List of Subjects

Environmental protection, Test marketing exemptions.

Dated: February 24, 2004.

**Miriam Wiggins-Lewis,**

*Acting Chief, New Chemicals Prenotice Management Branch, Office of Pollution Prevention and Toxics.*

[FR Doc. 04–4474 Filed 2–27–04 8:45 am]

**BILLING CODE 6560–50–S**

# FEDERAL COMMUNICATIONS COMMISSION

## Sprint Corporation's Petition for Designation as an Eligible Telecommunications Carrier in North Carolina

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; solicitation of comments.

**SUMMARY:** In this document, the Wireline Competition Bureau sought comment on the Sprint Corporation's (Sprint) petition. Sprint is seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support in the portions of its licensed service area in North Carolina served by non-rural incumbent local exchange carriers.

**DATES:** Comments are due on or before March 11, 2004. Reply comments are due on or before March 25, 2004.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

**FOR FURTHER INFORMATION CONTACT:** Thomas Buckley, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's public notice, CC Docket No. 96–45, DA 04–27, released January 8, 2004. On November 5, 2003, Sprint on behalf of its Wireless Division filed with the Commission a petition pursuant to section 214(e)(6) of the of the Communications Act of 1934, as amended, seeking designation as an ETC in the portions of its licensed service area in North Carolina served by non-rural incumbent local exchange carriers. Sprint contends that: the North Carolina Utilities Commission (North Carolina Commission) has provided an affirmative statement that it does not regulate commercial mobile radio service (CMRS) carriers; Sprint satisfies all the statutory and regulatory prerequisites for ETC designation; and designating Sprint as an ETC will serve the public interest.

We note that Sprint must provide a copy of its petition to the North Carolina Commission. The Commission will also send a copy of this public notice to the North Carolina Commission by overnight express mail to ensure that the North Carolina Commission is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments as follows: comments are due on or before March 11, 2004, and reply comments are due on or before March 25, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to <*ecfs@fcc.gov*>, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other then U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

**Sharon Webber,**

*Deputy Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.*

[FR Doc. 04–2241 Filed 2–27–04; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2647]**

### Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

February 23, 2004.

Petitions for Reconsideration and Clarification have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by March 16, 2004. *See* Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

*Subject:* In the Matter of the Review of Part 15 and other Parts of Commission's Rules (ET Docket No. 01–278, RM–9375, RM–10051)

Amendment of Parts 2 and 15 of the Commission's Rules to Deregulate the Equipment Authorization Requirements for Digital Devices (ET Docket No. 95–19).

*Number of Petitions Filed:* 2.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–4454 Filed 2–27–04; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL RESERVE SYSTEM

**[Docket No. OP–1184]**

### Privacy Act of 1974; Notice of Amendment of System of Records

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice: amendment of systems of records.

**SUMMARY:** In accordance with the Privacy Act, the Board of Governors of the Federal Reserve System (Board) is amending one system of records, entitled Consumer Complaint Information System (BGFRS–18), and removing another system of records, entitled Financial Disclosure Reports and Outside Business Interests Applications (BGFRS–19). We invite public comment on this publication.

**DATES:** Comment must be received on or before March 31, 2004.

**ADDRESSES:** Comments should refer to Docket No. OP–1184 and may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Please consider submitting your comments through the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm,* by e-mail to *regs.comments@federalreserve.gov,* or by fax to the Office of the Secretary at 202/452–3819 or 202/452–3102. Rules proposed by the Board and other federal agencies may also be viewed and commented on at *http://www.regulations.gov.*

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boutilier, Managing Senior Counsel, (202/452–2418), Legal Division. For the hearing impaired *only,* contact Telecommunications Device for the Deaf (TDD) (202/263–4869).

**SUPPLEMENTARY INFORMATION:** These two systems have not been updated for several years. The system entitled Financial Disclosure Reports and Outside Business Interests Applications (BGFRS–19) covers records contained in OGE/GOVT–1 and OGE/GOVT–2, which are government-wide systems that are maintained by the Office of Government Ethics. Accordingly, the Board's system is being removed as duplicative and unnecessary.

The Consumer Complaints Information system is being amended to clarify that records maintained in the system pertain only to the complainant and do not include investigatory records regarding the institution subject to the complaint. The system has also been amended to include appropriate routine uses.

In accordance with 5 U.S.C. 552a(r), a report of these amended systems of records is being filed with the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget. These amendments will become effective on April 12, 2004, without further notice, unless the Board publishes a notice to the contrary in the **Federal Register**.

Accordingly, the system of records entitled Financial Disclosure Reports and Outside Business Interests Applications (BGFRS–19) is removed, and the system of records entitled Consumer Complaint Information (BGFRS–18) is amended as follows.

## BGFRS–18

### SYSTEM NAME:

Consumer Complaint Information.

### SECURITY CLASSIFICATION:

None.

### SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551; and the twelve Federal Reserve Banks, located in Boston, MA; New York, NY; Philadelphia, PA; Cleveland, OH; Richmond, VA; Atlanta, GA; Chicago, IL; St. Louis, MO; Minneapolis, MN; Kansas City, MO; Dallas, TX; and San Francisco, CA.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have filed consumer complaints with the Federal Reserve Board or the Federal Reserve Banks, or whose complaint to another agency has been referred to the Federal Reserve Board for review.

### CATEGORIES OF RECORDS IN THE SYSTEM:

These records primarily consist of complaints regarding state-chartered member banks, as well as other financial institutions, individuals, or organizations that are subject to federal banking supervision. The records may contain the name and address of an individual or organization that referred a matter to the Board. Information in these records includes the complainant's name; the name of the financial institution that is the subject of the complaint; the subject matter of the complaint; and the Board's response to the complaint. Supporting records include, but are not limited to, documents supplied by the complainant. If the complaint concerns an institution that is not subject to supervision by the Board, the record may consist of a referral letter to the appropriate supervisory agency.

### PURPOSE:

These files permit the Board to perform its responsibilities under the Federal Reserve Act, the Federal Trade Commission Act, and other consumer protection laws to respond to consumer complaints and inquiries regarding practices by banks and other financial institutions supervised by the Board.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 11 of the Federal Reserve Act (12 U.S.C. 248(a)); Section 5 of the Bank Holding Company Act (12 U.S.C. 1844); and Section 18(f) of the Federal Trade Commission Act (15 U.S.C. 57a(f)).

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

a. A Board-regulated entity that is the subject of a complaint or inquiry;

b. Third parties to the extent necessary to obtain information that is relevant to the resolution of a complaint or inquiry;

c. The appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

d. The appropriate governmental, tribal, self-regulatory, or professional organization if that entity has jurisdiction over the subject matter of the complaint or inquiry, or the entity that is the subject of the complaint or inquiry;

e. The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the Board determines that the information is relevant and necessary to a proceeding in which the Board, any Board employee in his or her official capacity, any Board employee in his or her individual capacity represented by the Department of Justice or the Board, or the United States is a party or has an interest;

f. A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

g. Contractors, agents, or volunteers performing or working on a contract, service, cooperative agreement, or job for the Board;

h. Third parties when mandated or authorized by statute; or

i. The National Archives and Records Administration in connection with records management inspections and its role as Archivist.

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

#### STORAGE:

These records are stored in electronic or printed form.

#### RETRIEVABILITY:

Files are retrievable by consumer name or as appropriate.

#### SAFEGUARDS:

Access to and use of these records is restricted to authorized personnel only.

#### RETENTION AND DISPOSAL:

Records are retained for five years.

### SYSTEM MANAGER AND ADDRESS:

Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551.

### NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. The request should contain the individual's name, name of the bank that was the subject of the complaint, and date of the complaint.

### RECORD ACCESS PROCEDURES:

Same as ''Notification procedure'' above.

### CONTESTING RECORD PROCEDURES:

Same as ''Notification procedure'' above.

### RECORD SOURCE CATEGORIES:

Person(s) who initiates complaint (or his or her representative, which may

include a member of Congress or an attorney); appropriate federal, state, or local regulatory and enforcement agencies; and institutions or individuals that are the subject of the complaint.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, February 24, 2004.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 04–4444 Filed 2–27–04; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 01P–0333]**

### Determination That Cytoxan (Cyclophosphamide for Injection), 2 Gram Vials (NDA 12–142 054), Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined that although Bristol Myers Squibb (Bristol) has discontinued marketing CYTOXAN, 2 gram (g) vials (cyclophosphamide for injection), this formulation was not withdrawn from sale for reasons of safety and effectiveness. As a result of this determination, approved abbreviated new drug applications (ANDAs) for cyclophosphamide for injection that referenced Bristol's cyclophosphamide for injection will not be removed from the market. Because Bristol has supplemented its CYTOXAN NDA and obtained approval for a new formulation, cyclophosphamide lyophilized, any unapproved ANDAs seeking to reference CYTOXAN as a reference listed drug must reference the currently approved formulation, cyclophosphamide lyophilized.

**FOR FURTHER INFORMATION CONTACT:** Howard P. Muller, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20855, 301–594–2041.

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is typically a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under § 314.162 (21 CFR 314.162), drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was voluntarily withdrawn from sale by the sponsor for reasons of safety or effectiveness.

Regulations also provide that the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1) (21 CFR 314.161(a)(1))). If the agency determines that a listed drug was withdrawn for reasons of safety or effectiveness, the drug must be removed from the list of approved drug products, and ANDAs referencing that drug may not be approved (§ 314.162). Under § 314.161(a)(2), the agency must also determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness if ANDAs that referred to the listed drug have already been approved prior to its market withdrawal. If the agency determines that a listed drug was withdrawn from sale for reasons of safety or effectiveness, and there are approved ANDAs that reference that listed drug, FDA will initiate a proceeding to determine whether the suspension of the ANDAs is also required (21 CFR 314.153(b)).

On August 30, 1982, Bristol received approval for CYTOXAN (cyclophosphamide for injection), 2 g vials, under NDA 12–142 054. CYTOXAN is an alkylating agent used to treat various types of cancer. It interferes with the growth of cancer cells, which are eventually destroyed. On January 4, 1984, Bristol received approval for a new formulation of CYTOXAN, cyclophosphamide lyophilized, under NDA 12–142 058. Bristol's lyophilized formulation was approved on the basis of a showing of bioequivalence to the previously approved formulation. No additional clinical trials were required to demonstrate the safety or effectiveness of cyclophosphamide lyophilized. ANDAs were approved before the time the cyclophosphamide lyophilized formulation was approved. These ANDAs referenced cyclophosphamide for injection. Bristol discontinued marketing cyclophosphamide for injection, 2 g vials, in 1997. Cyclophosphamide for injection was moved from the prescription drug product list to the ''Discontinued Drug Product List'' section of the Orange Book in May 1997.

On July 26, 2001, ASTA Medica, Inc., submitted a citizen petition (Docket No. 01P–0333/CP1) to FDA under 21 CFR 10.30 requesting that the agency determine whether CYTOXAN, cyclophosphamide for injection, 2 g vials, was withdrawn from sale for reasons of safety or effectiveness. This determination not only affects whether an ANDA may be submitted and approved under §§ 314.122 and 314.161 using CYTOXAN, cyclophosphamide for injection, 2 g, as the reference listed drug, but also affects whether the agency is required to initiate withdrawal proceedings for the ANDAs that reference cyclophosphamide for injection and were approved before its market withdrawal.

The agency has determined that Bristol did not withdraw cyclophosphamide for injection from sale for reasons of safety or effectiveness. Three grounds support the agency's finding. First, Bristol continues to market cyclophosphamide lyophilized (which is pharmaceutically and therapeutically equivalent to Bristol's withdrawn cyclophosphamide for injection) in a variety of strengths. FDA has no reason to believe that cyclophosphamide lyophilized has a different safety or effectiveness profile than cyclophosphamide for injection, and required Bristol to conduct no clinical trials (other than bioequivalence trials) to support the formulation change. Second, the petitioner identified no adverse event data or other information suggesting that Bristol withdrew cyclophosphamide for injection from sale as a result of safety

or effectiveness concerns. Third, FDA has independently evaluated relevant literature and internal agency data for possible postmarketing reports associated with cyclophosphamide for injection, and has found no information that would indicate this product was withdrawn for reasons of safety or effectiveness.

After considering the citizen petition and reviewing its records, FDA determines that, for the reasons outlined above, Bristol's cyclophosphamide for injection was not withdrawn from sale for reasons of safety or effectiveness. Thus, FDA will not initiate proceedings to suspend the approvals of ANDAs referencing cyclophosphamide for injection. However, because Bristol has supplemented its CYTOXAN NDA and obtained approval for a new formulation, cyclophosphamide lyophilized, any unapproved ANDAs seeking to reference CYTOXAN (NDA 12–142 054) must reference the currently approved formulation.

Dated: February 15, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04–4505 Filed 2–27–04; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Cancellation of Grant Opportunities Previously Announced in the HRSA Preview on September 4, 2003 (68 FR 52632)

**AGENCY:** Health Resources and Services Administration (HRSA), HHS.

**ACTION:** Notice of cancellation.

**SUMMARY:** The Health Resources and Services Administration (HRSA) announces the cancellation of eight grant opportunities that were initially published in the (September 4, 2003 (68 FR 52632)) **Federal Register** notice of availability of competitive grant funds for numerous HRSA programs.

**EFFECTIVE DATE:** March 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Gail Lipton, Director, Division of Grants Policy, Office of Financial Policy and Oversight, Telephone (301) 443–6509. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The HRSA Preview is a comprehensive listing of HRSA competitive grant programs scheduled for award in Fiscal Year 2004. However, as indicated in the Frequently Asked Questions section of the Preview, programs may be withdrawn from competition. Based on final Fiscal Year 2004 appropriations and a redirection of priorities, HRSA hereby withdraws the following programs and announcements from Fiscal Year 2004 competition:

HRSA–04–021 Bioterrorism Training and Curriculum Development (BTCDP).

HRSA–04–028 Radiation Exposure Screening and Education Program (RESEP).

HRSA–04–036 National Health Center Technical Assistance Cooperative Agreements (NAT).

HRSA–04–046 Telehealth Resource Centers Cooperative Agreement Program (TRCCP).

HRSA–04–049 Title III: Early Intervention Services Planning Grants (EISPG).

HRSA–04–052 Maternal and Child Health Minority Research Infrastructure Support Program (RMIN).

HRSA–04–061 Partnership for Information and Communication (PIC) Cooperative Agreement Program.

HRSA–04–074 Best Practices to Increase Organ Donation (HIP).

These cancellations will be effective immediately upon publication of this **Federal Register** notice. HRSA will not accept any FY 2004 competitive applications for these funding opportunities, and any applications previously submitted will be returned to the respective applicants. Further information about HRSA programs will be provided through the HRSA Preview at the HRSA Home page at *http://www.hrsa.gov.*

Dated: February 24, 2004.

**Elizabeth M. Duke,**

*Administrator.*

[FR Doc. 04–4506 Filed 2–27–04; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director; Notice of Meeting

The Office of the Director, National Institutes of Health (NIH), announces a meeting of the NIH Blue Ribbon Panel on Conflict of Interest Policies, a working group of the Advisory Committee to the Director, NIH. The meeting is scheduled for March 1–2, 2004, beginning at 8:30 a.m. each day.

The meeting will be held at the NIH, 9000 Rockville Pike, Bethesda, Maryland, Building 31C, Conference Room 10. Attendance will be limited to space available. In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

On March 1 and until noon on March 2, the meeting will be open to the public. Sessions will include: Federal Conflict of Interest Policies; HHS Conflict of Interest Policies, NIH Conflict of Interest Policies and Procedures, and there will be time set aside for oral presentations by the public. Any person wishing to make a presentation should notify Charlene French, Office of Science Policy, National Institutes of Health, Building 1, Room 103, Bethesda, Maryland 20892, telephone 301–496–2122 by February 26, 2004 or by e-mail: *blueribbonpanel@mail.nih.gov*.

Oral comments will be limited to 5 minutes. Due to time constraints, only one representative from each organization will be allotted time or oral testimony. The number of speakers and the time allotment may also be limited by the number of presentations. The opportunity to speak will be based on a first come first served basis. All requests to present oral comments should include the name, address, telephone number, and business or professional affiliation of the interested party, and should indicate the areas of interest or issue to be addressed. Please provide, if possible, an electronic copy of your comments.

Any person attending the meeting who has not registered to speak in advance of the meeting will be allowed to make a brief oral statement during the time set aside for public comment, if time permits and at the discretion of the co-chairs.

Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Charlene French in advance of the meeting at the address listed earlier in this notice.

Dated: February 19, 2004.

**LaVerne Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–4528 Filed 2–26–04; 11:15 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4910–N–05]**

### Notice of Proposed Information Collection for Public Comment; Financial Standards for Housing Agency-Owned Insurance Entities

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD will submit the proposal for collection of information described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department will request this previously approved information collection be extended, and is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* April 30, 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: Sherry F. McCown, Acting Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

**FOR FURTHER INFORMATION CONTACT:** Sherry F. McCown, (202) 708–0614, extension 7651. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will request an extension of and submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Financial Standards for Housing Agency-Owned Insurance Entities.

*OMB Control Number:* 2577–0186.

*Description of the Need for the Information and Proposed Use:* Housing Authorities (HAs) can purchase insurance coverage when purchased from a nonprofit insurance entity owned and controlled by HAs which are approved by HUD. HA-owned insurance entities must submit certain documentation to HUD and also submit audit and actuarial reviews to HUD.

*Agency Form Numbers, if Applicable:*

*Members of Affected Public:* Business or other for-profit, State, local or tribal government.

*Estimation of the Total Number of Hours Needed to Prepare the Information Collection Including Number of Respondents, Frequency of Response, and Hours of Response:*

Frequency of Submission: Annually.

| | Number of respondents | × | Frequency response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Reporting Burden | 19 | | 1 | | 10 | | 190 |

*Total Estimated Burden Hours:* 190.

*Status of the Proposed Information Collection:* Extension.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: February 24, 2004.

**Michael Liu,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 04–4479 Filed 2–27–04; 8:45 am]

**BILLING CODE 4210–33–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4902–N–01]**

### Adjustments to Statutory Mortgage Limits for Sections 207 and 213 of the National Housing Act Multifamily Housing Programs

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The recently enacted FHA Multifamily Loan Limit Adjustment Act of 2003 made adjustments to certain maximum mortgage amount limits. This notice advises of HUD adjustment of these mortgage limits consistent with the new law.

**EFFECTIVE DATE:** January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–1142 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** The FHA Downpayment Simplification Act of 2002 (Pub. L. 107–326, approved December 4, 2002) amended the National Housing Act (the Act) (12 U.S.C. 1701 *et seq.*) by adding a new section 206A (12 U.S.C. 1712a). Under section 206A, maximum mortgage amounts (collectively referred to as ''dollar amounts'') shall be adjusted annually, commencing in 2004, for a number of programs under the Act. Accordingly, on November 1, 2003 (68 FR 65724), HUD published notice of the basic statutory mortgage limits for multifamily housing programs.

Subsequently, enactment of the FHA Multifamily Loan Limit Adjustment Act of 2003 (section 302 of Pub. L. 108–186, approved December 16, 2003) established ''catch-up adjustments'' to two programs under the Act. Under section 302(c), captioned ''Catch-up Adjustments to Certain Maximum Mortgage Amount Limits,'' the adjustments affect the following sections of the Act: (1) Section 207(c)(3)(A) (12 U.S.C. 1713(c)(3)(A)); and (2) section 213(b)(2)(A) (12 U.S.C. 1715e(b)(2)(A)).

The new dollar amounts in these sections have been adjusted by HUD according to the FHA Downpayment Simplification Act of 2002, using the Federal Reserve Board's adjustment of the $400 figure in the Home Ownership and Equity Protection Act of 1994 (HOEPA) (Pub. L. 103–325, approved September 23, 1994). The adjustment of the dollar amounts has been calculated

using the percentage change in the Consumer Price Index for All Urban Consumers (CPI–U) as applied by the Federal Reserve Board for purposes of the above-described HOEPA adjustment.

The percentage change in the CPI–U is 2.22 percent and the effective date of the HOEPA adjustment is January 1, 2004. The dollar amounts have been adjusted correspondingly and have an effective date of January 1, 2004.

The adjusted dollar amounts for calendar year 2004 are as follows:

**Basic Statutory Mortgage Limits for Calendar Year 2004**

*Multifamily Loan Program*

- Section 213—Cooperatives

| Bedrooms | Non-elevator | Elevator |
|---|---|---|
| 0 | $42,121 | 44,849 |
| 1 | 48,565 | 50,813 |
| 2 | 58,572 | 61,787 |
| 3 | 74,971 | 79,932 |
| 4+ | 83,521 | 87,741 |

- Section 207 ''Manufactured Home Parks

Per Space $17,847

Dated: February 20, 2004.

**John C. Weicher,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 04–4481 Filed 2–27–04; 8:45 am]

BILLING CODE 4210–27–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4914–N–02]**

## Mortgagee Review Board; Administrative Actions

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 202(c) of the National Housing Act, this notice advises of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

**FOR FURTHER INFORMATION CONTACT:** D. Jackson Kinkaid, Secretary to the Mortgagee Review Board, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone: (202) 708–3041 extension 3574 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this telephone number through TTY by calling the toll-free Federal Information Relay Information Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** Section 202(c)(5) of the National Housing Act (12 U.S.C. 1708(c)(5) requires that HUD publish a description of and the cause for administrative action against a HUD-approved mortgagee by HUD's Mortgagee Review Board. In compliance with the requirements of section 202(c)(5), this notice advises of administrative actions that have been taken by the Mortgagee Review Board (Board) from December 2001 through September 2003.

**1. Acclaim Mortgage Incorporated, Denver, CO [Docket No. 02–1959–MR]**

*Action:* Settlement Agreement signed on May 29, 2003. Without admitting fault or liability, Acclaim Mortgage Incorporated (AMI) agreed to pay a civil money penalty in the amount of $44,900.

*Cause:* The Board took this action based on the following violations of the HUD's Federal Housing Administration (FHA) requirements in the origination of HUD/FHA-insured loans where AMI: failed to perform Quality Control reviews in compliance with HUD/FHA requirements; failed to file annual reports regarding loan application activity as required by HUD/FHA requirements; and failed to pay all of its own operating expenses in compliance with HUD/FHA requirements.

**2. Allied Home Mortgage Capital Corporation, Houston, TX [Docket No. 01–1465–MR]**

*Action:* Settlement Agreement signed on August 13, 2003. Without admitting fault or liability, Allied Home Mortgage Capital Corporation (AMCC) agreed to pay an administrative payment in the amount of $50,000.

*Cause:* The Board took this action based on the following violations of the HUD/FHA requirements in the origination of HUD/FHA-insured loans where AMCC: engaged in improper branch operations because the employment agreements violated HUD/FHA requirements; allowed a loan officer to originate a HUD/FHA-insured loan in which the person was both the loan officer and real estate agent; and allowed the origination of HUD/FHA loans to occur in an office space that was not clearly identified as an office of AHMCC.

**3. Atlantic Coast Mortgage Services, Pleasantville, NJ [Docket No. 02–1913–MR]**

*Action:* Settlement Agreement signed on March 21, 2003. Without admitting fault or liability, Atlantic Coast Mortgage Services (ACMS) agreed to pay a civil money penalty in the amount of $100,000, and indemnify HUD on 13 FHA-insured loans.

*Cause:* The Board took this action based on the following violation of HUD/FHA requirements in the origination of HUD/FHA insured loans where ACMS failed to obtain and properly analyze necessary documents to determine the financial capacity of a nonprofit borrower.

**4. BancFirst Corporation, Oklahoma City, OK [Docket No. 02–2152–MR]**

*Action:* Settlement Agreement signed on March 24, 2003. Without admitting fault or liability, BancFirst Corporation (BFC) agreed to pay an administrative payment in the amount of $9,000.

*Cause:* The Board took this action based as a result of BFC's failure to perform property inspections on HUD/FHA-insured multifamily projects.

**5. Bank of New York, New York, NY [Docket No. 02–1963–MR]**

*Action:* Settlement Agreement signed on January 31, 2003. Without admitting fault or liability, Bank of New York (BNY) agreed to pay an administrative payment in the amount of $36,000.

*Cause:* The Board took this action as a result of BNY's failure to perform property inspections on HUD/FHA-insured multifamily projects.

**6. District of Columbia Housing Finance Agency, Washington, DC [Docket No. 03–3025–MR]**

*Action:* Settlement Agreement signed on May 13, 2003. Without admitting fault or liability, District of Columbia Housing Finance Agency (DCHFA) agreed to pay an administrative payment in the amount of $3,000.

*Cause:* The Board took this action as a result of DCHFA's failure to perform a property inspection on one HUD/FHA-insured multifamily project.

**7. Empire Funding Corporation, Austin, TX [Docket No. 99–974–MR]**

*Action:* Settlement Agreement signed on August 7, 2002. Without admitting fault or liability, Empire Funding Corporation (EFC) agreed to forever forfeit its HUD/FHA Title I approval and liquidate its assets in accordance with a federal bankruptcy court approved liquidation plan. HUD agreed not to pursue civil money penalties.

*Cause:* The Board took this action based on the following violations of HUD/FHA requirements in the origination of FHA-insured Title I property improvement loans where EFC: Failed to re-approve dealers in a timely manner and funded Title I loans from non-approved dealers; and failed to ensure that detailed descriptions of the

proposed improvements were provided to the borrowers.

**8. Evans Mortgage Corporation, Edmond, OK [Docket No. 01–1565–MR]**

*Action:* Settlement Agreement signed on June 11, 2002. Without admitting fault or liability, Evans Mortgage Corporation (EMC) agreed to pay a civil money penalty in the amount of $10,000 and refund excessive fees charged to mortgagors.

*Cause:* The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA insured loans where EMC: Failed to file annual reports regarding loan application activity as required by HUD/FHA requirements; failed to maintain and implement a Quality Control Plan in compliance with HUD requirements; allowed non-FHA approved entities to originate loans that were registered with HUD as though they had been originated by EMC employees; paid referral fees to non-employees; signed false lender certifications contained in the addenda to the Uniform Residential Loan Application; and charged unallowable and/or excessive fees to FHA borrowers not specifically permitted by HUD/FHA.

**9. Federal National Mortgage Association, Washington, DC [Docket No. 03–3026–MR]**

*Action:* Settlement Agreement signed on May 8, 2003. Without admitting fault or liability, Federal National Mortgage Association (FNMA) agreed to pay an administrative payment in the amount of $6,000.

*Cause:* The Board took this action as a result of FNMA's failure to perform property inspections on HUD/FHA-insured multifamily projects.

**10. Fidelity Bank and Trust Company, Baton Rouge, LA [Docket No. 01–1580–MR]**

*Action:* On June 25, 2002, the Board issued a letter to Fidelity Bank and Trust Company (FBTC) withdrawing its HUD/FHA-approval and imposing a civil money penalty in the amount of $93,500.

*Cause:* The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA insured loans where FBTC: Failed to adopt, maintain and implement a quality control plan in compliance with HUD requirements; failed to adequately verify the source and sufficiency of funds used for the down payment, loan closing, or to satisfy loan approval conditions; failed to properly verify and/or calculate the mortgagor's income used for qualifying purposes; failed to include all of the borrower's debts when calculating the total fixed payment-to-income qualifying ratios; failed to ensure that a mortgagor met a minimum required investment because the loan exceeded the maximum mortgage amount; failed to resolve discrepancies in documentation used to process, underwrite and approve HUD/FHA loans; failed to satisfy requirements established by the Direct Endorsement underwriter prior to closing; failed to verify the borrower's stability of income or employment for the recent two full years; approved borrowers with delinquent and/or poor credit histories; and charged fees to HUD/FHA borrowers that were not specifically permitted by HUD/FHA.

**11. Financial Mortgage Corporation, Fort Washington, PA [Docket No. 00–1106–MR]**

*Action:* Settlement Agreement signed on April 17, 2002. Without admitting fault or liability, Financial Mortgage Corporation (FMC) agreed to pay a civil money penalty in the amount of $1,000 and indemnify HUD for one loan.

*Cause:* The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA-insured loans where FMC: Used falsified or conflicting documentation to approve a HUD/FHA mortgagor, and failed to properly verify income to approve a HUD/FHA mortgagor.

**12. First Colony Mortgage Corporation, Orem, UT [Docket No. 01–1566–MR]**

*Action:* Settlement Agreement signed on March 14, 2003. Without admitting fault or liability, First Colony Mortgage Corporation (FCMC) agreed to pay a civil money penalty in the amount of $49,500, indemnify HUD on two FHA-insured loans, and buydown the over-insured amount in one loan.

*Cause:* The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA insured loans where FCMC: Accepted loans originated by personnel not employed or not exclusively employed by FCMC; failed to properly verify the source and adequacy of funds for the down payment and/or closing costs; failed to properly verify and analyze income; failed to ensure property eligibility for HUD/FHA mortgage insurance; and closed a loan in excess of the maximum allowable insurance amount resulting in an over-insured loan.

**13. First Eastern Mortgage Corporation, Andover, MA [Docket No. 02–1905–MR]**

*Action:* Settlement Agreement signed on April 1, 2003. Without admitting fault or liability, First Eastern Mortgage Corporation (FEMC) agreed to pay an administrative payment in the amount of $171,000, and indemnify HUD on 49 HUD/FHA-insured loans.

*Cause:* The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA insured loans where FEMC: Failed to obtain and properly analyze necessary documents to determine the financial capacity of a non-profit borrower; charged borrowers fees not permitted by HUD/FHA; and failed to identify the lender credits on the Good Faith Estimate and the HUD–1 Settlement Statement.

**14. First Nationwide Mortgage Corporation, Frederick, MD [Docket No. 02–2149–MR]**

*Action:* Settlement Agreement signed on May 1, 2003. Without admitting fault or liability, First Nationwide Mortgage Corporation (FNMC) agreed to pay an administrative payment in the amount of $12,000.

*Cause:* The Board took this action as a result of FNMC's failure to perform property inspections on HUD/FHA-insured multifamily projects.

**15. Firstrust Savings Bank, Philadelphia, PA [Docket No. 03–3086–MR]**

*Action:* Settlement Agreement signed on June 30, 2003. Without admitting fault or liability, Firstrust Savings Bank (FSB) agreed to pay an administrative payment in the amount of $6,000.

*Cause:* The Board took this action as a result of FSB's failure to perform property inspections on HUD/FHA-insured multifamily projects.

**16. Flagstar Bank, F.S.B., Troy, MI [Docket No. 02–1948–MR]**

*Action:* On March 7, 2003 the Board issued a letter of reprimand to Flagstar Bank, F.S.B.

*Cause:* The Board took this action after a jury found that Flagstar Bank had violated sections 805 and 818 of the Fair Housing Act (42 U.S.C. 3605 and 3617), and corresponding regulations promulgated by HUD pertaining to mortgage lending, 24 CFR 100.120 to 100.130.

**17. GMAC Mortgage Corporation, Horsham, PA [Docket No. 01–1596–MR]**

*Action:* Settlement Agreement signed on April 28, 2003. Without admitting fault or liability, GMAC Mortgage Corporation (GMACMC) agreed to pay

an administrative payment in the amount of $91,000 and indemnify HUD on 26 HUD/FHA-insured loans.

*Cause:* The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA insured loans where GMACMC: Failed to identify and/or resolve false or conflicting documentation prior to approving HUD/FHA mortgagors; failed to ensure that the mortgagor made the minimum required investment in the property; failed to adequately verify the source of funds for mortgagor's down payment and/or closing costs; failed to ensure that verifications and other supporting documents did not pass through the hands of an interested third party; failed to obtain and analyze the terms and conditions of the real estate transaction and to consider the acquisition cost of recently acquired properties in the underwriting of the loans; failed to submit closed loans form endorsement within 60 days after loan closing as required; permitted an employee, who was also a party to the transaction, to be involved in the loan processing; failed to retain pertinent loan file documents; permitted cash back to a mortgagor receiving a homebuyer's assistance grant; and failed to properly evaluate effective income.

**18. Highland Mortgage Company, Birmingham, AL [Docket No. 03–3089–MR]**

*Action:* Settlement Agreement signed on June 30, 2003. Without admitting fault or liability, Highland Mortgage Company (HMC) agreed to pay an administrative payment in the amount of $12,000.

*Cause:* The Board took this action as a result of HMC's failure to perform property inspections on HUD/FHA-insured multifamily projects.

**19. Imperial Lenders Corporation, Miami, FL [Docket No. 01–1623–MR]**

*Action:* Settlement Agreement signed on June 24, 2003. Without admitting fault or liability, Imperial Lenders Corporation (ILC) agreed to pay a civil money penalty in the amount of $18,000.

*Cause:* The Board took this action based on the following violations of the HUD/FHA requirements where ILC: Failed to prevent individuals who were not on the employee list to participate in the origination of HUD/FHA insured loans by interviewing applicants; failed to establish, maintain and implement a Quality Control Plan in compliance with HUD/FHA requirements; failed to file annual reports regarding FHA loan application activity for the years 1998 and 1999; failed to prevent a senior corporate officer to actively work as a real estate broker; and failed to separate its office space from another entity and clearly identify itself to the public.

**20. Infinity Mortgage Company, Murray, UT [Docket No. 01–1574–MR]**

*Action:* Settlement Agreement signed on May 6, 2002. Without admitting fault or liability, Infinity Mortgage Company (IMC) agreed to pay a civil money penalty in the amount of $6,500.

*Cause:* The Board took this action based on the following violations of the HUD/FHA requirements in the origination of HUD/FHA insured loans where IMC: Failed to establish a proper loan correspondent/sponsor relationship with a lender; failed to maintain and implement a quality control plan; and, failed to file annual reports regarding FHA loan application activity.

**21. Investors Mortgage Funding Incorporated, Sacramento, CA [Docket No. 01–1486–MR]**

*Action:* Settlement Agreement signed on April 17, 2002. Without admitting fault or liability Investors Mortgage Funding Incorporated (IMFI) agreed to a voluntary withdrawal of its HUD/FHA lender approval and pay a civil money penalty in the amount of $40,000.

*Cause:* The Board took this action based on the following violations of the HUD/FHA requirements in the origination of HUD/FHA insured loans where IMFI: Failed to implement and maintain a quality control plan in compliance with HUD requirements; failed to file annual reports regarding loan application activity as required by HUD/FHA requirements; permitted non-FHA approved branch offices to originate and process HUD/FHA-insured loans; employed loan officers that were not exclusive employees; and used non-employees to originate and process HUD/FHA mortgage loans.

**22. KB Home Mortgage Company, f/k/a Kaufman and Broad Mortgage Company, Woodland Hills, CA [Docket No. 01–1594–MR]**

*Action:* Settlement Agreement signed on January 30, 2003. Without admitting fault or liability, KB Home Mortgage Company (KBMC) (fka Kaufman and Broad Mortgage Company) agreed to pay an administrative payment in the amount of $146,000, indemnify HUD on 15 HUD/FHA-insured loans, and pay HUD for losses associated with HUD/FHA insurance claims.

*Cause:* The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA-insured loans where KBMC: Accepted fees for real estate settlement services when either no or nominal services were provided; failed to properly verify the source and adequacy of funds used for the down payment and/or closing costs; failed to properly verify, analyze, and calculate income used to qualify mortgagors; failed to properly consider and verify liabilities of the mortgagor and/or non-purchasing spouse; failed to properly document mortgagor's credit histories; failed to properly document that judgments were paid-off or that the creditor was willing to subordinate the judgments to the insured mortgages; failed to update expired credit documents; and failed to provide compensating factors for ratios exceeding HUD/FHA standards.

**23. Kiddco Mortgage Company, Cincinnati, OH [Docket No. 01–1578–MR]**

*Action:* On February 28, 2003, the Board issued a letter to Kiddco Mortgage Company (KMC) withdrawing its HUD/FHA approval and imposing a civil money penalty in the amount of $167,875.

*Cause:* The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA insured loans where KMC: Falsified documentation or conflicting information to originate and obtain mortgage insurance; failed to document the borrower's source of funds used for downpayment or closing costs; used faxed copies of documents to originate loans; failed to perform satisfactory credit analysis; failed to ensure that mortgagors met their minimum required investment; failed to ensure that the requirements for high loan-to-value, new construction loans were met; failed to remit Up-Front Mortgage Insurance Premiums to HUD within 15 days from the date of the loan closing; failed to file annual reports regarding FHA loan application activity as required by HUD/FHA for 1995 through 2000; failed to ensure that an employee did not act as both Loan Officer and Direct Endorsement Underwriter on HUD/FHA loans; accepted loan applications from non-employees; failed to ensure that their employees worked exclusively for the lender and did not maintain other employment in the mortgage or real estate industry; failed to ensure that loans involving employees of KMC were properly processed; failed to ensure that loan verification documents did not pass through the hands of an interested third party; failed to provide evidence that all parties to the loan transactions

were checked against HUD's Limited Denial of Participation (LDP) listing and the government-wide Government Services Administration (GSA) Excluded Parties Listing System; failed to maintain fidelity bond coverage and errors and omissions insurance; paid fees on behalf of borrowers which ere not permitted by HUD/FHA; and failed to maintain and implement a quality control plan in compliance with HUD/FHA requirement.

**24. Lend-Mor Capital Corporation, Garden City, NY [Docket No. 01–1361–MR]**

*Action:* Settlement Agreement signed on July 17, 2002. Without admitting fault or liability, Lend-Mor Capital Corporation (LMCC) agreed to pay a civil money penalty in the amount of $28,500 and indemnify HUD on eight HUD/FHA-insured loans.

*Cause:* The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA-insured loans where LMCC: Failed to maintain and implement a Quality Control Plan in compliance with HUD requirements; failed to verify documentation used to qualify borrowers in compliance with HUD requirements; failed to determine whether the borrower met minimum cash investment requirements; failed to verify the source and adequacy of funds for the downpayment and/or closing costs; did not provide adequate significant compensating factors to justify the approval of the mortgage loan with ratios exceeding FHA guidelines; and failed to explain irregularities in the appraisal report.

**25. Loan Correspondents Incorporated, d/b/a Capital Funding Group, Costa Mesa, CA [Docket No. 00–1349–MR]**

*Action:* Settlement Agreement signed on November 6, 2002. Without admitting fault or liability, Loan Correspondents Incorporated (LCI), d/b/a Capital Funding Group, agreed to pay a civil money penalty in the amount of $24,000.

*Cause:* The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA insured loans where LCI: failed to maintain and implement a Quality Control Plan in accordance with HUD requirements; failed to file annual reports regarding loan application activity in accordance with HUD requirements; used falsified documentation and/or conflicting information in originating HUD/FHA-insured loans; failed to adequately document the source of funds used for the down payment and closing costs; and failed to identify sales within 12 months on appraisals.

**26. M & T Mortgage Corporation, Buffalo, NY [Docket No. 01–1602–MR]**

*Action:* Settlement Agreement signed on July 17, 2002. Without admitting fault or liability, M & T Mortgage Corporation (MTMC) agreed to pay an administrative payment in the amount of $118,000.

*Cause:* The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA insured loans where MTMC: Failed to obtain the required exhibits and/or execute documents prior to disbursing funds from the 203(k) rehabilitation escrow account; disbursed contingency funds to borrowers without the required repair inspection; failed to take appropriate action when the rehabilitation period expired and the borrowers failed to complete the rehabilitation within the required time frame; and failed to arrange for a final inspection on each of the loans that were being placed in foreclosure.

**27. Mortgage Amenities Corporation, Lincoln, RI [Docket No. 02–1906–MR]**

*Action:* Settlement Agreement signed on July 24, 2003. Without admitting fault or liability, Mortgage Amenities Corporation (MAC) agreed to pay an administrative payment in the amount of $175,000, and indemnify HUD on 56 FHA-insured loans.

*Cause:* The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA insured loans where MAC: Failed to obtain and properly analyze the documents necessary to determine the financial capacity of a non-profit borrower; charged borrowers fees not permitted by HUD/FHA; failed to identify the lender credits on the Good Faith Estimate and HUD–1 Settlement Statement; and failed to implement and maintain a Quality Control Plan in compliance with HUD/FHA requirements.

**28. Mortgage Factory Incorporated, Houston, TX [Docket No. 02–1956–MR]**

*Action:* Settlement Agreement signed on April 4, 2003. Without admitting fault or liability, Mortgage Factory Incorporated (MFI) agreed to pay a civil money penalty in the amount of $200,000.

*Cause:* The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA-insured loans where MFI: Used prohibited third party originators to originate HUD/FHA-insured loans; failed to file annual reports regarding FHA loan application activity; and failed to display or maintain a fair housing poster at the main office or at a branch office.

**29. Mortgage Partners Incorporated, San Diego, CA [Docket No. 01–1531–MR]**

*Action:* Settlement Agreement signed on April 1, 2003. Without admitting fault or liability, Mortgage Partners Incorporated (MPI) agreed to pay a civil money penalty in the amount of $44,500.

*Cause:* The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA insured loans where MPI: Failed to maintain and implement a Quality Control Plan in compliance with HUD requirements; failed to file annual reports regarding FHA loan application activity as required by HUD requirements; allowed prohibited branch arrangements; and allowed dual employment of two loan officers.

**30. New York Housing Finance Agency, New York, NY [Docket No. 03–3011–MR]**

*Action:* Settlement Agreement signed on March 3, 2003. Without admitting fault or liability, New York Housing Finance Agency (NYHFA) agreed to pay an administrative payment in the amount of $57,000.

*Cause:* The Board took this action as a result of NYHFA's failure to perform property inspections on HUD/FHA-insured multifamily projects.

**31. North Carolina Housing Finance Agency, Raleigh, NC [Docket No. 03–3109–MR]**

*Action:* Settlement Agreement signed on June 30, 2003. Without admitting fault or liability, North Carolina Housing Finance Agency (NCHFA) agreed to pay an administrative payment in the amount of $3,000.

*Cause:* The Board took this action as a result of NCHFA's failure to perform a property inspection on one HUD/FHA-insured multifamily project.

**32. Omega Financial Services Incorporated, Whittier, CA [Docket No. 01–1490–MR]**

*Action:* On December 5, 2001 the Board issued Omega Financial Services Incorporated (OFSI) a letter withdrawing its FHA approval. On April 17, 2002 the Department entered into a Settlement Agreement with OFSI in which, without admitting fault or liability, they agreed to pay a civil

money penalty in the amount of $30,000.

*Cause:* The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA insured loans where OFSI: failed to maintain and implement a quality control plan in compliance with HUD requirements; used falsified documentation and/or conflicting information in originating nine loans; negotiated employment agreements which did not conform to HUD requirements; and failed to notify HUD of its change of address and change of officers.

**33. PFC Corporation, McLean, VA [Docket No. 03–3018-MR]**

*Action:* Settlement Agreement signed on June 30, 2003. Without admitting fault or liability, PFC Corporation (PFCC) agreed to pay an administrative payment in the amount of $30,000.

*Cause:* The Board took this action as a result of PFCC's failure to perform property inspections on HUD/FHA-insured multifamily projects.

**34. Priority Mortgage Incorporated, Las Vegas, NV [Docket No. 00–1338–MR]**

*Action:* On March 19, 2002, the Board sent a letter to Priority Mortgage Incorporated (PMI) withdrawing its HUD/FHA approval for a period of five years.

*Cause:* The Board took this action based on the following violations of the HUD/FHA requirements in the origination of HUD/FHA-insured loans where PMI: failed to maintain and implement a quality control plan in compliance with HUD requirements; failed to file annual reports regarding FHA loan application activity as required by HUD's requirements; failed to have mortgagors certify their statements explaining derogatory credit; failed to ensure that mortgagors did not sign blank documents; and failed to obtain gift letters in compliance with HUD's requirements.

**35. Rhode Island Housing Mortgage Finance Corporation, Providence, RI [Docket No. 02–2154–MR]**

*Action:* Settlement Agreement signed on April 3, 2003. Without admitting fault or liability, Rhode Island Housing Mortgage Finance Corporation (RIHMFC) agreed to pay an administrative payment in the amount of $30,000.

*Cause:* The Board took this action as a result of RIHMFC's failure to perform property inspections on HUD/FHA-insured multifamily projects.

**36. Sterling Capital Mortgage Company, Houston, TX [Docket No. 02–1910–MR]**

*Action:* Settlement Agreement signed on September 29, 2003. Without admitting fault or liability, Sterling Capital Mortgage Company (SCMC) agreed to indemnify HUD on 44 HUD/FHA-insured loans and pay HUD an administrative payment in the amount of $25,000.

*Cause:* The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA-insured loans where SCMC: used falsified documentation and/or conflicting information in originating loans and obtained HUD/FHA mortgage insurance; allowed loans to be originated by personnel not employed or not exclusively employed by SCMC; violated HUD regulations governing conflict of interest; failed to adequately verify the amount and/or stability of effective income; failed to adequately verify the source and/or adequacy of funds used to close loan transactions; omitted and/or understated mortgagor liabilities in loan qualifications; failed to adequately confirm the identity of mortgagors and obtain credit reports for all name variances; failed to reconcile deficiencies in appraisal reports; closed loans in excess of the maximum allowable mortgage amount resulting in over-insured mortgages; failed to reconcile important file discrepancies; charged mortgagors prohibited fees; and failed to verify mortgagors' Social Security numbers.

**37. Summit Mortgage Corporation, Houston, TX [Docket No. 01–1524–MR]**

*Action:* Settlement Agreement signed on March 5, 2003. Without admitting fault or liability, Summit Mortgage Company (SMC) agreed to pay a civil money penalty in the amount of $88,000, and indemnify HUD on 28 FHA-insured loans for five years.

*Cause:* The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA-insured loans including where SMC: failed to verify the source of funds used for closing costs, earnest money deposits and/or pay off debts; used inaccurate or unstable income to qualify the mortgagors; used inaccurate or unstable income to qualify the mortgagors; failed to adequately document the mortgagor's income; omitted mortgagor liabilities and/or the liabilities of the non-purchasing spouse in loan qualifications; approved loans for ineligible borrowers; approved loans in excess of benchmark ratios without adequate compensating factors; failed to properly document factors to justify the approval of a mortgagor with unacceptable credit history; failed to clarify or document important file discrepancies; closed loans in excess of the maximum allowable amount resulting in over-insured mortgages; failed to document that dwellings insured under section 221(d)(2) conformed to the standards of local housing codes; and failed to comply with escrow procedures for deferred repairs.

**38. Sun American Mortgage Company, Mesa, AZ [Docket No. 00–1328–MR]**

*Action:* Settlement Agreement signed on September 6, 2002. Without admitting fault or liability, Sun American Mortgage Company (SAMC) agreed to pay an administrative payment to the Department in the amount of $50,000 and indemnify nineteen FHA-insured mortgages.

*Cause:* The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA insured loans where SAMC: permitted interested third parties to conduct the face to face interview; failed to identify and resolve conflicting or inaccurate information obtained in connection with mortgagor's applications; failed to follow HUD/FHA requirements and prudent lending practices by permitting a loan officer to originate loans involving a real estate firm owned by members of the loan officer's family; knowingly submitted loans to HUD/FHA for insurance containing false information; closed loans on properties owned by HUD in which the lender charged the Department financing and/or closing costs that exceeded reasonable and customary costs in the areas in which the properties were located; and failed to properly implement a quality control program in compliance with HUD/FHA requirements.

**39. Swan Investments International Incorporated, d/b/a International Mortgage Corporation, Covina, CA [Docket No. 01–1542–MR]**

*Action:* Settlement Agreement signed on June 18, 2002. Without admitting fault or liability, Swan Investments International Incorporated (SIII) agreed to pay a civil money penalty in the amount of $40,000 and indemnify HUD on one HUD/FHA-insured mortgage.

*Cause:* The Board took this action based on the following violations of the HUD/FHA requirements in the origination of HUD/FHA insured loans where SIII: Failed to maintain and implement a quality control plan in

compliance with HUD requirements; failed to file annual reports regarding FHA loan application activity as required by HUD's requirements; executed a Real Estate Broker Agreement with its loan officers that is not in compliance with HUD requirements; allowed non-employees to originate HUD/FHA mortgage loans; and failed to ensure that its employees work exclusively for SIII.

**40. Western Fidelity Mortgage Company, Salt Lake City, UT [Docket No. 01–1585–MR]**

*Action:* Settlement Agreement signed on January 27, 2003. Without admitting fault or liability, Western Fidelity Mortgage Company (WFMC) agreed to pay a civil money penalty in the amount of $100,000, indemnify HUD on 28t FHA-insured mortgages.

*Cause:* The Board took this action based on the following violations of the HUD/FHA requirements in the origination of HUD/FHA insured loans where WFMC: Failed to establish an FHA approved loan correspondent/sponsor relationship; failed to properly verify the source and/or adequacy of funds for the down payment and/or closing costs; failed to properly verify and analyze income; failed to ensure property eligibility for HUD/FHA mortgage insurance; and failed to ensure creditworthiness and the use of acceptable qualifying ratios.

Dated: February 20, 2004.

**John C. Weicher,**

*Assistant Secretary for Housing-Federal Housing Commissioner, Chairman, Mortgagee Review Board.*

[FR Doc. 04–4418 Filed 2–27–04; 8:45 am]

BILLING CODE 4210–27–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Issuance of Permit for Incidental Take of Threatened Species for a Portion of the Meadows Property, Douglas County, CO

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permit for incidental take of endangered species.

**SUMMARY:** On December 18, 2002, a notice was published in the **Federal Register** (67 FR 77507), that an application had been filed with the U.S. Fish and Wildlife Service (Service) jointly by the Castle Rock Development Company and Castle Rock Land Company, LLC, for a permit to incidentally take, under section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1539), as amended, Preble's meadow jumping mouse (*Zapus hudsonius preblei*), pursuant to the terms of the ''Environmental Assessment/Habitat Conservation Plan for Issuance of an Endangered Species Section 10(a)(1)(B) Permit for the Incidental Take of the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*) for a Portion of the Meadows Property in Douglas County, Colorado.''

Notice is hereby given that on February 17, 2004, as authorized by the provisions of the Endangered Species Act, the Service issued a permit (TE–064965–0) to the above named party subject to certain conditions set forth therein. The permit was granted only after the Service determined that it was applied for in good faith, that granting the permit would not be to the disadvantage of the threatened species, and that it would be consistent with the purposes and policy set forth in the Endangered Species Act, as amended.

Additional information on this permit action may be requested by contacting the Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215, telephone (303) 275–2370 between the hours of 7 a.m. and 4:30 p.m. weekdays.

Dated: February 17, 2004.

**Ralph O. Morgenweck,**

*Regional Director, Region 6.*

[FR Doc. 04–4448 Filed 2–27–04; 8:45 am]

BILLING CODE 4310–55–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–130 (Review)]**

### Chloropicrin from China

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of a five-year review concerning the antidumping duty order investigation on chloropicrin from China.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on chloropicrin from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is April 20, 2004. Comments on the adequacy of responses may be filed with the Commission by May 14, 2004. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**DATES:** Effective: March 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Megan Spellacy (202–205–3190) or Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On March 22, 1984, the Department of Commerce issued an antidumping duty order on imports of chloropicrin from China (49 FR 10691). Following five-year reviews by Commerce and the Commission, effective April 14, 1999, Commerce issued a continuation of the antidumping duty order on imports of chloropicrin from China (64 FR 42655, August 5, 1999). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–082, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is China.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination and its expedited five-year review determination, the Commission defined the Domestic Like Product as chloropicrin.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited five-year review determination, the Commission defined the Domestic Industry as all domestic producers of chloropicrin.

(5) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

*Participation in the review and public service list.*—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is April 20, 2004. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is May 14, 2004. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

*Information To Be Provided in Response to This Notice of Institution:* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate

in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1997.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country after 1997, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: February 23, 2004.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04–4500 Filed 2–27–04; 8:45 am]

**BILLING CODE 7020–02–P**

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## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–101 (Review)]**

## Greige Polyester/Cotton Printcloth From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of a five-year review concerning the antidumping duty order on greige polyester/cotton printcloth from China.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on greige polyester/cotton printcloth from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is April 20, 2004. Comments on the adequacy of responses may be filed with the Commission by May 14, 2004. For further information

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–083, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**DATES:** Effective March 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Megan Spellacy (202–205–3190) or Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On September 16, 1983, the Department of Commerce issued an antidumping duty order on imports of greige polyester/cotton printcloth from China (48 FR 41614). Following five-year reviews by Commerce and the Commission, effective April 26, 1999, Commerce issued a continuation of the antidumping duty order on imports of greige polyester/cotton printcloth from China (64 FR 42661, August 5, 1999). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.—The following definitions apply to this review:*

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is China.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as greige polyester/cotton printcloth in chief value of cotton. In its expedited five-year review determination, the Commission defined the Domestic Like Product as the same as Commerce's scope, *i.e.*, greige polyester/cotton printcloth of chief weight cotton.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as all domestic producers of greige polyester/cotton printcloth in chief value of cotton. In its expedited five-year review determination, the Commission defined the Domestic Industry as all domestic producers of greige polyester/cotton printcloth of chief weight cotton.

(5) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

*Participation in the review and public service list.*—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is April 20, 2004. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is May 14, 2004. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the

requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

*Information to Be Provided in Response to This Notice of Institution:* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firmentity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a unionworker group or tradebusiness association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firmentity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general andor your firmentity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 1997.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in square yards and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in square yards and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in square yards and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country after 1997, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject

Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: February 23, 2004.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04–4499 Filed 2–27–04; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1069 (Preliminary)]**

## Outboard Engines From Japan

### Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of outboard engines and powerheads, provided for in subheading 8407.21.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

### Commencement of Final Phase Investigation

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

### Background

On January 8, 2004, a petition was filed with the Commission and Commerce by Mercury Marine, a division of Brunswick Corp., Fond du Lac, WI, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of outboard engines and powerheads from Japan. Accordingly, effective January 8, 2004, the Commission instituted antidumping duty investigation No. 731–TA–1069 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 14, 2004 (69 FR 2158). The conference was held in Washington, DC, on January 29, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 23, 2004. The views of the Commission are contained in USITC Publication 3673 (March 2004), entitled *Outboard Engines from Japan: Investigation No. 731–TA–1069 (Preliminary).*

Issued: February 24, 2004.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04–4424 Filed 2–27–04; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–04–005]**

## Government in the Sunshine Act Meeting

**AGENCY:** United States International Trade Commission.

**DATES:** March 8, 2004.

**ORIGINAL TIME:** 11 a.m.

**NEW TIME:** 10:30 a.m.

**PLACE:** Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

In accordance with 19 CFR 201.35(d)(1), the Commission has determined to change the time for the meeting of March 8, 2004 from 11 a.m. to 10:30 a.m.

By order of the Commission:

Issued: February 26, 2004.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04–4630 Filed 2–26–04; 2:13 pm]

BILLING CODE 7020–02–P

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## Changes to State Plans: Approval of Oregon State Standards

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice of approval of Oregon State standards.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) is approving amendments to 18 standards promulgated by the Oregon Department of Consumer and Business Services pursuant to its OSHA-approved State Plan. These amendments differ from the equivalent Federal standards amendments but have been determined to be ''at least as effective''; no concerns or objections have been brought to OSHA's attention regarding them.

**EFFECTIVE DATE:** March 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Barbara Bryant, Director, Office of State Programs, Directorate of Cooperative and State Programs, Occupational Safety and Health Administration, Room N–3700, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2244. You may access Oregon's standards on-line, using the Oregon standards references noted below, by going to *www.osha.gov/fso/osp/index.html* and selecting ''Oregon.'' You

will be directed to Oregon OSHA's Web site.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

### *A. Background*

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Occupational Safety and Health Administration will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of subpart D to part 1952 containing the decision and a description of the State's plan. Section 1953.4(b)(1) provides that when a significant change in the Federal program would have an adverse impact on the ''at least as effective'' status of the State program if a parallel State program modification were not made, State adoption of a change in response to the Federal program change shall be required. The Oregon plan provides for adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. The Oregon plan also provides for the adoption of Federal standards as State standards by reference. Oregon's standards, whether identical to the Federal or different, are adopted pursuant to State law (ORS 654.025(2), ORS 656.726(3) and ORS 183.335). OSHA has reviewed and determined that amendments to the following Oregon standards, while not identical to the Federal, are ''at least as effective'' as required by section 1953.5(a) and have not been the subject of any complaints, objections, or controversy brought to OSHA's attention with regard to their effectiveness or burden on interstate commerce (section 1953.6(c)).

### *B. Standards Approved*

1. Air Contaminants

In response to revision of the Federal Air Contaminants standard for general industry, 29 CFR 1910.1000, as published in the **Federal Register** (58 FR 35338) on June 30, 1993, with corrections on July 27, 1993 (58 FR 40191), and August 4, 1997 (62 FR 42018), Oregon adopted comparable changes as well as State-initiated changes to its Air Contaminants standards in Division 2/Z, General OSH Rules (OAR 437–002–0382); Division 3/Z, Construction (OAR 437–003–1000); and Division 4/Z, Agriculture (OAR 437–004–9000) between November 1993 and September 2001 under OR–OSHA Administrative Orders 17–1993, 5–1997, 6–1997, 4–2001 and 9–2001. (When a 1992 court decision required Federal OSHA to vacate its 1989 air contaminants standard, Oregon re-adopted its old air contaminants rules instead of OSHA's pre-1989 standard. When Federal OSHA adopted a revised standard in 1993, Oregon adopted some of the Federal changes but retained a number of its State-initiated provisions.) The State air contaminants standards for general industry and construction contain Permissible Exposure Limits (PELs) for 70 chemicals for which OSHA does not have a PEL, lower PELs for 13, and additional ceiling limits or shorter duration levels for two chemicals. Oregon's air contaminants standard for agriculture contains a shorter list of chemicals, though with the same PELs. (*See* Table 1.)

TABLE 1: OREGON AIR CONTAMINANTS: DIFFERENCES FROM FEDERAL

| |
|---|
| *Industries covered:* includes Construction as well as General Industry, plus a shorter list of chemicals for Agriculture. (Federal OSHA covers only General Industry.) |
| *Added PEL:* Abate, Acetylene, Allyl Glycidyl Ether (AGE), Alundum, Asphalt, Boron Tribromide, Butane, Butyl Lactate, Calcium Arsenate, Caprolactam, Corundum, Cyanogen, Dibrom, 2-N-Dibutylaminoethanol, Dichloroacetylene, Dichloroethyl Ether, Dicyclohexylmethane Diisocyanate, Dicyclohexylmethane 4,4-Diisocyanate, Diethylene Triamine, Diisobutyl Ketone, Dinitrobenzene, Diphenylene, Diisocyanate, Diphenylamine, Diquat, Ethane, Ethyl Mercaptan, Ethylene, Ethylene Glycol Particulate, Ethylene Glycol, Germanium Tetrahydride, Hexachlorocyclopentadiene, Hexafluoracetone, Hexamethylene Diisocyanate, 1,6 Hexamethylene Diisocyanate Based Adduct, 1,6 Hexamethylene Diisocyanate, Hydrogen, Indene, Indium, Iron Pentacarbonyl, Iron Salts, Isophorone Diisocyanate, Mercury, Methane, Methylacrylonitrile, Methyl Bromide, Methyl 2-Cyanoacrylate, Methylcyclopentadienyl, Methyl Demeton, Methyl Mercaptan, Methyl Parathion, Methyl Silicate, Mineral Wool Fiber, MOCA, Naphthalene Diisocyanate, Nicotine, Nitrous Oxide, Parafin Wax Fume, Phenothiazine, Phenylphosphine, Propargyl Alcohol, Propylene Glycol Monomethyl Ether, RDX, Rosin Core Solder Pyrolysis Products, Subtilisins, Sulfur Tetrafluoride, Tin Oxide, Toluene Diisocyanate, Trimethyl Benzene, Tungsten, Vinyl Bromide |
| *Lower PEL:* Emery, 2-Ethoxyethanol (Cellosolve), Furfuryl Alcohol, Glass (Fibrous or dust), Isophrone, Isopropyl Ether, Methylcyclohexanol, Methylcyclohexanone, Octane, Pentane, Stoddard Solvent, Organo Mercury and Toluene |
| *Added ceiling value:* Acetic Anhydride |
| *Shorter duration level:* Carbon Disulfide |

2. Bloodborne Pathogens—Needlestick Devices

In response to a Federal standard change, the State has submitted a State standard amendment on needlestick devices comparable to 29 CFR 1910.1030, Occupational Exposure to Bloodborne Pathogens (66 FR 5318, January 18, 2001). The State amendment was adopted September 14, 2001, effective October 18, 2001, under OR–OSHA Administrative Order 10–2001, and is located in Division 2/Z at OAR 437–002–1910.1030. Oregon's standard was previously adopted by reference and contains only two differences added in 2001, both concerning added requirements for medical sharps. The State-initiated rule at OAR 437–002–1030 requires employee involvement in an annual review of safer medical devices, and requires employee training in the use of safer medical devices before they are used. OAR 437–002–1035 requires that any employer who is required to maintain an Exposure Control Plan must maintain a sharps injury log. (Under 29 CFR part 1904 Federal OSHA excludes small employers or those in low-hazard SICs from recordkeeping requirements, including sharps injuries.)

3. Concrete and Masonry Construction

On its own initiative, the State adopted a change to the Concrete and Masonry Construction standard. The State repealed 29 CFR 1926.706(a)(2), (5) and (b) and adopted OAR 437–003–0706 and additional definitions in OAR 437–003–0017 of Division 3/Q. The State amendment was adopted on January 30, 2003, and effective April 30, 2003, under OR–OSHA Administrative Order 1–2003. The State standard was originally approved on December 12, 1989 (54 FR 51089). Major differences from the Federal standard are: (1) The State addresses limited access zones for reinforced and non-reinforced walls separately. For non-reinforced walls the State standard is the same as the Federal. For reinforced walls, the limited access zone for the State standard extends away from the wall a distance equal to the height of the grout

pour plus 4 feet. This allows the limited access zone to be extended as the wall gains height. The Federal standard requires the limited access zone to extend away from the wall a distance equal to the height of the wall to be constructed plus 4 feet. (2) The State also requires the additional safeguard of monitoring wind speeds and removing employees when winds exceed 34 mph. (3) The State and Federal standards have the same criteria for when bracing is required. However, where bracing is required, the State requires the employer to have a Registered Professional Engineer design a bracing system or follow the requirements in OAR 437–003–0706(4). The Federal standard requires walls to be adequately braced. (4) Additional definitions were adopted in OAR 437–003–0017.

4. Construction/Electrical

On its own initiative, the State adopted a new rule, OAR 437–003–0404, Branch circuits for ground-fault circuit interrupters (GFCI), in Division 3/K, Construction/Electrical, to replace 29 CFR 1926.404(b)(1). The State standard is patterned after the 2002 edition of the National Electrical Code section 527.6. The State standard was adopted on May 30, 2002, and effective August 5, 2002, under OR–OSHA Administrative Order 5–2002. The State standard does not contain the two exceptions allowed in the Federal standard addressing portable and vehicle mounted generators and work in fixed industrial establishments.

5. Control of Hazardous Energy (Lockout/Tagout)

On its own initiative the State adopted a change to its Control of Hazardous Energy (Lockout/Tagout) standard at OAR 437–002–1910.147 in Division 2/J. The new State-initiated rule at OAR 437–002–0154, Individual Locks, adds a requirement for the user (authorized employee) to have the only key or the only combination to each lock. Oregon's Control of Hazardous Energy standard was previously adopted by reference (except for a broader scope) and approved on April 26, 1991 (56 FR 19383). The State amendment was adopted and effective October 26, 2001, under OR–OSHA Administrative Order 12–2001. Oregon's standard covers all employers, while the federal standard (29 CFR 1910.147) exempts construction, agriculture and maritime employment.

6. Dipping and Coating Operations

On its own initiative, the State repealed OAR 437–002–1910.124(g)(2) in Division 2/H on Dipping and Coating Operations and replaced it with a note directing the reader to OAR 437–002–0161(5), on emergency eyewash and shower facilities, in Division 2/K, Medical and First Aid. The State amendment was adopted and effective on May 30, 2002, under OR–OSHA Administrative Order 4–2002. The original State standard was identical to the OSHA standard. The State now has additional and more specific requirements for emergency eyewash and shower facilities, *i.e.*, the location requirements for the equipment; the requirement to follow the manufacturer's instructions for installation and the manufacturer's criteria for water pressure, flow rate and testing; and allowing an alternative eyewash solution with the support of a physician board-certified in ophthalmology, toxicology or occupational medicine.

7. Electric Power Generation, Transmission and Distribution—Brush Chipping

On its own initiative, the State adopted a change to the Brush Chipping requirements contained in the Electric Power Generation, Transmission and Distribution standards for General Industry (OAR 437 Division 2/R) and for Construction (OAR 437 Division 3/V), comparable to 29 CFR 1910.269 and 1926.950. To promote consistency in Oregon OSHA's requirements, the State consolidated the various rules from each division into one rule that applies to all employees operating chippers. The General Industry standard at OAR 437–002–1910.269(r)(2) was repealed and OAR 437–002–0310(6) (located in Tree and Shrub Services and referenced under Electric Power Generation) was adopted; and in Construction, OAR 437–003–0660 and 437–003–0730 through 0765 were repealed and OAR 437–003–0707 was adopted. The State brush chipping standard has additional requirements not contained in the OSHA standards, such as strength requirements for the knife guards, having a coworker in the immediate vicinity when feeding the chipper, and chipper feeding requirements. The State standard was previously approved on August 25, 2000 (65 FR 51855). The State amendments were adopted and effective April 6, 2001, under OR–OSHA Administrative Order 5–2001.

8. Material Handling Equipment—Personnel Platforms

The State has adopted a State-initiated rule for Personnel Platforms at OAR 437–003–0094 amending Oregon's adoption by reference in Division 3/O of the Material Handling Equipment standards at 29 CFR 1926.602. Oregon's standard was previously approved by OSHA on July 17, 1987 (52 FR 27077). The new rule adds equipment and operator requirements for personnel platforms on lift trucks when there are no controls at the platform. It was adopted and effective May 26, 1999, under Administrative Order 6–1999.

9. Material Handling and Storage—Slings

On its own initiative, the State has adopted a change related to Slings in Division 2/N, Material Handling and Storage, comparable to 29 CFR 1910.184. This amendment revises the chain sling requirement at OAR 437–002–0235 to allow other types of chains for lifting in processes where the use of alloy chains is more hazardous. Oregon's Material Handling and Storage standard was previously approved on August 25, 2000 (65 FR 51857). The State amendment was adopted and effective on October 26, 2001, under OR-OSHA Administrative Order 12–2001.

10. Medical Services and First Aid

On its own initiative, the State has adopted amendments at OAR 437–022–0161 (in Division 2/K) comparable to 29 CFR 1910.151, Medical Services and First Aid. Oregon's standard was previously approved on March 16, 1976 (41 FR 11087). The current amendments were adopted and effective February 3, 1993, and January 28, 2000, under Administrative Orders 2–1993 and 1–2000. Differences include changed definitions, a requirement for employers to determine the first aid supplies required at the workplace based upon the intended use and types of injuries that may occur, clearer criteria for eyewash and showers, alternate eye treatment when approved by a specified physician, and a requirement to follow information on the Material Safety Data Sheets or the manufacturer's direction for treating contamination of the eye or body.

11. Ornamental Tree and Shrub Services

In response to Federal comments, the State has submitted changes to its independent Ornamental Tree and Shrub Services standard in Division 2/R at OAR 437–002–0301, adopted and effective February 16, 1996, under OR-OSHA Administrative Order 1–1996. The State's new Tree and Shrub Services standard had been adopted December 21, 1990 and effective February 1, 1991, under Administrative Order 27–1990. It excludes agricultural crops and crop services, but includes line clearance and telecommunication

line clearance activities contained in 29 CFR 1910.268(q).

12. Personal Protective Equipment

a. On its own initiative the State has adopted a standard for High Visibility Garments. The State's submittal adds OAR 437–002–0128 to requirements in Division 2/I, General Industry Personal Protective Equipment, and adds OAR 437–003–0128 to Division 3/C, Construction. The State standard was adopted November 7, 2000 and effective April 1, 2001, under OR–OSHA Administrative Order 10–2000. OSHA does not have a similar standard in the 29 CFR 1910 General Industry standards and the OSHA construction standard at 29 CFR 1926.201(a)(4) only applies to flaggers, whereas the State standard applies to any employee exposed to hazards caused by moving vehicles.

b. On its own initiative, the State has adopted a change to its General Industry and Agriculture personal protective equipment requirements when working on or over water. OSHA does not have a similar standard for General Industry or Agriculture. The new General Industry amendment in Division 2/I at OAR 437–002–0139 and 1139 reflects current practices and technology, and the Agriculture amendment in Division 4/I at OAR 437–004–1070 and 1075 restores and updates standards that were erroneously left out during a previous rewrite of the standard. Both require persons working on or over water to wear personal flotation devices. The State amendments were adopted January 18, 2001, and effective March 1, 2001, under OR–OSHA Administrative Order 1–2001.

c. The State also adopted a change in Division 2/I that added notes clarifying the application of the hazard assessment and training requirements, and added a requirement at OAR 437–002–0137(3) for leg protection when using chain saws. OSHA does not have a similar standard for General Industry. The State amendments were adopted and effective on October 26, 2001, under OR–OSHA Administrative Order 12–2001. Oregon's Personal Protective Equipment standard was previously approved on July 31, 1995 (60 FR 36009).

13. Portable and Fixed Ladders

On its own initiative, the State has repealed its standard for extension ladders, portable wood and metal ladders, and fixed ladders comparable to 29 CFR 1910.25—1910.26, and adopted new standards in Division 2/D at OAR 437–002–0026, Portable Ladders, and OAR 437–002–0027, Fixed Ladders. The State's repeal and adoption were effective September 10, 1999, under OR–OSHA Administrative Order 10–1999. Differences from the Federal standard include: The standards were re-written in clearer language and added coverage of reinforced plastic ladders to the portable ladders provisions. Detailed language on the design and construction of ladders was replaced with the requirement that the ladders meet the respective ANSI standard. Basic use and care requirements are grouped by type of ladder rather than the material from which it is made. Fixed ladder requirements were changed to meet the newest edition of ANSI for fixed ladders (A 14.3–1992), which changes the requirements for landing platforms, cages and climbing safety devices.

14. Powered Industrial Trucks

On its own initiative, the State has adopted a re-codification and amendment of the State standard for Powered Industrial Trucks, OAR 437–02–1910.178 (in Division 2/N), adopted August 20, 1993, and effective November 1, 1993, under Administrative Order 13–1993. The State repealed OAR 437–63, Powered Industrial Trucks, in its entirety, and adopted by reference the Federal standard at 29 CFR 1910.178, except for 1910.178(e)(1), Safety Guards on High Lift Rider Trucks. This section was replaced with previously approved OAR 437–63–260(1), which was also amended and re-codified as OAR 437–002–227(1)(a), (b), and (c). Instead of adopting OSHA's requirement for an overhead guard on high lift rider trucks to be manufactured in accordance with a 1969 ANSI standard, Oregon's standard contains specific requirements for these guards.

15. Pulp, Paper and Paperboard Mills

On its own initiative, the State has adopted standard amendments at OAR 437–002–312 (in Division 2/R) comparable to 29 CFR 1910.261, Pulp, Paper and Paperboard Mills. Oregon's original standard received OSHA approval (42 FR 38026) on July 26, 1977, and was re-codified and approved (52 FR 27077) on July 17, 1987. The current amendments were adopted on November 4, 1994 (effective January 3, 1995), and January 14, 2001 (effective February 5, 2001), under OR–OSHA Administrative Orders 7–1994 and 2–2001. The 2001 change was a corrective amendment that made one provision identical to the Federal: Oregon removed one paragraph, at OAR 437–002–0312(4)(j)(C), which makes the State's requirement at OAR 437–002–312(4)(j) concerning worker entry into chip and sawdust bins identical to 29 CFR 1910.261(c)(9). The standard contains additional requirements previously approved by OSHA concerning employee training, blow lines, exhaust systems for chlorine and chlorine dioxide, and handling sodium chlorate. Differences from the Federal standard effective since 1995 are: the State requires employers to follow 1910.147, Control of Hazardous Energy; updates the referenced ANSI standards to the most recent editions; and adds some ANSI standards not contained in the Federal standard. The most recent ANSI standards reflect more current industry practices.

16. Signs, Signals and Barricades

In response to a Federal standard change, the State submitted a State standard amendment comparable to 29 CFR 1926.200, .201 and .202, Accident Prevention Signs and Tags, Signaling and Barricades, as published in the **Federal Register** on September 12, 2002 (67 FR 57736). The State did not adopt the Federal provisions at 1926.200(g)(2), Traffic Signs, 1926.201, Signaling, and 1926.202, Barricades, and instead amended its Division 3/G, OAR 437–003–0420, Traffic Control construction standard, which includes rules for signaling and the use of flaggers and for using barricades for protection of workers. The State also revised Division 2/N, General Industry rules for Commercial and Industrial Vehicles standard, OAR 437–002–0223(23), Warning Devices, to reflect the same updated language requiring adequate and appropriate traffic controls as found in the Construction standard. The State amendments were adopted and effective on January 30, 2003, under OR–OSHA Administrative Order 2–2003. Differences are: The State has adopted the same rules for general industry, while the Federal standard lacks a companion rule for general industry. The State requires conformance with the Millenium Edition, December 2000, of the Manual of Uniform Traffic Control Devices (MUTCD) while Federal OSHA also allows the option of complying with the September 3, 1993, revision of the 1988 MUTCD.

17. Spray Finishing

On its own initiative, the State submitted changes to its Spray Finishing standard. The State removed OAR 437–002–1910.94(c) and OAR 437–002–1910.107 on spray finishing and replaced them with OAR 437–002–0107, Spray Finishing, in Division 2/H. The purpose of the change was to consolidate the two rules in one place and make the rules easier to understand. The amendment was adopted and

effective on April 21, 2003, under OR–OSHA Administrative Order 3–2003. The State standards at 1910.94(c) and 1910.107 had previously been adopted by reference with additional State requirements and approved on August 25, 2000 (65 FR 51857). OSHA has determined the following differences between the State and Federal standards: The State standard combines the requirements for spraying flammable or combustible materials and materials that are not flammable or combustible into one standard. The State also has kept some of its previously approved rules that were not part of the Federal standard. Language was also added that allows for alternatives to certain requirements when written authorization is obtained from the local fire authority. The State has additional definitions such as ''infrequent and of short duration'', ''non-combustible materials'' and ''overspray''. The State standard requires all employees engaged in spray finishing operations to be provided with and wear respiratory protection unless exhaust ventilation is provided and reduces employee exposure to any material or finish or its solvent to below the PEL. The State standard considers spray booths constructed in accordance with the Oregon Building Codes Division to be in compliance with the standards. The State adopted the more current consensus industry standards such as requiring a 4½-inch metal deflector on the upper outer edge of the spray booth, which is the current requirement in the Uniform Fire Code, rather than the 2½-inch deflector required by OSHA. The standard was also written in language that is easier to understand.

18. Telecommunications

In response to Federal comments, the State has submitted changes to its Telecommunications standard in Division 2/R comparable to 29 CFR 1910.168, adopted and effective April 30, 1999, under OR–OSHA Administrative Order 3–1999. The State had previously adopted by reference on August 4, 1993, effective October 1, 1993 (Administrative Order 11–1993), most of 29 CFR 1910.268, Telecommunications. An Oregon-initiated rule at OAR 437–002–0316 covered seven Telecommunications provisions not adopted, as well as some additional State requirements. In response to Federal comments, the State adopted by reference two of the federal Telecommunications provisions, concerning rubber insulating equipment and tree trimming electrical hazards, that were not adopted in 1993, and repealed a provision and Note in OAR 437–002–0316 concerning tree trimming electrical hazards. Current differences are: The general Medical Services and First Aid requirements contained in OAR 437–002–0161 are referenced rather than adopting the specific requirements contained in 1910.268(b)(3); the employer must make a complete evaluation of the work location before work is performed; all equipment, tools and safety devices must be installed, used and operated in accordance with the manufacturer's recommendations and operating instructions; safety straps must be lashed around the top rung of ladders when ladder hooks are used; there are standards for use of chain saws; employees operating cranes and derricks must be trained in accordance with OAR 437–002–0229(2); there are standards addressing fiber optic/light wave transmission; and additional definitions.

## II. Decision

After review, OSHA has determined that the State standards amendments for Air Contaminants; BloodbornePathogens—Needlestick Devices; Concrete and Masonry Construction; Construction/Electrical; Control of Hazardous Energy (Lockout/Tagout); Dipping and Coating Operations; Electric Power Generation, Transmission and Distribution—Brush Chipping; Material Handling Equipment—Personnel Platforms; Material Handling and Storage—Slings; Medical Services and First Aid; Ornamental Tree and Shrub Services; Personal Protective Equipment; Portable and Fixed Ladders; Powered Industrial Trucks; Pulp, Paper and Paperboard Mills; Signs, Signals and Barricades; Spray Finishing; and Telecommunications are at least as effective as the comparable Federal standards and/or compliance policies, as required by section 18(c)(2) of the Act and 29 CFR 1902.3(c) and 1953.5(a). OSHA has received no comments, complaints or concerns about these different State standards either as to their effectiveness in comparison to the Federal standards or as to their conformance with the product clause requirements of section 18(c)(2) of the Act. (A different State standard applicable to a product which is distributed or used in interstate commerce must be required by compelling local conditions and not unduly burden interstate commerce.)

OSHA, therefore, approves these standards; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

## III. Location of Basic State Plan Documentation

Copies of basic State plan documentation are maintained at the following locations; specific documents are available upon request, including a copy of these State standards and comparison to the Federal standards. Contact the Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212, (206) 553–5930, fax (206) 553–6499; Oregon Occupational Safety and Health Division, Department of Consumer and Business Services, Salem, Oregon 97310, (503) 378–3272, fax (503) 947–7461; and the Office of State Programs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N3700, Washington, DC 20210, (202) 693–2244, fax (202) 693–1671. Oregon's current standards are posted on the State's Web site at *www.cbs.state.or.us/external/osha/standards/standards.htm.* An electronic copy of this **Federal Register** notice is available on OSHA's Web site, *www.osha.gov.*

## IV. Public Participation

Under 29 CFR 1953.3(e), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard amendments are as effective as the Federal standards which were promulgated in accordance with Federal law, including meeting requirements for public participation.

2. The standard amendments were adopted in accordance with the procedural requirements of State law and further opportunity for public comment is unnecessary in light of the non-controversial nature of the standards.

This notice is issued pursuant to section 18 of the Occupational Safety and Health Act of 1970, Pub. L. 91–596, 84 Stat. 6108 (29 U.S.C. 667).

Signed in Seattle, Washington, this 28th day of January, 2004.

**Richard S. Terrill,**

*Regional Administrator.*

[FR Doc. 04–4450 Filed 2–27–04; 8:45 am]

BILLING CODE 4510–26–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (04–033)]**

### NASA Advisory Council, Space Science Advisory Committee, Sun-Earth Connection Advisory Subcommittee Meeting

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of meeting.

**SUMMARY:** The National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Sun-Earth Connection Advisory Subcommittee (SECAS).

**DATES:** Wednesday, March 10, 2004, 8:30 a.m. to 5:30 p.m., Thursday, March 11, 2004, 8:30 a.m. to 5 p.m., and Friday, March 12, 2004, 8:30 a.m. to Noon.

**ADDRESSES:** National Aeronautics and Space Administration, 300 E Street, SW., Room 9H40, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Dr. Barbara Giles, Code SS, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–1762, *barbara.giles@nasa.gov.*

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Sun-Earth Connection Overview
—New Space Vision, Budget, Priorities
—Reports from Sun-Earth Connection Management Operations Working Group
—Living with a Star Program Update
—Sun-Earth Connection Roadmap/Strategic Plan

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Barbara Giles via e-mail at *Barbara.giles@nasa.gov* or by telephone at (202) 358–1762. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

**Michael F. O'Brien,**

*Assistant Administrator for External Relations, National Aeronautics and Space Administration.*

[FR Doc. 04–4411 Filed 2–27–04; 8:45 am]

BILLING CODE 7510–01–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (04–035)]**

### Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of prospective patent license.

**SUMMARY:** NASA hereby gives notice that Laura Lee Desrosiers Curtis LLC of McLean, Virginia, has applied for a partially exclusive patent license to practice the invention described and claimed in NASA Case No. KSC–12386 entitled ''Wireless Instrumentation System and Power Management Scheme Therefore,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Randall M. Heald, Assistant Chief Counsel/Patent Counsel at John F. Kennedy Space Center.

**DATES:** Responses to this Notice must be received by March 16, 2004.

**FOR FURTHER INFORMATION CONTACT:** Randall M. Heald, Assistant Chief Counsel/Patent Counsel, John F. Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: February 23, 2004.

**Robert M. Stephens,**

*Deputy General Counsel.*

[FR Doc. 04–4413 Filed 2–27–04; 8:45 am]

BILLING CODE 7510–01–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (04–034)]**

### Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of prospective patent license.

**SUMMARY:** NASA hereby gives notice that Nivis LLC of Atlanta, GA, has applied for a partially exclusive patent license to practice the invention described and claimed in NASA Case No. KSC–12386 entitled ''Wireless Instrumentation System and Power Management Scheme Therefore,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Randall M. Heald, Assistant Chief Counsel/Patent Counsel at John F. Kennedy Space Center.

**DATES:** Responses to this Notice must be received by March 16, 2004.

**FOR FURTHER INFORMATION CONTACT:** Randall M. Heald, Assistant Chief Counsel/Patent Counsel, John F. Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

**Robert M. Stephens,**

*Deputy General Counsel.*

[FR Doc. 04–4412 Filed 2–27–04; 8:45 am]

BILLING CODE 7510–01–P

## NATIONAL SCIENCE FOUNDATION

### NSF-NASA—Astronomy and Astrophysics Advisory Committee #13883; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* NSF-NASA Astronomy and Astrophysics Advisory Committee (#13883).

*Date and Time:* March 8, 2004, 12–1 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, via teleconference.

*Type of Meeting:* Open.

*Contact Person:* Dr. G. Wayne Van Citters, Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–4908.

*Purpose of Meeting:* To provide advice and recommendations to the National Science Foundation (NSF) and the National Aeronautics and Space Administration (NASA) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the two agencies.

*Agenda:* To review and discuss a draft of the committee's March 2004 report.

*Reason for Late Notice:* Difficulty in scheduling committee member participation.

Dated: February 24, 2004.

**Susanne E. Bolton,**

*Committee Management Officer.*

[FR Doc. 04–4437 Filed 2–27–04; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 70–143–MLA–3 and ASLBP No. 04–820–05–MLA]**

## Nuclear Fuel Services, Inc.; Designation Of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 FR 28710 (December 29, 1972), and the Commission's regulations, *see* 10 CFR 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding: Nuclear Fuel Services, Inc., Erwin, Tennessee, (Material License Amendment-3).

The hearing will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns two requests for hearing submitted on February 2, 2004, one from Friends of the Nolichucky River Valley, Inc., the State of Franklin Group of the Sierra Club, the Oak Ridge Environmental Peace Alliance, and the Tennessee Environmental Council, and the second from Kathy Helms-Hughes. These petitions were filed in response to an NRC staff December 17, 2003, notice of receipt of a request by Nuclear Fuel Services, Inc. (NFS) to amend its 10 CFR part 70 license to authorize processing operations in the Oxide Conversion Building and the Effluent Processing Building at the NFS Blended Low-Enriched Uranium Complex in Erwin, Tennessee. The notice of receipt of amendment request and opportunity for a hearing were published in the **Federal Register** on December 24, 2003 (68 FR 74653).

The Presiding Officer in this proceeding is Administrative Judge Alan S. Rosenthal. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Richard F. Cole has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judges Rosenthal and Cole in accordance with 10 CFR 2.1203. Their addresses are:

Administrative Judge Alan S. Rosenthal, Presiding Officer,
Atomic Safety and Licensing Board Panel,
U.S. Nuclear Regulatory Commission,
Washington, DC 20555–0001
Administrative Judge Richard F. Cole.
Special Assistant.
Atomic Safety and Licensing Board Panel.
U.S. Nuclear Regulatory Commission.
Washington, DC 20555–0001

Issued in Rockville, Maryland, this 24th day of February, 2004.

**G. Paul Bollwerk III,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. E4–432 Filed 2–27–04; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No 50–255]**

## Nuclear Management Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–20, issued to Nuclear Management Company, LLC (the licensee), for operation of the Palisades Plant located in Covert Township, Van Buren County, Michigan.

The proposed amendment would add a paragraph to Section 2C of the operating license authorizing the licensee to update the final safety analysis report (FSAR) to reflect a change in the licensing basis for the handling of heavy loads using the main hoist of the fuel pool building crane (L–3 crane). The revised licensing basis is based upon the upgrading or re-evaluation of the lifting capacity of the L–3 crane main hoist, bridge, trolley, and the supporting structure from 100 tons to 110 tons, and the incorporation and crediting of single-failure-proof technology meeting the requirements of NUREG–0554, ''Single-Failure-Proof Cranes for Nuclear Power Plants'' and NUREG–0612, ''Control of Heavy Loads at Nuclear Power Plants.'' (NUREG–0612 requires analyses of postulated load drop accidents from spent fuel pool area cranes unless the handling system is designed to be single failure proof). The modified L–3 crane is the single-failure-proof crane designed by Ederer Incorporated in accordance with the NRC-approved report, EDR–1, ''Generic Licensing Topical Report.'' The upgrade, with its increased lifting capacity, will provide for use of a new, heavier dry fuel storage cask system which, due to dimensional changes, results in elimination of the impact limiting pad previously installed in the spent fuel pool to protect the pool structure from postulated transfer cask drop accidents during dry fuel storage operations. The 15-ton auxiliary hoist of the spent fuel pool crane is not upgraded to be single-failure-proof and continues to be bounded by existing cask drop accident analyses in Section 14.11 of the FSAR.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner/requester in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requester or petitioner; (2) the nature of the requester's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requester's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requester's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requester seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requester shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requester to relief. A petitioner/requester who fails to file such a petition/request that satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

If two or more requesters/petitioners seek to co-sponsor a contention, the requesters/petitioners shall jointly designate a representative who shall have the authority to act for the requesters/petitioners with respect to that contention. If a requester/petitioner seeks to adopt the contention of another sponsoring requester/petitioner, the requester/petitioner who seeks to adopt the contention must either agree that the sponsoring requester/petitioner shall act as the representative with respect to that contention or jointly designate with the sponsoring requester/petitioner a representative who shall have the authority to act for the requesters/petitioners with respect to that contention.

Each contention should be given a separate numeric or alpha designation within one of the following groups: (1) Technical (primarily related to safety concerns); (2) environmental; or (3) miscellaneous.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by email to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee, Jonathan Rogoff, Vice President Counsel and Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment dated January 29, 2004, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 24th day of February 2004.

For the Nuclear Regulatory Commission.

**Darl S. Hood,**

*Senior Project Manager, Section I, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. E4–433 Filed 2–27–04; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–498 and 50–499]**

## STP Nuclear Operating Company, et al.; South Texas Project, Units 1 and 2; Notice of Withdrawal of Application Regarding Proposed Corporate Restructuring

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of STP Nuclear Operating Company (the licensee) to withdraw the September 29, 2003, application for an order under section 50.80 of Title 10 of the Code of Federal Regulations (10 CFR) approving the indirect transfer of Facility Operating Licenses Nos. NPF–76 and NPF–80 for South Texas Project (STP), Units 1 and 2, respectively, to the extent held by Texas Genco, LP (Texas Genco). STP, Units 1 and 2, are located in Matagorda County, Texas.

The Commission had previously issued a Notice of Consideration of Approval of Application and Opportunity for a Hearing in the **Federal Register** on November 5, 2003 (68 FR 62641). However, by letter dated January 29, 2004, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated September 29, 2003, and the licensee's withdrawal letter dated January 29, 2004, which withdrew

the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 13th day of February, 2004.

For the Nuclear Regulatory Commission.

**William D. Reckley,**

*Acting Chief, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. E4–431 Filed 2–27–04; 8:45 am]

BILLING CODE 7590–01–P

## PRESIDIO TRUST

### Public Health Service Hospital, The Presidio of San Francisco (Presidio), CA; Notice of Availability of Environmental Assessment and Scheduling of Public Comment Period

**ACTION:** The Presidio Trust (Trust) announces the availability for review of the Environmental Assessment (EA) for the Public Health Service Hospital (PHSH) project and the scheduling of a review period for the public to provide comment on the PHSH EA. The EA, prepared in accordance with the provisions of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), evaluates the environmental impacts of rehabilitating and reusing historic buildings in the PHSH district of the Presidio. The Trust is inviting public review and comment on the PHSH EA until April 30, 2004. Public scoping comments were solicited as noticed in the **Federal Register** on September 9, 2003 (68 FR 53205–6) and again on November 12, 2003 (68 FR 64151–2).

*Materials Available to the Public:* The PHSH EA is being provided to agencies, organizations and individuals who have expressed an interest in the NEPA process for the PHSH project. The EA may be viewed at or downloaded from the Trust's Web site at *http://www.presidio.gov,* following the link from the home page. A printed copy may be requested at no charge at 415/561–5414 or *phsh@presidiotrust.gov,* or by writing the Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052. The EA may also be reviewed in the Trust's library on the Presidio at 34 Graham Street, San Francisco, CA.

*Public Review and Comment Period:* Before finalizing the PHSH EA, the Trust invites the interested public to review the document and provide comment. Written comments may be submitted to John Pelka, NEPA Compliance Coordinator at 415/561–2790 (fax), *phsh@presidiotrust.gov,* or the address below, and must be transmitted or delivered no later than April 30, 2004. Please be aware that all written comments and information submitted will be made available to the public, including, without limitation, any postal address, e-mail address, phone number or other information contained in each submission. Additional public notice in the **Federal Register**, on the Trust's Web site and/or in written newsletters to those on the Trust's public mailing list will announce the date, location and details of a hearing for the public to provide oral comment on the PHSH EA. Following the close of the public review period on April 30, 2004, the Trust will consider and respond to any written or oral comments in the final PHSH EA.

**FOR FURTHER INFORMATION CONTACT:** John Pelka, NEPA Compliance Coordinator, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052, 415/561–5300.

Dated: February 24, 2004.

**Karen A. Cook,**

*General Counsel.*

[FR Doc. 04–4449 Filed 2–27–04; 8:45 am]

BILLING CODE 4310–4R–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49295; File No. SR–Amex–2004–06]**

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and 2 by the American Stock Exchange LLC Relating to Small Business Issuers

February 23, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 21, 2004, the American Stock Exchange LLC (the ''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. On January 30, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On February 12, 2004, the Exchange filed Amendment No. 2 to the proposed rule change.[4] Amex has filed the proposed rule change as a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act,[5] which renders the proposal effective upon filing with the Commission. 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 Amex proposes to make technical amendments to the Exchange's recently approved enhanced corporate governance requirements to: (i) Amend sections 121A, 121B(2)(c), 802(a), and 809(b) of the Amex *Company Guide* to reference small business issuers rather than small business filers, and (ii) insert in section 809 of the Amex *Company Guide* the date of Commission approval and certain effective dates based on the date of approval. Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

American Stock Exchange Company Guide

Section 121. INDEPENDENT DIRECTORS AND AUDIT COMMITTEE

A. Independent Director

Each listed company must have a sufficient number of independent directors on its Board of Directors (1) such that at least a majority of such directors are independent directors (subject to the exceptions set forth in section 801 and, with respect to small business [filers] *issuers,* section 121B(2)(c)), and (2) to satisfy the audit committee requirement set forth below. ''Independent director'' means a person other than an officer or employee of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 29, 2004.

[4] *See* Letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 11, 2004.

[5] 17 CFR 240.19b–4(f)(6).

company or any parent or subsidiary. No director qualifies as independent unless the Board of Directors affirmatively determines that the director does not have a material relationship with the listed company that would interfere with the exercise of independent judgment. In addition, audit committee members must also comply with the requirements set forth in paragraph B(2) below. The following is a non-exclusive list of persons who shall not be considered independent:

(a) through (g)—No change.

B. Audit Committee:

(1)—No change.

(2) Composition

(a) and (b)—No change.

(c) Small Business [Filers] *Issuers—Small Business* Issuers [that file reports under] *(as defined in* SEC Regulation S–B*)* are subject to all requirements specified in this Section, except that such issuers are only required to maintain a Board of Directors comprised of at least 50% independent directors, and an Audit Committee of at least two members, comprised solely of independent directors who also meet the requirements of Rule 10A–3 under the Securities Exchange Act of 1934.

Section 802. BOARD OF DIRECTORS

(a) At least a majority of the directors on the Board of Directors of each listed company must be independent directors as defined in Section 121A, except for (i) a controlled company (see Section 801(a)), and (ii) a Small Business [filer] *Issuer* (see Section 121B(2)(c)).

(b) through (e)—No change.

Section 809. EFFECTIVE DATES/TRANSITION

(a) In order to permit listed companies to make necessary adjustments in the course of their regular annual meeting schedule, to the extent not inconsistent with Rule 10A–3 under the Securities Exchange Act of 1934, Sections 802–805 (other than Section 802(d)), as well as the corresponding changes to Section 121, are effective as set forth below. During the transition period between *December 1, 2003* and the applicable effective date, listed companies must comply with Section 121 as in effect immediately prior to *December 1, 2003* (see Commentary .01).

- July 31, 2005 for foreign private issuers and small business issuers (as defined in Rule 12b–2 under the Securities Exchange Act of 1934); and
- For all other listed companies, by the earlier of: (1) The listed company's first annual shareholders meeting after March 15, 2004; or (2) October 31, 2004.

In the case of a company with a staggered board, to the extent not inconsistent with Rule 10A–3 under the Securities Exchange Act of 1934, if the company would be required to change a director who would normally not stand for election in such annual meeting, the company may continue such director in office until the second annual meeting after the date specified above, but no later than December 31, 2005.

(b) Companies that have listed or will be listed in conjunction with their initial public offering shall be afforded exemptions from all board composition requirements consistent with the exemptions afforded in Rule 10A–3 under the Securities Exchange Act of 1934. That is, for each applicable committee that the company establishes (*i.e.*, nominating and/or compensation) the company shall have one independent member at the time of listing, a majority of independent members within 90 days of listing and all independent members within one year. Such companies will be required to meet the majority independent board requirement (or 50% independent in the case of a small-business [filer] *issuer*) within one year of listing. It should be noted however, that investment companies are not afforded these exemptions under Rule 10A–3 under the Securities Exchange Act of 1934. Companies emerging from bankruptcy or which have ceased to be controlled companies will be required to meet the majority independent board requirement (or 50% independent in the case of a small-business [filer] *issuer*) within one year. Companies may choose not to establish a compensation or nomination committee and may rely instead upon a majority of independent directors to discharge responsibilities under Part 8.

(c) Companies transferring from other markets with a substantially similar requirement shall be afforded the balance of any grace period afforded by the other market. Companies transferring from other markets that do not have a substantially similar requirement shall be afforded one year from the date of listing, to the extent not inconsistent with Rule 10A–3 under the Securities Exchange Act of 1934.

(d) Section 807 is effective *June 1, 2004.*

(e) Section 808 and the amendments to Sections 110, 120, 401, 402 and 610 are effective *December 31, 2003.*

(f) The amendments to Section 1009 and the adoption of Section 802(d) are effective *December 1, 2003.*

Commentary—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 Amex 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 Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On December 1, 2003 the Commission approved comprehensive enhancements to the corporate governance requirements applicable to listed companies in order to promote accountability, transparency and integrity by such companies, including the changes required by Commission Rule 10A–3 [6] with respect to listed company audit committees.[7] In order to provide consistency between certain provisions of Amex requirements and Rule 10A–3 with respect to small business issuers, the Exchange is proposing to revise Section 121B(2)(c) of the Amex *Company Guide* to reference small business issuers rather than small business filers. Section 121B(2)(c) of the Amex *Company Guide* provides a limited exception from certain of new requirements. Specifically, such companies are subject to the enhanced corporate governance requirements, except that they are only required to have a board of directors comprised of at least 50% independent directors, rather than a majority, and must have an audit committee of at least two, rather than three, independent directors. Small business companies are required to fully comply with Rule 10A–3.

Rule 10A–3 provides a later effective date for small business issuers than is available for other listed companies. The Amex states that the proposed change to Section 121B(2)(c) of the Amex *Company Guide* will provide consistency between these two provisions. Further, by limiting the applicability of section 121B(2)(c) of the Amex *Company Guide* to small business filers, the provision provides a

[6] 17 CFR 240.10A–3.

[7] *See* Securities Exchange Act Release No. 48863 (December 1, 2003), 68 FR 68432 (December 8, 2003) (order approving File No. SR–Amex–2003–65).

disincentive for small business companies to voluntarily provide the greater disclosure required pursuant to Regulation S–K. The limited exception for small business companies is intended to provide narrow relief for smaller companies in view of the difficulties that such issuers may face in recruiting independent directors. Companies that choose to provide enhanced disclosure should not be penalized in this regard.

The Exchange is also proposing to make conforming changes in Sections 121A, 802(a), and 809(b) and to amend Section 809 of the Amex *Company Guide* to insert the effective date of Commission approval of the new corporate governance standards and related effective dates.

2. Statutory Basis

The Amex believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act [8] in general and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange did not receive any written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Amex as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act [10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

Consequently, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, and the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

Pursuant to Rule 19b–4(f)(6)(iii),[12] a proposed ''non-controversial'' rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Amex has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The revision contained in the proposed rule change relating to small business issuers would provide consistency between the treatment afforded to such entities under Amex's enhanced corporate governance listing standards and the provisions of those standards that were adopted to comply with Rule 10A–3. Acceleration of the operative date will ease implementation of the new rules. The other revisions contained in the proposed rule change are non-substantive. For these reasons, the Commission designates the proposed rule change, as amended, to be effective and operative upon filing with the Commission.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, as amended, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–Amex–2004–06 . 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 hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–2004–06 and should be submitted by March 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–4430 Filed 2–27–04; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on February 12, 2004, the date that the Exchange filed Amendment No. 2.

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49302; File No. SR–Amex–2003–86]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC To Amend Section 605 of the Exchange's Company Guide Relating to the Requirements Applicable to Listed Company Auditors

February 23, 2004.

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 3, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in items I, II and III below, which items have been prepared by the Exchange. On January 22, 2004, the Exchange submitted an amendment 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 Exchange proposes to amend section 605 of the Amex *Company Guide* with respect to the requirements applicable to listed company auditors. The text of the proposed rule change, as amended, is set forth below. Text in brackets indicates material to be deleted, and text in italics indicates material to be added.

* * * * *

### American Stock Exchange LLC Company Guide

Sec. 605 [Peer Review] *Auditor Requirements*

[(a) A listed company must be audited by an independent public accountant that:

(i) has received an external quality control review by an independent public accountant (''peer review'') that determines whether the auditor's system of quality control is in place and operating effectively and whether established policies and procedures and applicable auditing standards are being followed; or

(ii) is enrolled in a peer review program and within 18 months receives a peer review that meets acceptable guidelines.

(b) The following guidelines are acceptable for the purposes of Sec. 605:

(i) the peer review should be comparable to AICPA standards included in Standards for Performing on Peer Reviews, codified in the AICPA's SEC Practice Section Reference Manual;

(ii) the peer review program should be subject to oversight by an independent body comparable to the organizational structure of the Public Oversight Board as codified in the AICPA's SEC Practice Section Reference Manual; and

(iii) the administering entity and the independent oversight body of the peer review program must, as part of their rules of procedure, require the retention of the peer review working papers for 90 days after acceptance of the peer review report and allow the Exchange access to those working papers.]

*A listed company must be audited by an independent public accountant that is registered, as required, with the Public Company Accounting Oversight Board (''PCAOB'').*

*Commentary*

*.01 In evaluating the eligibility of an issuer which has applied for listing, the Exchange will only consider financial statements provided in connection with the application and relied upon to demonstrate compliance by the applicant, if such financial statements were audited or reviewed, as required by applicable SEC requirements, by an independent public accountant that was, at the time of issuance of such financial statements, either registered with the PCAOB, or, for financial statements issued prior to the time the auditor was required to register with PCAOB, enrolled in the American Institute of Certified Public Accountants (''AICPA'') or equivalent peer review program.*

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Currently, section 605 of the Amex *Company Guide* requires Amex listed companies to be audited by an independent public accountant that participates in a peer review program, *i.e.*, an external quality control review by an independent public accountant that determines whether the auditor's system of quality control is in place and operating effectively and whether established policies and procedures and applicable auditing standards are being followed. In practice, section 605 of the Amex *Company Guide* requires that the auditor either be a member of the American Institute of Certified Public Accountants (''AICPA'') SEC Practice Section, which subjects the auditor to the AICPA peer review program, or be enrolled in a peer review program with comparable standards.

Pursuant to the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley Act''), the Public Company Accounting Oversight Board (''PCAOB'') was created to regulate accounting firms that prepare and issue audit reports on public companies that are either required to file reports with the Commission or that have filed a registration statement for a public offering of securities (together, ''public companies''). The Sarbanes-Oxley Act further provides that 180 days after the Commission determines that the PCAOB is capable of carrying out its responsibilities, accounting firms that are not registered with PCAOB would be prohibited from preparing or issuing audit reports on public companies. In accordance with recently approved PCAOB rules, U.S. accounting firms were required to register by October 22, 2003.[4]

Accordingly, the Exchange proposes to revise section 605 of the Amex *Company Guide* to specify that Amex listed companies must be audited by an accounting firm registered, as required, with the PCAOB. New commentary to section 605 would also clarify that, in evaluating the eligibility of an issuer which has applied for listing, the Exchange would only consider financial statements provided in connection with the application and relied upon to demonstrate compliance by the applicant, if such financial statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Eric Van Allen, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 21, 2004, replacing Form 19b–4 in its entirety (''Amendment No. 1''). In Amendment No. 1, the Amex made technical changes to its proposed rule text and discussion.

[4] Pursuant to PCAOB rules, foreign public accounting firms have been granted an additional 180 days to register (*i.e.*, until April 19, 2004).

were audited or reviewed, as required by applicable Commission requirements, by an independent public accountant that was, at the time of issuance of such financial statements, either registered with the PCAOB, or, for financial statements issued prior to the time the auditor was required to register with PCAOB, enrolled in the AICPA or equivalent peer review program.

In evaluating either the initial or continued listing eligibility of an issuer, the Exchange would consider the extent to which any PCAOB regulatory finding or action, a modified or adverse peer review opinion, or other regulatory issue with respect to a listed company's auditor raises concerns with respect to the reliability or integrity of the company's financial statements. As warranted, the Exchange would take action pursuant to its general authority to exclude issuers raising public interest concerns from listing (*i.e.*, sections 101 and 1003(f)(iii) of the Amex *Company Guide*) to either deny the listing application or delist the issuer.[5] In determining whether a public interest concern exists, the Exchange would consider the substance of the issue(s) raised, the independent accountant's response, including whether corrective action was taken, as well as any follow-up review or action by PCAOB or AICPA.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[6] in general, and furthers the objectives of section 6(b)(5) of the Act[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change will impose no burden on competition.

[5] Any such action would be subject to appropriate appeal procedures as set forth in Part 12 of the Amex *Company Guide*.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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 Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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–Amex–2003–86. 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 Exchange. All submissions should refer to file number SR–Amex–2003–86 and should be submitted by March 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–4435 Filed 2–27–04; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49300; File No. SR–BSE–2004–07]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. Relating to the Extension of a Linkage Fee Pilot Program

February 23, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 11, 2004, the Boston Stock Exchange, Inc. (''Exchange'' or ''BSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On February 20, 2004, the BSE 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 and is approving the proposed rule change, as amended, on an accelerated basis, until July 31, 2004.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The BSE proposes to extend the current pilot program applicable to Options Intermarket Linkage (''Linkage'') fees[4] for six months until July 31, 2004.

The proposed fee schedule is available at the Exchange and at the Commission.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John A. Boese, Assistant Vice President, Legal and Compliance, BSE, to Nancy J. Sanow, Assistant Director, Commission, dated February 19, 2004 (''Amendment No. 1''). In Amendment No. 1, the Exchange made technical corrections to the proposed rule change.

[4] *See* Exchange Act Release No. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (SR–BSE–2003–17) (Approving Linkage fees on a pilot basis to expire January 31, 2004).

## 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 BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The BSE proposes to extend the current pilot program for the effectiveness of its Linkage fees on its Boston Options Exchange (''BOX'') facility through July 31, 2004. BOX's current fee structure for Principal (''P'') and Principal Acting as Agent (''P/A'') orders [5] executed on BOX is operating under a pilot program which expired on January 31, 2004.[6] Because all Linkage Orders received by BOX are for the account of a market maker on another exchange, the fees applicable to P and P/A Orders would be the same as fees applicable to market makers on other exchanges that submit orders to BOX outside of Linkage. The side of a BOX trade opposite an inbound P or P/A order would be billed normally as any other BOX trade. Also, consistent with the Linkage Plan, no fees would be charged to a party sending a Satisfaction request (''S'' order) to BOX. However, a fee would be charged to the BOX Options Participant that was responsible for the trade-through that caused the S order to be sent.

The BSE now proposes to extend the pilot program to July 31, 2004, and have the requested extension applied retroactively to February 1, 2004, in order to remain consistent with the other options exchanges concerning these fees. The Exchange notes that BOX did not commence trading until February 6, 2004, and therefore the Linkage fees would not be applicable until that date.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,[7] in general, and section 6(b)(4),[8] in particular, in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–BSE–2004–07. 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 hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should be submitted by March 22, 2004.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,[9] and, in particular, with the requirements of section 6(b) of the Act [10] and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(4) of the Act,[11] which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Exchange's Linkage fee pilot program until July 31, 2004 will give the Exchange and the Commission opportunity to evaluate whether such fees are appropriate.

The BSE has requested that the Commission approve the extension of the pilot retroactively to February 1, 2004. The Commission notes that BOX did not commence trading until February 6, 2004 and, therefore, the Linkage fees would not be applicable until that date. The Commission believes that applying the fees retroactively will enable BOX to charge fees for Linkage Orders in a manner consistent with the charges for Linkage fees imposed pursuant to the rules of the other options exchanges, which were previously approved by the Commission.

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,[12] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of the filing thereof in the

[5] Under the Options Intermarket Linkage Plan (''Plan'' or ''Linkage Plan'') and Chapter XII of the BOX Rules, which tracks the language of the Plan, a ''Linkage Order'' means an Immediate or Cancel order routed through the Linkage as permitted under the Plan. There are three types of Linkage orders:

(i) ''P/A Order,'' which is an order for the principal account of a Market Maker (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent;

(ii) ''P Order,'' which is an order for the principal account of a market maker (or equivalent entity on another Participant exchange) and is not a P/A Order; and

(iii) ''Satisfaction Order,'' which is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

[6] *See supra* note 4.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] In approving this rule, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(2).

**Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change will allow the Exchange to implement its existing pilot program for Linkage fees as the BSE and the Commission consider the appropriateness of Linkage fees.

## V. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–BSE–2004–07), as amended, is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–4429 Filed 2–27–04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49305; File No. SR–BSECC–2003–01]**

## Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Order Approving Proposed Rule Change To Clarify Liability and Clearing Agency Services

February 23, 2004.

## I. Introduction

On May 29, 2003, the Boston Stock Exchange Clearing Corporation (''BSECC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–BSECC–2003–01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On July 21, 2003, August 25, 2003, and September 12, 2003, BSECC amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on January 13, 2004.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

## II. Description

The purpose of the proposed rule change is to delete or amend certain sections of the BSECC Rules to clarify BSECC's liability and clearing agency services.

BSECC is seeking to make several changes to its Rules as they pertain to BSECC's liability in order to maintain a consistent approach with the Boston Stock Exchange's (''BSE'') recently approved proposed rule change clarifying BSE's liability with respect to its members' contractual obligations.[3] These changes being made by BSECC:

(1) Clarify in Rule II, Section 1, that BSECC's clearing fund is to make good losses suffered by BSECC without the losses of its members having priority;

(2) Eliminate a provision in Rule II, Section 5(e), which allows the retained earnings of BSECC to be used to satisfy any loss or liability resulting from a BSECC member's default;

(3) Eliminate language in Rule III, Section 3(a), stating that BSECC guarantees settlement of all trades executed on the floor of BSE;[4]

(4) Amend Rule III, Section 3(e), to make BSECC loans to members to complete settlement with the National Securities Clearing Corporation (''NSCC'') discretionary, not automatic. The current automatic loan provision is inconsistent with the purpose of the proposed rule change that members will be solely liable for their transactions and that BSECC is not the ultimate guarantor for its members;

(5) Amend Rule XI, Section 3, to increase the maximum fine for any offense of BSECC Rules from $1,000 to $5,000 and increase from $5,000 to $30,000 the amount that fines imposed in the last six months must exceed before BSECC is required to give the member notice of its right to appeal; and

(6) Strengthen BSECC's indemnification clause found in Rule XII, Section 6, by stating that each member will remain ''solely responsible'' and liable for its transactions; The proposed rule change also deletes all references to Boston Representative Broker/Dealer Accounts, BSE Service Corporation, and Institutional Members. Such references are no longer applicable as they relate to services or lines of business in which BSECC is no longer involved. Also, BSECC has in various places added references to NSCC due to the merger of NSCC and The Depository Trust Company.

BSECC is not making these amendments in response to any recent or perceived action by any of its members. Rather, BSECC is seeking to clarify, by eliminating inconsistencies and providing succinct language, and to enhance its position which it holds with respect to liability on the part of its members.

## III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[5] The Commission finds that BSECC's proposed rule change is consistent with this requirement because it will clarify and enhance BSECC's Rules so that it can better protect itself and its members from the risk of default.

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–BSECC–2003–01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary .*

[FR Doc. 04–4433 Filed 2–27–04; 8:45 am]

BILLING CODE 8010–01–P

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49304; File No. SR–BSE–2002–06]**

## Self-Regulatory Organizations; Boston Stock Exchange; Order Approving Proposed Rule Change To Clarify Exchange Liability

February 23, 2004.

## I. Introduction

On September 26, 2002, the Boston Stock Exchange (''BSE'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–BSE–2002–06 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On November 5, 2002, May 29, 2003, and July 21, 2003, BSE amended the proposed rule change.

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[13] *Id.*

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 49027 (January 6, 2004), 69 FR 2027.

[3] The Commission approved a companion proposed rule change filed by the Boston Stock Exchange to amend various Articles of its Constitution and sections of its Rules to clarify the liability of the exchange with respect to its members' contractual obligations. Securities Exchange Act Release No. 49304 (February 23, 2004), [File No. SR–BSE–2002–06].

[4] BSE guarantees exchange trades until they are accepted by the National Securities Clearing Corporation.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

Notice of the proposal was published in the **Federal Register** on January 13, 2004.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

**II. Description**

The purpose of the proposed rule change is to amend certain sections of the BSE Constitution and Rules to clarify BSE's liability with respect to its members' contractual obligations.[3]

In particular, BSE is modifying Articles XII and XIII of its Constitution to insure that any BSE member who is a party to a transaction remains solely liable for the transaction. This language is consistent with similar language and approaches of other exchanges in limiting the liability of an exchange with respect to contracts entered into by members.[4] In Article XIII of its Constitution, the BSE is also adding certain language from the BSECC Participant Hypothecation Agreement. The provision to be inserted into the Constitution would prevent BSE from becoming a de facto guarantor of an insolvent member's contractual obligations.

BSE is amending other sections of its Rules consistent with this theme. Chapter III, ''Comparisons—Liability on Contracts,'' Section 4, ''Failures to Compare,'' now states that BSE shall have no liability to any of the original parties to a contract entered into by a member. Chapter VI, ''Failure to Fulfill Contracts,'' Section 1, ''Closing Contracts,'' now makes it clear that no action taken by BSE in closing or assisting to close a contract entered into by a BSE member shall have the effect of transferring any liability related to that contract to BSE. Chapter VI, Section 2, ''Notice of Closing Contracts,'' echoes this approach for instances in which BSE takes action to attempt to close a contract on behalf of a member in default. None of these changes are in response to any recent circumstance. They are only aimed at clarifying BSE's unique position in relation to assisting its members in other contractual matters exclusively linked to conducting transactions in the buying and selling of equity securities.

**III. Discussion**

Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[5] The Commission finds that BSE's proposed rule change is consistent with these requirements because it clarifies BSE's liability with respect to its members' contractual obligations.

**IV. Conclusion**

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 6(b)(5) of the Act and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–BSE–2002–06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–4434 Filed 2–27–04; 8:45 am]

**BILLING CODE 8010–01–P**

[2] Securities Exchange Act Release No. 49026 (January 6, 2004), 69 FR 2026.

[3] The Commission approved a companion proposed rule change filed by the Boston Stock Exchange Clearing Corporation (''BSECC'') to amend various sections of its Rules as they pertain to BSECC's liability in order to maintain a consistent approach with the changes approved in this filing. Securities Exchange Act Release No. 49305 (February 23, 2004), [File No. SR–BSECC–2003–01].

[4] *See, e.g.,* New York Stock Exchange Rules 137 and 142; Chicago Stock Exchange Rules, Article XXV, Rule 11; and Philadelphia Stock Exchange Rule 254.

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49297; File No. SR–CHX–2003–39]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

February 23, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on December 31, 2003, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') 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 the Exchange. On February 19, 2004, the Exchange 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 Exchange proposes to amend its membership dues and fees schedule (the ''Fee Schedule''), effective January 1, 2004, to clarify the applicability of certain Fee Schedule provisions relating to transaction fees, and establish a schedule of maximum monthly transaction fees for certain agency orders executed through a CHX floor broker.

Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

**Membership Dues and Fees**

F. Transaction and Order Processing Fees

1–3. No change to text.

4. Transaction Fees.

a. Market orders sent via MAX*, except agency orders executed through floor brokers*—No charge.

b. All orders sent via MAX in Tape B eligible issues or in the stocks comprising the Standard & Poor's 500 Stock Price Index*, except agency orders executed through floor brokers*—No charge.

c. No change to text

d. [Through June 30, 2001, all orders that are executed during the E-Session] *Reserved for future use*—[No charge.]

e. In Nasdaq/NM securities, agency executions executed through a floor broker and market maker execution—$.0025 per share (up to a maximum of $100 per side), subject to the fee reduction described in (i), below[.] *and the fee cap described in (j) below.*

f. In Dual Trading System issues, agency executions executed through a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* facsimile from Ellen J. Neely, Senior Vice President & General Counsel, CHX, to A. Michael Pierson, Attorney, and Marisol Rubecindo, Law Clerk, Division of Market Regulation (''Division''), Commission, dated February 19, 2004 (''Amendment No. 1''). Amendment No. 1 replaced the proposed rule change in its entirety.

floor Broker and market maker Executions—$.0035 per share (up to a maximum of $100 per side), subject to the fee reduction described in (i), below[. (Effective January 1, 2001)] *and the fee cap described in (j) below.*

g. All other MAX orders*, except agency orders executed through floor brokers.*

* * * * *

h. The monthly maximum for transaction fees for orders sent via MAX*, except agency orders executed through floor brokers,* is $10,000 or, if less, $.40 per 100 average monthly gross round lot shares.

i. No change to text

*j. The transaction fees set forth in Sections F.4(e) and (f) shall be subject to the following monthly maximums:*

(i) *If the order-sending firm has routed an average of 7,000–9,999 executed round lot orders per day in a given month to the Exchange via the MAX system, a maximum of $40,000 for that month;*

(ii) *If the order-sending firm has routed an average of 10,000–12,499 executed round lot orders per day in a given month to the Exchange via the MAX system, a maximum of $35,000 for that month;*

(iii) *If the order-sending firm has routed an average of 12,500–15,000 executed round lot orders per day in a given month to the Exchange via the MAX system, a maximum of $30,000 for that month;*

(iv) *If the order-sending firm has routed an average of more than 15,000 executed round lot orders per day in a given month to the Exchange via the MAX system, a maximum of $25,000 for that month.*

*k. An order-sending firm will not be eligible for any of the transaction fee caps or reductions set forth in Section F.4 if the number of orders cancelled during the subject month by the member firm exceeds 50% of the member firm's total CHX executions for the month.*

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Section F (''Transactions and Order Processing Fees'') of the Fee Schedule, effective January 1, 2004, by clarifying the applicability of certain Fee Schedule provisions relating to transaction fees, and establishing a schedule of maximum monthly transaction fees for certain agency orders executed through a CHX floor broker.

Order-sending firms, which are members of the Exchange,[4] generally route agency orders to the CHX via the Exchange's Midwest Automated Execution system, commonly referred to as the MAX'' system.[5] The Exchange currently does not assess its order-sending firms a transaction fee for most orders sent through MAX and executed by specialists.[6] If an agency order is routed by MAX to a CHX floor broker for execution, however, such order is assessed a transaction fee in accordance with Section F.4(e) and (f). The Exchange is proposing changes to Sections F.4(a), (b), (g) and (h) of the Fee Schedule to clarify the applicability of a transaction fee to MAX agency orders executed through a CHX floor broker.[7] Thus, the proposed rule change does not impose any new transaction fees.

To preserve the CHX's competitive position with respect to MAX agency orders executed through a CHX floor broker, the Fee Schedule is also being amended to incorporate a monthly maximum transaction fee schedule for order-sending firms that meet certain monthly volume thresholds. The CHX believes that the proposed transaction fee schedule represents a reasonable balance between the need to maintain a competitive pricing structure and the need to assess a reasonable transaction fee when the assistance of a floor broker is required.[8] In addition, the CHX believes that the transaction fee maximums represent a reasonable allocation of transaction fees, chiefly because the maximums apply to benefit the order-sending firms that route significant levels of order flow to the CHX, which generates increased revenues for the CHX. The CHX also believes that the maximums are fair to all members because they are available to any order-sending firm that chooses to meet the volume thresholds.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of Section 6(b) of the Act,[9] in general, and Section 6(b)(4) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

[4] Telephone conversation between Kathleen M. Boege, Vice President and Associate General Counsel, CHX, and Lisa N. Jones, Special Counsel, Division, Commission (February 17, 2004).

[5] At the order-sending firm's request, however, an agency order routed through the MAX system may be sent directly to a CHX floor broker for handling.

[6] *See* CHX Schedule of Membership Dues and Fees at Section F.4(a)–(c). Sections (b) and (c) of Section F.4 were added to clarify that orders in Tape B eligible issues, in the stock of the Standard & Poor's 500 Stock Price Index, and in Nasdaq/NMS securities are not assessed a transaction fee when sent through MAX and executed by a specialist. Telephone conversation between Ellen J. Neely, CHX, A. Michael Pierson, and Marisol Rubecindo, Division, Commission (February 23, 2004).

[7] To summarize the interplay between the provisions of Section F.4, as a general rule, the Exchange notes that most orders sent via MAX and executed by the MAX system are not subject to a transaction fee. *See* Sections F.4(a), (b), (c), and (g). Telephone conversation between Ellen J. Neely, CHX, A. Michael Pierson, and Marisol Rubecindo, Division, Commission (February 23, 2004). Orders that are sent via MAX and require the assistance of a CHX floor broker, however, are assessed a transaction fee, to compensate for the costs associated with the floor broker's services. *See* Sections F.4(e), (f) and proposed amendments to Section F.4(a), (b) and (g). Section F.4 also establishes monthly maximum aggregate transaction fees. According to the Exchange, Section F.4(h) has always been interpreted as a cap on MAX order transaction fees other than the fees for MAX-delivered, floor broker-assisted orders. Section F.4(i) provides for fee reductions applicable to floor broker-assisted orders, but is based on total shares traded, thus rendering the fee reductions largely unavailable to order-sending firms that route smaller orders to floor brokers via MAX. The proposed amendment would add Section F.4(j) to establish new transaction fee maximums for MAX-delivered, floor broker-assisted orders, based on the number of MAX orders routed to the CHX by the order-sending firm. This change will permit order-sending firms that route a large number of small orders to qualify for a transaction fee cap. The CHX believes that the clarifying provisions of the amendment are necessary to avoid disputes as to the applicability of existing provisions imposing transaction fees and providing for caps. The Exchange notes that no order-sending firm would qualify for both the fee cap in F.4(j) and the fee reduction in F.4(i) because, if an order-sending firm had sufficient numbers of MAX-delivered orders to qualify for the fee cap in (j), the proposed cap would prevent it from generating monthly charges sufficient to qualify for the fee reduction in (i).

[8] The Exchange is also proposing Section F.4(k) to the Fee Schedule to provide that the monthly transaction fee caps are not available to an order-sending firm that cancels a number of orders that exceeds 50% of the firm's CHX executions during the month. The CHX believes that this limitation is an appropriate means of deterring abusive cancellation practices because repetitive cancellations are extremely disruptive to floor members and to the CHX's automated systems.

[9] 15 U.S.C. 78(f)(b).

[10] 15 U.S.C. 78f(b)(4).

*B. Self-Regulatory Organization's Statement of Burden on Competition*

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received from Members, Participants or Others*

No written comments were either solicited or received with respect to the proposed rule change, as amended.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) [11] of the Act, and Rule 19b–4(f)(2) [12] thereunder, because it establishes or changes a due, fee or other charge imposed by the Exchange. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such proposed 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.[13]

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, 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 may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–CHX–2003–39. The 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 hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–CHX–2003–39 and should be submitted by March 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–4508 Filed 2–27–04; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 15 CFR 240.19b–4(f)(2).

[13] *See* 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on February 19, 2004, the date the CHX filed Amendment No. 1.

[14] 17 CFR.200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49298; File No. SR–CHX–2004–01]**

## Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

February 23, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on January 21, 2004, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') 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 the Exchange. On February 19, 2004, the Exchange 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 Exchange proposes to amend its membership dues and fees schedule (the ''Fee Schedule''), effective retroactively as of November 1, 2003,[4] to clarify the applicability of certain Fee Schedule provisions relating to transaction fees, and establish a schedule of maximum monthly transaction fees for certain agency orders executed through a CHX floor broker.

Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

MEMBERSHIP DUES AND FEES

**F. Transaction and Order Processing Fees**

1–3. No change to text.

4. Transaction Fees.

| | |
|---|---|
| a. Market orders sent via MAX, *except agency orders executed through floor brokers.* | No charge. |
| b. All orders sent via MAX in Tape B eligible issues or in the stocks comprising the Standard & Poor's 500 Stock Price Index, *except agency orders executed through floor brokers.* | No charge. |

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* facsimile from Ellen J. Neely, Senior Vice President & General Counsel, CHX, to A. Michael Pierson, Attorney, and Marisol Rubecindo, Law Clerk, Division of Market Regulation (''Division''), Commission, dated February 19, 2004 (''Amendment No. 1''). Amendment No. 1 replaced the proposed rule change in its entirety.

[4] On December 31, 2003, the Exchange filed an identical amendment to the Fee Schedule, as immediately effective. *See* SR–CHX–2003–39. Because the Exchange also seeks to apply the Fee Schedule amendments on a retroactive basis (*i.e.*, to the months of November and December, 2003), the Exchange is submitting this proposal for notice and comment.

MEMBERSHIP DUES AND FEES—Continued

| | |
|---|---|
| c. No change to text. | |
| d. [Through June 30, 2001, all orders that are executed during the E-Session] *Reserved for future use.* | [No charge.] |
| e. In Nasdaq/NM securities, agency executions executed through a floor broker and market maker executions. | $.0025 per share (up to a maximum of $100 per side), subject to the fee reduction described in (i), below[.] *and the fee cap described in (j) below.* |
| f. In Dual Trading System issues, agency executions executed through a floor Broker and market maker Executions. | $.0035 per share (up to a maximum of $100 per side), subject to the fee reduction described in (i), below[. (Effective January 1, 2001)] *and the fee cap described in (j) below.* |
| g. All other MAX orders, *except agency orders executed through floor brokers.* | |

* * * * * * *

h. The monthly maximum for transaction fees for orders sent via MAX*, except agency orders executed through floor brokers,* is $10,000 or, if less, $.40 per 100 average monthly gross round lot shares.

i. No change to text

*j. The transaction fees set forth in Sections F.4(e) and (f) shall be subject to the following monthly maximums:*

(i) *If the order-sending firm has routed an average of 7,000–9,999 executed round lot orders per day in a given month to the Exchange via the MAX system, a maximum of $40,000 for that month;*

(ii) *If the order-sending firm has routed an average of 10,000–12,499 executed round lot orders per day in a given month to the Exchange via the MAX system, a maximum of $35,000 for that month;*

(iii) *If the order-sending firm has routed an average of 12,500–15,000 executed round lot orders per day in a given month to the Exchange via the MAX system, a maximum of $30,000 for that month;*

(iv) *If the order-sending firm has routed an average of more than 15,000 executed round lot orders per day in a given month to the Exchange via the MAX system, a maximum of $25,000 for that month.*

*k. An order-sending firm will not be eligible for any of the transaction fee caps or reductions set forth in Section F.4 if the number of orders cancelled during the subject month by the member firm exceeds 50% of the member firm's total CHX executions for the month.*

* * * * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Section F (''Transactions and Order Processing Fees'') of the Fee Schedule, effective November 1, 2003, by clarifying the applicability of certain Fee Schedule provisions relating to transaction fees, and establishing a schedule of maximum monthly transaction fees for certain agency orders executed through a CHX floor broker.

Order-sending firms, which are members of the Exchange,[5] generally route agency orders to the CHX via the Exchange's Midwest Automated Execution system, commonly referred to as the MAX® system.[6] The Exchange currently does not assess its order-sending firms a transaction fee for most orders sent through MAX and executed by specialists.[7] If an agency order is routed by MAX to a CHX floor broker for execution, however, such order is assessed a transaction fee in accordance with Section F.4(e) and (f). The Exchange is proposing changes to Sections F.4(a), (b), (g) and (h) of the Fee Schedule to clarify the applicability of a transaction fee to MAX agency orders executed through a CHX floor broker.[8]

[5] Telephone conversation between Kathleen M. Boege, Vice President and Associate General Counsel, CHX, and Lisa N. Jones, Special Counsel, Division, Commission (February 17, 2004).

[6] At the order-sending firm's request, however, an agency order routed through the MAX system may be sent directly to a CHX floor broker for handling.

[7] CHX Schedule of Membership Dues and Fees at Section F.4(a)–(c). Sections (b) and (c) of Section F.4 were added to clarify that orders in Tape B eligible issues, in the stock of the Standard & Poor's 500 Stock Price Index, and in Nasdaq/NMS securities are not assessed a transaction fee when sent through MAX and executed by a specialist. Telephone conversation between Ellen J. Neely, CHX, A. Michael Pierson, and Marisol Rubecindo, Division, Commission (February 23, 2004).

[8] To summarize the interplay between the provisions of Section F.4, as a general rule, the Exchange notes that most orders sent via MAX and executed by the MAX system are not subject to a transaction fee. *See* Sections F.4(a), (b), (c) and (g). Telephone conversation between Ellen J. Neely, CHX, A. Michael Pierson, and Marisol Rubecindo, Division, Commission (February 23, 2004). Orders that are sent via MAX and require the assistance of a CHX floor broker, however, are assessed a transaction fee, to compensate for the costs associated with the floor broker's services. *See* Sections F.4(e), (f) and proposed amendments to Section F.4(a), (b) and (g). Section F.4 also establishes monthly maximum aggregate transaction fees. According to the Exchange, Section F.4(h) has always been interpreted as a cap on MAX order transaction fees other than the fees for MAX-delivered, floor broker-assisted orders. Section F.4(i) provides for fee reductions applicable to floor broker-assisted orders, but is based on total shares traded, thus rendering the fee reductions largely unavailable to order-sending firms that route smaller orders to floor brokers via MAX. The Exchange is proposing to add Section F.4(j) to establish new transaction fee maximums for MAX-delivered, floor broker-assisted orders, based on the number of MAX orders routed to the CHX by the order-sending firm. This change will permit order-sending firms that route a large number of small orders to qualify for a transaction fee cap. The CHX believes that the clarifying provisions of the amendment are necessary to avoid disputes as to the applicability of existing provisions imposing transaction fees and providing for caps. The Exchange notes that no order-sending firm would qualify for both the fee cap in F.4(j) and the fee reduction in F.4(i) because, if an order-sending firm had sufficient numbers of MAX-delivered orders to

Continued

P='9662'≤Thus, the proposed rule change does not impose any new transaction fees.

To preserve the CHX's competitive position with respect to MAX agency orders executed through a CHX floor broker, the Fee Schedule is also being amended to incorporate a monthly maximum transaction fee schedule for order-sending firms that meet certain monthly volume thresholds. The CHX believes that the proposed transaction fee schedule represents a reasonable balance between the need to maintain a competitive pricing structure and the need to assess a reasonable transaction fee when the assistance of a floor broker is required.[9] In addition, the CHX believes that the transaction fee maximums represent a reasonable allocation of transaction fees, chiefly because the maximums apply to benefit the order-sending firms that route significant levels of order flow to the CHX, which generates increased revenues for the CHX. The CHX also believes that the maximums are fair to all members because they are available to any order-sending firm that chooses to meet the volume thresholds.

As noted above, the Exchange is proposing to apply the Fee Schedule changes on a retroactive basis, to November 1, 2003. The Exchange believes that this relief is appropriate because during the months of November and December, the Exchange had noted a need for additional clarity regarding transaction fees for MAX agency orders executed through a CHX floor broker, and was engaged in an effort to draft appropriate Fee Schedule provisions for approval by the Exchange's Finance Committee and Board of Governors.[10] According to the Exchange, if the Fee Schedule amendments are applied, retroactively, to the months of November and December, 2003, there are Exchange order-sending member firms that would be eligible for a transaction fee credit. In addition, according to the Exchange the retroactive application of the Fee Schedule amendments would not result in the assessment of any additional fees against any CHX member.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of Section 6(b) of the Act,[11] in general, and Section 6(b)(4) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

*B. Self-Regulatory Organization's Statement of Burden on Competition*

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received with respect to the proposed rule change, as amended.

**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 other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, 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 may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–CHX–2004–01. The 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 hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–CHX–2004–01 and should be submitted by March 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–4509 Filed 2–27–04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49306; File No. SR–NASD–2004–018]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Amend the Procedures for Review of Nasdaq Listing Determinations

February 23, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 28, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On February 20, 2004, Nasdaq submitted Amendment No. 1 to the proposal,[3] which replaced the original proposal in its entirety. The Commission is publishing this notice to

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qualify for the fee cap in (j), the proposed cap would prevent it from generating monthly charges sufficient to qualify for the fee reduction in (i).

[9] The Exchange is also proposing Section F.4(k) to the Fee Schedule to provide that the monthly transaction fee caps are not available to an order-sending firm that cancels a number of orders that exceeds 50% of the firm's CHX executions during the month. The CHX believes that this limitation is an appropriate means of deterring abusive cancellation practices; repetitive cancellations are extremely disruptive to floor members and to the CHX's automated systems.

[10] These provisions included the maximum transaction fee schedule for order-sending firms that meet certain monthly volume thresholds.

[11] 15 U.S.C. 78(f)(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 17 CFR.200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Division of Market Regulation, Commission, dated February 20, 2004 (''Amendment No. 1'').

solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Nasdaq is filing a proposed rule change to amend the procedures for review of listing determinations. Below is the text of the proposed rule change, as amended. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

**4800. Procedures for Review of Nasdaq Listing Determinations**

4830. The Listing Qualifications Panel

(a)–(c) No change

*(d) If, following the hearing, the Listing Qualifications Panel cannot reach an unanimous decision regarding the matter under review, a Panel Decision shall not be issued and the issuer shall be notified of this circumstance. Thereafter, the issuer shall be provided an additional hearing before a Listing Qualifications Panel composed of three persons who did not participate in the previous hearing. The issuer may determine whether the hearing will be conducted based on the written record or an oral hearing, whether in person or by telephone. The issuer may submit any documents or other written material in support of its request for review, including any information not available at the time of the initial hearing before the Listing Qualifications Panel. There shall be no fee for the new hearing.*

*4845. Reconsideration by the Listing Qualifications Panel and the Listing and Hearing Review Council*

*(a) An issuer may request that the Listing Qualifications Panel reconsider a Panel Decision only upon the basis that a mistake of material fact existed at the time of the Panel Decision. The issuer's request shall be made within seven calendar days of the date of issuance of the Panel Decision. An issuer's request for reconsideration shall not stay a Listing Qualifications Panel delisting determination unless the Listing Qualifications Panel issues a written determination staying the delisting prior to the scheduled date for delisting. An issuer's request for reconsideration shall not toll the time period set forth in Rule 4840(b) for the issuer to initiate the Listing Council's review of the Panel Decision. If the Listing Qualifications Panel grants an issuer's reconsideration request, the Listing Qualifications Panel shall issue a modified decision within 15 calendar days following the issuance of the original Panel Decision or lose jurisdiction over the matter. If the Listing Council calls a Panel Decision for review on the same issue that the issuer has requested reconsideration by the Listing Qualifications Panel, the Listing Council, in its discretion, may assert jurisdiction over the Panel Decision or may permit the Listing Qualifications Panel to proceed with the reconsideration.*

*(b) An issuer may request that the Listing Council reconsider a Listing Council Decision only upon the basis that a mistake of material fact existed at the time of the Listing Council Decision. The issuer's request shall be made within seven calendar days of the date of issuance of the Listing Council Decision. If the Listing Council grants an issuer's reconsideration request, the Listing Council shall issue a modified decision within 15 calendar days following the issuance of the original Listing Council Decision or lose jurisdiction over the matter.*

*(c) The Listing Qualifications Panel and the Listing Council may correct clerical or other non-substantive errors in their respective decisions either on their own motion or at the request of an issuer.*

4880. Delivery of Documents

Delivery of any document under this Rule 4800 Series by an issuer or by the Association may be made by hand delivery to the designated address, [or] by facsimile to the designated facsimile number and overnight courier to the designated address*, or by e-mail if the issuer consents to such method of delivery.* Delivery will be considered timely if hand delivered prior to the relevant deadline or upon being *e-mailed or* faxed and/or sent by overnight courier service prior to the relevant deadline. If an issuer has not specified a facsimile number or *street* address, delivery will be made to the last known facsimile number and *street* address. If an issuer is represented by counsel or a representative, delivery will be made to the counsel or representative.

* * * * *

**I. 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

The purpose of the proposed rule change is to amend several of Nasdaq's procedures for review of listing determinations as described below.

*Listing Qualifications Panel Deadlocks*

NASD Rule 4840(a) requires that all Listings Qualifications Panel hearings be conducted by at least two persons designated by the Nasdaq Board of Directors. Nasdaq's practice is to conduct such hearings before Listing Qualifications Panels comprised of two members. Based on comments from Commission staff regarding the need for specific procedures to address a Listing Qualifications Panel deadlock, Nasdaq proposes to amend NASD Rule 4830 to address such situations.

Specifically, if the Listing Qualifications Panel is unable to agree on a Panel Decision, the issuer will be notified immediately and afforded the opportunity for a new hearing before an entirely new Listing Qualifications Panel comprised of three members. The issuer will have the opportunity to select whether the new hearing will be by written submission, telephone, or in person. All documents from the original record will be retained for the new Listing Qualifications Panel's consideration. In addition, the issuer and Nasdaq staff will be afforded the opportunity to supplement the record on review, including any information that was not available at the time of the first hearing before the Listing Qualifications Panel. There will be no additional fee for the new hearing before the Listing Qualifications Panel because such a fee would be inequitable to issuers as a Listing Qualifications Panel deadlock is not within an issuer's control.

*Reconsideration of Listing Qualifications Panel and Listing Council Decisions*

Nasdaq believes that, in certain situations, it is appropriate for the Listing Qualifications Panel or the Nasdaq Listing and Hearing Review Council (''Listing Council'') to have an opportunity to reconsider their decision. Therefore, Nasdaq proposes to adopt a rule that sets forth the procedures and circumstances under which such reconsiderations can be made.

Nasdaq proposes to allow issuers to request that the Listing Qualifications Panel or the Listing Council reconsider a prior decision when there is a mistake of material fact in the decision. Under this standard, reconsideration would be appropriate only if the issuer can demonstrate that the original decision was based on the Listing Qualifications Panel or Listing Council's misunderstanding or lack of knowledge of a material fact that was in existence at the time of the decision. For example, reconsideration of a decision would be appropriate if the Listing Qualifications Panel delisted an issuer based on its failure to meet the shareholders' equity listing standard, not realizing that, prior to the decision, the issuer had increased its shareholders' equity by completing a private placement. Reconsideration of a Listing Qualifications Panel or Listing Council decision would not be granted for any material fact that occurs after the decision.

Under the proposed rule, issuers would be required to apply for reconsideration within seven calendar days of the date of issuance of the Listing Qualifications Panel or Listing Council decision. A request for reconsideration would not stay a Panel delisting determination, unless the Panel were to issue a written determination staying the delisting prior to the scheduled date for the delisting. Likewise, a request for reconsideration of a Panel Decision would not toll the 15-calendar-day period for appealing such a decision to the Listing Council that is set forth in NASD Rule 4840(b). As such, issuers that request reconsideration of a Panel Decision must also appeal the Panel Decision within the 15-day period provided in the Rule if they wish the Listing Council to review the decision.

In situations where reconsideration is granted by the Listing Qualifications Panel, a revised Panel Decision must be issued within 15 calendar days of the original Panel Decision. If the Listing Qualifications Panel does not issue a modified decision within that time period, the Listing Qualifications Panel will lose jurisdiction over the matter so that parallel proceedings with the Listing Council are avoided.[4]

Where reconsideration is granted by the Listing Council, a revised Listing Council Decision must be issued within 15 calendar days of the original Listing Council Decision. If the Listing Council does not issue a modified decision within that time period, the Listing Council will lose jurisdiction over the matter so that parallel proceedings with the NASD Board are avoided.[5]

Lastly, Nasdaq proposes to allow both the Listing Qualifications Panel and the Listing Council to correct clerical and other non-substantive errors in a decision, either on their own initiative or at the request of an issuer.

*Delivery of Documents Via E-mail*

NASD Rule 4880 provides that the delivery of documents in connection with the review of listing determinations may be made by hand or by facsimile and overnight courier. Over the past several years, Nasdaq has received numerous requests from issuers to submit documents via e-mail as it is a more cost effective and expeditious form of delivery.

In response to such requests, Nasdaq proposes to amend Rule 4880 to include e-mail as an allowable method of service. Thus, issuers would have the option of delivering documents by hand, facsimile and overnight courier, or e-mail.[6] Nasdaq would continue to deliver documents to issuers only by facsimile and overnight delivery unless an issuer specifically consents to receive delivery by e-mail.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6) of the Act[7] in that the proposal is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. Nasdaq believes that the proposed rule change is designed to improve the procedures applicable to the review of listing determinations as well as to provide greater transparency to these procedures.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the 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 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–NASD–2004–018. The 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 hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to the File No.

[4] If the Listing Council has called a matter for review on the same issue that the issuer has requested reconsideration, the Listing Council can claim jurisdiction over the matter and there will be no further consideration of the issue by the Listing Qualifications Panel. Issuers do not have the ability to determine whether the Listing Qualifications Panel or the Listing Council has jurisdiction over a matter that has been called for review by the Listing Council.

[5] NASD Rule 4850 provides that the NASD Board may call a Listing Council Decision for review not later than the next NASD Board meeting that is 15 calendar days or more following the date of the Listing Council Decision.

[6] As with documents sent via facsimile and overnight courier, delivery of a document sent by e-mail would be considered timely under NASD Rule 4880 if it were sent prior to the relevant deadline.

[7] 15 U.S.C. 78o–3(b)(6).

SR–NASD–2004–018 and should be submitted by March 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–4427 Filed 2–27–04; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49301; File No. SR–NASD–2004–030]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Listing and Trading of 97% Protected Notes Linked to the Dow Jones Industrial Average

February 23, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 17, 2004, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to list and trade 97% Protected Notes Linked to the Performance of the Dow Jones Industrial Average (''Notes'') issued by Merrill Lynch & Co., Inc. (''Merrill Lynch'').

### 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

Nasdaq proposes to list and trade the Notes, the return on which is based upon the Dow Jones Industrial Average (''DJIA'') and for protection of 97% of the principal.[3]

Under NASD Rule 4420(f), Nasdaq may approve for listing and trading innovative securities that cannot be readily categorized under traditional listing guidelines.[4] Nasdaq proposes to list the Notes for trading under NASD Rule 4420(f).

*Description of the Notes*

The Notes are a series of senior non-convertible debt securities that will be issued by Merrill Lynch and will not be secured by collateral. The Notes will rank equally with all of Merrill Lynch's other unsecured and unsubordinated debt. The Notes will be issued in denominations of whole units (''Unit''), with each Unit representing a single Note. The original public offering price will be $10 per Unit. The Notes will have a term to maturity of seven years. The Notes will not pay interest and are not subject to redemption either by Merrill Lynch or at the option of any beneficial owner before maturity.[5]

At maturity, a beneficial owner will be entitled to receive a payment on the Notes based on the value of the DJIA, but not less than $9.70 per Unit (''Minimum Redemption Amount''). Thus, the Notes provide investors the opportunity to obtain returns based on the DJIA and they provide for the return of at least 97% of the principal amount per Unit.

Any payment that a beneficial owner may be entitled to receive in addition to the Minimum Redemption Amount (the ''Supplemental Redemption Amount'') will depend entirely on: (a) The relation of the average of the values of the DJIA at the close of the market on five business days shortly before the maturity of the Notes (the ''Ending Value'') and the closing value of the DJIA on the date the Notes are priced for initial sale to the public (the ''Starting Value''), and (b) the Participation Rate, which will be a fixed value determined by Merrill Lynch on the date the Notes are priced for initial sale to the public and disclosed in the final prospectus supplement to be delivered in connection with sales of the Notes. The Participation Rate is expected to be between 1.00 and 1.15.[6]

The Supplemental Redemption Amount per Unit will equal:

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The DJIA is a price-weighted index published by Dow Jones & Company, Inc. A component stock's weight in the DJIA is based on its price per share rather than the total market capitalization of the issuer of that component stock. The DJIA is designed to provide an indication of the composite price performance of 30 common stocks of corporations representing a broad cross-section of U.S. industry. Nasdaq states that the corporations represented in the DJIA tend to be market leaders in their respective industries, and their stocks are typically widely held by individuals and institutional investors. The corporations currently represented in the DJIA are incorporated in the U.S. and its territories, and their stocks are traded on the New York Stock Exchange, Inc. (''NYSE'') and the Nasdaq. The component stocks in the DJIA are selected (and any changes are made) by the editors of the Wall Street Journal (''WSJ''). Changes to the stocks included in the DJIA tend to be made infrequently. Historically, most substitutions have been the result of mergers, but from time to time, changes may be made to achieve what the editors of the WSJ deem to be a more accurate representation of the broad market of the U.S. industry. As of February 12, 2004, the market capitalization of the securities included in the DJIA ranged from a high of $329.3 billion to a low of $8.4 billion. The average monthly trading volume for the last six months, as of the same date, ranged from a high of 24.6 million shares to a low of 3.0 million shares. The value of the DJIA is the sum of the primary market prices of each of the 30 common stocks included in the DJIA, divided by a divisor that is designed to provide a meaningful continuity in the value of the DJIA. In order to prevent certain distortions related to extrinsic factors, the divisor may be adjusted appropriately. The current divisor of the DJIA is published daily in the WSJ and other publications. Other statistics based on the DJIA may be found in a variety of publicly available sources. The value of the index is publicly disseminated every two seconds if the index value changes. Telephone conversation between Alex Kogan, Associate General Counsel, Nasdaq, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission (February 20, 2004).

[4] *See* Securities Exchange Act Release No. 32988 (September 29, 1993), 58 FR 52124 (October 6, 1993), (''1993 Order'').

[5] The actual maturity date will be determined on the day the Notes are priced for initial sale to the public.

[6] The Participation Rate is a fixed percentage expected to be between 100% and 115%. Merrill Lynch will determine the Participation Rate on the day the Notes are priced, and it will be disclosed in the Prospectus and Nasdaq's circular to members, describing this product. The exact value of the Participation Rate will be determined at Merrill Lynch's discretion. Merrill expects but does not guarantee that the Participation Rate will be between 100% and 115% of the interest rate on the Pricing Date. However, in no event, will the investor receive less than 97% of the principal amount per Unit at maturity. Telephone conversation between Alex Kogan, Associate General Counsel, Nasdaq, and Florence E. Harmon, Senior Special Counsel, Division, Commission (February 20, 2004).

$$\left(\$10 \times \left(\frac{\text{Ending Value} - \text{Starting Value}}{\text{Starting Value}}\right) \times \text{Participation Rate}\right),$$

but will not be less than zero.

As a result, the DJIA will need to increase by a percentage between 2.61% and 3.00%, depending upon the actual Participation Rate (and assuming that it Yis, as expected, in the range of 1.00 and 1.15), in order for a beneficial owner to be entitled to receive a total amount at maturity equal to the principal amount. If the value of the DJIA decreases or does not increase sufficiently, a beneficial owner will be entitled to less than the principal amount of $10 per Unit. In no event, however, will a beneficial owner be entitled to less than the Minimum Redemption Amount.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments or any other ownership right or interest in the portfolio or index of securities comprising the DJIA. The Notes are designed for investors who want to participate or gain exposure to the DJIA, while protecting 97% of the principal, and who are willing to forego market interest payments on the Notes during the term of the Notes. The Commission has previously approved the listing of options on, and other securities the performance of which have been linked to or based on, the DJIA.[7]

As of February 12, 2004, the market capitalization of the securities included in the DJIA ranged from a high of $329.3 billion to a low of $8.4 billion. The average monthly trading volume for the last six months, as of the same date, ranged from a high of 24.6 million shares to a low of 3.0 million shares.

**Criteria for Initial and Continued Listing**

The Notes, which will be registered under Section 12 of the Act, will initially be subject to Nasdaq's listing criteria for other securities under NASD Rule 4420(f). Specifically, under NASD Rule 4420(f)(1):

(A) The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million.[8] In the case of an issuer which is unable to satisfy the income criteria set forth in paragraph (a)(1), Nasdaq generally will require the issuer to have the following: (i) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million;

(B) There must be a minimum of 400 holders of the security, provided, however, that if the instrument is traded in $1,000 denominations, there must be a minimum of 100 holders;

(C) For equity securities designated pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units; and

(D) The aggregate market value/principal amount of the security will be at least $4 million.

In addition, Nasdaq notes that Merrill Lynch satisfies the listed marketplace requirement set forth in NASD Rule 4420(f)(2).[9] Lastly, pursuant to NASD Rule 4420(f)(3), prior to the commencement of trading of the Notes, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. In particular, Nasdaq will advise members recommending a transaction in the Notes to have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. In addition, pursuant to NASD Rule 2310(b),[10] prior to the execution of a transaction in the Notes that has been recommended to a non-institutional customer, a member shall make reasonable efforts to obtain information concerning: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member in making recommendations to the customer.

The Notes will be subject to Nasdaq's continued listing criterion for other securities pursuant to NASD Rule 4450(c). Under this criterion, the aggregate market value or principal amount of publicly-held units must be at least $1 million. The Notes also must have at least two registered and active market makers as required by NASD Rule 4310(c)(1). Nasdaq will also consider prohibiting the continued listing of the Notes if Merrill Lynch is not able to meet its obligations on the Notes.

*Rules Applicable to the Trading of the Notes*

Since the Notes will be deemed equity securities for the purpose of NASD Rule 4420(f), the NASD and Nasdaq's existing equity trading rules will apply to the Notes. First, pursuant to NASD Rule 2310, ''Recommendations to Customers (Suitability),'' and NASD IM–2310–2, ''Fair Dealing with Customers,'' NASD members must have reasonable grounds for believing that a recommendation to a customer regarding the purchase, sale or exchange of any security is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.[11] In addition, as previously described, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. Furthermore, the Notes will be subject to the equity margin rules. Lastly, the regular equity trading hours of 9:30 a.m. to 4 p.m. will apply to transactions in the Notes.

Nasdaq represents that NASD's surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, NASD will rely on its current surveillance procedures governing equity securities, and will include additional monitoring on key pricing dates.

[7] *See* Securities Exchange Act Release Nos. 46883 (November 21, 2002), 67 FR 71216 (November 29, 2002) (approving the listing and trading of notes linked to the DJIA); 39525 (January 8, 1998), 63 FR 2438 (January 15, 1998) (approving the listing and trading of DIAMONDS Trust Units, portfolio depositary receipts based on the DJIA); and 39011 (September 3, 1997), 62 FR 47840 (September 11, 1997) (approving the listing and trading of options on the DJIA).

[8] Merrill Lynch satisfies this listing criterion.

[9] NASD Rule 4420(f)(2) requires issuers of securities designated pursuant to this paragraph to be listed on The Nasdaq National Market or the NYSE or be an affiliate of a company listed on The Nasdaq National Market or the NYSE; provided, however, that the provisions of NASD Rule 4450 will be applied to sovereign issuers of ''other'' securities on a case-by-case basis.

[10] Telephone conversation between Alex Kogan, Associate General Counsel, Nasdaq, and Florence E. Harmon, Senior Special Counsel, Division, Commission (February 20, 2004).

[11] NASD Rule 2310(b) requires members to make reasonable efforts to obtain information concerning a customer's financial status, a customer's tax status, the customer's investment objectives, and such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

*Disclosure and Dissemination of Information*

Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes. The procedure for the delivery of a prospectus will be the same as Merrill Lynch's current procedure involving primary offerings. In addition, Nasdaq will issue a circular to NASD members explaining the unique characteristics and risks of the Notes.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[12] in general, and with section 15A(b)(6) of the Act,[13] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Specifically, the proposed rule change will provide investors with another investment vehicle based on the DJIA.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. 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–NASD–2004–030. The 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 hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–NASD–2004–030 and should be submitted by March 22, 2004.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

Nasdaq requests that the Commission approve the proposal, on an accelerated basis to accommodate the timetable of listing the Notes. The Commission notes that it has previously approved the listing of options on, and securities the performance of which have been linked to or based on, the DJIA.[14] The Commission has also previously approved the listing of securities with a structure substantially the same as that of the Notes.[15]

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities association, and, in particular, with the requirements of section 15A(b)(6) of the Act[16] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[17] The Commission believes that the Notes will provide investors with the opportunity to obtain returns based on the DJIA and they provide for the return of at least 97% of the principal amount per Unit. Specifically, as described more fully above, if the value of the DJIA decreases or does not increase sufficiently, a beneficial owner will be entitled to less than the principal amount of $10 per Unit. However, in no event will a beneficial owner be entitled to less than the Minimum Redemption Amount.

The Notes are a series of senior non-convertible debt securities whose price will be derived from and based upon the value of the DJIA. In addition, as discussed more fully above, the Notes do not guarantee the total amount at maturity equal to the principal amount. Thus, if the DJIA has declined at maturity, a beneficial owner may receive may receive 3% less than the original public offering price of the Notes. Because the final rate of return on the Notes is derivatively priced and based upon the performance of the 30 common stocks underlying the DJIA and because the Notes are debt instruments that do not guarantee a total return of principal, and because investors' potential return is limited by the Participation Rate, there are several issues regarding trading of this type of product. For the reasons discussed below, the Commission believes that Nasdaq's proposal adequately addresses the concerns raised by this type of product.

First, the Commission notes that the protections of NASD Rule 4420(f) were designed to address the concerns attendant to the trading of hybrid securities like the Notes.[18] In particular, by imposing the hybrid listing standards, heightened suitability for recommendations,[19] and compliance requirements, noted above, the Commission believes that Nasdaq has adequately addressed the potential problems that could arise from the hybrid nature of the Notes. The Commission notes that Nasdaq will distribute a circular to its membership that provides guidance regarding member firm compliance responsibilities and requirements,

[12] 15 U.S.C. 78*o*–3.

[13] 15 U.S.C. 78*o*–3(6).

[14] *See supra* note 7.

[15] *See* Securities Exchange Act Release Nos. 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of contingent principal protection notes linked to the S&P 500 Index); and 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of partial principal protected notes linked to the S&P 500 Index).

[16] 15 U.S.C. 78*o*–3(b)(6). Pursuant to Section 15A(b)(6) of the Act, the Commission must predicate approval of Nasdaq trading for new derivate products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[17] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] *See* 1993 Order, *supra* note 4.

[19] As discussed above, Nasdaq will advise members recommending a transaction in the Notes to: (1) determine that the transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, the transaction.

including suitability recommendations, and highlights the special risks and characteristics associated with the Notes. Specifically, among other things, the circular will indicate that the Notes do not guarantee a total return of principal at maturity, that the Participation Rate on the Notes is expected to be between 100% and 115% per unit,[20] that the Notes will not pay interest, and that the Notes will provide exposure in the DJIA. The circular will also explain Merrill Lynch's calculation of the Notes' Participation Rate. Distribution of the circular should help to ensure that only customers with an understanding of the risks attendant to the trading of the Notes and who are able to bear the financial risks associated with transactions in the Notes will trade the Notes. In addition, the Commission notes that Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.

Second, the Commission notes that the final rate of return on the Notes depends, in part, upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the NASD's listing standards in NASD Rule 4420(f), which provide that only issuers satisfying substantial asset and equity requirements may issue these types of hybrid securities. In addition, the NASD's hybrid listing standards further require that the Notes have at least $4 million in market value. Financial information regarding Merrill Lynch, in addition to information concerning the issuers of the securities comprising the Index, will be publicly available.[21]

Third, the Notes will be registered under Section 12 of the Act. As noted above, the NASD's and Nasdaq's existing equity trading rules will apply to the Notes, which will be subject to equity margin rules and will trade during the regular equity trading hours of 9:30 a.m. to 4 p.m. NASD Regulation's surveillance procedures for the Notes will be the same as its current surveillance procedures for equity securities, and will include additional monitoring on key pricing dates. Nasdaq represents that its surveillance procedures are adequate to monitor properly the grading of the Notes.

Fourth, the Commission has a systemic concern that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for the hybrid instruments issued by broker-dealers,[22] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

Nasdaq also represents that index value of the DJIA is publicly disseminate every two seconds if the index valuation changes. The Commission finds that such public dissemination of the index valuation will provide investors with timely and useful information concerning the value of their Notes.

Finally, the Commission believes that the listing and trading of the proposed Notes should not unduly impact the market for the securities underlying the DJIA or raise manipulative concerns. In approving the product, the Commission recognizes that the DJIA is a price-weighted index of 30 companies listed on Nasdaq and the NYSE. The Commission notes that the DJIA is determined, composed, and calculated by the editors of the WSJ, and not a broker-dealer. As of February 12, 2004, the market capitalization of the securities included in the DJIA ranged from a high of $329.3 billion to a low of $8.4 billion. The average monthly trading volume for the last six months, as of the same date, ranged from a high of 24.6 million shares to a low of 3.0 million shares. Given the compositions of the stocks underlying the DJIA, the Commission believes that the listing and trading of the Notes that are linked to the DJIA, should not unduly impact the market for the underlying securities comprising the DJIA or raise manipulative concerns. As discussed more fully above, the underlying stocks comprising the DJIA are well-capitalized, highly liquid stocks. Moreover, the issuers of the underlying securities comprising the DJIA, are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. In addition, Nasdaq's surveillance procedures should serve to deter as well as detect any potential manipulation.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. In addition, the Commission notes that it has previously approved the listing and trading of similar Notes and other hybrid securities based on the Index.[23] Accordingly, the Commission believes that there is good cause, consistent with Sections 15A(b)(6) and 19(b)(2) of the Act,[24] to approve the proposal, on an accelerated basis.

## V. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change (SR–NASD–2004–030) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[20] The actual Participation Rate date will be determined on the day the Notes are priced for initial sale to the public and disclosed in the final prospectus supplement.

[21] The companies comprising the DJIA are reporting companies under the Act.

[22] *See, e.g.,* Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (approving the listing and trading of notes issued by Morgan Stanley Dean Witter & Co. whose return is based on the performance of the Nasdaq-100 Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a weighted portfolio of the Healthcare/Biotechnology industry securities).

[23] *See supra* note 15.

[24] 15 U.S.C. 78*o*–3(b)(6) and 78s(b)(2).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR.200.30–3(a)(12).

# SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49294; File No. SR–NSCC–2003–15]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Implement Real-Time Trade Matching for Fixed Income Securities

February 23, 2004.

## I. Introduction

On June 27, 2003, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2003–15 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on January 16, 2004.[2] No comment letters

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 49051 (January 12, 2004), 69 FR 2639.

were received. For the reasons discussed below, the Commission is approving the proposed rule change.

## II. Description

NSCC is seeking to implement a real-time trade matching system (''RTTM'') for certain NSCC-eligible corporate bonds, municipal bonds, and unit investment trusts (''NSCC debt securities'').[3] RTTM was implemented in the fourth quarter of 2000 by the former Government Securities Clearing Corporation (''GSCC''),[4] an NSCC affiliate, for the processing of government securities transactions.[5] It was designed so that the platform could be used for other fixed income securities. Accordingly, it was implemented in 2002 for mortgage-backed securities transactions processed by the former Mortgage Backed Securities Clearing Corporation (''MBSCC'').[6] The purpose of the proposed rule change is to implement RTTM for NSCC debt securities. RTTM will eventually replace NSCC's current Fixed Income Transactions System (''FITS'').[7]

The two areas of NSCC debt securities processing rules that require changes to implement RTTM are those governing (1) inbound submissions to NSCC and (2) NSCC's reporting of information related to such submissions to participants. Specifically, interactive messages and the RTTM Web User Interface (''RTTM Web'') [8] will be added as ways in which participants can submit trade data and subsequent related trade processing instructions.[9] With respect to output issued by NSCC, initially upon implementation end-of-day reports will continue to be produced by FITS whereas intraday reports will be produced by RTTM. In addition, NSCC will make output available for interactive message users and RTTM Web users in those respective media.

The following is a summary of the key proposed rule changes needed to implement RTTM:

(1) References to ''Contract Lists'' will be replaced with references to ''output'' or to ''information made available'' by NSCC to cover the additional types of output that could be generated by RTTM.

(2) References to the names of specific instructions that participants may submit to resolve uncompared trades (*e.g.*, ''Delete of Original Trade Input'') will be replaced with general references to ''appropriate instructions'' to include similar instructions which have different names that may be submitted by interactive message users and RTTM Web users.[10]

(3) With respect to trades submitted for two-sided comparison processing, interactive message users, and RTTM Web users will be able to modify their trades, subject to the timeframes and requirements imposed by NSCC from time-to-time and will also be able to remove an unmatched trade from processing by sending an instruction indicating that they do not agree with the terms of a trade that has been submitted against them.[11] Locked-in trade sources and syndicate managers that are interactive message users or RTTM Web users will also be able to modify their trade submissions.

(4) RTTM will accept cash and next-day transactions for comparison-only processing. RTTM will add an intraday money tolerance pursuant to which NSCC will compare a trade using the seller's contract amount if the contract amounts submitted by the buyer and seller are within a net $2 difference for trades of $1 million or less or $2 per million for trades greater than $1 million.[12] In addition, RTTM will compare a trade if trade data matches in all respects, including contract amounts which have been compared pursuant to the money tolerances, except for trade date. In this case, the earlier of the two trade dates submitted will be used. RTTM will not use the summarization process used to compare trades currently set forth in NSCC Procedure II, Section D.1(e).

(5) NSCC's rules and procedures will continue to provide that the submission of a locked-in trade or a syndicate takedown trade results in a compared trade. However, RTTM will provide members on behalf of whom locked-in and syndicate takedown trades are submitted (''LI/ST contrasides'') the option of submitting matching trade details for their internal reconciliation purposes. In order to facilitate the participants' internal reconciliation process, RTTM has been designed to issue output that indicates a status of ''unmatched'' or ''match request'' upon receipt of a locked-in or syndicate takedown trade. Notwithstanding the output indicating unmatched and match request, the proposed rule changes make clear that the submission of matching trade data by LI/ST contrasides will have no legal effect on the status of locked-in and syndicate takedown trades as compared trades. In addition, notwithstanding that output is made available by NSCC as a result of subsequent processing information submitted by LI/ST contrasides that are not specifically provided for in NSCC's rules and procedures, the proposed rule changes make clear that such submissions will have no legal effect and that RTTM has been designed to accept such submissions for participants' internal reconciliation purposes only.

In addition to the above, NSCC is proposing the following additional technical changes and corrections:

(1) References to the ''Automated Bond System'' (''ABS'') will be deleted because ABS trades submitted by the New York Stock Exchange are locked-in trades and are covered by provisions dealing with locked-in trades. In addition, references to the ''AMEX Order File System'' will be deleted because that system is no longer operational.

(2) Technical corrections will be made throughout the debt when-issued

[3] The proposed rule change does not apply to debt securities transactions that are submitted to NSCC via its correspondent clearing service, by regional exchanges/marketplaces, or through qualified securities depositories as defined in NSCC's rules because such transactions will not be processed by RTTM.

[4] On January 1, 2003, MBS Clearing Corporation (''MBSCC'') was merged into GSCC and GSCC was renamed the Fixed Income Clearing Corporation (''FICC''). The functions previously performed by GSCC are now performed by the Government Securities Division of FICC, and the functions previously performed by MBSCC are now performed by the Mortgage-Backed Securities Division of FICC. Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 [File Nos. SR–GSCC–2002–09 and SR–MBSCC–2002–01].

[5] Securities Exchange Act Release No. 44946 (October 17, 2001), 66 FR 53816 [File No. SR–GSCC–2001–01].

[6] Securities Exchange Act Release No. 45563 (March 14, 2002), 67 FR 13389 [File No. SR–MBSCC–2001–02].

[7] In March 2003, the Commission approved certain modifications to FITS in order that NSCC could prepare its participants for the new RTTM functionality. Securities Exchange Act Release No. 47494 (March 13, 2003), 68 FR 13975 [File No. SR–NSCC–2003–10].

[8] The RTTM Web will replace NSCC's PC Web application for NSCC fixed income securities.

RTTM will be implemented in phases in 2004. Participants will be notified of specific implementation dates by Important Notice. Conversation with Nikki Poulos, Vice President and Associate General Counsel, FICC (January 9, 2004).

[9] Initially, RTTM will support the current batch method of data input.

[10] For example, in the current version of NSCC's procedures there is a reference to an instruction called a ''Delete of Original Trade Input'' that is used by batch participants to delete uncompared trade data they have submitted. Interactive message users and RTTM Web users will use an instruction called a ''Cancel'' to accomplish the same result. Therefore, references to ''Delete of Original Trade Input'' will be replaced by references to ''appropriate instruction'' in order to cover the equivalent interactive message and RTTM Web instruction.

[11] RTTM Web users will also be able to subsequently restore a trade to processing by submitting the requisite instruction.

[12] No changes are being proposed to NSCC's existing end-of-day money tolerance currently contained in Procedure II, Section D.1(a).

section of NSCC's Procedure II, Section E to clarify the submission requirements for a transaction to be treated as a when-issued transaction. It should be noted that due to the systems development schedule, RTTM will not be available with respect to when-issued corporate debt securities transactions upon implementation. NSCC will file a rule change pursuant to Section 19(b)(3) of the Act and will notify members when the service becomes available for these transactions.

(3) Technical corrections will be made to the use of the term ''settlement date'' so that when referenced with upper case letters it means the settlement date as established by NSCC.[13]

## III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[14] The Commission finds that NSCC's proposed rule change is consistent with this requirement because it should permit the accurate clearance and settlement of securities by enabling NSCC to process fixed income trades more efficiently.

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2003–15) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–4432 Filed 2–27–04; 8:45 am]

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[13] For example, if a trade is executed on September 15 with a contract settlement date of September 18 but the trade does not match until September 18 or later, NSCC will provide the Settlement Date.

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49293; File No. SR–PCX–2004–02]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Elimination of the Posting Period for an Application for Reinstatement

February 23, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 28, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. On February 18, 2004, the PCX amended the proposed rule change.[3] The PCX filed the proposal pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 19b-4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend its rules governing the Archipelago Exchange (''ArcxEx''), the equities trading facility of PCXE, by amending PCXE Rule 11.7 to eliminate the 10-day period upon which the Exchange must give notification to all Equity Trading Permit (''ETP'') Holders of an application for reinstatement. The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steven B. Matlin, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 9, 2004 (''Amendment No. 1''). In Amendment No. 1, the PCX provided additional justification for its proposal under section 6(b)(3) of the Act and corrected the title of the proposed rule change. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on February 18, 2004, the date the Exchange filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The PCX provided the Commission with notice of its intent to file the proposed rule change on January 21, 2004. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

### 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 PCX 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

As part of its ongoing efforts to enhance participation on ArcaEx, the PCX recently amended its rules to expedite the timeframe within which new ETP Holders may effect transactions on the Exchange. On September 24, 2003, the Exchange eliminated its requirement that the names of all new ETP applicants must be published for 10 days in the Exchange's Weekly Bulletin.[7] The Exchange notes that although it eliminated the 10-day posting period for new applicants, it maintains the 10-day posting period for applicants seeking reinstatement to the Exchange pursuant to PCXE Rule 11.7. In order to make the rules consistent, the Exchange is proposing to amend PCXE Rule 11.7 to eliminate the 10-day period during which the Exchange must give notification to all ETP Holders of an application for reinstatement.

The Exchange's current rules governing reinstatement procedures for ETP Holders and associated persons of ETP Holders are set forth in PCXE Rule 11.7. Presently, PCXE Rule 11.7 provides that upon sufficient proof of a resolution of the problem or problems responsible for such suspension, the Exchange shall notify in writing all ETP Holders of the application for reinstatement and that a meeting of the PCXE Board will be held not less than 10 business days subsequent to such notice. Historically, membership-based exchanges in which members have ownership and involvement in determining who should be granted access to their facilities used posting

[7] *See* Securities Exchange Act Release No. 34–48532 (September 24, 2003), 68 FR 56369 (September 30, 2003) (SR–PCX–2003–43).

rules to notify members of parties interested in joining the exchange. Consistent with the rationale of eliminating the requirement for new applicants, the Exchange believes that because PCXE is a demutualized organization in which there are no ownership or voting rights, the posting period is not a critical part of the application or reinstatement process. Accordingly, the Exchange proposes to amend PCXE Rule 11.7 to eliminate the 10-day notification period.

The Exchange believes that the elimination of the posting process promotes a more efficient and effective market operation by enabling Exchange access to ETP Holders in a more timely manner. Due to the fact that ETP Holders are not involved in the application approval process, and because the basis for the notification process was to inform individuals who were involved in membership decisions of the status of such applications, the Exchange believes eliminating the posting period is merely an administrative change necessary to streamline the process of enabling ETP Holders access to the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[8] in general, and further the objectives of section 6(b)(5),[9] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest. Furthermore, the Exchange believes the elimination of this requirement is consistent with section 6(b)(3) of the Act.[10] While PCXE is demutualized and therefore does not contain the traditional approval process for its applicants as a membership-based exchange, the fair representation requirements of section 6(b)(3) of the Act[11] would still be satisfied after the proposed rule change is approved through the ETP representative on the PCX Board of Governors.[12]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has been filed by the Exchange as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act[13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14] Consequently, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

Pursuant to Rule 19b–4(f)(6)(iii),[17] a proposed ''non-controversial'' rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The PCX has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.[18]

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest,[19] because it will allow for a more efficient and effective market operation by enabling Exchange access to new ETP Holders in a more timely manner. For this reason, the Commission designates the proposed rule change to be effective and operative immediately.

At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed 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 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–2004–02. 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–2004–02 and should be submitted by March 22, 2004.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(3).

[11] *Id.*

[12] *See* Amendment No. 1, *supra* note 3.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] In its original filing, the PCX inadvertently requested that the Commission also waive the five-day pre-filing period. The PCX had, in fact, already provided the Commission with the appropriate five-day pre-filing notice. Telephone call between Steven B. Matlin, Regulatory Policy, PCX, and David Hsu, Attorney, Division, Commission on February 4, 2004.

[19] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–4431 Filed 2–27–04; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49312; File No. SR–Phlx–2004–13]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Phlx/KBW Bank Index 10-for-1 Split

February 24, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 17, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Phlx has submitted the proposed rule change under section 19(b)(3)(A) of the Exchange Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to reduce the value of its Phlx/KBW Bank Index (''Index'') option (''BKX'') to one-tenth its present value by multiplying by ten the base market divisor used to calculate the Index. In addition, the position and exercise limits applicable to the BKX (currently 24,000 contracts) will be increased to 44,000 contracts. The Index is a cash-settled, capitalization-weighted, narrow-based, A.M. settled index composed of 24 geographically diverse stocks representing national money center banks and leading regional institutions.[5]

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to attract additional liquidity to the BKX. A ten-for-one split, which reduces the value of the Index, should have a positive effect on overall transaction volumes by making the option premiums more attractive for retail investors. By reducing the value of the Index, investors will be able to utilize the BKX as a trading vehicle while extending a smaller outlay of capital. This should attract additional investors and, in turn, create a more active and liquid trading environment.

The Exchange began trading the BKX in 1992.[6] As of January 30, 2004, the Index value was 992.69 and the near-month at-the-money call premium was $16.25 per contract. The Exchange proposes to conduct a ''ten-for-one split'' of the Index, such that the Index value would be reduced to one-tenth of its current value, or 99.27. In order to maintain economic equivalence, the number of BKX contracts will be increased ten-fold, such that for each BKX contract currently held, the holder would receive ten contracts at the reduced value, each with a strike price equal to one-tenth of the original strike price. For example, the holder of one BKX 990 call with a premium of $16.25 will receive ten BKX 99 calls with a premium of $1.63.

In addition, the position and exercise limits applicable to BKX will be increased from 24,000 contracts to 44,000 contracts in order to accommodate the increased number of contracts outstanding. With the exception of the position limit change, this procedure is similar to the one employed respecting equity options where the underlying security is subject to a ten-for-one stock split.[7] The trading symbol will remain BKX.

In conjunction with the proposed split, the Exchange will list strike prices surrounding the new lower Index value, pursuant to Phlx Rule 1101A. The Exchange will announce the effective date by way of an Exchange memorandum to the membership, which will also serve as notice of the strike price and position limit changes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5)[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest by establishing a lower Index value, which should, in turn, facilitate trading in BKX, creating a more liquid trading environment. The Exchange believes that reducing the value of the Index should not raise manipulation concerns and should not cause adverse market impact because the Exchange will continue to employ its surveillance procedures and has proposed an orderly procedure to achieve the Index split, including adequate prior notice to market participants.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Index is currently composed of the following stocks: Citigroup, Inc., Bank of America Corp., Wells Fargo and Co., JP Morgan Chase & Co., Wachovia Corp., Bank One Corporation, U.S. Bancorp, Washington Mutual, Fifth Third Bancorp, FleetBoston Financial Corp., MBNA Corp., National City Corp., Bank of New York Company, SunTrust Banks, Inc., BB&T Corp., PNC Financial Services, Golden West Financial Corp., State Street Corp., Keycorp, Mellon Financial Corporation, SouthTrust Corp., Northern Trust Corp., Comerica, Inc., and Zion Bancorporation.

[6] *See* Securities Exchange Act Release No. 31145 (September 3, 1992), 57 FR 41531 (September 10, 1992) (File No. SR–Phlx–91–27).

[7] Customarily, the position and exercise limits would also be increased ten-fold in a ten-for-one split until the expiration of the then-furthest-out expiration month, after which time the position and exercise limits would revert back to their pre-split levels. *See, e.g.*, Securities Exchange Act Release No. 42814 (May 23, 2000), 65 FR 35152 (June 1, 2000) (File No. SR–Phlx–00–11) (two-for-one split of index value resulted in a doubling of the applicable position and exercise limits). In the present case, the position and exercise limits will not revert back to pre-split levels.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Phlx has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act [10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) is not proposed to become operative for 30 days, or such shorter time as the Commission may designate, and the Phlx provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx has requested that the Commission waive the 30-day operative delay to allow the proposed Index split and corresponding increases in the position and exercise limits applicable to BKX options to occur without delay.

The Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[12] Specifically, the Commission believes that allowing the Phlx to implement the proposed ten-for-one split of the Phlx/KBW Bank Index will facilitate a more liquid trading environment and make the BKX product more accessible to investors. Waiving the 30-day operative delay will permit the Exchange community (specialists, broker-dealers, and retail customers) a full expiration month's notice before the changes specified in the proposal take effect following the March 2004 expiration date, and will assist Phlx in implementing the proposed Index split in an orderly manner. Accordingly, the Commission designates the proposal to be operative immediately.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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–Phlx–2004–13. The 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 hardcopy or by e-mail but not by both methods.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–Phlx–2004–13 and should be submitted by March 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–4507 Filed 2–27–04; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(3)(C).

[14] 17 CFR.200.30–3(a)(12).

## Securities and Exchange Commission

**[Release No. 34–49311; File No. SR–Phlx–2003–72]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change To Reduce Strike Prices for Index Options

February 24, 2004.

On December 4, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Phlx Rule 1101A (''Terms of Option Contracts'') to provide that strike price intervals for index options [3] shall be $2.50 for the three consecutive near-term months, $5 for the fourth month, and $10 for the fifth month. The proposed rule change was published for comment in the **Federal Register** on January 21, 2004.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act [6] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that by reducing strike price intervals to $2.50 strikes for three consecutive near-term months, $5 for the fourth month, and $10 for the fifth month, the proposed rule change should increase the ability to trade an options series that is likely to expire in-the-money. In addition, the Commission notes that the Exchange has represented that there is sufficient

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Index options traded on the Exchange are also known as sector index options.

[4] *See* Securities Exchange Act Release No. 49074 (January 14, 2004), 69 FR 2959.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

Options Price Reporting Authority (''OPRA'') system capacity to accommodate the reduced strike price intervals.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Phlx–2003–72) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–4510 Filed 2–27–04; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Elk Associates Funding Corp., (License No. 02/02–5377); Notice Seeking Exemption Under 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Elk Associates Funding Corp., 747 Third Avenue, New York, New York, 10017, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings Which Constitute Conflicts of Interest, of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2003)). Elk Associates Funding Corp. proposes to provide loans to Across the Town Cab Corp., 811 West Evergreen, Chicago, IL 60622. The financings are contemplated for the purchase of taxi medallions and taxi vehicles.

The financings are brought within the purview of Sec. 107.730(a)(1) of the Regulations because Mr. Charles Goodbar III, Esq., an Associate of Elk Associates Funding Corp., currently owns greater than 10 percent of Across the Town Cab Corp. and therefore, Across the Town Cab Corp. is considered an Associate of Elk Associates Funding Corp. as defined in Sec. 105.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction, within 15 days, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: February 17, 2004.

**Jeffrey D. Pierson,**

*Associate Administrator for Investment.*

[FR Doc. 04–4409 Filed 2–27–04; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #P021]**

### State of Oregon

As a result of the President's major disaster declaration for Public Assistance on February 19, 2004, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Baker, Benton, Clackamas, Clatsop, Columbia, Deschutes, Douglas, Gilliam, Hood River, Jefferson, Lake, Lane, Lincoln, Linn, Malheur, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, and Yamhill Counties in the State of Oregon constitute a disaster area due to damages caused by severe winter storms occurring on December 26, 2003 and continuing through January 14, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 19, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, PO Box 419004, Sacramento, CA 95841–9004.

The interest rates are:

| For physical damage | Percent |
|---|---|
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 2.900 |
| Non-Profit Organizations With Credit Available Elsewhere ..... | 4.875 |

The number assigned to this disaster for physical damage is P02111.

(Catalog of Federal Domestic Assistance Program Nos. 59008).

Dated: February 20, 2004.

**Cheri L. Cannon,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 04–4410 Filed 2–27–04; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Public Notice 4634]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''The Cubist Paintings of Diego Rivera Memory, Politics, Place''

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition ''The Cubist Paintings of Diego Rivera Memory, Politics, Place,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about April 4, 2004, to on or about July 25, 2004, and at possible additional venues yet to be determined, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: February 19, 2004.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 04–4477 Filed 2–27–04; 8:45 am]

BILLING CODE 4710–08–P

## DEPARTMENT OF STATE

**[Public Notice 4633 ]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Japan and Paris: Impressionism, Postimpressionism and the Modern Era''

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition ''Japan and Paris: Impressionism, Postimpressionism and the Modern Era,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Honolulu Academy of Arts, Honolulu, Hawaii, from on or about April 7, 2004, to on or about June 6, 2004, and at possible additional venues yet to be determined, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Wolodymyr R. Sulzynsky, the Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–5078). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: February 20, 2004.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 04–4476 Filed 2–27–04; 8:45 am]

BILLING CODE 4710–08–P

## DEPARTMENT OF STATE

**[Public Notice 4609]**

### Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Tuesday, March 23, 2004, in Room 2415 of the United States Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the 51st session of the International Maritime Organization (IMO) Marine Environment Protection Committee (MEPC) to be held at IMO Headquarters in London, England from March 29 to April 2, 2004.

The primary matters to be considered include:

- Harmful aquatic organisms in ballast water;
- Recycling of ships;
- Prevention of air pollution from ships;
- Consideration and adoption of amendments to mandatory instruments;
- Harmful anti-fouling systems for ships;
- Implementation of the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) Convention and the OPRC-Hazardous Noxious Substance Protocol and relevant conference resolutions;
- Identification and protection of Special Areas and Particular Sensitive Sea Areas;
- Inadequacy of reception facilities;
- Promotion of implementation and enforcement of the International Convention on the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) and related instruments;
- Technical co-operation program;
- Interpretation and amendments of MARPOL 73/78 and related instruments;
- Future role of formal safety assessment and human element issues; and
- Work program of the Committee and subsidiary bodies.

Please note that hard copies of documents associated MEPC 51 will not be available at this meeting. Documents will be available in Adobe Acrobat format on CD–ROM. To requests documents please write to the address provided below, or request documents via the following Internet link: *http://www.uscg.mil/hq/g-m/mso/mso4/mepc.html.*

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Lieutenant Junior Grade Mary Stewart, Commandant (G–MSO–4), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 1601, Washington, DC 20593–0001 or by calling (202) 267–2079.

Dated: February 19, 2004.

**Steven Poulin,**

*Executive Secretary, Shipping Coordinating Committee, U.S. Department of State.*

[FR Doc. 04–4478 Filed 2–27–04; 8:45 am]

BILLING CODE 4710–07–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

February 20, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Action of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written commens should be recieved on or before March 31, 2004 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0755.

*Regulation Project Number:* LR–53–83 Final.

*Type of Review:* Extension.

*Title:* Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations.

*Description:* The election described in the attached justification converted an annual election to an election effective until revoked. The computational information required is necessary to assure that the U.S. shareholder correctly reports any shipping income of its controlled foreign corporations which is taxable to that shareholder.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 100.

*Estimated Burden Hours Respondent:* 2 hours, 3 minutes.

*Frequency of Response:* Other (nonrecurring).

*Estimated Total Reporting Burden:* 205 hours.

*OMB Number:* 1545–0768.

*Regulation Project Number:* EE–178–78 Final (TD 7898).

*Type of Review:* Extension.

*Title:* Employees' Qualified Educational Assistance Programs.

*Description:* Respondents include employers who maintain education assistance programs for their employees. Information verifies that programs are qualified and that employees may exclude educational assistance from their gross incomes.

*Respondents:* business or other for-profit, Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 5,200.

*Estimated Burden Hours Respondent/Recordkeeper:* 7 minutes.

*Frequency of Response:* Annual.

*Estimated Total Reporting/Recordkeeping Burden:* 615 hours.

*OMB Number:* 1545–1555.

*Regulation Project Number:* REG–115975–97 Final.

*Type of Review:* Extension.

*Title:* General rules for Making and Maintaining Qualified Electing Fund Elections.

*Description:* The regulations provide rules for making section 1295 elections and satisfying annual reporting requirements for such elections, revoking section 1295 elections, and making retroactive section 1295 elections.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions.

*Estimated Number of Respondents/Recordkeepers:* 1,290.

*Estimated Burden Hours Respondent/Recordkeeper:* 29 minutes.

*Frequency of Response:* Other (one-time only).

*Estimated Total Reporting/Recordkeeping Burden:* 623 hours.

*Clearance Officer:* Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Treasury PRA Clearance Officer.*

[FR Doc. 04–4452 Filed 2–27–04; 8:45 am]

**BILLING CODE 4830–01–M**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

February 23, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before March 31, 2004 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0044.

*Form Number:* IRS Form 973.

*Type of Review:* Extension.

*Title:* Corporation Claim for Deduction for Consent Dividends.

*Description:* Corporations file Form 973 to claim a deduction for dividends paid. If shareholders consent and IRS approves, the corporation may claim a deduction for dividends paid, which reduces the corporation's tax liability. IRS uses Form 973 to determine if shareholders have included the dividend in gross income.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 500.

*Estimated Burden Hours Respondent/Recordkeeper:*

Recordkeeping—3 hr., 21 min.
Learning about the law or the form—30 min.
Preparing and sending the form to the IRS—34 min.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 2,210 hours.

*OMB Number:* 1545–0045.

*Form Number:* IRS Form 976.

*Type of Review:* Extension.

*Title:* Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.

*Description:* Form 976 is filed by corporations that wish to claim a deficiency dividend deduction. The deduction allows the corporation to eliminate all or a portion of a tax deficiency. The IRS uses Form 976 to determine if shareholders have included amounts in gross income.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 500.

*Estimated Burden Hours Respondent/Recordkeeper:*

Recordkeeping—5 hr., 44 min.
Learning about the law or the form—53 min.
Preparing, copying, assembling, and sending the form to the IRS—1 hr., 1 min.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 3,830 hours.

*OMB Number:* 1545–0073.

*Form Number:* IRS Form 1310.

*Type of Review:* Extension.

*Title:* Statement of Person Claiming Refund Due a Deceased Taxpayer.

*Description:* Form 1310 is used by a claimant to secure payment of a refund on behalf of a deceased taxpayer. The information enables IRS to send the refund to the correct person.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 7,500.

*Estimated Burden Hours Respondent/Recordkeeper:*

Recordkeeping—6 min.
Learning about the law or the form—3 min.
Preparing the form—15 min.
Copying, assembling, and sending the form to the IRS—16 min.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 5,250 hours.

*OMB Number:* 1545–0746.

*Regulation Project Number:* LR–100–78 Final.

*Type of Review:* Extension.

*Title:* Creditability of Foreign Taxes.

*Description:* The information needed is a statement by the taxpayer that it has elected to apply the safe harbor formula of section 1.901–2A(e) of the foreign tax credit regulations. This statement is necessary in order that the IRS may properly determine the taxpayer's tax liability.

*Respondents:* Business or other for-profit, Individuals or households, Farms.

*Estimated Number of Respondents:* 110.

*Estimated Burden Hours Respondent:* 3 hours.

*Frequency of Response:* Other (non-recurring).

*Estimated Total Reporting Burden:* 37 hours.

*OMB Number:* 1545–1455.

*Regulation Project Number:* PS–80–93 Final.

*Type of Review:* Extension.

*Title:* Rules for Certain Rental Real Estate Activities.

*Description:* The regulation provides rules relating to the treatment of rental real estate activities of certain taxpayers under the passive activity loss and credit limitations of Internal Revenue Code section 469.

*Respondents:* Individuals or households, Business or other for-profit.

*Estimated Number of Respondents:* 20,100.

*Estimated Burden Hours Respondent:* 9 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 3,015 hours.

Clearance Officer: Glenn P. Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Treasury PRA Clearance Officer.*

[FR Doc. 04–4453 Filed 2–27–04; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee Will Be Conducted (Via Teleconference)

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Friday, March 19, 2004, from 1 p.m. e.s.t. to 2 p.m. e.s.t.

**FOR FURTHER INFORMATION CONTACT:** Inez E. De Jesus at 1–888–912–1227, or 954–423–7977

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Friday, March 19, 2004, from 1 p.m. e.s.t. to 2 p.m. e.s.t. via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

*The agenda will include the following:* Various IRS issues.

Dated: February 25, 2004.

**Bernard Coston,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 04–4486 Filed 2–27–04; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### Adjustments for Service-Connected Benefits

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** As required by the Veterans' Compensation Cost-of-Living Adjustment Act of 2003, Pub. L. 108–147, the Department of Veterans Affairs (VA) is hereby giving notice of adjustments in certain benefit rates. These adjustments affect the compensation and dependency and indemnity compensation (DIC) programs.

**DATES:** These adjustments are effective December 1, 2003, the date provided by Pub. L. 108–147.

**FOR FURTHER INFORMATION CONTACT:** Paul Trowbridge, Consultant, Compensation and Pension Service (212B), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7218.

**SUPPLEMENTARY INFORMATION:** Section 2 of Pub. L. 108–147 provides for an increase in each of the rates in sections 1114, 1115(1), 1162, 1311, 1313, and 1314 of title 38, United States Code. VA is required to increase these benefit rates by the same percentage as increases in the benefit amounts payable under title II of the Social Security Act. In computing increased rates in the cited title 38 sections, fractions of a dollar are rounded down to the nearest dollar. The increased rates are required to be published in the **Federal Register**.

The Social Security Administration has announced that there will be a 2.1 percent cost-of-living increase in Social Security benefits. Therefore, applying the same percentage, the following rates for VA compensation and DIC programs will be effective December 1, 2003:

DISABILITY COMPENSATION (38 U.S.C. 1114)

| Disability evaluation (percent) | Monthly rate |
|---|---|
| 10 | $106 |
| 20 | 205 |
| 30 | 316 |
| 40 | 454 |
| 50 | 646 |
| 60 | 817 |
| 70 | 1,029 |
| 80 | 1,195 |
| 90 | 1,344 |
| 100 | 2,239 |

| (38 U.S.C. 1114(k) through (s)) | Monthly rate |
|---|---|
| 38 U.S.C. 1114(k) | $82; $2,785; $82; $3,907 |
| 38 U.S.C. 1114(l) | $2,785 |
| 38 U.S.C. 1114(m) | $3,073 |
| 38 U.S.C. 1114(n) | $3,496 |
| 38 U.S.C. 1114(o) | $3,907 |
| 38 U.S.C. 1114(p) | $3,907 |
| 38 U.S.C. 1114(r) | $1,677; $2,497 |
| 38 U.S.C. 1114(s) | $2,506 |

ADDITIONAL COMPENSATION FOR DEPENDENTS (38 U.S.C. 1115(1)

| 38 U.S.C. 1115(1) | Monthly rate |
|---|---|
| 38 U.S.C. 1115(1)(A) | $127 |
| 38 U.S.C. 1115(1)(B) | $219; $65 |
| 38 U.S.C. 1115(1)(C) | $86; $65 |
| 38 U.S.C. 1115(1)(D) | $103 |
| 38 U.S.C. 1115(1)(E) | $241 |
| 38 U.S.C. 1115(1)(F) | $202 |

CLOTHING ALLOWANCE (38 U.S.C. 1162)—$600 PER YEAR DIC TO A SURVIVING SPOUSE (38 U.S.C. 1311)

| Pay grade | Monthly rate |
|---|---|
| E–1 | $967 |
| E–2 | 967 |
| E–3 | 967 |
| E–4 | 967 |
| E–5 | 967 |
| E–6 | 967 |
| E–7 | 1,000 |
| E–8 | 1,056 |
| E–9[1] | 1,102 |
| W–1 | 1,022 |
| W–2 | 1,063 |
| W–3 | 1,094 |

CLOTHING ALLOWANCE (38 U.S.C. 1162)—$600 PER YEAR DIC TO A SURVIVING SPOUSE (38 U.S.C. 1311)—Continued

| Pay grade | Monthly rate |
|---|---|
| W–4 | 1,157 |
| O–1 | 1,022 |
| O–2 | 1,056 |
| O–3 | 1,130 |
| O–4 | 1,195 |
| O–5 | 1,316 |
| O–6 | 1,483 |
| O–7 | 1,602 |
| O–8 | 1,758 |
| O–9 | 1,881 |
| O–10[2] | 2,063 |

[1] If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, the surviving spouse's monthly rate is $1,189.

[2] If the veteran served as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, the surviving spouse's monthly rate is $2,213.

DIC TO A SURVIVING SPOUSE (38 U.S.C. 1311(A) THROUGH (D)

| 38 U.S.C. 1311(a) through (d) | Monthly rate |
|---|---|
| 38 U.S.C. 1311(a)(1) | $967 |
| 38 U.S.C. 1311(a)(2) | 208 |
| 38 U.S.C. 1311(b) | 241 |
| 38 U.S.C. 1311(c) | 241 |
| 38 U.S.C. 1311(d) | 115 |

DIC TO CHILDREN (38 U.S.C. 1313)

| 38 U.S.C. 1313 | Monthly rate |
|---|---|
| 38 U.S.C. 1313(a)(1) | $410 |
| 38 U.S.C. 1313(a)(2) | $590 |
| 38 U.S.C. 1313(a)(3) | $767 |
| 38 U.S.C. 1313(a)(4) | $767; $148 |

SUPPLEMENTAL DIC TO CHILDREN (38 U.S.C. 1314)

| 38 U.S.C. 1314 | Monthly rate |
|---|---|
| 38 U.S.C. 1314(a) | $241 |
| 38 U.S.C. 1314(b) | 410 |
| 38 U.S.C. 1314(c) | 205 |

Dated: February 20, 2004.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

[FR Doc. 04–4484 Filed 2–27–04; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### Office of Research and Development

### Government Owned Invention Available for Licensing

**AGENCY:** Office of Research and Development.

**ACTION:** Notice of government owned invention available for licensing.

**SUMMARY:** The invention listed below is owned by the U.S. government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Technical and licensing information on the invention may be obtained by writing to: Robert W. Potts, Department of Veterans Affairs, Director Technology Transfer Program, Office of Research and Development (122TT) , 810 Vermont Avenue, NW., Washington, DC 20420; fax: 202–254–0473; e-mail at *bob.potts@hq.med.va.gov.* Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** The invention available for licensing is: International Patent Application No. PCT/US03/27163 ''Variable Compliance Joystick with Compensation Algorithms.''

Dated: February 23, 2004.

**Anthony J. Principi,**

*Secretary, Department of Veterans Affairs.*

[FR Doc. 04–4485 Filed 2–27–04; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
March 1, 2004

# Part II

# Department of Transportation

## Federal Motor Carrier Safety Administration

## National Environmental Policy Act Implementing Procedures; Notice

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2002–14095]**

### National Environmental Policy Act Implementing Procedures

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final Order.

**SUMMARY:** The FMCSA is publishing its final Order on agency procedures for implementing the National Environmental Policy Act of 1969 (NEPA). Now that the FMCSA is a separate agency within the Department of Transportation (Department or DOT), it has developed its own environmental procedures for complying with NEPA, other pertinent environmental regulations, Executive Orders, statutes, and laws to ensure that it actively incorporates environmental considerations into informed decisionmaking.

**EFFECTIVE DATE:** March 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Miller, Office of Policy, Plans, and Regulations (MC–PR), (202) 366–6408, or Mrs. Elaine Walls, Office of the Chief Counsel (MC–CC), (202) 366–0834, FMCSA, U.S. Department of Transportation, 400 Seventh St, SW., Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

### Background

The FMCSA was established within the Department on January 1, 2000, pursuant to the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, 113 Stat. 1748 (December 9, 1999)). The FMCSA's primary mission is to prevent commercial motor vehicle-related fatalities and injuries. FMCSA activities contribute to ensuring safety in motor carrier operations through strong enforcement of safety regulations; targeting high-risk carriers and commercial motor vehicle drivers; improving safety information systems and commercial motor vehicle technologies; strengthening commercial motor vehicle equipment and operating standards; and increasing safety awareness. To accomplish these activities, the FMCSA works with Federal, State, and local enforcement agencies, the motor carrier industry, labor organizations, safety interest groups, and others.

The majority of the functions FMCSA inherited from the FHWA are safety-related functions that were transferred from the former Interstate Commerce Commission (ICC) to the Department when it was established in 1966 (49 U.S.C. 102 and 102 note). The FMCSA also inherited additional functions relating to registering motor carriers operating in interstate and foreign commerce that had been carried out by the ICC before 1996 and by the FHWA from 1996–1999.

When the FHWA assumed authority over motor carrier licensing in 1996, it did not adopt the ICC's environmental regulations because the FHWA had its own. The FHWA's environmental impact regulations at 23 CFR part 771, which are primarily geared to highway and urban mass transportation construction projects, contain a categorical exclusion (CE) for the promulgation of rules, regulations, and directives (23 CFR 771.117(c)(17)).

### Draft Order

On September 26, 2003, FMCSA published its proposal to implement environmental procedures for carrying out its responsibilities under NEPA (68 FR 55713). We also solicited public comments on the draft procedures.

Our NEPA Order establishes a process for assessing environmental impacts, and for the preparation of Environmental Assessments (EAs), Findings of No Significant Impacts (FONSIs), and Environmental Impact Statements (EISs) for FMCSA actions. We will use this Order in conjunction with NEPA, the Council on Environmental Quality (CEQ) regulations at 40 CFR parts 1500–1508, DOT Order 5610.1C, as amended, and other pertinent environmental regulations, Executive Orders, statutes, and laws for consideration of environmental impacts of FMCSA actions. We will also use the Order, to the fullest extent possible, to conduct analyses and consultations required by the environmental authorities noted above in conjunction with NEPA implementation to reduce redundancy, paperwork, time, and cost.

This FMCSA Order supplements DOT Order 5610.1C, as amended. It is important that persons using the FMCSA Order refer to those sections of the DOT Order 5610.1C, as amended, and the CEQ regulations, which are cross-referenced in this document. Reference to the DOT Order will provide a wider perspective on the issues, as well as provide details that may prove applicable to certain projects and actions.

The FMCSA Order will apply to all our actions, including the decision to conduct research activities, promulgate regulations, award grants, and conduct major acquisitions.

### Comments to the Draft Order

We received two sets of comments to our draft Order—comments from the Environmental Protection Agency (EPA) and comments signed by Public Citizen, International Brotherhood of Teamsters, California Labor Federation, and the Environmental Law Foundation. This latter comment will be referred to as the Public Citizen comment.

Public Citizen raised six issues concerning the draft Order's Appendix 14, Air Quality Analysis.

First, Public Citizen says Appendix 14 appears to be outdated. We have revised and updated Appendix 14, Air Quality Analysis, to reflect current EPA regulations and guidance as suggested by Public Citizen.

Second, Public Citizen stated that ''rulemaking'' is on the list of CEs with respect to general conformity determinations. Public Citizen states that under the Ninth Circuit holding in *Public Citizen* v. *DOT,* 316 F.3d 1002, 1030–31 (9th Cir. 2003), while the process of developing and issuing regulations is exempt, the outcome of the rulemaking process—the substantive result of the rule's implementation—is not exempt. In that case, the court held that FMCSA was required to prepare a conformity analysis for rules that it had promulgated. Although the Supreme Court has granted the government's petition for writ of certiorari in the case, Public Citizen notes that FMCSA did not ask the Supreme Court to review the rulemaking holding. Public Citizen believes FMCSA should clarify its guidance to include and explain the application of a requirement for conformity determinations in the context of this holding and its planned practices.

Under the regulations promulgated by the EPA, we understand ''rulemaking'' is not subject to the Clean Air Act (CAA) general conformity review requirement. See 40 CFR 93.153(c)(2)(iii). Appendix 14, therefore, lists rulemaking as an exempt activity (and not, as stated by Public Citizen, as a ''categorical exclusion''). Moreover, EPA regulations establish threshold emission amounts for various pollutants, below which no conformity review is required (49 CFR 93.153(b)). The Ninth Circuit Court found that FMCSA did not properly analyze whether Presidential rescission of the moratorium against cross-border truck operations would exceed that threshold. The United States has sought Supreme Court review of that determination, as well as the Ninth Circuit's conclusion that the CAA general conformity review requirements apply to FMCSA rules implementing a

presidential foreign policy decision. The Supreme Court has agreed to review the determination.

In updating Appendix 14 of the Order, we have restated the EPA regulations regarding applicable exemptions to the general conformity review requirement. In the future, we will analyze the facts of a proposed action on a case-by-case basis and rely on all applicable laws, guidance, and rulings from the Courts and EPA in applying the EPA regulations. Our revised guidance in the Order conforms to EPA's general conformity rule and we will consider it to be our continuing responsibility to conduct general conformity review where warranted.

Third, Public Citizen states that the comparison for a conformity analysis is between the existing State Implementation Plan (SIP) (or in the absence of an SIP, a Federal Implementation Plan (FIP)) and the amended SIP (or FIP) to incorporate the Federal action.

We have revised Appendix 14 to document the procedures for determining conformity, as outlined in EPA guidance and regulations.

Fourth, Public Citizen stated its belief that the last factor in the list of factors of the draft Order is inconsistent with the agency's conformity responsibilities. The last factor was ''the estimate(s) in tons per year for the year when the maximum emissions are expected to occur.''

We have modified Appendix 14 so that when a conformity determination is necessary, emissions estimates will be developed in accordance with 40 CFR 93.159(d)(2).

Fifth, Public Citizen stated that it believes the first full paragraph on page 102 of the draft Order is inconsistent with the agency's conformity obligations insofar as it limits the analysis of mitigation measures or offsets necessary to achieve conformity to '''the extent known.'' Public Citizen argues ''the agency is required to identify mitigation measures or offsets and to ensure that they are incorporated into legally enforceable requirements in the relevant SIPS (or FIPs). Only after this has been accomplished may the agency action proceed consistently with the conformity requirements of the Clean Air Act.''

We have revised the procedures for developing conformity determinations, and offsets or mitigation, to also reflect current EPA guidance and regulations.

Finally, Public Citizen stated its belief that throughout Appendix 14, the discussion was limited erroneously to carbon monoxide (CO). It argues that in addition to other criteria pollutants, analysis of toxics should be included.

Public Citizen believes it is incorrect for the agency to assert that ozone ''is not a concern at the Federal action level.'' It also asserts that FMCSA's analysis must include ozone, particulate matter, and all other relevant impacts.

We have revised Appendix 14 so that conformity analyses will be shown for all National Ambient Air Quality Standards criteria pollutants. The discussion should not be limited to carbon monoxide only.

*EPA Comments*

In reference to Order's Planning and Early Coordination scoping section (Chapter 2 section C.1.), EPA stated that the wording for affected parties published in the draft Order ''may be misconstrued as limiting invitations to participate in the scoping process to governmental bodies only.'' EPA believes the wording ''known affected private parties amongst the invitees'' is more appropriate.

We have adopted EPA's suggestions concerning the list of affected parties who must be notified in writing and invited to participate in the NEPA process for all FMCSA actions not categorically excluded. We have changed the final Order to include the phrase ''known affected private parties amongst the invitees.''

In reference to the Order's Environmental Documentation section, EPA believes the wording is awkward. EPA suggested alternative wording for identifying extraordinary circumstances. FMCSA has changed the Order to include EPA's suggestion to describe extraordinary circumstances that preclude the use of a CE. We have also changed item 3.a.(2) to read ''Has a reasonable likelihood of promoting controversy regarding the potential for significant environmental effects (direct, indirect, and cumulative).''

In reference to the Order's Appendix 2, entitled ''Categorical Exclusions,'' EPA requested clarification of proposed category section 4.f., which reads ''Establishment of Global Positioning System (GPS), intelligent transportation systems (ITS), or essentially similar systems that use overlay of existing procedures.'' Second, EPA states that section 4.g., which reads ''Procedural actions requested by users on a test basis to determine the effectiveness of new technology and measurement of possible impacts on the environment'' is unclear and would benefit from further clarification.

In response to EPA's request for clarification here, FMCSA has decided to remove the two CEs in sections 4.f. and 4.g. Our justification for use of these two CEs was based on the approval of similar category of actions or activity by another agency. Because we have no additional experience, specifically FONSIs, to prove these actions meet the definition of a CE, we are, therefore, removing them from our final Order.

**Other Issues**

FMCSA has made a number of changes to section D of chapter 1 of the Order, which explains the applicability of the Order. In paragraph 1, we have added language from § 1508.18 of CEQ's NEPA regulations. This language supplements and clarifies language from § 1508.18 that appeared in the proposed Order, and explains that the Order does not apply to actions that the agency has no discretion to withhold or condition if those actions are in accordance with specific statutory criteria and the agency lacks control and responsibility over the effects of the actions. This language is modeled after similar language in NEPA regulations of other DOT administrations. (Changes have been made to sections B.1. (Step 2), and D.1. of Chapter 2, and to Appendix 17 to conform to this addition to the Order.) Finally, FMCSA has deleted the text citing rules of practice for certain agency proceedings as examples of enforcement actions that are not covered by the Order, because these rules of practice are covered more appropriately by a Categorical Exclusion.

FMCSA has changed paragraph 2 of section D of Chapter 1 to reflect the original intent of the agency in proposing this paragraph—to make it clear that the scope of the Order's coverage includes applications to FMCSA for grants and other similar actions, such as applications submitted to the agency by States pursuant to the Motor Carrier Safety Assistance Program. The broader language in the proposed Order, which was based on language from other agencies' NEPA Orders, went beyond the intended scope of the paragraph and included language that could have been construed as covering FMCSA actions to which the Order does not apply.

Any other edits FMCSA made to the Order were minor in nature and merely done to address changes in program roles and responsibilities, correct typographical errors, more fully define existing terms and concepts, and clarify the extent of the agency's jurisdictional parameters in certain subject matter areas. Overall, we believe that our final Order will ensure that FMCSA actively incorporates environmental considerations into its decisionmaking process.

**Implementation of FMCSA's NEPA Order**

It is necessary for FMCSA to issue implementing procedures for carrying out its responsibilities under NEPA, 42 U.S.C. 4321, *et seq.*, as amended. You may access an electronic version of the Order including all appendices at *http://dms.dot.gov* by referencing the docket number at the heading of this document. To request a copy of the Order by mail, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT.**

**Authority:** National Environmental Policy Act of 1969, as amended [42 U.S.C. 4321 *et. seq.*]; the Council on Environmental Quality Regulations at 40 CFR parts 1500–1508; DOT Order 5610.1C, as amended on July 13, 1982 and July 30, 1985; and 49 CFR 1.73.

Issued on: February 24, 2004.

**Warren E. Hoemann,**

*Deputy Administrator.*

**FMCSA Order 5610.1**

**U.S. Department of Transportation**

*Federal Motor Carrier Safety Administration*

*Subject:* National Environmental Policy Act Implementing Procedures and Policy For Considering Environmental Impacts.

*Classification Code:* 5610.1.

*Date:* March 1, 2004.

*Office of Primary Interest:* MC–PR.

1. *Purpose.* This order establishes policy and prescribes responsibilities and procedures for the Federal Motor Carrier Safety Administration's (FMCSA's) implementation of the following:

(a) National Environmental Policy Act (NEPA), 42 U. S. C. 4321, *et seq.*, as amended.

(b) 40 CFR parts 1500—1508, Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, as amended.

(c) DOT Order 5610.1C, Procedures for Considering Environmental Impacts, as amended on July 13, 1982 and July 30, 1985.

(d) Executive Order 11514, ''Protection and Enhancement of Environmental Quality,'' March 5, 1970, as amended by Executive Order 11991, May 24, 1977.

2. *Action.* The Offices of Administration; Research, Technology, and Information Management; Policy and Program Development; Enforcement and Program Delivery; Chief Counsel; Civil Rights; Field Operations Service Centers; and Field Division Offices must ensure that the provisions of this Order are followed in the consideration of environmental effects of Federal Motor Carrier Safety Administration actions. Program managers must submit draft program guidance for implementing this Order to the Administrator for review and concurrence to ensure consistency with this Order.

3. *Changes.* Recommendations and amendments for improvement of these Federal Motor Carrier Safety Administration NEPA implementing procedures must be submitted to the Regulatory Development Division, MC-PRR, Office of Policy Plans and Regulation.

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**Chapter 1. Introduction**

*A. Purpose*

This Order provides information pertaining to environmental planning and establishes policy and procedures to ensure timely environmental review for appropriate Federal Motor Carrier Safety Administration (FMCSA) actions. Furthermore, this Order addresses the policies and responsibilities for FMCSA's implementation of the National Environmental Policy Act of 1969 (NEPA), as well as other pertinent environmental regulations, Executive Orders, statutes, and laws.

*B. FMCSA Policies*

1. NEPA establishes broad Federal policies and goals for the protection of the environment and provides a flexible framework for balancing the need for environmental quality with other essential societal functions, including national defense. The FMCSA is expected to manage those aspects of the environment affected by FMCSA activities, comprehensively integrating environmental policy objectives into planning and decisionmaking. Meaningful integration of environmental considerations is accomplished by efficiently and effectively informing FMCSA planners and decisionmakers. The FMCSA will use the flexibility of NEPA to ensure implementation in the most cost-efficient and effective manner. The depth of analyses and length of documents will be proportionate to the nature and scope of the action, the complexity and level of anticipated effects on important environmental resources, and the capacity of FMCSA decisions to influence those effects in a productive, meaningful way from the standpoint of environmental quality.

2. The FMCSA will actively incorporate environmental considerations into informed decisionmaking, in a manner consistent with NEPA. Communication, cooperation, and, as appropriate, collaboration between government and extra-government entities is an integral part of the NEPA process. FMCSA personnel engaged in the NEPA process as participants, preparers, reviewers, and approvers will balance environmental concerns with mission requirements, technical requirements, economic feasibility, and long-term sustainability of FMCSA operations. While carrying out its missions, the FMCSA will also encourage the wise stewardship of natural and cultural resources for future generations. Decisionmakers will be cognizant of the impacts of their decisions on cultural resources, soils, forests, rangelands, water and air quality, fish and wildlife, and other natural resources under their stewardship, and, as appropriate, in the context of regional ecosystems.

3. Environmental analyses will reflect appropriate consideration of non-statutory environmental issues identified by Federal and DOT orders, directives, and policy guidance. Potential issues will be discussed and critically evaluated during scoping and other public involvement processes.

4. The FMCSA will ensure NEPA compliance and will provide for levels and kinds of public involvement appropriate to the type of action and its likely effects, taking into account the recommendations as set forth in the CEQ regulations regarding public involvement.

a. The FMCSA will provide public notice of NEPA-related public meetings and hearings in the following manner:

(1) By publishing notice in the **Federal Register**, in local newspapers, newsletters, or by direct mailings of the availability of environmental documents so as to inform those persons and agencies who may be interested or affected;

(2) By posting notice on- and off-site in the area where the action is to be located; and

(3) By requesting comments on environmental documents to secure views either on the adequacy of the FMCSA action or the merits of the alternatives discussed or both. (See 40 CFR 1506.6).

b. When any other related authority provides specific procedures for public involvement, the responsible FMCSA official shall ensure that such procedures are addressed in the NEPA review process.

c. The FMCSA will involve the public in its decisionmaking and will have as its purpose the full disclosure of FMCSA actions and alternatives to the public and giving the public a full opportunity to influence FMCSA decisions.

5. The FMCSA will continually take steps to ensure that the NEPA program is effective and efficient. Effectiveness of the program will be determined by the degree to which environmental considerations are included on a par with the agency mission in project planning and decisionmaking. Efficiency will be promoted through the following:

a. Awareness and involvement of the decisionmaker and participants in the NEPA process.

b. NEPA technical and awareness training, as appropriate, at all decision levels of the FMCSA.

c. Where appropriate, the use of programmatic analyses and tiering to ensure consideration at the appropriate decision levels, elimination of repetitive discussion, consideration of cumulative effects, and focus on issues that are important and appropriate for discussion at each level.

d. Use of the scoping and public involvement processes to limit the analysis of issues to those which are of interest to the public and/or important to the decision.

e. Elimination of needless paperwork by focusing documents on the major environmental issues affecting those decisions.

f. Integration of the NEPA process into all aspects of FMCSA planning at an early stage, so as to prevent disruption in the decisionmaking process; ensuring that NEPA personnel function as team members, supporting the FMCSA planning process and sound FMCSA decisionmaking. All NEPA analyses will be prepared by an interdisciplinary team.

g. Partnering or coordinating with Federal, State, tribal and local governmental agencies, organizations, and individuals whose specialized expertise will improve the NEPA process.

h. Oversight of the NEPA program to ensure continuous process improvement.

i. Clear and concise communication of data, documentation, and information relevant to NEPA analysis and documentation.

6. The worldwide, transboundary, and long-range character of environmental problems will be recognized, and, where consistent with national security requirements and U.S. foreign policy, appropriate support will be given to initiatives, resolutions, and programs designed to maximize international cooperation in protecting the quality of the world human and natural environment. Consideration of the environment for FMCSA decisions involving activities outside the United States will be accomplished pursuant to Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions, 4 January 1979), the DOT Order, and the requirements of this Order. An environmental planning and evaluation process will be incorporated into FMCSA actions that may substantially affect the global commons, environments of other nations, or any protected natural or ecological resources of global importance.

*C. Scope*

1. The Federal Motor Carrier Safety Administration's primary mission is to

prevent commercial motor vehicle-related fatalities and injuries. Administration activities contribute to ensuring safety in motor carrier operations through rigorous enforcement of safety regulations, targeting high-risk carriers and commercial motor vehicle (CMV) drivers; improving safety information systems and commercial motor vehicle technologies; strengthening commercial motor vehicle equipment and operating standards; and increasing safety awareness. To accomplish these activities, the FMCSA works with Federal, State, and local enforcement agencies; tribal governments; the motor carrier industry; labor, safety, and any other interested parties.

2. Any environmental impacts that result from FMCSA's oversight of motor carrier operations would most likely be in areas affecting air quality, noise, and hazardous materials transportation. Actions that may result in environmental impacts include, for example, the following:

a. Any action that may directly, indirectly, or cumulatively result in a significant increase in noise levels, either within a commercial motor vehicle's closed environment or upon nearby areas.

b. Any action that may directly, indirectly, or cumulatively result in a significant increase in the energy or fuel necessary to operate a commercial motor vehicle, including but not limited to the following: (1) Actions which may directly or indirectly result in a significant increase in the weight of a commercial motor vehicle; and (2) actions which may directly or indirectly result in a significant adverse effect upon the aerodynamic drag of a commercial motor vehicle.

c. Any action that may directly, indirectly, or cumulatively result in a significant increase in the amount of harmful emissions resulting from the operation of a commercial motor vehicle.

d. Any action that may directly, indirectly, or cumulatively result in a significant increase in either the use of or the exposure to toxic or hazardous materials in the operation or disposal of commercial motor vehicles or commercial motor vehicle equipment.

e. Any action that may directly, indirectly, or cumulatively result in a significant increase in solid waste, as in the disposal of commercial motor vehicles or commercial motor vehicle equipment.

f. Any action that may directly, indirectly, or cumulatively result in a significant depletion of scarce natural resources associated with the manufacture or operation of commercial motor vehicles or commercial motor vehicle equipment.

*D. Applicability*

1. This FMCSA Order applies to all FMCSA actions, including actions with effects that may be major and which are potentially subject to the agency's control and responsibility. Actions include: projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by FMCSA; new or revised agency rules, regulations, plans, policies, or procedures; and agency legislative proposals. Where FMCSA has no discretion to withhold or condition an action if the action is in accordance with specific statutory criteria and FMCSA lacks control and responsibility over the effects of an action, that action is not subject to this Order. *See* 40 CFR 1500.6; 40 CFR 1508.18. Actions do *not* include bringing judicial or administrative civil or criminal enforcement actions. *See* 40 CFR 1508.18.

2. These environmental procedures also apply to all FMCSA actions in response to Motor Carrier Safety Assistance Program (MCSAP) applications or other similar requests to FMCSA for a grant, award, or other similar action. For major categories of FMCSA actions involving a large number of applicants, the appropriate Program Office must prepare and make available generic guidance describing the recommended level and scope of environmental information that applicants should provide. The appropriate Program Office must also begin the NEPA review and planning processes as early as possible after receiving an application for items described above, advising any potential applicants of issues, such as the appropriate level and scope of any studies or environmental information that the agency may require to be submitted as part of the application, and the need to consult with appropriate Federal, tribal, State, regional, and local governments. *See* 40 CFR 1501.2(d) and 1507.3.

*E. Legal Basis*

1. National Environmental Policy Act of 1969 (NEPA)

NEPA sets forth a national policy that encourages and promotes productive harmony between humans and the environment. NEPA procedures require that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The NEPA process is intended to help public officials make decisions that are based on an understanding of environmental consequences and take actions that protect, restore, and enhance the environment.

2. Council on Environmental Quality (CEQ) Regulations (40 CFR parts 1500–1508)

The CEQ regulations establish policy requirements that are binding on all Federal agencies for implementing NEPA and related statutory requirements.

3. Department of Transportation (DOT) Order 5610.1C, Procedures for Considering Environmental Impacts

DOT Order 5610.1C sets the policy and procedures that supplement the CEQ regulations and applies them to DOT programs. The Federal Motor Carrier Safety Administration must comply with the CEQ regulations and the provisions of the DOT Order.

4. Other Relevant Environmental Statutes, Laws, and Executive Orders

Appendix 16 lists other relevant environmental statutes, laws, and Executive Orders that must be reviewed for compliance.

*F. Common Environmental Acronyms*

ACHP Advisory Council on Historic Preservation
AC&I Acquisition, Construction, and Improvement
CAA Clean Air Act
CBRA Coastal Barriers Resource Act
CD Consistency Determination
CE Categorical Exclusion
CED Categorical Exclusion Determination
CEQ Council on Environmental Quality
CERCLA Comprehensive Environmental Response, Compensation, and Liability Act
CFR Code of Federal Regulations
CWA Clean Water Act
CZM Coastal Zone Management Act
DEIS Draft Environmental Impact Statement
DOT Department of Transportation
EA Environmental Assessment
EIS Environmental Impact Statement
E.O. Executive Order
ESA Endangered Species Act
FEIS Final Environmental Impact Statement
FEQA Field Environmental Quality Advisor
FHWA Federal Highway Administration
FMCSA Federal Motor Carrier Safety Administration
FMCSR Federal Motor Carrier Safety Regulations
FONSI Finding of No Significant Impact
FWPCA Federal Water Pollution Control Act (also commonly referred to as the Clean Water Act)
FWS Fish and Wildlife Service
FR **Federal Register**
HMR Hazardous Material Regulations
LESA Land Evaluation and Site Assessment
MCSAP Motor Carrier Safety Assistance Program

NAAQS National Ambient Air Quality Standards
NEPA National Environmental Policy Act
NHPA National Historic Preservation Act
NMFS National Marine Fisheries Services
NPDES National Pollutant Discharge Elimination System
NPS Non-Point Source
NSPS New Source Performance Standard
NRCS Natural Resources Conservation Service
NRHP National Register of Historic Places
PCB Polychlorinated Biphenyls
Pub. L. Public Law
PPR Project Proposal Report
RCRA Resource Conservation and Recovery Act
ROD Record of Decision
SDWA Safe Drinking Water Act
SEIS Supplemental Environmental Impact Statement
SHPO State Historic Preservation Officer
SIP State Implementation Plan
THPO Tribal Historic Preservation Officer
TSCA Toxic Substance Control Act
TSDF Treatment, Storage, and Disposal Facility
USACE U. S. Army Corps of Engineers (Former Acronym—COE)
U.S.C. United States Code

*G. Use and Organization of this Order*

1. Use

This Order will be used in conjunction with NEPA, the CEQ regulations, and as a supplement to DOT Order 5610.1C, as amended, for consideration of environmental impacts of FMCSA actions. It will also be used, to the fullest extent possible, to conduct analyses and consultations required by environmental laws other than NEPA, statutes, Executive Orders, and regulations in conjunction with NEPA implementation to reduce redundancy, paperwork, time, and cost.

2. Organization

Chapter 2 of this FMCSA Order implementing NEPA procedures and policies for considering environmental impacts supplements specific paragraphs in DOT Order 5610.1C, as amended. It is important that persons using this Order refer to those sections of the DOT Order 5610.1C, as amended, cross-referenced in this FMCSA Order. Reference to the DOT Order will provide a wider perspective on the issues as well as provide details that may prove applicable to certain projects and actions. Additional chapters and/or changes providing guidance in meeting new or changed requirements will be added to this Order as necessary.

**Chapter 2. FMCSA Responsible Parties, Duties, and Instructions for Implementing NEPA**

**[Supplementary Instructions to DOT Order 5610.1C, 9/18/79, as amended 7/13/82 and 7/30/85]**

*A. Responsible Parties for NEPA Implementation*

This FMCSA Order assigns the following NEPA implementation responsibilities:

1. Administrator, Federal Motor Carrier Safety Administration

a. *Responsibilities.* Acts on matters relating to NEPA implementation and is responsible for providing NEPA capabilities (40 CFR 1507.2) as follows:

(1) Establishes and maintains the capability (personnel and other resources) to ensure adherence to the policies and procedures specified by this Order. This capability can be provided through contract support, matrix (other modal) support, and permanent staff, with sufficient staff to ensure:

(A) FMCSA cognizance of the analyses and decisions being made; and

(B) Familiarity with the requirements of NEPA and the provisions of this Order by every person preparing, implementing, supervising, and managing projects involving NEPA analysis.

(2) Ensures environmental responsibility and awareness among personnel to most effectively implement the goals and policies of NEPA. All personnel who are engaged in any activity or combination of activities that significantly affect the quality of the human environment will be aware of their NEPA responsibility. Only through alertness, foresight, and notification through Project and Program managers to MC–P, and training and education will NEPA goals be realized.

b. *Environmental Analyses and Documentation.* Approves all environmental analyses and documentation for Administration-initiated actions, unless delegated to another FMCSA responsible official or another Federal agency. The Administrator may enter into contracts with a State or private entity to conduct initial environmental analyses and documentation, but the Administrator must review and approve all such environmental analyses and documentation and remains responsible for its scope and contents (see Section D.7. of Chapter 2):

(1) With the exception of highly controversial EISs (as defined by Section 11.d of DOT Order 5610.1C), the Administrator delegates approval authority to Field Operations Service Center Administrators for FMCSA DEISs, FEISs, and SEISs for actions that originate within, and having effects confined to, their respective area;

(2) Authority for the appropriate FMCSA Administrator-level Program Office to approve highly controversial EISs (see Section D.6.b.(4) of Chapter 2); and

(3) For all other FEISs (non-controversial), only a notice of approval will be made to DOT (P–1) by the responsible Administrator-level Program office via the Administrator.

(c) *Decisions on How to Proceed with FMCSA Actions.* The Administrator, or the Administrator's designee, has authority to decide whether or, at a minimum, how to proceed with every action the FMCSA undertakes. Thus, the Administrator (unless his/her authority is delegated) is the decisionmaker and the responsible FMCSA official. (Authority to sign EISs as the responsible official will be governed by Section D.14.a. of Chapter 2). The Administrator makes the following delegations:

(1) The NEPA Liaison will act as the senior decisionmaker and senior environmental advisor for NEPA compliance and NEPA implementation of all FMCSA actions. The Administrator also delegates the responsibility to the NEPA Liaison to ensure accountability for implementation of the policies set forth in this Order. For Headquarters-originated actions, the Administrator delegates the responsibility to the NEPA Liaison to determine whether to prepare an EA, EIS, a Finding of No Significant Impact (FONSI), or a decision withdrawing the proposal on the basis of its environmental impacts (40 CFR 1508.9) in consultation with the Office Director for the program sponsoring the action or the person with the delegated authority to issue the regulation.

(2) The Field or Division Administrators or their delegated Federal, State, or Division Program Managers, in consultation with their FEQAs (*see* also Section D.13. of Chapter 2), will hold authority to determine whether to prepare an EA, EIS, a Finding of No Significant Impact (FONSI), or a decision withdrawing the proposal on the basis of its environmental impacts (40 CFR 1508.9) for actions that originate within, and have effects confined to, their respective area. For Headquarters-originated actions, the NEPA Liaison makes this determination in consultation with the responsible FMCSA Program Manager.

2. NEPA Liaison—Associate Administrator for Policy and Program Delivery

a. Is the principal FMCSA environmental advisor and decisionmaker for the completion of the environmental analysis under NEPA, CEQ regulations, DOT and FMCSA Orders, and other environmental laws, statutes, and Executive Orders listed in Appendix 16. The Regulatory Development Division (MC-PRR), in the Office of Policy, Plans and Regulation is the Program Office that will assist the NEPA Liaison in carrying out these duties.

b. Is responsible for overseeing NEPA compliance and NEPA implementation of all FMCSA actions. The NEPA Liaison ensures accountability for implementation of the policies set forth in this Order and that all necessary NEPA analyses (CE, EA, and EIS) are completed before initiation of an FMCSA action.

c. Reviews all FMCSA proposed projects and advises the responsible FMCSA official (*e.g.*, the FEQAs or Project Manager) on the appropriate level of environmental analysis and documentation needed for the proposal. For CEs, EAs and non-controversial EISs, the NEPA Liaison may direct the FEQAs or program staff to determine the appropriate level of environmental analysis and documentation needed for the proposal.

d. Provides expert advice on NEPA-related matters to FMCSA Heads of Offices, Divisions, and Field Operations Service Center Units.

e. Acts as the intra-agency and interagency liaison and coordinates NEPA-related matters on a national basis, and is the principal contact for CEQ on all other FMCSA actions.

f. Provides and periodically updates this FMCSA Order, program guidance and policies after consultation with the Chief Counsel, Heads of Offices, Divisions, and Field Operations Service Center Units. Updates must comply with 40 CFR 1507.3 requirements for public notice and CEQ review.

g. Serves as FMCSA representative in coordination with outside groups at the national level regarding NEPA-related matters.

3. Heads of Headquarters Offices and Divisions

a. Coordinate with the NEPA Liaison to ensure agency-wide consistency in areas of shared or related responsibility.

b. Serve as the responsible agency officials under NEPA and CEQ regulations for actions subject to their approval.

c. Ensure accountability for implementation of the policies set forth in this Order.

d. In consultation with the NEPA Liaison, ensure that FMCSA staff responsible for the supporting function of the responsible agency official under CEQ and related authorities receive appropriate training in how to carry out FMCSA's responsibilities.

e. Ensure completion of all environmental analysis and documentation for Headquarters Office-originated actions in consultation with environmental staff and the NEPA Liaison. This responsibility includes ensuring that the appropriate environmental planning, analyses, and documentation are completed for the respective programs and actions.

f. Notify the Policy, Plans, and Regulations Office Director (MC–PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

4. The Office of Administration

At the current time, the General Services Administration (GSA) is responsible for all building acquisition and construction projects to meet the needs of the FMCSA. The GSA is currently responsible for, and is required to comply with, all statutory and regulatory requirements of NEPA for such projects. In the event the FMCSA is authorized by Congress or the GSA delegates authority for the purchase, lease, and/or acquisition of real property in the future, the FMCSA's Office of Administration will assume primary responsibility for all necessary environmental analyses and documentation needed for building acquisition and construction projects, in consultation with the FMCSA's Office of Chief Counsel. The FMCSA will coordinate such environmental analyses, as appropriate, with the interested general public, as well as other Federal, State, local, and tribal government agencies.

5. The Office of the Chief Counsel

a. Responsible for legal interpretation of NEPA and related authorities, and represents FMCSA in litigation under such authorities.

b. Must approve the implementation of the procedures of FMCSA Environmental Orders in consultation with the NEPA Liaison, NEPA Field Environmental Quality Advisors (FEQAs), MC–PR, and MC–RI (Office of Information Management), for actions originated by the Administrator.

c. Responsible for the review and approval of FMCSA and non-FMCSA environmental documents submitted for Associate Administrator level review. *See* Section D.6.b.(3) of Chapter 2 for information on legal review of Environmental Impact Statements (EISs).

d. Responsible for the review and approval of guidance and training concerning this Order, in consultation with the NEPA liaison and the Professional Development and Training division.

6. Office of Research, Technology, and Information Management

a. Responsible for preparation and completion of all environmental analysis and documentation for all headquarters office- and Administrator-originated actions. Ensures that all required analysis is completed, and that it meets CEQ and DOT standards for quality and completeness. The Regulatory Evaluation Team (MC–RIA) within the Analysis Division is the program office that will carry out these duties.

b. Ensures the division is adequately staffed and has technical capabilities, through government employees, contractors, or some combination of the two, to complete all necessary analysis.

c. Coordinates actions and evaluations with program offices and NEPA Liaison, and ensure that relevant offices have an opportunity to review and comment on environmental analyses.

7. FMCSA Program Staff

a. For purposes of this FMCSA Order, this includes all FMCSA employees responsible for the management and implementation of program actions, such as, promulgating regulations, project planning and development, project management, and research.

b. Program staff are responsible for:

(1) Developing and maintaining a thorough understanding of NEPA requirements and the requirement of related authorities, and of the policies articulated in this FMCSA Order, DOT Order 5610.1C, as amended, as these pertain to their program areas with the assistance of the NEPA Liaison and the FEQA.

(2) Ensuring that NEPA and related authorities are complied with, as early as possible in the planning of any action within their program areas.

(3) Coordinating their programs, activities, and projects with FEQAs and the NEPA liaison, as appropriate.

(4) Implementing all mitigation and other commitments resulting from NEPA compliance for actions under their authority.

(5) Initiating early consultations with Field Operations Service Center Units, the FEQAs, Heads of Offices and Divisions, the NEPA liaison, as appropriate if uncertain regarding the need for environmental analysis or documentation for any project. The Field Operations Service Center Administrator will promptly notify the Policy, Plans, and Regulations Office Director (MC–PR) and the NEPA Liaison if uncertainty for NEPA review persists.

(6) Notifying the Policy, Plans, and Regulations Office Director (MC–PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

8. Field Operations Service Center Administrators

a. Are accountable for execution of FMCSA's responsibilities under NEPA and related authorities with respect to actions under their jurisdiction.

b. Serve as the ''responsible agency official'' under CEQ regulations (40 CFR 1506.5(c)) with respect to the environmental effects of actions under their jurisdiction.

c. Maintain FEQA within their staffs, augmented as necessary through interagency agreements and contracts, to ensure field interdisciplinary competence in environmental matters.

d. In consultation with the FMCSA NEPA Liaison, ensure that all field staff with responsibility for planning, approving, and implementing Commercial Vehicle Safety Plan grants, etc., receive training in how to carry out FMCSA's responsibilities under NEPA and related authorities.

e. Comply with all environmental laws. What may appear to be a good idea initially may not be environmentally acceptable. It is, therefore, important that alternatives to a proposed action be available. Coordination of FMCSA environmental analyses and documents with Federal, State, local, and tribal officials may be necessary. Questions concerning environmental matters should be directed to the FEQA and appropriate Field Operations Service Center staff.

f. Notify the Policy, Plans, and Regulations Office Director (MC–PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

9. Heads of Units, Divisions, and Offices

a. Ensure that all environmental analyses and documentation for FMCSA actions (except building acquisition and construction actions) they initiate, or are directed by higher authority to initiate, are completed.

b. Ensure that a FEQA, Environmental Project Manager, and Environmental Specialists are available within the Field Operations Service Center territory.

c. Ensure that Field Operations Service Center Units and Field Division Offices are notified as soon as possible of any needed environmental analyses or documentation required for field proposed actions and projects.

d. Notify the Policy, Plans, and Regulations Office Director (MC–PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

10. The Field Environmental Quality Advisor (FEQA)

a. The Field Environmental Quality Advisor is the center of expertise maintained at the Field Service Unit in which knowledge in NEPA-related environmental matters and other related authorities, such as the National Historic Preservation Act, the Clean Air Act, and the Endangered Species Act, is vital.

b. The FEQA will be a collateral duty among others assigned to the employee.

c. The FEQA will be located at the Field Service Unit where it can influence decisionmaking early in FMCSA's planning or preparation for any project or action subject to review under NEPA and related authorities.

d. The FEQA is responsible for participating in FMCSA planning and decisionmaking, for advising the Administrator, the Office Heads, the Field Administrators, and other decisionmakers, and for providing training and technical assistance to all pertinent FMCSA employees and contractors.

e. Maintains interdisciplinary expertise in environmental matters, through the employment of qualified staff and/or by interagency agreement or under contract.

f. Reviews all documentary products of FMCSA NEPA analyses, and assists program staff in ensuring that such products, and the analyses they report, are adequate and defensible.

g. Maintains records of FMCSA NEPA compliance activities.

h. Routinely interacts with, and is assisted by, the NEPA Liaison.

i. Maintains needed guidance material, and recommends updates and/or changes to this FMCSA Order, as appropriate. Updates must comply with 40 CFR 1507.3 requirements for public notice and CEQ review.

j. Develops and maintains an up-to-date checklist for use in determining whether an action requires an environmental assessment or impact statement.

k. Notifies the Policy, Plans, and Regulations Office Director (MC–PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

11. Field Operations Service Center Program Staff

a. Ensure completion of all environmental analyses and documentation for FMCSA actions designated to them.

b. Assist Headquarters Units, where appropriate, with their implementation of the procedures set forth in this Order.

c. Coordinate these environmental analyses and documents with Federal, State, local, and tribal officials as necessary.

d. Maintain close coordination with appropriate Field Division Office elements during the execution of these tasks. Questions concerning environmental matters should be directed to appropriate Field Operations Service Center Unit staff and the FEQA.

e. Empower the FEQA to advise and assist in planning and decisionmaking on actions that could affect the human environment, in a way and at a time in the planning and decisionmaking process that maximizes the effectiveness of the FEQA's advice and assistance.

f. Ensure that all Field program staff involved in planning and decisionmaking about actions that could affect the human environment are made aware of FMCSA's responsibilities under NEPA and related authorities, are acquainted with this FMCSA Order, DOT Order 5610.1C, as amended, and other NEPA- or CEQ-related guidance, are held accountable for the quality of their actions and decisions, and are required to coordinate effectively with the FEQA.

g. Notify the Policy, Plans, and Regulations Office Director (MC–PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

*B. FMCSA's Decisionmaking Process for NEPA Implementation. (see Flow Chart in Appendix 17)*

1. Normal Circumstances

Under normal circumstances, FMCSA's compliance with the

procedural requirements of NEPA is handled as follows:

*Step 1:* Program staff determine a purpose and need for a particular action, and develop a preliminary description of the action.

*Step 2:* In consultation with, or at the direction of the FEQAs or NEPA Liaison, program staff determine whether a NEPA analyses is required and, if so, the appropriate level of NEPA analysis and documentation required.

*Step 3:* Program staff and the FEQA, in consultation with the NEPA Liaison (or designee) and the Office of Information Management (MC-RI), arrange for necessary environmental analysis and documentation to take place, including public involvement for preparation of EAs and EISs [40 CFR 1501.4(b) and 1506.6]. Program staff make sure that there is written documentation of all environmental analyses in the FMCSA docket or record. When legal issues and/or public controversy are involved in the action or NEPA analysis, program staff must notify the FEQAs and Field Administrators, the NEPA Liaison, MC-P, and Chief Counsel, to afford them an opportunity to participate.

*Step 4:* Program staff and the Office of Information Management (MC-RI), in consultation with, or with oversight by, the FEQAs and the NEPA Liaison ensure that the appropriate analysis and documentation are completed, and that documents are circulated and filed in accordance with the requirements of law, the CEQ regulations, this FMCSA Order, DOT Order 5610.1C, as amended, any other NEPA-related guidance, statutes, Executive Orders, and related authorities.

*Step 5:* Program staff, assisted as needed by the FEQAs and the NEPA Liaison, provide the results of the NEPA review process to the relevant FMCSA decisionmaker(s).

*Step 6:* The decisionmaker(s) decides whether and how the action will proceed, and if it proceeds, what, if anything, will be done to mitigate adverse impacts.

*Step 7:* Program staff, as assisted by the FEQAs and the NEPA Liaison, ensure that any required final public notifications of the environmental decision are issued.

*Step 8:* If the project or action has been approved by the decisionmaker, it proceeds, subject to whatever mitigation (if any) and monitoring activities have been chosen.

*Step 9:* If mitigation is to be performed, program staff, FEQAs, and the NEPA liaison monitor the activity to ensure that it is carried out.

The extent to which all of the above steps in FMCSA's environmental decisionmaking process can be carried out varies with the type of action under consideration (*see* Chapter 3).

2. Timing of Agency Action

a. FMCSA is adopting the availability of, and the review process for, draft EISs as set forth at 40 CFR 1506.10. No decision on the FMCSA's proposed action shall be made or recorded (*see* 40 CFR 1505.2/RODs in cases requiring an EIS) by the agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice by EPA described in 40 CFR 1506.10(a) for a draft environmental impact statement (DEIS); and

(2) Thirty (30 ) days after publication of the notice by EPA described in 40 CFR 1506.10(a) for a final environmental impact statement (FEIS).

b. *Exceptions.* An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in subparagraph 2(a)(2) above and publish a decision on the final rule simultaneously with publication of the notice of the availability of the FEIS. *See* 40 CFR 1506.10(b)(2).

c. *Time Periods May Run Concurrently.* If the FEIS is filed within ninety (90) days after a DEIS is filed with the EPA, then the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to 40 CFR 1506.10(d), the FMCSA shall allow not less than 45 days for comments on draft statements.

d. *Request for Reasonable Extensions.* Requests for reasonable extensions of the review period for the draft EISs shall be granted whenever possible, and particularly when warranted by the magnitude and complexity of the statement or the extent of citizen interest.

e. *Reduction of Prescribed Periods.* Requests to reduce the prescribed periods for EIS processing based on compelling reasons of national security must be made via the Administrator to EPA.

f. *Emergency Circumstances.* In emergency situations (such as life-threatening natural or human-caused disasters), where it is necessary to take an action with significant environmental impact without observing the provisions of CEQ regulations, the process outlined above (NEPA normal circumstance procedures) cannot be followed. CEQ regulations (40 CFR 1506.11) permit Federal agencies to consult with CEQ to discuss alternative arrangements. The FMCSA NEPA Liaison will consult with CEQ to discuss alternative arrangements in such emergency situations. This is only applicable to actions necessary to control the immediate effects of the emergency; other actions remain subject to NEPA review (40 CFR 1506.11). The FMCSA NEPA Liaison will also notify Cooperating Agencies in this regard.

(1) Program staff should always alert the FEQAs and the NEPA Liaison immediately when an emergency exists.

(2) FMCSA will limit such actions necessary to control the environmental impacts of the emergency.

(3) In emergency situations where it is necessary to take an action that does not have significant environmental impact without observing the provisions of CEQ regulations, and the process in this Order cannot be followed, the FMCSA NEPA Liaison will consult with DOT's Office of the Assistant Secretary for Transportation Policy (P–1) to determine if alternative arrangements are needed.

*C. Planning and Early Coordination*

1. Scoping

The environmental checklist, located in Appendix 1, is a tool to assist in scoping, *i.e.*, identifying environmental requirements and potential consequences to consider in project planning efforts. Some consultation with Federal, State, tribal, or local expert agencies may be necessary to complete the environmental analysis checklist. The responsible official (the Office Director for the program sponsoring the action or the person with the delegated authority to issue the regulation) must maintain a written record of contacts made and responses received. For all FMCSA actions to which NEPA applies and that are not categorically excluded (*see* Appendix 2), all known interested (including those that might not be in accord with the action on environmental grounds) or affected parties (Federal, State, tribal, local, and private) must be notified in writing and invited to participate in the NEPA process. Any other known affected private parties amongst the invitees having regulatory involvement in the outcome of, or otherwise having expressed an interest in the action, will also be notified in writing. All other interested parties may be informally contacted. For actions requiring preparation of an Environmental Impact Statement (EIS), the scoping process must be followed as described in 40 CFR 1501.7. Policy regarding public notice and involvement is presented in

Sections A. and D.3. of Chapter 3 of this Order. The NEPA Liaison will identify other environmental review and consultation requirements so that FMCSA and cooperating agencies may prepare other required analyses and studies concurrently with preparation of the EA or EIS (40 CFR 1502.25).

2. Environmental Planning Process

Consideration of the environmental consequences of a given action (scoping) should begin early in the project planning process. This is necessary not only for documentation purposes, but also because environmental factors and compliance with Federal law may alter the design, layout, or timing of a given action. The word ''action'' is a comprehensive term used throughout this Order that includes all undertakings that may have environmental impacts. See Section D of chapter 1 for examples. Environmental analysis and documentation for proposed actions are to be completed before initiation of the action.

For very broad actions, (*e.g.*, actions that are regional in scope or involving regulations on hours-of-service of drivers and hazardous materials), the EIS tiering as discussed in the CEQ regulation (40 CFR 1502.20) may be appropriate. The first tier EIS would focus on broad issues, such as, general location, mode choice, area-wide air quality and land use implications of the major alternatives. The second tier would address site-specific details on project impacts, costs, and mitigation measures.

*D. Environmental Documentation*

1. Actions Affected

This FMCSA Order applies to all FMCSA actions as described in section D of chapter 1, including the decision to conduct research activities (research, development, test, and evaluation); promulgate regulations; award grants; change operations; conduct major acquisitions; and decommission FMCSA facilities or equipment (such as noise pollution, radioactive monitoring equipment, and computers).

2. Categorical Exclusions (CEs)

a. *Introduction.* As defined by the Council on Environmental Quality (CEQ), a ''categorical exclusion'' or ''CE'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an EA nor an EIS is required. The use of a CE is intended to reduce paperwork and delay by eliminating the unnecessary preparation of EAs and EISs. All CEs are subject to ''extraordinary circumstances.'' (40 CFR 1508.4)

b. *FMCSA List of CEs.* A list of current FMCSA CEs can be found in Appendix 2 of this Order. The CEs listed in Appendix 2 are subject to review and any suggested modifications should be provided to the Administrator. Additional CEs should be suggested by the responsible FMCSA official when it becomes clear that the category of actions does not individually or cumulatively result in significant effects. For example, when through the preparation of EAs, FONSIs result after numerous analyses of similar types of actions and monitoring confirms the FONSI are appropriate, a new CE should be proposed.

3. Limitations on Using Categorical Exclusions

a. Extraordinary circumstances that preclude the use of a categorical exclusion are when the proposed action:

(1) Has greater size or scope than is generally experienced for the category of action.

(2) Has a reasonable likelihood of promoting controversy regarding the potential for significant environmental effects (direct, indirect, and cumulative).

(3) Has highly uncertain effects on the environment that involve unique or unknown risks, or are scientifically controversial.

(4) Is reasonably likely to establish a precedent (or makes decisions in principle) for future or subsequent actions that are reasonably likely to have a future significant effect.

(5) Is reasonably likely to have significant effects on public health, safety, or the environment.

(6) Is reasonably likely to be inconsistent with or cause a violation of any Federal, State, local or tribal law or requirement imposed for the protection of the environment.

(7) Is reasonably likely to cause reportable releases of hazardous or toxic substances as specified in 40 CFR part 302, Designation, Reportable Quantities, and Notification.

(8) Is reasonably likely to cause releases of petroleum, oils, and lubricants, application of pesticides and herbicides.

(9) Is reasonably likely to generate air emissions that would exceed de minimis levels or otherwise require a formal Clean Air Act conformity determination.

(10) Has reasonable potential for degradation of already existing poor environmental conditions, or reasonably likely to initiate a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

(11) Is reasonably likely to have an unresolved effect on environmentally sensitive resources unless the impact has been resolved through another environmental process (*e.g.*, CZMA, NHPA, CWA, etc). Environmentally sensitive resources include:

(A) Proposed federally listed, threatened, or endangered species or their habitats.

(B) Properties listed or eligible for listing on the National Register of Historic Places.

(C) A site that involves a unique characteristic of the geographic area, such as prime or unique agricultural land, a coastal zone, a historic or cultural resource, park land, wetland, wild and scenic river, designated wilderness or wilderness study area, 100-year floodplain, sole source aquifer (potential sources of drinking water), ecologically critical area, or property requiring special consideration under 49 U.S.C. 303(c). (49 U.S.C. 303(c) is commonly referred to as section 4(f) of the Department of Transportation (DOT) Act, which includes any land from a public park, recreation area, wildlife and waterfowl refuge, or any historic site).

(12) Is considered together with other past, present, and reasonably foreseeable future actions, and is likely to create cumulatively significant impacts.

(13) Has a reasonably disproportionate (high and adverse) effect on a minority or low income population.

(14) May cause a change in traffic patterns or an increase in traffic volumes (road and/or waterway) that could require rerouting of roads, waterways, or traffic.

b. The listed circumstances above and those in the DOT Order are addressed in the Environmental Checklist (Appendix 1). If a CE is *not* appropriate, an EA or an EIS must be prepared.

c. Complete an Environmental Checklist (Appendix 1) to substantiate the use of each CE. The checklist must be submitted with the proposal for the action. If a CE is not appropriate, the Environmental Checklist will be used for developing an EA or EIS. A written Categorical Exclusion Determination (CED) (Appendix 4) must be prepared as a part of the Rulemaking Support Paper [1] when a CE will be relied on to promulgate a regulation that requires an environmental checklist. Checklists and CEDs supplementary to the

[1] Required by FMCSA Order 2100.1.

requirements of this Order may be developed by subordinate offices for specific types of actions. Those documents must be approved by the Administrator before they are adopted for use.

d. Even though a CE is appropriate, that fact does not exempt the action from compliance with any other Federal law or any review or consultation requirements contained in any applicable agreement. For example, compliance with the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act, the Clean Air Act (conformity requirements), etc., is always mandatory, even for actions that do not require an EA or EIS.

4. Environmental Assessment (EA)

An EA is a brief report that provides sufficient evidence and analysis to determine the significance of the potential environmental effects of the proposed action and its alternatives. The EA documents, in summary, set forth the agency's consideration of environmental effects in the planning stages of the action. The EA is the document used to determine whether to prepare an EIS, a Finding of No Significant Impact (FONSI), or a decision withdrawing the proposal on the basis of its environmental impacts (40 CFR 1508.9).

a. An Environmental Assessment (EA) means a concise public document that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare:

(A) An Environmental Impact Statement; or

(B) A Finding of No Significant Impact.

(2) Aid an agency's compliance with NEPA when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

b. All EAs shall include brief discussions of:

(1) The need for the proposal;

(2) The no action alternative and alternatives as required by section 102(2)(E) of NEPA;

(3) The environmental impacts of the proposed action and alternatives;

(4) The significance of effects, including:

(A) The context(s) in which effects may occur; and

(B) The intensity of effects, using the Environmental checklist as an outline, and including mitigation measures where they exist and are adequate to reduce effects below significance; and

(5) A listing of agencies and persons consulted.

The EA, supported by the necessary appendices, must be concise for meaningful review and use by the decisionmaker. Studies, technical data and other documents incorporated by reference should be readily available to the public.

c. Projects for which environmental assessments are normally completed include new or revised regulations, directives or policy guidance concerning activities that are not categorically excluded and uncertainty about whether they may have significant environmental effects.

5. Finding of No Significant Impact (FONSI)

A FONSI is a statement that a proposed action has been environmentally assessed (EA completed) and determined not to ''significantly affect the quality of the human environment.'' The FONSI must briefly present the reasons why the action will not have a significant impact on the quality of the human environment.

a. The FMCSA is only required to circulate an EA if there is a special reason to do so. The CEQ regulations require an agency to make an EA available for 30 days [see 40 CFR 1501.4(e)(2)] if there is a precedent-setting or unique action. Thus, the EA will be made available to the public for review and comment for thirty (30) days and notice will be provided in accordance with 40 CFR 1501.4(e)(2) and 1506.6. Normally, the FONSI may be attached to the EA and combined into a single document. However, if the EA is developed on a ''precedent-setting or unique action'' as referred to in section 1501.4(e)(2), a copy of the EA shall be made available to the public for a period of not less than 30 days before the FONSI is made and the action is implemented.

b. If the FMCSA is engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, it may make a finding of no significant impact available for public review (including State and area-wide clearinghouses) for thirty (30) days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(1) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the FMCSA pursuant to 40 CFR 1507.3, or

(2) The nature of the proposed action is one without precedent. *See* 40 CFR 1501.4(e)(2).

c. *Format.* For FMCSA purposes a FONSI should be a separate, one page document to which an EA is attached and which notes any other environmental document related to it. The format should be as outlined in Appendix 7.

d. *Coordination.* To ensure copies of the FONSI and the EA are available to the public upon request, the originator must forward one copy each to the Administrator and the responsible Associate Administrator program office, and retain one copy each in the office of the preparer and the appropriate program office. For actions involving a notice to be published in the **Federal Register** or where a docket has been established in the DOT Docket Management System (DMS), the originator must forward one single-sided copy suitable for black and white scanning to the staff responsible for the **Federal Register** notice or FMCSA docket. The staff person responsible for the FMCSA docket will forward the FONSI and EA to the appropriate docket for public viewing on the World Wide Web (www).

6. *Environmental Impact Statement (EIS)*

a. An EIS is prepared for actions significantly affecting the quality of the human environment. It describes in detail the nature and extent of the environmental impacts of the proposed action and each alternative. The EIS should discuss appropriate mitigation measures for any adverse impacts associated with the proposed action or alternative. FMCSA actions which normally require an EIS include the following:

(1) Actions addressed in an environmental assessment that concludes preparation of an EIS is necessary to discuss significant environmental impacts of the action(s), and where FMCSA cannot make a finding of no significant effect.

(2) Actions which generate significant controversy because of effects on the human environment.

(3) Actions for which there is a clear need for an Environmental Impact Statement, such that it is unnecessary to first prepare an Environmental Assessment. These would include actions having a significant effect on the following:

(A) Air quality.

(B) Noise.

(C) Hazardous materials.

(D) Endangered species.

(E) Significant archaeological, cultural or historical resources.

(F) Wetlands.

(G) Property protected under section 4(f) of the DOT Act.

b. Preparation and Processing of EISs.

(1) *Preparation of EISs.* All draft, final, and supplemental EISs (DEISs, FEISs, SEISs) must be prepared as directed in 40 CFR part 1502. A template for the cover page of an FMCSA EIS is included in Appendix 9.

(2) *Circulation of EISs.* FMCSA is adopting the availability of, and the review process for, draft EISs as set forth at 40 CFR 1506.10. The originator of the draft EIS or the responsible Associate Administrator program office must forward copies of the DEIS, FEIS, and SEIS, as applicable, to the Administrator for distribution among Administrator level offices and DOT elements, as appropriate, and for filing 5 copies with the Environmental Protection Agency's (EPA's) Office of Federal Activities. The copies of the environmental documents should be forwarded to the Administrator in sufficient time for review and comment by Administrator level offices and DOT elements as appropriate.

When the State process for intergovernmental review provides that comments are obtained through a designated agency, the DEIS must be circulated to that agency. When there is no designated agency for intergovernmental review, the FMCSA project manager must obtain comments directly from interested State and local agencies.

Additionally, comments must be solicited from the affected and interested public, Federal agencies that have jurisdiction by law or expertise with respect to any environmental impact involved or which are authorized to develop and enforce environmental standards, and any other Federal agency that is affected by the proposed action or has requested a copy of the DEIS. The FEIS and SEIS will be circulated to all those who commented on the DEIS or requested copies of the FEIS, and to any other interested or affected organizations, agencies or individuals.

(3) *Legal Review.* The Headquarters Office of the Chief Counsel must provide final legal sufficiency review of all FMCSA DEISs, FEISs, and SEISs prepared for all actions.

(4) *Environmental Review and Approval.* As noted above, the Administrator has authority to approve all FMCSA DEISs, FEISs, and SEISs in conjunction with the responsible official in the originating program office. With the exception of highly controversial EISs (as defined by Section 11.d. of DOT Order 5610.1C), this approval authority is delegated to the Headquarters Division Offices and Field Operations Service Center Administrators for FMCSA DEISs, FEISs and SEISs for actions that originate within, and have effects confined to, their respective area.

(A) *Highly controversial EISs.* The Administrator and the appropriate FMCSA Associate Administrator program office must approve highly controversial EISs. Before final FMCSA approval of a controversial FEIS, however, the Administrator will notify the Secretary of Transportation's Office of the Assistant Secretary for Transportation Policy (P–1) and Office of the General Counsel (C–1) that a controversial FEIS is under review and will provide them a copy of the summary section contained in the FEIS. The Administrator as appropriate, will give DOT [(P–1) and (C–1)] two weeks notice before final approval of a highly controversial FEIS.

(B) *Non-controversial EISs.* For all other FEISs, only a notice of approval will be made to DOT (P–1) by the responsible Associate Administrator program office via the Administrator.

(5) *Records of Decision (40 CFR 1505.2).*

(A) A concise public Record of Decision (ROD) must be completed for projects requiring an EIS (*See* Appendix 12). As required by 40 CFR 1505.2, the record must do the following:

(i) State what the decision was.

(ii) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency must identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(iii) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program must be adopted and summarized where applicable for any mitigation.

(A) The ROD is the document that completes the EIS process and states whether and how to proceed with the proposed action. The Environmental Project Manager must forward 12 copies of the ROD (these can be submitted along with the copies of the FEIS) through the appropriate chain of command to the Administrator. The twelve copies of the ROD must be forwarded to the Administrator in sufficient time for review and comment by Administrator level offices and DOT elements as appropriate. After the ROD is reviewed and signed by the responsible official (*see* section D.14. of this chapter), signed copies will be forwarded to the Administrator for distribution among Administrator level offices and DOT elements as appropriate and for publication in the **Federal Register**. The responsible official must distribute the ROD to appropriate agencies, organizations, individuals, and FMCSA dockets.

7. Agency Responsibility for Documents Prepared by Applicants or Proponents

a. The CEQ regulations allow for applicants or proponents (*e.g.*, a cooperating local government) to prepare environmental documents for a proposed action, but require that the FMCSA take an active guidance and evaluative role during EA/EIS preparation, and take final responsibility for the quality of the analysis and the resulting document. If the FMCSA permits an applicant to prepare an EA or EIS, the FMCSA:

(1) Will assist the applicant by outlining the types of information required;

(2) Will independently evaluate the information submitted and shall be responsible for its accuracy; or

(3) Will make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental document (40 CFR 1506.5).

b. Local governments, other applicants, or cooperating agencies may conduct studies, etc., on FMCSA's behalf, but the FMCSA must oversee and approve the work. FMCSA staff will provide guidance to assist applicants in preparation of these documents.

8. Documents Prepared by Contractors

a. Contractors frequently prepare EISs and EAs. To obtain unbiased analyses, contractors must be selected in a manner that avoids, to the maximum extent possible, even the appearance of impropriety, including but not necessarily limited to, avoiding any conflicts of interest. Therefore, contractors must execute disclosure statements specifying that they have no financial or other interest in the outcome of the project or action. The contractor's efforts should be closely monitored throughout the contract to ensure an adequate assessment/

statement and also to avoid extensive, time-consuming, and costly analyses or revisions. FMCSA Action proponents and NEPA program managers must be continuously informed and involved. When selecting a contractor the following rules shall apply:

(1) A contractor shall be chosen solely by Federal agencies to avoid any conflict of interest.

(2) Agencies shall prepare disclosure statements for execution by contractors specifying that the contractor has no financial or other interest in the outcome of the action.

(3) The responsible Federal official shall independently evaluate the EIS and take responsibility for its scope and contents.

(4) All contractor-prepared documents must indicate the contractor's level of involvement in the following ways:

(A) If contractor involvement is minimal and only for a limited portion of the NEPA analysis process, then the contractor must be included in the list of preparers and the FMCSA Environment Project Manager will sign as the Environmental Project Manager.

(B) If the contractor has major involvement in the preparation of the NEPA document, or if the contractor and the FMCSA preparer have equal involvement in the preparation, then the ''cover page'' of the NEPA document will indicate that the CED and/or checklist, EA, and/or EIS was prepared by the contractor for the FMCSA and be signed by the contractor as preparer, or that the documentation was prepared by both the contractor and the FMCSA and be signed by the contractor and the FMCSA Environmental Project Manager as preparers.

b. *Types of Contracts and Agreements.* Most FMCSA NEPA-related work would normally be procured under Firm Fixed Price contracts (used when all elements of a task are well-defined), but this may not always be the most efficient kind of vehicle for the stated purpose. The type of contract used is a determination for the Contracting Officer (CO). The FMCSA may also use other different contract types, such as:

(1) Indefinite Delivery (used when delivery requirements are not certain);

(2) Fixed Price with Economic Price Adjustment (used when market prices for labor and/or materials are likely to be unstable over the life of the contract);

(3) Fixed Price Award Fee (used when FMCSA wishes to provide an incentive award and evaluation standards exist);

(4) Fixed Price Prospective Redeterminable (used when the costs can be estimated reliably only during the first year of performance);

(5) Fixed Price Incentive (used when a proposed cost-sharing formula would motivate a contractor to control costs);

(6) Cost Plus Fixed Fee (used when risks and requirements are highly uncertain);

(7) Cost Plus Incentive Fee (used when risks and requirements are highly uncertain);

(8) Cost Plus Award Fee (used when risks and requirements are highly uncertain);

(9) Cost or Cost Sharing (used when risks and requirements are highly uncertain); and

(10) Time and Materials (used when risks and requirements are highly uncertain).

c. *Interagency Agreements.*

(1) The FMCSA can use Interagency Agreements (IAAs) (or ''Economy Act'' Transfers, 31 U.S.C. 1535) to accomplish needed NEPA studies. For example, it may be possible to obtain data on the air quality standards for a particular region in the United States through agreement with the Environmental Protection Agency, or on endangered species through the U.S. Fish and Wildlife Service. Use of an IAA is a determination for the CO.

(2) IAAs can provide the FMCSA with the interdisciplinary team it needs to establish Statements of Work, the scope of NEPA analysis and obtain the expertise needed to carry it out, and to develop contracts for NEPA-related studies.

d. *Statements of Work (SOWs).*

(1) SOWs are used in formal contracting, and informal and formal agreements to guide the development of data and deliverables.

(2) The FMCSA shall develop a SOW specifically for each proposed action and the FMCSA and the consultant should have a specific understanding of the nature of an acceptable deliverable before finalizing any contract or agreement.

e. *Role of the Contracting Officer, Subject Matter Expert, and Project Manager.*

(1) The FMCSA's Contracting Officer is responsible for all phases of procurement, from initial distribution of the Request for Proposals or Quotations (RFP/RFQ) to approving the final payment for NEPA services.

(2) The subject matter expert (SME) is crucial to the success of the procurement, as this person must develop the SOW, the specific evaluation criteria, and review the deliverables along with the project manager at each stage of the NEPA process.

(3) The Project Manager, here used in the sense of the Contracting Officer's Representative, is the officially designated person who, with the appropriate SMEs, evaluates the various contract deliverables and recommends payments and other specific actions to the Contracting Officer.

9. List of Preparers

The EA and the EIS must contain a list of preparers who assisted in the preparation of the analysis. The list may also include members of other government entities, such as the Department of Justice, the Department of Labor, OSHA, etc., when they are responsible for a particular analysis used in the preparation of the document. The list should provide the name, affiliation or organization, and qualifications of the preparer and identify the section(s) of the document containing their analysis. *See* 40 CFR 1502.17 and 1506.5.

10. Reducing Paperwork in Preparation of Environmental Documents

Reduce excessive paperwork by:

a. Reducing the length of documents by means such as page limits.

b. Preparing analytic rather than encyclopedic documents.

c. Discussing only briefly issues other than significant ones.

d. Writing documents in plain language.

e. Following a clear format for documents.

f. Emphasizing the portions of the document that are useful and reducing emphasis on background material.

g. Using the scoping process to identify significant issues, deemphasize insignificant issues, and to narrow the scope of the environmental process.

h. Summarizing the document and circulating the summary if the document is unusually long.

i. Using program, policy, or plan environmental documents and tiering to eliminate repetition.

j. Incorporating by reference.

k. Integrating NEPA requirements with other environmental review and consultation requirements.

l. Requiring comments to be specific.

m. Attaching and circulating only changes to the draft documents rather than the entire document when changes are minor.

n. Eliminating duplication with State and local procedures, by providing for joint preparation, and with other Federal procedures, by providing for adoption of environmental documents.

o. Combining environmental documents with other documents.

p. Using categorical exclusions.

q. Using findings of no significant impact.

11. Reducing Delays in Preparation of Environmental Documents

Reduce delays by:

a. Integrating the NEPA process into early planning.

b. Emphasizing interagency cooperation before the environmental documents are prepared, rather than submission of adversary comments on completed documents.

c. Insuring the swift and fair resolution of lead agency disputes.

d. Using the scoping process for an early identification of what are and what are not the real issues.

e. Establishing appropriate time limits for the NEPA process.

f. Preparing environmental impact statements early in the process.

g. Integrating NEPA requirements with other environmental review and consultation requirements.

h. Eliminating duplication with State and local procedures by providing for joint preparation.

i. Combining environmental documents with other documents—and describing the circumstances when this will be done.

12. Supplementation

FMCSA NEPA documentation must be periodically reviewed for adequacy and completeness in light of changes in project conditions.

a. Supplemental NEPA documentation is required when:

(1) The FMCSA makes substantial changes in the proposed action that are relevant to environmental concerns; or

(2) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impact.

b. This review requires a ''hard look'' to ascertain the adequacy of the previous analyses and documentation in light of the changes in project conditions listed above. If this review indicates no need for new or supplemental documentation, a statement to that effect should be prepared and attached to the documentation and included in the administrative record. The NEPA Liaison and the Office of Information Management must periodically review relevant existing NEPA analyses to ascertain the need for supplemental documentation and document this review.

c. In the event supplementation is required, the supplemental analysis and documentation should be prepared in accordance with 40 CFR 1502.9 and included in the administrative record for the proposed action.

13. Signing FMCSA NEPA Documents

Documentation resulting from FMCSA NEPA processes may require the signature of the preparer/environmental project manager, environmental reviewer, and/or the responsible FMCSA official. FMCSA documents which require signatures consist of the following:

a. The Environmental Checklist (Appendix 1).

b. The Categorical Exclusion Determination (Appendix 4).

c. The cover page of an Environmental Assessment (Appendix 5).

d. The Finding of No Significant Impact document for FMCSA-prepared, adopted, contractor, or applicant-prepared NEPA documents (Appendix 7).

e. The cover page for an Environmental Impact Statement (EIS), (Appendix 9).

f. The Record of Decision (ROD) for an EIS (Appendix 12).

14. Signature

Where a signature is required on each of the signature pages listed in Section D.13. of Chapter 2, above, the following policy applies.

a. *Signature of the Responsible Official.* The responsible official is the person with the authority for either making the decision or developing the final recommendation for a decision on the actions analyzed in the NEPA document. The purposes of the responsible official's signature are to:

(1) Provide a means to monitor NEPA activity in the FMCSA; and

(2) Demonstrate that relevant environmental information was considered by the decisionmaker when the decision was made.

Typically, for Administrator-initiated actions, the responsible official is the Office Director for the program sponsoring the action. For Administrator-initiated regulations, the responsible official is the person with the delegated authority to issue the regulation.

b. *Signature of the Environmental Reviewer.* The environmental reviewer is the individual responsible for reviewing the environmental content of the document to ensure that the environmental analysis and documentation complies with NEPA, CEQ regulations, DOT, and FMCSA NEPA policies and procedures.

For Administrator-initiated actions, including those where document preparation has been delegated to the Field, the environmental reviewer must be a member of the FMCSA environmental staff in the Administrator's office. For Administrator-initiated actions where document preparation has been delegated to the Field, the Administrator may also delegate environmental review of the document to the Field. However, such delegation must be documented in formal correspondence between the Administrator and the applicable Field office. For Field initiated actions, the environmental reviewer must be a member of the environmental staff in that organization. For actions initiated by Headquarters Units, Divisions, and Offices, the environmental reviewer must be a member of the FMCSA Headquarters environmental staff. In all cases, the environmental reviewer cannot be the same individual as the preparer of the NEPA document.

c. *Signature of the Environmental Project Manager.* For NEPA documents that are prepared with in-house staff, the FMCSA staff member coordinating the preparation of the environmental document is, and signs as, the ''Environmental Project Manager.'' The Environmental Project Manager is responsible for the quality of the environmental and technical analysis and documentation.

(1) If contractor involvement is minimal and only for part of the NEPA document, then the contractor must be included in the list of preparers and the FMCSA Environment Project Manager will sign as the Environmental Project Manager.

(2) If the contractor has major involvement in the preparation of the NEPA document, or if the contractor and the FMCSA preparer have equal involvement in the preparation, then the ''cover page'' of the NEPA document will indicate that the CED and/or checklist, EA, and/or EIS was prepared by the contractor for the FMCSA and be signed by the contractor as preparer, or that the documentation was prepared by both the contractor and the FMCSA and be signed by the contractor and the FMCSA Environmental Project Manager as preparers.

d. *Signature of applicant, contractors, or other preparers.* Applicants, contractors, and other preparers must sign-off on environmental documents at the time they submit the documents to the FMCSA.

*E. Special Areas of Consideration*

See Appendix 18 for additional information on evaluating special areas of consideration, such as air quality, potential noise impacts, hazardous materials, endangered species, the National Historic Preservation Act,

wetlands, and determinations under section 4(f) of the DOT Act.

**Chapter 3. Public Involvement, Legislative, and Interagency Coordination**

*A. Citizen Involvement and Public Notice Process*

In addition to the information in this Chapter, see Appendix 15, which contains information on distribution of EISs and notices of NEPA related hearings, meetings, and documents.

1. Public Involvement (40 CFR 1506.6)

a. The FMCSA will make diligent efforts to involve the public in preparing and implementing its NEPA procedures. The FMCSA will provide public notice of NEPA-related hearings and hold or sponsor public hearings or meetings whenever appropriate in accordance with statutory requirements applicable to FMCSA. The FMCSA will make environmental documents available to inform those persons and agencies who may be interested or affected. The FMCSA will provide:

(1) *Notice in All Actions.* In all cases mail notice to those who have requested it on an individual action.

(2) *Notice in Actions of National Concern.* In the case of an action with effects of national concern, provide notice to include publication in the **Federal Register**.

(A) In addition, the FMCSA will post notices and press releases on the FMCSA internet website.

(B) FMCSA will provide notice by mail to:

(i) News organizations and members of the public as appropriate or expected to be interested in the action.

(ii) Federal, State, tribal, and local government agencies that have jurisdiction by law or special expertise with respect to an environmental impact involved or that are authorized to develop and enforce environmental standards, or those agencies, organizations, and individuals that have expressed a concern in the matter.

(iii) Those who have requested it on an individual action; and

(iv) National organizations reasonably expected to be interested in the matter. If engaged in rulemaking, the FMCSA will provide notice by mail to national organizations who have requested that notice regularly be provided. The FMCSA shall maintain a list of such organizations.

(3) *Notice in Actions of Local Concern.* In the case of an action with effects primarily of local concern, the FMCSA will:

(A) Notify State and area wide clearinghouse pursuant to Exceutive Order 12372 entitled, ''Intergovernmental Review of Federal Programs.'' (*see* 47 FR 30959; July 16, 1982).

(B) Publish notice in local newspapers as appropriate (in papers of general circulation rather than legal papers).

(C) Publish notice in newsletters or provide notice through other local media (*e.g.*, radio, television, etc.) that may be expected to reach potentially interested persons.

(D) Notify affected Indian tribes when effects may occur on reservations or impact tribal interests.

(E) Follow the affected State's public notice procedures for comparable actions.

(F) Notify potentially interested community organizations including small business associations.

(G) Send direct mailings to owners and occupants of nearby or affected property.

(H) Post notice on- and off-site in the area where the action is to be located.

b. When deciding whether to hold or sponsor a public hearing or meeting, consider whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the proposed action supported by reasons why a hearing will be helpful.

c. If a draft EIS is to be considered at a public hearing, the FMCSA shall make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

d. The FMCSA must solicit appropriate information from the public.

e. The FMCSA must explain in its public notice where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

f. The FMCSA must make EISs (in addition to the distribution described in 40 CFR 1502.19)., the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including CEQ.

2. Notice of Intent

As soon as the decision to prepare an EIS has been made, the responsible FMCSA official, via the Administrator, must approve and publish the required Notice of Intent (40 CFR 1508.22) in the **Federal Register**. Where there is a lengthy period between the decision to prepare an environmental impact statement and the time of actual preparation, the Notice of Intent may be published at a reasonable time in advance of preparation of the draft statement. In addition to publishing the Notice of Intent in the **Federal Register**, the FMCSA will provide notices and press releases on the FMCSA Internet Web site.

3. Intergovernmental Review

Responsible FMCSA officials will provide notice to other Federal, State, local, and tribal government agencies when proposed actions are likely to involve public interest. The EA or EIS must evidence this solicitation, and consideration of the comments received.

*B. Proposals for Legislation*

1. Preparation

The originating Associate Administrator program office must ensure completion of the environmental analysis and/or documentation for legislative proposals which originate with FMCSA.

2. Processing

An EIS, if necessary, must be processed as required in paragraph 15.b. of DOT Order 5610.1C, via the Administrator (*See* 40 CFR 1506.8).

*C. Mitigating Measures*

The responsible FMCSA official must assure the execution and monitoring of all mitigating measures committed to in any environmental document (*i.e.*, EA, FONSI, EIS, SEIS, or FEIS) and/or record of decision for any FMCSA action. When implementing decisions, the FMCSA shall:

1. Include appropriate conditions in grants, permits, regulations or other approvals;

2. Condition funding or actions on mitigation;

3. Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted; and

4. Upon request, make available to the public the results of relevant monitoring.

*D. Inter-Agency Coordination*

1. Lead Agencies and Cooperating Agencies

The FMCSA will request the participation of each Cooperating Agency in the NEPA process at the earliest possible time. The FMCSA will coordinate and integrate State and tribal processes early in the NEPA process. When FMCSA is a Lead Agency, it will use the environmental analysis and proposals of Cooperating Agencies with jurisdiction by law or special expertise, to the maximum extent possible.

a. *Lead Agency Designation.* For Field office actions, the program office in the Field will assume responsibility for maintaining FMCSA lead agency status. The Chief of the responsible Administrator-level program office will assume this responsibility for Administrator-originated actions. The Administrator will designate the responsible Field Administrator for maintaining FMCSA lead agency status in extraordinary circumstances (*e.g.*, when an action transcends or involves more than one Field office, etc.).

b. *Proactively Soliciting Cooperating Agencies.* FMCSA will actively consider designation of Federal and non-Federal cooperating agencies in the preparation of its analyses and documentation required by NEPA, and will ensure that FMCSA actively participates as a cooperating agency in other agencies' NEPA processes. Stakeholder involvement is important to ensure decisionmakers have the environmental information necessary to make informed and timely decisions efficiently. One of the benefits of Cooperating Agency participation in NEPA analyses includes enhancing agencies' ability to adopt environmental documents by allowing adoption of an EIS without recirculating it as a draft EIS.

(1) *Cooperating Agency Designation.* FMCSA shall determine if Federal and non-Federal agencies are interested and appear capable of assuming the responsibilities of becoming a cooperating agency under 40 CFR 1501.6. If invited, Federal, State, tribal and local agencies that elect *not* to be included as cooperating agencies, should still be considered for inclusion in interdisciplinary teams engaged in the NEPA process and on distribution lists for review and comment on the NEPA documents.

(A) If the FMCSA determines that cooperating agencies will be useful in the development and preparation of EAs and EISs, it will notify, in writing, those Federal and non-Federal agencies that may be interested in assuming the responsibilities of becoming a cooperating agency. The FMCSA may consider the following factors, as appropriate on a case-by case basis, for determining whether to invite, decline, or end cooperating agency status:

(i) Whether the agency has jurisdiction by law (40 CFR 1508.15) (*e.g.*, Does the agency have authority to approve, veto, or finance a proposal or portions of a proposal?);

(ii) Does the cooperating agency have the special expertise (40 CFR 1508.26) needed to help the lead agency to:

(a) Meet a statutory responsibility;

(b) Carry out an agency mission;

(c) Meet related program expertise or experience; or

(d) Meet the objectives of regional, State, and local land use plans, policies and controls (40 CFR 1502.16(c))?

(iii) Does the agency understand what cooperating agency status means and can it legally enter into an agreement to be a cooperating agency?

(iv) Can the cooperating agency participate during scoping and/or throughout the preparation of the analysis and documentation as necessary and meet milestones established for completing the process?

(v) Can the cooperating agency, in a timely manner, aid in:

(a) Identifying significant environmental issues, including aspects of the human environment (40 CFR 1508.14) and natural, social, economic, energy, urban quality, historic and cultural issues (40 CFR 1502.16)?

(b) Eliminating minor issues from further study?

(c) Identifying issues previously the subject of environmental review or study?

(d) Identifying the proposed action's relationship to the objectives of regional, State and local land use plans, policies and controls (40 CFR 1502.16(c))?

(vi) Can the cooperating agency assist in preparing portions of the review and analysis and resolving significant environmental issues to support scheduling and critical milestones?

(vii) Can the cooperating agency provide resources to support scheduling and critical milestones, such as:

(a) Personnel? Consider all forms of assistance (*e.g.*, data gathering, surveying; compilation; research).

(b) Expertise? This includes technical or subject matter expertise.

(c) Funding? Examples include funding for personnel, travel and studies.

(d) Models and databases? Consider consistency and compatibility with lead and other cooperating agencies' methodologies.

(e) Facilities, equipment and other services? This type of support is especially relevant for smaller governmental entities with limited budgets.

(viii) Does the agency provide adequate lead-time for review and do the other agencies provide adequate time for review of documents, issues, and analyses?

(ix) Can the cooperating agency(s) accept the lead agency's final decisionmaking authority regarding the scope of the analysis, including authority to define the purpose and need for the proposed action? For example, is an agency unable or unwilling to develop information/analysis of alternatives they favor and disfavor?

(x) Are the agency(s) able and willing to provide data and rationale underlying the analyses or assessment of alternatives?

(xi) Does the agency release predecisional information (including working drafts) in a manner that undermines or circumvents the agreement to work cooperatively before publishing draft or final analyses and documents? Disagreeing with the published draft or final analysis should not be a ground for ending cooperating agency status. Agencies must be alert to situations where State law requires release of information.

(xii) Does the agency consistently misrepresent the process or the findings presented in the analysis and documentation?

(B) FMCSA program offices responsible for NEPA analysis must:

(i) Set time limits;

(ii) Assign milestones;

(iii) Assign responsibilities for analysis and documentation;

(iv) Specify scope and detail of the cooperating agency's contribution;

(v) Establish other appropriate ground-rules addressing issues such as availability of pre-decisional information; and

(vi) In appropriate cases, document the agency's expectations, roles, and responsibilities (e.g., Memorandum of Agreement or Understanding, or correspondence).

(2) *Agencies That Decline Cooperating Agency Status.* Federal agencies that decline to accept cooperating agency status in whole or in part are obligated to respond to the request. A copy of their response should be provided to CEQ (40 CFR 1501.6(c)). If an agency refuses to participate, FMCSA shall provide the agency refusing to participate with a draft EIS for comment. Negative and/or controversial comments may be referred to CEQ for resolution via the Administrator.

(3) *Declining an agency's request to participate.*

(A) If the FMCSA disagrees with the request by an agency to participate in the development of an EA or EIS, the Associate Administrator for Policy and Program Development (MC–PR) will contact the requesting agency's responsible official to have a meeting to discuss the matter and attempt to resolve the issues the FMCSA has against participating.

(B) If no agreement can be reached between the requesting agency and FMCSA:

(i) The Associate Administrator for Policy and Program Development will prepare a letter for the FMCSA Administrator's signature declining to participate with the requesting agency.

(ii) The letter will provide the specific reasons why the FMCSA believes it should not or cannot participate with the cooperating agency's request.

(iii) The FMCSA will coordinate its letter of declination with OST's Office of the Assistant Secretary for Transportation Policy (P–1) before the FMCSA Administrator signs and transmits this letter of declination to the cooperating agency and CEQ.

c. *CEQ Resolution.* Request for Council on Environmental Quality (CEQ) resolution concerning lead agency designation must be made via the Administrator. The Administrator will contact CEQ for resolution of environmental issues.

d. *Adverse Comments and Delays.* Matters to be discussed with the Council on Environmental Quality (CEQ) must be coordinated with the Administrator.

2. Distribution of Environmental Documents

a. FMCSA will provide a written notification to State, area-wide, regional, local, and tribal officials through the State process or otherwise, of any plan or project proposed in the State or locality. Where the effect of an action or rulemaking, etc., crosses State/tribal lines, the FMCSA will notify each entity of the proposal. Notification must take place at the earliest practicable time in project planning. The notification must contain all of the following:

(1) Name of the organization proposing the project.

(2) Geographic location of the project.

(3) Brief description of the project that will ensure appropriate distribution.

(4) Program to be supported by the project.

(5) Date on which the actual development, construction, or other activities involved in the physical implementation of the project is scheduled to begin.

b. In areas where no State clearinghouse process exists, forward the notification letter directly to affected State, area, regional, local, and tribal entities with instructions to review and coordinate the project.

c. It is recommended that interagency distribution of Environmental Assessments or Environmental Impact Statements be handled using a ''Public Notice'' type cover letter addressed to ''All Interested Parties.'' It should announce the availability of the EA, EIS, or SEIS, describe the project, review environmental considerations, and solicit comments. This practice eliminates the need for individual distribution letters.

3. Adopting Environmental Documents Prepared by Other Agencies

a. *Summary.*

(1) Some FMCSA actions can be taken based on environmental documentation that has been prepared by another Federal agency. The CEQ Regulations (40 CFR 1506.3) encourage agencies to adopt the environmental documentation of other Federal agencies whenever possible to reduce costs and processing time of Federal actions. This adoption may be complicated due to difference in internal agency judgment.

(2) In order to adopt another agency's environmental documentation the FMCSA must be in agreement with the content and findings of the document.

b. *Specific Procedures.* The following procedures must be adhered to when adopting environmental documents produced by other agencies:

(1) *Environmental Assessments (EAs).* EAs produced by another agency may be adopted. The responsible FMCSA official must ensure that the EA prepared for, or by, the other agency is adequate for FMCSA's purposes. If the EA is in fact adequate from a NEPA standpoint and meets FMCSA requirements, the FMCSA may adopt the document. In doing so, the FMCSA accepts the EA and takes full responsibility for its scope and content.

Should review of the EA by the responsible FMCSA official conclude in a Finding of No Significant Impact (FONSI), a FONSI statement must be prepared and should follow the format provided in Appendix 7. The FONSI should be attached to the front of the EA. The use of Appendix 7 serves both as a statement adopting the lead agency's EA and as a Finding of No Significant Impact for the FMCSA. A separate adoption statement is not needed.

When the responsible FMCSA official determines that the lead agency's EA is *not* adequate, the EA must be supplemented or rewritten. This may be done by the lead agency at the request of the FMCSA. Should the lead agency be unable to do so, or refuse, the responsible FMCSA official must ensure that the EA is supplemented or rewritten, as appropriate. In this instance, the FMCSA does not adopt the lead agency's document. The lead agency's EA becomes the basis for the FMCSA's EA, and is incorporated in the FMCSA EA to the extent it is adequate.

(2) *Finding of No Significant Impact (FONSI).* A FONSI statement itself may not be adopted. However, an EA resulting in a FONSI may be adopted as discussed in Section D.4.b.(1) of Chapter 3.

(3) *Environmental Impact Statement (EIS).* The FMCSA may adopt the EIS of another agency if the EIS adequately addresses the impacts of the project within the FMCSA's area of jurisdiction and concern. The FMCSA may either adopt the entire EIS or just a portion of it, in accordance with the procedures described in 40 CFR 1506.3. When adopting the EIS of another agency, the responsible FMCSA official must state that the FMCSA has adopted another agency's EIS in the Record of Decision. A suggested format for the statement is as follows:

''After an independent review of (specify lead agency) Environmental Impact Statement, I have determined that the document adequately addresses the impacts of the (specify action(s)). Therefore, I hereby adopt the (specify entire EIS or portion thereof).''

4. Review of Environmental Statements Prepared by Other Agencies

*Comments on Non-FMCSA EISs.* In many instances, other Federal agencies will submit copies of their EIS to the FMCSA for review. One copy of all FMCSA comments must be sent to the Administrator and DOT (P–1).

5. Pre-Decision Referrals to the Council on Environmental Quality

*DOT Lead Agency Proposals.* Field Offices and Administrator-level program offices receiving a notice of intended referral from another agency must provide DOT (P–1) with a copy of the notice via the Administrator.

**Appendices**

Appendix 1—FMCSA Environmental Checklist

Appendix 2—FMCSA Categorical Exclusions (CE)

Appendix 3—FMCSA Regulations Typically Subject to an Environmental Assessment
Appendix 4—FMCSA Categorical Exclusion Determination (CED)
Appendix 5—FMCSA Environmental Assessment Cover Sheet
Appendix 6—FMCSA Environmental Assessment (EA)
Appendix 7—FMCSA Finding of No Significant Impact (FONSI)
Appendix 8—FMCSA Notice of Intent to Prepare an Environmental Impact Statement
Appendix 9—FMCSA Environmental Impact Statement Model Cover Sheet
Appendix 10—FMCSA Environmental Impact Statement (EIS)
Appendix 11—FMCSA Notice of Availability of Environmental Impact Statement
Appendix 12—FMCSA Record of Decision
Appendix 13—Form and Content of 4(F) Statements
Appendix 14—Air Quality Analysis Guidance
Appendix 15—Distribution of Environmental Impact Statements
Appendix 16—List of Relevant Environmental Statutes and Executive Orders
Appendix 17—FMCSA's National Environmental Policy Act (NEPA) Review Process (Flow Chart)
Appendix 18—Special Areas of Consideration When Implementing NEPA

## Appendix 1—FMCSA Environmental Checklist

*Action Name:*
(Give project name and FMCSA Docket No., and/or other ID codes);
*Action Location:*
(List specific location of action [*i.e.*, border States]);
*Action Description:*
(Describe the action);
*Action Category:*
(List the category into which you believe the action falls).

### Environmental Checklist

**Note:** The decisionmaker in consultation with a HEADQUARTERS OR FIELD ENVIRONMENTAL QUALITY ADVISOR should complete this checklist. Please read the information on how to properly complete this checklist and make sure each question is answered using the accompanying explanations found on the following pages in this appendix. Attempting to answer these questions without reading the accompanying explanations may result in an incorrect or incomplete environmental analysis.

* Project Description:

Activity Year:

(* **Note:** Checklist preparer may want to attach additional descriptive information on the proposed action such as diagrams, site maps, and photographs.)

*Part I. Checklist Analysis*

| | Yes | No | Need data |
|---|---|---|---|
| 1. Is there greater size or scope than generally experienced for a particular category of action? | | | |
| 2. Is the proposed action located near a site that involves a unique characteristic of the geographic area, such as a historic or cultural resource, park land, wetland, wild and scenic river, ecologically critical area, or property requiring special consideration under 49 U.S.C. 303(c)? | | | |
| 3. Is there a likelihood that the proposed action would be highly controversial on environmental grounds? | | | |
| 4. Is there a potential for effects on the human environment that are highly uncertain or involve unique or unknown risks? | | | |
| 5. Will the action cause effects on the human or natural environment that may be precedent setting? | | | |
| 6. Are the action's impacts likely to create cumulatively significant impacts when considered along with other past, present, and reasonably foreseeable future actions? | | | |
| 7. Is the proposed action likely to have an impact on a district, site, highway, structure, or object that is listed on or eligible for listing on the National Register of Historic Places, or to cause the loss or destruction of a significant scientific, cultural, or historic resource? | | | |
| 8. Will the proposed action have a significant effect on species or habitats protected by the Endangered Species Act or other statute? | | | |
| 9. Is there a likelihood that the proposed action would be inconsistent with or cause a violation of any Federal, State, local, or tribal law or requirement imposed for the protection of the environment? | | | |
| 10. Is the action likely to have an impact that may be both beneficial and adverse? A significant impact may exist even if it is believed that, on balance, the effect will be beneficial such as likelihood that air emissions exceed *de minimis* levels or otherwise that a formal Clean Air Act conformity determination is required? | | | |
| 11. Are there reportable releases of hazardous or toxic substances as specified in 40 CFR part 302, Designation, Reportable Quantities, and Notification in the vicinity of the proposed action? | | | |
| 12. Are there reportable releases of petroleum, oils, and lubricants, application of pesticides and herbicides, or where the proposed action results in the requirement to develop or amend a Spill Prevention, Control, or Countermeasures Plan? | | | |
| 13. Does the proposed action have the potential to degrade already poor environmental conditions? Does the initiation of degrading influence activity, or affect areas not already significantly modified from their natural condition? | | | |
| 14. Does the proposed action have the potential to impact minority and/or low-income populations? | | | |
| Other environmental considerations not included on checklist. | | | |

*Part II. Comments or Additional Information Related to Part I*

The following space is provided to discuss the ''YES'' responses to the above categories (identify by corresponding number), or to provide any supplemental information.

*Part III. Conclusions*

1. This proposed action is a CE and it requires no further environmental review. [ ]
*Comments:*
2. This proposed action is a CE, but it is recommended for further review under one or more of the environmental authorities noted below (list). [ ]
*Comments:*
3. An EA is recommended for this proposed action. [ ]
*Comments:*
4. An EIS is recommended for this proposed action. [ ]
*Comments:*
5. A SEIS is recommended for this proposed action. [ ]
*Comments:*
6. A FEIS is recommended for this proposed action. [ ]
*Comments:*

Date
* Preparer/Environmental Project Manager
Title/Position
Date
** Environmental Reviewer
Title/Position
* The FMCSA preparer signs for NEPA documents prepared in-house. The FMCSA Environmental Quality Advisor signs for NEPA documents

prepared by an applicant, a contractor, or another outside party.

**Considering Environmental Consequences**

The 14 questions listed in this appendix comprise the analysis portion of the Environmental Checklist. Each question calls for a judgment by you, the decisionmaker and/or the Environmental Protection Specialist, about the likelihood that a particular kind of environmental consequence will result from the proposed action. The purpose of this checklist is to serve as a tool for the decisionmaker and/or the Environmental Protection Specialist to determine the proper level of NEPA analysis with which to begin and to identify areas of potential problems and concern.

Clarification and lists of things to consider for each question are found below; however, these lists should not be considered exhaustive by any means. Every situation and proposed action will have a unique set of circumstances that you will need to take into account as you contemplate the potential consequences of the proposed action.

Based on an internal review, external review (where appropriate), and research, check ''YES,'' ''NO,'' or ''NEED DATA'' for each question. Attach documentation as needed to support your answer.

The checklist is not complete until all ''Need Data'' issues have been resolved and all blocks are checked either ''YES'' or ''NO.'' Once you have done this, you need to go back, look at all the ''YES'' answers, and ask yourself, ''Do any of these YES's indicate potential for *significant effects to the human environment.''* Remember that the *human environment* includes both the natural and historic/cultural environment.

- If it is known that significant effects will occur which cannot be avoided or mitigated to a level of insignificance, then an EIS should be prepared.
- If it is unknown whether significant effects will occur or there is no appropriate categorical exclusion applicable to your action, an EA should be prepared with the potential for an EIS, as necessary.

**Note:** If an EA or EIS is necessary, then you must also consider the significance of impacts on the socioeconomic environment and environmental justice. Significant impacts in either of these two realms alone are NOT enough to trigger an EA or EIS. However, if an EA or EIS is prepared due to the potential for significant environmental impacts, then these documents should include discussion of any potentially significant socioeconomic or environmental justice impacts as well. Please see the discussion for Question 12 for further guidance.

- If you answered ''NO'' to all the questions, or all ''YES'' responses were adequately researched and found to have no potential for significant impacts, and there is a Categorical Exclusion (CE) to cover the proposed action, then you do *not* need to prepare either an EA or EIS.
- If the appropriate CE requires documentation such as a Categorical Exclusion Determination (CED) and/or this Environmental Checklist, make sure the documentation is complete, submit it with the appropriate planning documents, and place it in the project file.

*Question 1*

Is there greater size or scope than generally experienced for a particular category of action?

Think about whether your action is likely to

- Result in the use, storage, release, and/or disposal of toxic materials such as fertilizers, cleaning solvents, laboratory wastes, or other hazardous materials such as explosives;
- Involve a facility that may contain polychlorinated biphenyls (PCBs), urea formaldehyde, or friable asbestos;
- Be on or near an EPA or State Superfund, or a priority cleanup site;
- Involve construction on or near an active or abandoned toxic, hazardous, or radioactive materials generation, storage, transportation, or disposal site;
- Involve use of a site that contains underground storage tanks (USTs) as evidenced by historical data or physical evidence such as vent pipes or fill caps;
- Have a significant possibility of accidental spills of oils, hazardous, or toxic materials;
- Require the use or storage of explosives; or
- Require the storage or transportation of a large amount of fuel.

Agencies that may require consultation include the following:

- EPA
- OSHA
- Appropriate Federal, State and local authorities, and Indian tribes

Think about whether your action is likely to be inconsistent with such authorities as:

- EPA's solid waste management guidelines
- A State Implementation Plan (SIP) under the Clean Air Act
- OSHA noise standards
- Executive Order 12898 (Environmental Justice)
- Executive Order 12372 (Review of Federal Programs)

Are you in compliance with the following laws?

- Clean Air Act
- Clean Water Act
- Resource Conservation and Recovery Act
- Comprehensive Environmental Response Compensation, and Liability Act (CERCLA—Superfund)
- Toxic Substance Control Act
- Occupational Safety and Health Act
- The Noise Control Act

*Question 2*

Is the proposed action located near a site that involves a unique characteristic of the geographic area, such as a historic or cultural resource, park land, wetland, wild and scenic river, ecologically critical area, or property requiring special consideration under 49 U.S.C. 303(c)?

Think about whether your action is likely to:

- Alter a natural ecosystem;
- Cause damage to or require the removal of any terrestrial, marine, or aquatic vegetation;
- Affect the water supplies of humans, animals, or plants;
- Affect the water table;
- Result directly or indirectly in construction on slopes greater than 15%;
- Result in construction on or near hydric soils, wetland vegetation, or other evidence of a wetland;
- Result in construction on or near any other natural feature that could affect the safety or health of the public;
- Be located on or near a wildlife refuge, a designated wilderness, a wild and scenic river, a National Natural Landmark, a National Historic Landmark, or a National Monument designated under the Antiquities Act;
- Be located on or near designated open space, or a designated conservation area;
- Be located on or near an area under study for any such designation;
- Be located on or near any other environmentally critical area;
- Have adverse visual, social, atmospheric, traffic, or other effects on such a critical area even though it is NOT located on or near the area;
- Change the use of park lands; or
- Alter a wetland.

Find out whether there is some possible, even improbable, effect of your action that would be so serious if it occurred that further review is appropriate.

For example, you want to acquire land in a non-sensitive area that is generally unlikely to have adverse effects on the environment. However, if there is an environmentally sensitive

area downstream from the land you want to acquire, and use of the land might have the potential to cause pollution as groundwater flows through the sensitive area, then you must conduct further review. Agencies that may require consultation include:

- Army Corps of Engineers
- US Fish and Wildlife Service
- National Marine Fisheries Service
- Appropriate Federal, State and local authorities, and Indian tribes

Think about whether your action is likely to be inconsistent with such authorities as:

- Executive Order 11990, Protection of Wetlands
- Executive Order 13089 (Coral Reef Protection)
- Executive Order 13158 (Marine Protected Areas)
- DOT Order 5660.1A (Wetlands)

Are you in compliance with the following laws?

- Clean Water Act
- Wild and Scenic Rivers Act
- Coastal Zone Management Act
- National Historic Preservation Act
- American Indian Religious Freedom Act
- Native American Graves Protection and Repatriation Act
- Archaeological Resources Protection Act

*Question 3*

Is there a likelihood that the proposed action would be highly controversial on environmental grounds?

Consider first whether your action is likely to be controversial in any way. If so, consider whether this controversy is likely to have an environmental element. For example, if the FMCSA decides to close a unit, controversy could be generated on economic grounds; however, unless this controversy encompasses a potential significant *environmental* impact, it does not trigger further NEPA analysis on its own.

Environmental controversies can be about a variety of things: Impacts on historic buildings, archaeological sites, and other cultural resources; impacts on traffic or parking on a community or neighborhood; and, of course, impacts on natural resources such as water, air, soil, and wildlife. To avoid missing a controversial issue that should be addressed under NEPA, be sure not to interpret the word ''environmental'' too narrowly.

Consideration should be given to Executive Order 12372 (Review of Federal Programs).

*Question 4*

Is there a potential for effects on the human environment that are highly uncertain or involve unique or unknown risks?

First, is there anything you do not know about the action's potential impacts? Second, does what you do not know have any significance?

For example, consider a conservation plan's implementation when the full effects of the plan will not be known until after implementation and monitoring.

*Question 5*

Will the action cause effects on the human or natural environment that may be precedent setting?

To answer this question, you must look forward and outward, and consider the possibility that what is done with your particular action will pave the way for future actions that could have serious environmental consequences.

For example, you decide to issue a waiver under 49 CFR 381.215 from 49 CFR 392.66(a)(3) for a commercial motor vehicle that has been found to have a mechanical condition which would likely produce a carbon monoxide hazard to the occupants. It may be possible to issue this waiver because of the type and circumstance of the mechanical condition, or perhaps the mechanical condition of other parts and accessories mitigates the hazard. Although the nature of the particular situation may allow a CE to occur, if your action were taken as precedent for allowing ALL similar mechanical conditions to allow non-unique carbon monoxide hazards, then a higher level of review of the action may be in order.

*Question 6*

Are the action's impacts likely to create cumulatively significant impacts when considered along with other past, present, and reasonably foreseeable future actions?

Consider whether the action is related to other actions (by FMCSA or others) with impacts that are individually insignificant but that may, taken together, have significant effects.

For example, is the action part of an ongoing pattern of pollutant discharge, traffic generation (truck or bus), economic change, or land-use change in its locality that could collectively affect human health or the condition of the environment? (For further information on cumulative effects see: The Council on Environmental Quality's, ''Considering Cumulative Effects'' published January 1997.)

*Question 7*

Is the proposed action likely to have an impact on a district, site, highway, structure, or object that is listed on or eligible for listing on the National Register of Historic Places, or to cause the loss or destruction of a significant scientific, cultural, or historic resource?

Some preliminary investigation will be necessary to determine whether significant scientific, cultural or historic resources exist in the area of potential effect of the proposed action.

Think about whether your action is likely to affect:

- Districts, sites, buildings, vessels, aircraft, structures, or objects included in or eligible for the National Register of Historic Places;
- A building, structure, truck, bus, or aircraft that is over 45 years old;
- A neighborhood or commercial area; that may be important in the history or culture of the community;
- A neighborhood, commercial, industrial, or rural area that might be eligible for listing on the National Register as a district;
- A known or probable cemetery, through physical alteration or by altering its visual, social, or other characteristics;
- A rural landscape that may have cultural or aesthetic value;
- A place of traditional cultural value in the eyes of a Native American group or community;
- A known archaeological site, or land identified by archaeologists as having high potential to contain archaeological resources;
- An area identified by archaeologists or a Native American Group as a sacred site or as having high potential to contain Native American cultural items; or
- The historic/cultural character of communities or neighborhoods.

Agencies that may require consultation include:

- Appropriate State (*e.g.* State Historic Preservation Officer) and local authorities (*e.g.*, local historic preservation groups)
- Applicable Native American populations.

Think about whether your action is likely to be inconsistent with such authorities as:

- E.O. 13006, Locating Federal Facilities on Historic Properties in Our Nations Central Cities;
- E.O. 13007, Indian Sacred Sites;
- E.O. 13175, Consultation and Coordination with Indian Tribal Governments;
- E.O. 11593, Protection and Enhancement of the Cultural Environment;

Are you in compliance with the following laws?

- National Historic Preservation Act;
- Archaeological Resources Protection Act;
- American Indian Religious Freedom Act;
- Native American Graves Protection and Repatriation Act;

*Question 8*

Will the proposed action have a significant effect on species or habitats protected by the Endangered Species Act or other statute?

To answer this question, you must have information on protected species or habitats in the area of potential effect of the proposed action.

Think about whether your action is likely to

- Affect an endangered or threatened species, or its critical habitat;
- Affect a species under consideration for listing as endangered or threatened, or its critical habitat;
- Affect migratory birds;
- Affect a protected marine mammal; or
- Affect essential fish habitat protected by the Magnuson-Stevens Fishery Conservation and Management Act.

Agencies that may require consultation include:

- US Fish and Wildlife Service
- National Marine Fisheries Service

Are you in compliance with the following laws?

- Endangered Species Act
- Fish and Wildlife Coordination Act
- Magnuson-Stevens Fishery Conservation and Management Act as amended in 1996
- Migratory Bird Treaty Act
- Executive Order 13186, Responsibilities of Federal Agencies To Protect Migratory Birds

*Question 9*

Is there a likelihood that the proposed action would be inconsistent with or cause a violation of any Federal, State, local, or tribal law or requirement imposed for the protection of the environment?

Think about whether your action is likely to

- Adversely affect the ambient air quality due to dust, vehicle or equipment emissions, open burning, etc.;
- Result in toxic or unusual air emissions;
- Adversely affect the ambient air quality due to the operation and/or maintenance of vehicles, vessels, or aircraft;
- Significantly increase the ambient noise levels of the area (includes operation and/or maintenance of machinery, vehicles, vessels, aircraft, loudspeaker systems, alarms, etc.);
- Include the use of equipment with unusual noise characteristics; or
- Have noisy activities continue past normal working hours.

*Question 10*

Is the proposed action likely to have an impact that may be both beneficial and adverse? A significant impact may exist even if it is believed that, on balance, the effect will be beneficial such as likelihood that air emissions exceed de minimis levels or otherwise that a formal Clean Air Act conformity determination is required?

Think about whether your action is likely to Adversely affect a SIP;

- Adversely affect national primary ambient air quality standards (NAAQS);
- Violate the carbon monoxide standards;
- Violate ozone standards;
- Violate lead standards; or
- Violate particulate matter standards.

Think about whether your action is likely to

- Change traffic patterns;
- Increase traffic volumes;
- Increase access constraints; or
- Require substantial new facilities.

*Question 11*

Are there reportable releases of hazardous or toxic substances as specified in 40 CFR part 302, Designation, Reportable Quantities, and Notification in the vicinity of the proposed action?

To answer this question, you must have historic information on reportable releases of hazardous or toxic substances as specified in 40 CFR part 302.

*Question 12*

Are there reportable releases of petroleum, oils, and lubricants, application of pesticides and herbicides, or where the proposed action results in the requirement to develop or amend a Spill Prevention, Control, or Countermeasures Plan?

To answer this question, you must have historic information on reportable releases of petroleum, oils, and lubricants, application of pesticides and herbicides, and have an understanding of the requirements for developing and amending a Spill Prevention, Control, or Countermeasures Plan.

*Question 13*

Does the proposed action have the potential to degrade already poor environmental conditions? Does the initiation of degrading influence activity, or effect areas not already significantly modified from their natural condition?

To answer this question, you must have historic information of the area of potential effect and determine if the proposed action will further degrade or improve the already poor environmental conditions. In addition, you must determine the likelihood of the degrading activities, previously described, having an effect on areas not already modified from their natural condition.

*Question 14*

Does the proposed action have the potential to impact minority and/or low-income populations?

Think about whether your action is likely to

- Adversely impact minority and low-income communities;
- Adversely impact how public services (*i.e.*, transportation) are made available to minorities and low-income communities in the vicinity of the action; and
- Adversely change the environment in minority and low-income communities.

*Other Environmental Considerations*

Address any potential environmental effects that may be of concern, but do not fall into any of the other categories. As the decisionmaker, you could recognize something problematic in your unique situation that could not be foreseen in the development of a generalized guideline such as this.

*Socioeconomic Impacts and Environmental Justice*

If you are preparing an EA or an EIS due to the potential for significant environmental impacts, you must also consider and analyze any potential for significant impacts on the socioeconomic environment and issues of environmental justice.

Think about whether your action is likely to

- Change traffic patterns or increase traffic volumes (road and/or waterway);
- Require the rerouting of roads/waterways or traffic;
- Be located near any existing bottleneck in vehicle traffic (*e.g.*, a bridge intersection);
- Have access constraints;
- Affect a congested intersection;
- Be inconsistent with existing zoning, surrounding land use, or the official land use plan for the specific site and/or the delineated area;
- Be inconsistent with surrounding architecture or landscape;

• Increase or decrease the population of the community;
• Increase the population density of the area;
• Intrude on residential or business uses in the affected area;
• Relocate private residences or businesses;
• Affect the economy of the community in ways that result in impacts to its character, or to the physical environment;
• Result in a higher proportion of effects affecting low income or minority groups;
• Require substantial new utilities;
• Be regarded as burdensome by local or regional officials or the public because of infrastructure demands (*e.g.*, sewer, water, utilities, street system, public transit);
• Be regarded as burdensome by local or regional officials or the public because of support facilities demands (*e.g.*, schools, hospitals, shopping facilities, and recreation facilities);
• Alter a group's use of land or other resources (*e.g.*, sustenance fishing); or
• Disproportionately have a high and adverse effect on a minority or low income population.

*Appendix 2—FMCSA Categorical Exclusions (CE)*

The following are actions that, unless consideration of the factors in Section D.3.a. of Chapter 2 triggers the need to conduct further analysis, are categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement. These categories of activities have been found by FMCSA to not have the potential to significantly affect the quality of the human environment, except when ''extraordinary circumstances'' are involved. (**Note:** Where there is the potential for extraordinary circumstances, an environmental checklist must be completed to determine whether the circumstances warrant further analysis in an EA or EIS. Ordinarily, documentation of a decision regarding the applicability of a categorical exclusion and the basis for that decision should be limited to the space of one page. If more detailed justification is considered necessary, the decisionmaker should consider whether an environmental assessment is a more appropriate level of documentation.)

**1. Administration**

a. Preparation of guidance documents that implement decisions authorized by the applicable FMCSA's Office of Business Operations Directive or other Federal agency regulations, procedures, manuals, internal orders, and other guidance documents not required to be published in the **Federal Register** under the Administrative Procedure Act, 5 U.S.C. 552(a)(1).

b. Routine intra-agency personnel, fiscal, and administrative activities, actions, procedures, and policies which clearly do not have environmental impacts, such as, hiring, recruiting, processing and paying of personnel, and recordkeeping.

c. Routine procurement and contract activities and actions for goods and services, including office supplies, equipment, mobile assets, and utility services for routine administration, operation, and maintenance in accordance with Executive Orders 13101, 13148, and other applicable Executive Orders and Departmental policies regarding ''greening the government.''

d. Decisions to set up or decommission equipment or temporarily discontinue use of facilities or equipment, such as:

(1) Noise pollution monitors used in enforcement of the Noise Control Act of 1972.

(2) Radioactive material detectors used in enforcement of the Hazardous Material Transportation Acts.

(3) FMCSA-owned commercial motor vehicles used in the:

(A) Office of Enforcement and Program Delivery;

(B) Office of Research and Technology; or

(C) Commercial Vehicle platform of the Intelligent Vehicle Initiative.

This does not preclude the need to review decommissioning under Section 106 of the National Historic Preservation Act.

e. Routine and permitted movement of agency personnel and equipment, and the routine movement, handling, and distribution of non-hazardous and hazardous materials and wastes incidental to the routine and permitted movement of personnel and equipment in accordance with applicable regulations. Examples would include moving personnel from the Boise, Idaho, Division Office to the Pierre, South Dakota, Division Office or moving the agency's Intelligent Transportation System/Commercial Vehicle Operation Technology Truck working display from McLean, Virginia, to an awareness training venue in Oak Ridge, Tennessee.

f. Personnel and other administrative actions associated with consolidations, reorganizations, or reductions in force resulting from identified inefficiencies, reduced personnel or funding levels, skill imbalances, or other similar causes.

g. Financial assistance or procurements for motor carrier activities that do not commit the FMCSA or its applicants to a particular course of action affecting the environment.

h. Hearings, meetings, or public affairs activities held at locations developed for such activities.

**2. Purchase, Lease, and Acquisitions**

Lease of space in buildings or towers for a firm-term of one year or less when the intended use is in conformity with current uses.

**3. Operations**

Realignment of mobile assets, including motor vehicles, to existing operational facilities that have the capacity to accommodate such assets or where supporting infrastructure changes will be minor in nature to perform as new terminals or for repair and overhaul.

**Note.** If the realignment would result in more than a one for one replacement of assets at an existing facility, then the checklist required for this CE must specifically address whether such an increase in assets could trigger the potential for significant impacts to sensitive resources before use of the CE can be approved.

**4. Data Gathering, Review of Environmental Tests, Studies, Analyses and Reports, and Research Activities**

a. Data gathering, information gathering, and studies that involve no detectable physical change to the environment.

b. Research activities that are in accordance with inter-agency agreements and which are designed to improve or upgrade the FMCSA's ability to manage its resources. Examples of these resources would include FMCSA's stored data, its assets, and its properties, including its Intelligent Transportation System/Commercial Vehicle Operation Technology Trucks and its Safety Trucks.

c. Environmental studies undertaken to define the elements of a proposal or alternatives sufficiently so that the environmental effects may be assessed.

d. Contracts for activities conducted at established laboratories and facilities, to include contractor-operated laboratories and facilities, on FMCSA-contracted property where all airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing applicable Federal, State, and local laws and regulations.

e. Planning and technical studies that do not contain recommendations for authorization or funding for future

construction, but may recommend further study. This includes engineering efforts or environmental studies undertaken to define the elements of a proposal or alternatives sufficiently so that the environmental effects may be assessed and does not exclude consideration of environmental matters in the studies.

**5. Training**

a. Simulated inspection exercises, including those involving small numbers of personnel.

b. Training of an administrative or classroom nature. Examples would include training to inspect a commercial motor vehicle brake system or to learn more about NEPA and how to prepare and develop environmental analyses for Environmental Assessments (EAs) and Environmental Impact Statements (EISs).

**6. The Following Types of Regulations,[2] and Actions Covered by This Order Taken Pursuant to Those Regulations**

a. Regulations concerning Civil Rights procedures and guidance.

b. Regulations which are editorial or procedural, such as, those updating addresses or establishing application procedures, and procedures for acting on petitions for waivers, exemptions and reconsiderations, including technical or other minor amendments to existing FMCSA regulations.

c. Regulations concerning internal agency functions or organization or personnel administration, such as, funding or delegating authority.

d. Regulations concerning the training, qualifying, licensing, certifying, and managing of personnel.

e. Regulations concerning applications for operating authority and certificates of registration.

f. Regulations implementing the following activities, whether performed by FMCSA or by States pursuant to the Motor Carrier Safety Assistance Program (MCSAP), which provides financial assistance to States to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles (CMVs).

(1) Driver/vehicle inspections;

(2) Traffic enforcement;

(3) Safety audits; [3]

(4) Compliance reviews [4]

(5) Public education and awareness; and

(6) Data collection; and provide reimbursement for:

(A) Personnel expenses;

(B) Equipment and travel expenses;

(C) Indirect expenses for:

(i) Facilities (not including fixed scales, real property, land or buildings) used to conduct inspections or house enforcement personnel. Examples of facilities would include a motor vehicle trailer for inspection personnel to take cover while doing paperwork during a roadside inspection;

(ii) Support staff;

(iii) Equipment to the extent they are measurable and recurring (*e.g.*, rent, overhead, maintenance and minor improvements);

(iv) Expenses related to data acquisition, storage, and analysis; and

(v) Clerical and administrative expenses.

g. Regulations implementing procedures to:

(1) Promote adoption and enforcement of State laws and regulations pertaining to CMV safety that are compatible with the FMCSRs and HMRs;

(2) Provide guidelines for a continuous regulatory review of State laws and regulations; and

(3) Establish deadlines for States to achieve compatibility with appropriate parts of the FMCSRs and HMRs with respect to interstate commerce.

h. Regulations implementing procedures to collect fees that will be charged for motor carrier registration and insurance for the following activities:

(1) Application filings;

(2) Records searches; and

(3) Reviewing, copying, certifying and related services.

i. Regulations implementing procedures for which motor carriers and brokers designate their agents (persons) for whom court process may be served, describing activities, such as:

(1) The forms upon which the carrier can make the designations;

(2) The eligible persons that can be agents, and how carriers shall make the designations in each State in which it is authorized to operate and for each State traversed during such operations, and

(3) Where such designations must be made.

j. Regulations implementing uniform Single-State registration procedures for motor carriers registered with the Secretary of Transportation.

k. Regulations for all brokers [5] of transportation by motor vehicles that describe the following activities:

(1) The duties and obligations of a broker;

(2) The records and accounts a broker must keep;

(3) The type of brokerage service the broker must perform; and

(4) The charges and compensation a broker is entitled to receive.

l. Regulations requiring every motor carrier to issue and keep a receipt or bill of lading (or record) for property tendered for transportation in interstate or foreign commerce containing such information as:

(1) What must be contained on the receipt; and

(2) Who shall be given the original freight bill and who shall be given a copy, as well as how it can be transmitted to the payer.

m. Regulations implementing procedures applicable to the operations of household good carriers engaged in the transportation of household goods,[6] for the following activities:

(1) The information that carriers must give to prospective shippers prior to holding themselves out to perform such service;

(2) How carriers are to estimate the shipping costs which the shippers will be required to pay for these shipments;

(3) How to determine the weight of the shipments prior to assessing any shipping charges;

(4) How to accept shipments and provides carrier notification of delay;

(5) The liability of carriers; and

(6) How to file complaints.

[2] ''Regulations'' as used in this section includes interpretative rules and guidance, policy statements, orders, and other similar agency actions.

[3] A ''safety audit'' is an examination of motor carrier's operations to provide educational and technical assistance on safety and the operational requirements of 49 CFR parts 100 through 178 and parts 350 through 399) and to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls.

[4] A ''compliance review'' is an on-site examination of motor carrier operations (normally at the carrier's facility). An investigator can examine items, such as driver's hours-of-service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accident involvement, hazardous materials, and other safety and transportation records to determine whether a motor carrier has systems, policies, programs, practices or procedures to ensure compliance with the applicable Federal safety regulations.

[5] A ''broker'' is a person who, for compensation, arranges, or offers to arrange, the transportation of property by an authorized motor carrier. The broker has accepted the shipments and is legally bound to transport them.

[6] As defined in 49 U.S.C. 13102(10) and amended by the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, title II, Sec. 209(a), Dec. 9, 1999, 113 Stat. 1764), the term ''household goods'' as used in connection with transportation, means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is—

(A) arranged and paid for by the householder, except such term does not include property moving from a factory or store, other than property that the householder has purchased with the intent to use in his or her dwelling and is transported at the request of, and the transportation charges are paid to the carrier by, the householder; or

(B) arranged and paid for by another party.

n. Regulations that apply to actions by motor carriers registered with the Secretary to transport property for the following:

(1) The leasing of equipment (*e.g.*, a motor vehicle, straight truck, tractor, semi-trailer, full trailer, any combination of these and any other type of equipment used by carriers in the transportation of property) with which to perform transportation regulated by the Secretary;

(2) The interchange of equipment between motor common carriers in the performance of transportation regulated by the Secretary;

(3) To provide written lease requirements for authorized carriers that do not own their transportation equipment; and

(4) To set forth requirements for carriers to obtain exemptions for lease arrangements.

o. Regulations that apply to the transportation by motor vehicle of C.O.D. shipments by all common carriers of property subject to 49 U.S.C. 13702, except such transportation which is auxiliary to or supplemental of transportation by railroad and performed on railroad bills of lading, and for such transportation that is performed by freight forwarders and on freight forwarder bills of lading for the following activities:

(1) Tariff filing requirements;

(2) Extension of credit to shippers;

(3) Presentation of freight bills; and

(4) Computing time for shipments.

p. Regulations that govern the processing of claims for overcharge, duplicate payment, or over-collection for the transportation of property in interstate commerce or foreign commerce by motor carriers for information concerning how to document and investigate claims, keep records, and dispose of claims.

q. Regulations implementing record preservation procedures for motor carriers, brokers, and household goods freight forwarders, including record types retained and retention periods.

r. Regulations implementing employer controlled substances and alcohol use and testing procedures designed to prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles who:

(1) Operate a commercial motor vehicle (as defined in 49 CFR 382.107) in commerce in any State; and

(2) Are required by 49 CFR part 383 to possess a commercial driver's license (CDL).

(3) Examples of the topics covered include rules prescribing activities for:

(A) Pre-employment controlled substances test requirements;

(B) Random, post accident, reasonable suspicion, return to duty and follow-up alcohol and controlled substances testing procedures for employers and employees;

(C) Random testing rates,

(D) Requirements for drivers to report immediately to a specimen collection site; and

(E) An action required by employers if an employee has a positive test result, and recordkeeping.

s. Regulations intended to help reduce or prevent truck and bus accidents, fatalities, and injuries by requiring drivers to have a single commercial motor vehicle driver's license and by disqualifying drivers who operate commercial motor vehicles in an unsafe manner and provide for:

(1) A prohibition against a commercial motor vehicle driver having more than one commercial motor vehicle driver's license;

(2) A requirement for drivers to notify their current employer and State of domicile of certain convictions;

(3) A requirement for drivers to provide previous employment information when applying for employment as an operator of a commercial motor vehicle;

(4) A prohibition against an employer allowing a person with a suspended license to operate a commercial motor vehicle;

(5) Periods of disqualification and penalties for those persons convicted of certain criminal and other offenses and serious traffic violations, or subject to any suspensions, revocations, or cancellations of certain driving privileges; testing and licensing requirements for commercial motor vehicle operators;

(6) A requirement for States to give knowledge and skills tests to all qualified applicants for commercial drivers' licenses which meet the Federal standard; and

(7) Requirements for the State-issued commercial license documentation.

t. Regulations to ensure that the States comply with the provisions of the Commercial Motor Vehicle Safety Act of 1986, by:

(1) Including the minimum standards for the actions States must take to be in substantial compliance with each of the statutory requirements of 49 U.S.C. 31311(a); and

(2) Having the appropriate laws, regulations, programs, policies, procedures and information systems concerning the qualification and licensing of persons who apply for a commercial driver's license, and persons who are issued a commercial driver's license.

And, establish procedures for:

(1) Determining whether a State is in compliance with the rules of this part; and

(2) The consequences of State noncompliance.

u. Regulations implementing rules of practice for motor carrier, broker, freight forwarder and hazardous materials proceedings before the Assistant Administrator/Chief Safety Officer, under applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399), including the commercial regulations (49 CFR parts 360–379) and the Hazardous Materials Regulations (49 CFR parts 171–180) to determine whether:

(1) A motor carrier, property broker, freight forwarder, or its agents, employees, or any other person subject to the jurisdiction of the FMCSA, has failed to comply with the provisions or requirements of applicable statutes and the corresponding regulations; and,

(2) To issue an appropriate order to compel compliance with the statute or regulation, assess a civil penalty, or both if such violations are found.

v. Regulations prescribing the minimum levels of financial responsibility required to be maintained by motor carriers of property and passengers operating motor vehicles in interstate, foreign, or intrastate commerce.

w. Regulations to enable States to enter into cooperative agreements with the FMCSA to enforce the safety laws and regulations of a State and the agency concerning motor carrier transportation by filing a written acceptance of the terms.

x. Regulations implementing procedures for the issuance, amendment, revision and rescission of Federal motor carrier regulations (*e.g.*, the establishment of procedural rules that would provide general guidance on how the agency manages its notice-and-comment rulemaking proceedings, including the handling of petitions for rulemakings, waivers, exemptions, and reconsiderations, and how it manages delegations of authority to carry out certain rulemaking functions).

y. Regulations implementing:

(1) Aiding or abetting prohibitions;

(2) Motor carrier identification and registration reports, including Performance and Registration Information Systems Management program registrations;

(3) Motor carrier and driver assistance with routine accident investigations;

(4) Relief during regional and local emergencies, including tow trucks responding to emergencies;

(5) Locations where motor carriers, drivers, brokers, and freight forwarders must store records;

(6) Requirements about motor carriers, drivers, brokers, and freight forwarders copies of records; and

(7) Prohibitions on motor carriers, agents, officers, representatives, and employees from making fraudulent or intentionally false statements on any application, certificate, report, or record, including interstate motor carrier noise emission applications, certificates, reports, or records required by FMCSA.

z. Regulations establishing:

(1) The minimum qualifications for persons who drive CMVs as, for, or on behalf of motor carriers; and

(2) The minimum duties of motor carriers with respect to the qualifications of their drivers.

aa. Regulations requiring motor carriers, their officers, drivers, agents, representatives, and employees directly in control of CMVs to inspect, repair, and provide maintenance for every CMV used on a public road.

bb. Regulations concerning vehicle operation safety standards (*e.g.*, regulations requiring: Certain motor carriers to use approved equipment which is required to be installed such as an ignition cut-off switch, or carried on board, such as a fire extinguisher, and/or stricter blood alcohol concentration (BAC) standards for drivers, etc.), equipment approval, and/or equipment carriage requirements (*e.g.* fire extinguishers and flares).

cc. Special local regulations issued in conjunction with a motor vehicle rodeo or motor vehicle parade; provided that, if a permit is required, the environmental analysis conducted for the permit included an analysis of the impact of the regulations.

dd. Regulations concerning rules of the road, traffic services, and marking of intelligent transportation systems.

**7. Recreational Activities and Events**

a. Approval of recreational activities or events (such as an FMCSA picnic) at a location developed or created for that type of activity.

b. Approvals of motor vehicle rodeo and motor vehicle parade event permits for the following events:

(1) Events that are not located in, proximate to, or above an area designated environmentally sensitive by an environmental agency of the Federal, State, or local government. For example, environmentally sensitive areas may include such areas as critical habitats or migration routes for endangered or threatened species or important fish or shellfish nursery areas.

(2) Events that are located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, State, or local government and for which the FMCSA determines, based on consultation with the Governmental agency, that the event will not significantly affect the environmentally sensitive area.

**Appendix 3—FMCSA Regulations Typically Subject to an EA**

The following actions are typically subject to an environmental assessment:

(1) Regulations addressing compliance with interstate motor carrier noise emission standards.

(2) Regulations implementing procedures for motor carrier routing (commercial).

(3) Regulations addressing principles and practices for the investigation and voluntary disposition of loss and damage claims and processing salvage (*i.e.*, disposition of damaged property).

(4) Regulations addressing exemptions (not included in Appendix 2), commercial zones, and terminal areas.

(5) Regulations that apply exclusively to passenger carriers.

(6) Regulations that apply to driving of commercial motor vehicles.

(7) Regulations addressing parts and accessories necessary for safe operation.

(8) Regulations that apply to hours of service of drivers.

(9) Regulations that apply to transportation of hazardous materials, including driving and parking rules.

(10) Regulations that apply to transportation of migrant workers.

(11) Regulations that address employee safety and health standards (not included in Appendix 2).

**Appendix 4—FMCSA Categorical Exclusion Determination (CED)**

**''Public Notice—All Interested Parties'' FMCSA Categorical Exclusion Determination for (Title of Proposed Project)**

(Brief, concise description of the location and the proposed action. Should be only one or two paragraphs.)

This action is not expected to result in any significant adverse environmental impacts as described in the National Environmental Policy Act of 1969 (NEPA). The proposed action has been thoroughly reviewed by the FMCSA, and the undersigned have determined this action to be categorically excluded from further environmental documentation, in accordance with FMCSA's NEPA Implementing Procedures and Policy for Considering Environmental Impacts (FMCSA Order 5610.1), since implementation of this action will *not* result in any of the following:

1. Significant cumulative impacts on the human environment.

2. Substantial controversy or substantial change to an existing environmental condition.

3. Impacts that are more than minimal on properties protected under 4(f) of the DOT Act as superseded by Pub. L. 97–449, and Section 106 of the National Historic Preservation Act.

4. Inconsistencies with any Federal, State, tribal, or local laws or administrative determinations relating to the environment.

Date
*Preparer/Environmental Project Manager (as applicable)
Title/Position
Date
Environmental Reviewer
Title/Position

In reaching my decision/recommendation on the FMCSA's proposed action, I have considered the information contained in this CED (and in any attached environmental checklists or other supplemental environmental analyses) on the potential for environmental impacts.

Date
Responsible Official
Title/Position

• The FMCSA preparer signs for NEPA documents prepared in-house. The FMCSA environmental project manager signs NEPA documents prepared by an applicant, a contractor, or another outside party.

**Appendix 5—FMCSA Environmental Assessment Cover Sheet**

**Public Notice—All Interested Parties**

Title of Document
(Environmental Assessment)
Responsible Agency Names(s)
Title of Action
Location
Contact Name
Address
Telephone/Fax/E-mail (as appropriate)
Abstract of the Document
Date of Distribution

**Appendix 6—FMCSA Environmental Assessment (EA)**

**''Public Notice—All Interested Parties'' FMCSA'S Environmental Assessment for (Title of proposed action)**

The FMCSA's environmental assessment (EA) was prepared in accordance with FMCSA's NEPA Implementing Procedures and Policy for Considering Environmental Impacts

(FMCSA Order 5610.1) and complies with the National Environmental Policy Act of 1969 (Pub.L. 91–190) and the Council of Environmental Quality Regulations dated 28 November 1978 (40 CFR parts 1500–1508).

This environmental assessment serves as a concise public document to briefly provide sufficient evidence and analysis for determining the need to prepare an environmental impact statement or a finding of no significant impact (FONSI). This environmental assessment concisely describes the proposed action, the need for the proposal, the alternatives, and the environmental impacts of the proposal and alternatives. This environmental assessment also contains a comparative analysis of the action and alternatives, a statement of the environmental significance of the preferred alternative, and a list of the agencies and persons consulted during EA preparation.

Date
*Preparer/Environmental Project Manager (as applicable)
Title/Position
Date
Environmental Reviewer
Title/Position

In reaching my decision/recommendation on the FMCSA's proposed action, I have considered the information contained in this EA on the potential for environmental impacts.

Date
Responsible Official
Title/Position

*The FMCSA preparer signs for NEPA documents prepared in-house. The FMCSA environmental project manager signs for NEPA documents prepared by an applicant, a contractor, or another outside party.

*Environmental Assessment (EA) Format*

I. Purpose of and Need for Proposed Action

The preparer of the EA will need to examine the objectives of the proposed action, the problems to be resolved by the action, and the environmental issues raised by the action, if any, as determined through scoping.

II. Description of the Proposed Action, No Action, and Alternatives

Examine the size, location, nature of proposed action, tied to purpose and need above. Also examine the size, location, and nature of any alternative actions that would meet the purpose and need when required by section 102(2)(E) of NEPA. A description of the No Action Alternative is also useful here, indicating the state of the environment as it exists today and in the future if the agency decides not to implement its proposal.

III. Description of the Environmental Impacts of the Proposed Action, including the Alternatives and No Action

The preparer of the EA would describe the potential environmental impacts for each alternative, including all proposed Action Alternatives and No Action, and all issues identified during scoping and any other issues that have become apparent in the course of analysis. The preparer of the EA may examine the context(s) in which effects may occur, including the intensity of effects, using the Environmental Checklist as an outline. The preparer should also include mitigation measures (avoidance, minimization, repair, rehabilitation, restoration, preservation, and compensation) where they exist and are adequate to reduce effects below significance.

IV. Comments and Coordination

The preparer of the EA must include a list of agencies, tribes, groups or individuals who commented during the preparation of the EA and who have submitted comments to the notice of availability. A copy of each comment to the notice of availability must be appended to the EA. A list (may be in table format) of names, titles, educational and experience background, and analyses or document sections for which each person who prepared, reviewed, or who were consulted during the EA's preparation.

V. Appendicies (if any), Including References, Maps, Reports, etc., That Substantiate the EA Analysis

VI. Section 4(f) Evaluation (49 U.S.C. 303) (if any)

VII. Other Compliance Information (if any)

The preparer of the EA must include any other environmental statutory evaluations completed, such as section 6(f) of the Land and Water Conservation Fund Act of 1965, section 106 of the National Historic Preservation Act, section 404 of the Clean Water Act, section 7 of the Endangered Species Act, Clean Air Act 1990 (conformity), Executive Order 12898 and DOT Order 5610.2 Environmental Justice assessments,

**Appendix 7—FMCSA Finding of No Significant Impact (FONSI)**

**"Public Notice—All Interested Parties"**

**FMCSA'S Finding of No Significant Impact for (Title of proposed action)**

In accordance with the National Environmental Policy Act of 1969 (NEPA) (Pub. L. 91–190) and the Council of Environmental Quality Regulations dated 28 November 1978 (40 CFR parts 1500–1508), and FMCSA Order 5610.1, this action has been thoroughly reviewed by the FMCSA and it has been determined, by the undersigned, that this project will have no significant impact on the human environment. Therefore, no Environmental Impact Statement (EIS) will be prepared.

This finding of no significant impact is based on the attached FMCSA prepared environmental assessment (reference other environmental documents as appropriate and if this action is related to other projects) which has been determined to adequately and accurately discuss the environmental issues and impacts of the proposed action and provides sufficient evidence and analysis for determining that an environmental impact statement is not required.

[Use the following language only if needed]:

The following environmental agreements have been reached with agencies having jurisdiction by law or expertise on environmental issues:

(List any agreements reached during the environmental analysis for this EA.)

The following mitigation and monitoring measures will be implemented to ensure that the action will have no significant impact on the quality of the human environment:

(List mitigation and monitoring measures agreed upon with others, or established independently by FMCSA.)

Date

Environmental Reviewer

Title/Position

I have considered the information contained in the EA, which is the basis for this FONSI. Based on the information in the EA and this FONSI document, I agree that the proposed action as described above, and in the EA, will have no significant impact on the environment.

Date

Responsible Official

Title/Position

**Appendix 8—FMCSA Notice of Intent to Prepare An Environmental Impact Statement**

**Public Notice—All Interested Parties**

**FMCSA'S Notice of Intent To Prepare an Environmental Impact Statement**

The Federal Motor Carrier Safety Administration (FMCSA) intends to prepare an Environmental Impact Statement on the following action and/or project:

Name of Action/Project
Location of Action/Project
FMCSA Docket Number

The proposed action/project will:

(Enter a brief description of the purpose and need for the project, and a description of the proposed action to meet that purpose and need.)

Alternatives to the proposed action include:

(Describe briefly any alternatives identified that will meet the purpose and need for the project; include a description of the No Action alternative.)

Public scoping (if appropriate at this stage) will include:

(Describe the scoping and public involvement plan for the EIS, including any meetings, field trips, or other public events scheduled as part of scoping.)

For further information:

Name of Contact
Title
Address
Phone Number
(Fax and E-mail addresses, if appropriate)

**Appendix 9—FMCSA Environmental Impact Statement Model Cover Sheet FMCSA'S EIS Model Cover Sheet Format**

**Public Notice—All Interested Parties**

**FMCSA'S EIS Cover Sheet for (Title of Document/Volume #/Total # of Volumes)**

(Draft or Final Environmental Impact Statement)
or
(Supplemental Environmental Impact Statement)
FMCSA Docket Number
Responsible Agency Name(s)
Title of Action/Project
FMCSA Docket Number
Location
Contact Name(s)
Address
Telephone/Fax/E-mail (as appropriate)
[Add one paragraph abstract of the Document]

The Federal Motor Carrier Safety Administration (FMCSA) [enter a brief description of the underlying purpose and need to which the agency is responding in proposing the alternatives, including the ''no action'' alternative]. This Environmental Impact Statement (EIS) examines the environmental effects of: [List the environmental analyses that were made in the EIS (*i.e.*, potential impacts on natural resources, air quality, water quality, endangered species, and community, social, and cultural resources were examined, together with the potential for the generation or release of toxic, hazardous, and radioactive wastes).] Date of Publication:

Date Comments Must be Received:

(For DEIS/SEIS: Allow at least 45 Days from Date of Publication)
(For FEIS: Allow at least 30 Days from Date of Publication)

**Appendix 10—FMCSA Environmental Impact Statement (EIS)**

**''Public Notice All Interested Parties''**

FMCSA (State whether Draft, Supplemental, or Final)
Environmental Impact Statement
(Volume # / Total # of Volumes)
For (Title of action)

*Document Number:*

*Prepared By:* (Responsible agency name(s) and contractor name, if appropriate, or prepared by: contractor name for responsible agency name(s)) (Location).

*Contact Information:* (Name, address, telephone/fax/e-mail, as appropriate).

*Abstract:* (One-paragraph abstract of the document).

*Date of Publication:*

*Date Comments Must Be Received:*

FMCSA Docket Number:

(For DEIS/SEIS: allow at least 45 Days from date of publication)
(For FEIS: allow at least 30 Days from date of publication)
Date
* Preparer/Environmental Project Manager (as applicable)
Title/Position
Date
Environmental Reviewer
Title/Position

In reaching my decision/recommendation on the FMCSA's proposed action, I have considered the information contained in this EIS on environmental impacts.

Date
Responsible FMCSA Official
Title/Position

* The FMCSA preparer signs for EISs prepared in-house. The FMCSA environmental project manager signs for EISs prepared by an applicant, a contractor, or another outside party.

**Appendix 11—FMCSA Notice of Availability of Environmental Impact Statement**

**FMCSA's Notice of Availability of (Draft/Supplemental/Final) EIS for (Title of Proposed Action)**

The Federal Motor Carrier Safety Administration (FMCSA) has filed with the Environmental Protection Agency and made available to other governmental and private bodies a (Draft / Supplemental / Final) Environmental Impact Statement on the following action/project:

Name of Action/Project
Location of Action/Project
FMCSA Docket Number

This proposed action/project will:

(Enter brief description of the purpose and need for the action, alternatives, plus no action, location of project, affected environment, etc.)

Copies of Draft/Final environmental Impact Statement are available from:

Name of Contact
Title
Address
Phone Number
(Fax and E-mail addresses, if appropriate)

[For Draft EISs *only*, use the following language:]

Council on Environmental Quality regulations provide for a 45-day review and comment period, which begins with the date of the **Federal Register** notice of the availability of the Draft Environmental Impact Statement. That date is (insert date here); comments are due to the FMCSA contact named above no later than (insert date here).

Date
*Preparer/Environmental Project Manager (as applicable)
Title/Position
Date
Environmental Reviewer
Title/Position
Date
Responsible FMCSA Official
Title/Position

**Appendix 12—FMCSA Record of Decision**

**''Public Notice—All Interested Parties''**

**FMCSA Record of Decision**

The FMCSA has published a Final Environmental Impact Statement (FEIS) on the following project:

(Name of action/project)
(Location of action/project)
(FMCSA Docket Number)

(Describe each of the following topics:)

The purpose and need for the action/project was:

Alternatives examined included:

Environmental consequences of the action/project include:

The decision is:

The environmentally preferable alternative(s) is (are):

I (selected/did not select) the environmentally preferable alternative because:

The following are the economic, technical, FMCSA statutory mission, national policy considerations (as applicable) that were weighed in reaching my decision: (Explain how these considerations, as applicable, entered into the decisionmaking process.)

All practicable means of avoiding or minimizing environmental harm from the selected alternative(s) were/were not adopted because:

The following mitigation, monitoring, and enforcement has been adopted (if applicable):

In reaching my decision/recommendation on the FMCSA's proposed action, I have considered the information contained in the above-mentioned FEIS on the potential for environmental impacts.

Date

Responsible FMCSA Official

Title/Position

**Appendix 13—Form and Content of 4(f) Statements**

**Form and Content of 4(f) Statements**

1. These instructions are to supplement the 4(f) requirements of Attachment 2 to DOT Order 5610.1C.

2. Section 4(f) of the Department of Transportation Act states that *special effort* should be made to preserve the natural beauty of the countryside, public parks, and recreation lands, wildlife and waterfowl refuges, and historic sites. Section 4(f) further states that the Secretary of Transportation (Secretary) shall not approve any program or project which requires the use of 4(f) lands (*see* paragraph 4.) unless:

a. There is *no feasible and prudent* alternative to the use of such lands, and;

b. Such program includes *all possible* planning to minimize harm to 4(f) lands resulting from such use.

3. Subsequent legal decisions have indicated that the protection of parklands and other 4(f) areas is of *paramount importance;* that such lands are not to be lost unless there are *truly unusual factors* present, or unless the cost or community disruption resulting from alternatives reaches *extraordinary magnitudes;* and that the Secretary cannot approve the destruction of parkland unless alternatives present *unique problems*.

4. Section 4(f) lands include any publicly owned land from a park, recreation area, or wildlife or waterfowl refuge, or any land from an historic (including archaeological) site.

a. Publicly Owned land—Any land owned in fee simple or land subject to public easement or other interest in the land by a Federal, State, or local agency or entity.

b. Historic Site—For the purposes of Section 4(f), an historic site is significant only if it is on or eligible for inclusion on the National Register of Historic Places, or if the FMCSA or the DOT lead Federal agency determines that the application of Section 4(f) is appropriate. Consultation with the State Historic Preservation Officer (SHPO) and the Keeper of the Register (DOI) is required to identify such properties, unless the FMCSA official and the SHPO have agreed that the property does not meet the eligibility criteria, then the Keeper of the Register need not be consulted for a determination.

c. Archaeological Site—Section 4(f) generally applies to archaeological sites on or eligible for the National Register. If the SHPO concurs in a FMCSA determination that a data recovery program will negate ''an adverse'' effect to an archaeological property on or eligible for the National Register, Section 4(f) does not normally apply. (See the Advisory Council Historic Preservation Handbook: Treatment of Archaeological Properties, November 26, 1980, Part II, Section X.)

d. Multiple-Use Lands—Where Federal lands or other large public land holdings are managed for multiple uses under a statute authorizing such management, Section 4(f) applies only to portions of multiple-use lands that are used for or are designated as being for public park, recreation, wildlife or waterfowl refuge, or historic purposes. The official having jurisdiction over the land (see paragraph 7) determines its significance.

e. Temporary 4(f)—Type Use of Acquired (Non-4(f)) Lands—This use shall not be subject to 4(f) actions if:

(1) The land was not previously used for parks, recreation, wildlife or waterfowl refuge purposes or was not listed on or eligible for the National Register before acquisition by the transportation agency; and

(2) The lease, permit, or license clearly states that the use is temporary (time period specified or subject to the transportation agency owning the land) and that after that period the transportation use will commence.

f. The amount of land taken or affected is immaterial; the law clearly refers to any 4(f) lands having Federal, State, local, or tribal significance as determined by the officials having jurisdiction over the land. The 4(f) lands' significance must be determined as one entity and not be divided into significant and non-significant parcels.

g. Enhancement of the 4(f) lands by the proposed project is also immaterial; the Secretary must still approve the use of the land.

h. Also included are *former* 4(f) lands, if the transfer of ownership or the change in use was to avoid a Section 4(f) issue.

i. ''Use of land'' under Section 4(f) generally means the acquisition of title to or an easement in land for a transportation program or project. In unusual circumstances, serious adverse impacts such as severe increases in noise or air pollution, or access disruption may constitute a ''constructive use,'' even where no acquisition is involved, and Section 4(f) would apply.

j. Facilities (*e.g.*, roadside rest areas) located on 4(f) lands and provided by the transportation agency solely for the use by the users of the transportation facility will not normally be subject to Section 4(f).

k. Projects (*e.g.*, pedestrian, bicycle or equestrian bridges) that require the use of 4(f) lands for recreation purposes will not normally be subject to Section 4(f).

5. The language of Section 4(f) and subsequent legal interpretations clearly indicate the need for a *rigorous* 4(f) statement to accompany any FMCSA project using lands under the protection of this statute. The 4(f) statement should include the information discussed in the following paragraphs.

6. A comprehensive description of the 4(f) lands affected or taken by the project should be presented.

a. The type and amount of lands required by the project should be indicated. This should include the acreage needed for permanent surface easements, aerial easements, underground easements, drainage and utility easements, etc., as well as that needed for temporary construction easements.

b. The existing 4(f) lands should be described including ownership, administrative jurisdiction, location, size, available recreational facilities, use, patronage, unique or irreplaceable qualities present, type of vegetation or landscaping, type of wildlife (including resident and migratory species), historical or cultural (including architectural or artistic) significance, etc.

c. The relationship of the 4(f) lands to other similarly used lands near the project should be clearly indicated.

d. Adverse impacts of the project on 4(f) lands should be discussed. This discussion should pay particular attention to the special nature of 4(f) lands and should include detailed information concerning the effect of the project on natural views, local historical values, pedestrian and other access, recreational use, vegetation, wildlife, etc. Care should be taken to include a rigorous analysis of aesthetic, air, water, and noise pollution on 4(f) lands near and adjacent to the project. If these impacts are insignificant, the reasons for this determination should be given in detail.

e. Secondary impacts of the project on involved 4(f) lands should also be discussed, as these can often be of a greater magnitude than direct primary impacts. Such a discussion should include possible change in nearby land values that could lead to private development in the area which would reduce the natural beauty or scenic qualities of the 4(f) lands, increased access which may lead to excessive patronage and overuse of the lands, etc.

f. General statements made in the above discussions and descriptions should be supported by numerical data. In addition, maps, plans, elevations, pictorial drawings, photographs (including aerial photographs), or other graphics should be presented which show the affected 4(f) lands and their relationship to the proposed project. These graphics should be of sufficient scale and detail to allow an analysis of the use to be made.

7. A statement of the tribal, local, State, or national significance of the 4(f) lands should be presented. This statement should come from the officials having jurisdiction over the lands when at all possible, and should address the significance of the entire area involved, and the actual land affected or taken by the project. When such a statement cannot be obtained from the officials having jurisdiction, the lands will be presumed to be significant. Any statement of insignificance from whatever source is subject to review by the FMCSA for bias.

8. A complete description of all alternatives and their impacts that were considered in order to avoid effects on, or the taking of, 4(f) lands should be presented. The Secretary cannot approve a project unless there is *no feasible and prudent* alternative to the use of involved 4(f) lands.

a. Alternatives considered should be sincere attempts to avoid or reduce impacts on 4(f) lands and not those contrived to satisfy the letter of the law.

b. The FMCSA must critically examine the project as a whole and its relation to nearby 4(f) lands to determine if the applicant has considered *all reasonable* alternatives to avoid or minimize the use of these lands, including the ''status quo'' or ''do nothing'' alternative.

c. In order to evaluate the feasibility and prudence of the alternatives, rigorous and detailed information must be presented for *each* one. If the alternatives are determined not to be feasible and prudent, this information should include evidence that they present *truly unique and unusual* technical problems or that they will result in costs or community disruptions that reach *extraordinary magnitudes.* (*See Citizens to Preserve Overton Park* v. *Volpe,* 401 U.S. 402 (2 ERC 1250) (1971)).

d. Evidence supporting determination on feasibility and prudence should include, but not be limited to:

(1) A description of each alternative, including a discussion of the type and amount of land required (especially through 4(f) lands), maps, plans, elevations, or other graphics, sufficient to assess potential impacts of the alternative.

(2) A cost estimate for *each* alternative, including figures showing percentage differences in total costs for the various alternatives (including the proposed project).

(3) A discussion of the environmental and community impacts of *each* alternative, including figures showing the number of people displaced, the number of homes or businesses removed, the degree of air and noise pollution caused by the alternative, and other numerical data that will allow a proper evaluation of the *magnitude* of the impacts to be made, if appropriate.

(4) An assessment of the technical or engineering feasibility of *each* alternative, which includes full consideration of new or innovative construction techniques.

9. If there is no feasible and prudent alternative to the use of 4(f) lands by the proposed project, then a description of measures to minimize harm to the protected area should be presented. The Secretary cannot approve a project unless it includes *all possible* planning to minimize harm to the involved 4(f) lands.

a. The FMCSA must examine the relationship of the proposed project to the affected 4(f) lands and determine whether *all possible* measures to minimize harm were considered; it should ensure that the statement treated alternative designs, sites and/or routes.

b. All planning undertaken to minimize harm to 4(f) lands should be described in detail. A statement of actions taken, or to be taken, to implement this planning should also be included, along with an estimated schedule showing when this implementation will take place.

c. Measures to minimize harm should include, but not be limited to, the following:

(1) The replacement of land and facilities, or the provision of compensation adequate for the functional replacement of land and facilities.

(2) Measures to reduce visual intrusion and related aesthetic impacts, such as landscape screenings, appropriate architectural design, etc.

(3) Measures to reduce noise impacts, such as sound barriers, etc.

(4) Measures to reduce construction impacts, such as control of drainage and erosion, proper disposal of spoil material, protection of trees and other vegetation, control of temporary air and noise pollution, maintenance of vehicular and pedestrian access during construction, etc.

(5) Measures to enhance the natural beauty of the lands traversed, such as the provision of more usable landscaped open space in congested urban areas, etc.

10. Evidence of concurrence, or a description of efforts to obtain concurrence of officials having jurisdiction over Section 4(f) lands regarding the proposed action and measures planned to minimize harm should be presented. Evidence of consultation with grantor agencies, where land acquired with Federal grant money is involved, should also be presented. Concurrence of these officials to the proposed project, however, does not remove the necessity for the preparation of a detailed and rigorous 4(f) statement.

11. Approval of the 4(f) statement in accordance with FMCSA's NEPA Implementing Procedures and Policy for Considering Environmental Impacts (FMCSA Order 5610.1) shall be accomplished by having the proper approving official sign a 4(f) determination approval statement. This approval page shall contain the following paragraph:

''Based on this 4(f) statement, I have determined that there is no feasible and prudent alternative to the use of this 4(f) land(s) and that all possible planning to minimize harm to this land(s) has been accomplished.''

The dated approval page must be inserted as the first page inside the cover of the final document.

12. Section 4(f) statements should be made a part of, and be supported by, data within Environmental Impact Statements, or FMCSA Supplementary Statements, whenever such are prepared as part of a project, *e.g.*, whenever the use of or effect on the 4(f) lands will ''significantly affect the quality of the human environment.''

a. When incorporating a 4(f) statement into an EIS as required by FMCSA's NEPA Implementing Procedures and Policy for Considering Environmental Impacts (FMCSA Order 5610.1), one of two methods for presentation of the 4(f) information may be used. The 4(f) statement may be presented as a *complete separate section* of the EIS or the 4(f) information may be *incorporated throughout the text* of the EIS.

b. When the 4(f) statement is presented as a *complete separate section* of an EIS, that section must contain the detailed analysis of issues, alternatives, and mitigation measures to be implemented. A 4(f) statement presented in this manner shall be written in sufficient detail to allow the 4(f) section to stand independent of the EIS.

c. When the 4(f) information is *incorporated throughout the text* of an EIS a summary of findings of the 4(f) investigation shall be presented in an appropriate section of the EIS. This summary should concisely describe the 4(f) issue and direct the reader to quickly locate detailed information needed to rigorously evaluate the 4(f) issue.

d. When a 4(f) statement is incorporated throughout the text of an EIS, the front cover of the EIS shall clearly indicate that the document is an Environmental Impact/Section 4(f) Statement.

e. When the 4(f) statement is incorporated throughout the text of an EIS, the requirement of paragraph 11 of this appendix shall be combined with the EIS approval page.

13. Some uses of 4(f) lands will only minimally affect the 4(f) land. In such instances, the 4(f) statement shall be an independent document accompanied by a Finding of No Significant Impact (FONSI) or Categorical Exclusion Determination Statement.

## Appendix 14—Air Quality Analysis

This appendix offers guidance on how to determine the appropriate level of air quality analysis for Federal Motor Carrier Safety Administration (FMCSA) actions subject to environmental review. Where projects are of greater scope than characteristic FMCSA actions, these actions should be developed in coordination with the Office of the Secretary of Transportation (OST) and the Environmental Protection Agency (EPA).

Two primary laws apply to air quality: The National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), and the Clean Air Act as amended (CAA) (42 U.S.C. 7401 *et seq.*). NEPA and its implementing regulations (40 CFR Parts 1500–1508) and guidelines establish broad Federal policies and goals for the protection of the environment and provide a framework for balancing the need for environmental quality with other essential societal functions, including national defense.

The CAA established National Ambient Air Quality Standards (NAAQS) for six pollutants, termed criteria pollutants. The six pollutants are: Carbon monoxide (CO), lead (Pb), nitrogen dioxide ($NO_2$), ozone ($O_3$), particulates (PM–10 and PM–2.5), and sulfur dioxide ($SO_2$). The CAA requires each State to adopt a plan to achieve the NAAQS for each pollutant within timeframes established under the CAA. These air quality plans, known as State implementation plans (SIP), are subject to Environmental Protection Agency (EPA) approval. In default of an approved SIP, the EPA is required to promulgate a Federal implementation plan (FIP).

Every effort should be made to reflect information necessary to address any applicable State and local air quality requirements in the NEPA document.

These requirements can include, but are not limited to, provisions such as State indirect source regulations and State air quality standards

### FMCSA Responsibilities

*National Environmental Policy Act*

FMCSA has a responsibility under NEPA to include in its EA or EIS sufficient analysis to disclose the potential impacts of a proposed action, including whether the action would affect an area's attainment and maintenance of air quality standards established by the Clean Air Act.

*Clean Air Act*

It is FMCSA's affirmative responsibility under Section 176(c) of the CAA to assure that its actions that are covered by the general conformity requirements conform to applicable SIPs in nonattainment and maintenance areas. Before FMCSA can fund or support in any manner an activity, it must address the conformity of the action with the applicable SIP using the criteria and procedures prescribed in the general conformity rule (see CAA—General Conformity Requirements section).

### Requirements

*National Environmental Policy Act*

The requirements for air quality analysis under NEPA are distinct from those of the general conformity rule of the CAA. However, the NEPA document should reflect findings of a conformity analysis. When a NEPA analysis is needed, the impacts of the alternatives on air quality are assessed by evaluating the alternatives against the NAAQS. The proposed action's emissions are analyzed for each reasonable alternative, including the no action alternative. The analysis should include direct emissions as well as indirect emissions that are reasonably foreseeable. For purposes of quantitatively evaluating health impacts under NEPA, provide all estimated criteria air pollutant concentrations, *e.g.*, 1—or 8-hour average concentrations for ozone.

In most cases, further analysis would not be required for areas that are in attainment with the NAAQS for criteria pollutants. However, based on the nature of the proposed action, additional analysis may be appropriate. The methodologies and scope of these analyses should be determined through consultation with Federal, State, and local air quality agencies.

*Categorical Exclusions (CEs)*

Typically, actions that are categorically excluded under this Order would have no effect or a de minimus effect on air quality and would not result in more than a de minimus increase in emissions from commercial motor vehicle (CMV) activity. As such, an air quality analysis is generally not necessary. If there is some question as to whether a particular project normally processed as a CE would have the potential for a significant air quality impact, the screening criteria listed in the analysis section of this appendix can be used to determine whether further analysis is needed. If the screening analysis shows that the proposed action has the potential to substantially increase emissions from CMV activity, a national-level analysis should be conducted to develop an estimate of emissions associated with the proposed action (see Analysis section), and if appropriate, the results should be documented in an environmental assessment.

*Environmental Assessment (EA)/ Finding of No Significant Impact (FONSI)*

NEPA and the CAA Amendments of 1990 have separate requirements and processes; however, their steps can be integrated and combined for efficiency, and results of conformity analysis should be reflected in environmental documents. Also, an air quality analysis can require the coordination of many different agencies. Such coordination and subsequent analysis takes time; therefore, air quality impacts should be addressed as early as practicable when preparing an EA.

The preparation of an EA/FONSI may not require substantial analytical backup. Such a judgment could be based on the screening criteria, previous analyses for similar Federal agency actions or previous general analyses for various classes of projects that are current. In general, a simplified national analysis procedure should be adequate for most Federal agency actions processed with an EA/FONSI (see Analysis Section). If the analysis shows that the proposed action will not create a new violation or exacerbate an existing violation, the proposed action will normally lead to a FONSI.

*Clean Air Act—General Conformity Requirements*

Section 176(c) of the CAA, as amended in 1990, requires that Federal agency actions conform to the appropriate Federal or State air quality implementation plans (FIPs or SIPs) in order to attain the CAA's air quality goals. Section 176(c) states:

''No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to an implementation plan.''

General conformity is defined as conformity to the implementation plan's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards, and that such Federal agency activities will not:

(1) Cause or contribute to any new violation of any standard in any area.

(2) Increase the frequency or severity of any existing violation of any standard in any area.

(3) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The CAA 1990 amendments required the EPA to issue rules that would ensure Federal agency actions conform to appropriate FIP or SIP. A final rule for determining conformity of general Federal agency actions (40 CFR part 93, subpart B) was published in the **Federal Register** (FR) on November 30, 1993, and became effective January 31, 1994. In addition, 40 CFR part 51, subpart W specifies requirements for conformity which States must include in their respective SIPs. EPA published separate rules addressing conformity of highway, roadway, and transit plans and projects (40 CFR part 93, subpart A, and 40 CFR part 51, subpart T) on November 24, 1993 and several subsequent amendments. The remaining conformity discussion addresses only general conformity since FMCSA actions are subject to this rule.

The general conformity rule establishes the procedures and criteria for determining whether certain Federal agency actions conform to State or Federal air quality implementation plans. To determine whether conformity requirements apply to a proposed Federal agency action, the following must be considered: the nonattainment or maintenance status of the area; the project's emission levels; exemptions from conformity and presumptions to conform; and the regional significance (discussed below) of the project's emissions. The procedures for assessing conformity for FMCSA actions are presented in the analysis section of this appendix.

The general conformity rule only applies in areas that EPA has designated nonattainment or maintenance. A nonattainment area is any geographic area of the U.S. that experiences a violation of one or more NAAQS and is designated as nonattainment by EPA. A maintenance area is any geographic area of the U.S. previously designated nonattainment for a criteria pollutant pursuant to the CAA Amendments of 1990 and subsequently re-designated to attainment. A list of all areas designated as nonattainment or maintenance areas is maintained in 40 CFR part 81 (commonly known as the *Green Book*) by the EPA Office of Air Quality Planning and Standards (OAQPS) on their Web site. This serves as the official register of all nonattainment and maintenance areas.

The general conformity rule covers direct emissions of criteria pollutants or their precursors from Federal agency actions, as well as indirect emissions that are reasonably foreseeable, and can practicably be controlled and maintained by the Federal agency through continuing program responsibility.

A conformity determination is not required if the emissions caused by the proposed Federal agency action are not reasonably foreseeable; if the emissions caused by the proposed Federal agency action cannot practicably be controlled and maintained by the Federal agency through its continuing program responsibility; if the action is listed as exempt or presumed to conform; or if the action is below the emission threshold (*de minimis*) levels (40 CFR 93.153).

*Exemptions*

Certain Federal actions are exempt from the requirement of the general conformity rule because they result in no emissions or emissions are clearly below the rule's applicability emission threshold levels. These include, but are not limited to:

(i) Judicial and legislative proceedings;

(ii) Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted;

(iii) Rulemaking and policy development and issuance;

(iv) Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities;

(v) Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel;

(vi) Administrative actions such as personnel actions, organizational changes, debt management or collections, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties, and fees;

(vii) The routine, recurring transportation of material and personnel;

(viii) The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted; or

(ix) Research, investigations, studies, demonstrations, or training where no environmental detriment is incurred;

A complete list of all actions that would result in no emissions increase or an increase in emissions that is clearly *de minimis* can be found at 40 CFR 93.153(c)(2) and 93.153(d).

The general conformity rule (58 FR 63250, November 30, 1993) includes a provision that permits agencies to develop a list of actions presumed to conform which would be exempt from the requirements of the rule unless

regionally significant. To date, FMCSA does not have a list of actions that are presumed to conform. Notification of such a list and the basis for the presumption of conformity would be published in the **Federal Register** in the future. For those actions that are not exempt from the general conformity requirements, FMCSA must conduct a screening process to determine if the proposed action has the potential to generate emissions in excess of the *de minimis* thresholds (*see* Analysis section).

**Analysis**

*General Procedures*

In the preparation of the air quality section of the NEPA document, FMCSA must present the results of the air quality analysis for all analyzed alternatives. The scope of the air quality analysis must be designed so that it provides a comparison of alternatives with regard to the air quality standards set forth in the CAA. If the results of the analysis determine that the proposed action would result in emissions below *de minimis* levels, no conformity determination is required. However, if the air quality analysis determines the proposed action would result in emissions above *de minimis* levels, FMCSA must perform a conformity analysis and determination.

The conformity review and determination does not address how emissions of pollutant(s) of concern affect human or ecological receptors. However, completion of the conformity analysis would provide the necessary data to evaluate the effects on these receptors.

The general conformity analysis should be reflected in the air quality analysis section of the NEPA document. As a matter of practice, the general conformity analysis should be performed concurrently with the NEPA document. The draft and final conformity determinations may be provided as an appendix or separate volume of the NEPA documents or incorporated into the body of the NEPA document.

**Analysis**

When the analysis indicates potentially significant air quality impacts, it may be necessary to consult further with State or local air quality agencies and/or with EPA. It also is advisable to include such officials in the EIS scoping process to represent agencies with air quality expertise. These officials will help identify specific analyses needed, alternatives to be considered, and/or mitigation measures to be incorporated into the action.

**Evaluation Criteria**

Figure 1 contains a flow chart that describes the evaluation criteria and procedure to help determine if a conformity determination is required. If a proposed action is not exempt from the general conformity requirements, the potential for the proposed action to generate direct or indirect emissions in excess of the *de minimis* thresholds must be evaluated.

The potential for a proposed action to generate emissions in excess of the *de minimis* thresholds in a nonattainment or maintenance area can be determined using the following evaluation criteria. Actions that would not modify the elements of CMV traffic presented in these criteria would have air quality impacts that are clearly *de minimis* and no further air quality analysis is required.

*Increase in CMV mileage*

Would the proposed action result in an overall increase in CMV mileage? An increase in the number of miles traveled could result in an increase in overall emissions.

*Routing*

Would the proposed action result in a geographical shift of CMV operations at the regional level? For example, if the proposed action were to shift CMV travel to different interstates, a region may experience an increase in CMV mileage, although the number of miles traveled nation-wide may not increase.

*Operation*

Would the proposed action result in a change in how CMVs are operated? For example, would idling times be increased or would speeds be restricted during operation. These changes in operation could result in an increase in overall emissions.

*Fleet Mix*

Would the proposed action result in a shift in the mixture of CMVs in any regional fleet? The use of different types of CMVs, vehicles of different ages, or vehicles with different maintenance regimes should be considered changes in the fleet mix. Emissions from CMVs can vary substantially and changes in the fleet mix may result in changes in the amount of emissions from the fleet.

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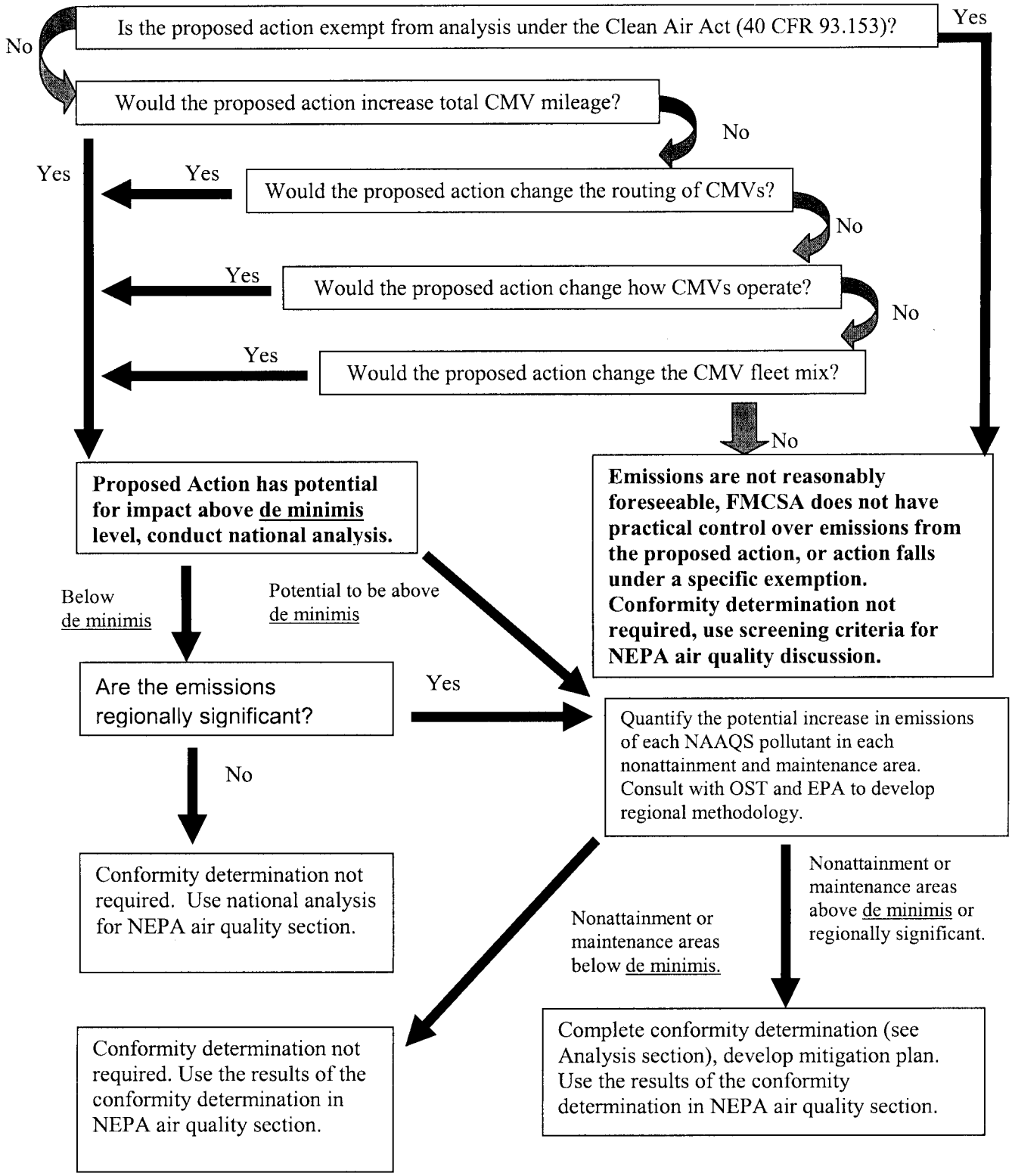
# Figure 1. Air Quality Analysis Procedure

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Emissions from FMCSA proposed actions that would have the potential to modify the elements of CMV operation listed above must be assessed using the methodology described below.

**National Analysis Methodology**

For FMCSA actions with the potential to increase emissions that impact CMV activity uniformly nation-wide,

emissions should be calculated at the national scale. These nation-wide estimates of emissions can then be assigned to each nonattainment area in proportion to the national level of CMV activity. Estimates of potential nation-wide emission increases should be developed using EPA-approved models unless otherwise approved by the EPA (40 CFR 51.859(c)). In accordance with CEQ NEPA guidelines (40 CFR 1500–1508), this simplified analysis would allow FMCSA to determine the scope of the potential emission increase without the need for excess paperwork and delay.

If the project's emissions are below annual threshold levels (*de minimis* levels) and are not regionally significant, then the requirements of the general conformity regulation do not apply to the Federal agency action or project (and therefore, a conformity determination is not required). If the potential emission increase from the proposed action is greater than the *de minimis* threshold in a nonattainment area or maintenance area, then the agency must prepare a conformity determination based on analysis using criteria stated in EPA's General Conformity Rule (40 CFR parts 51 and 93).

**Conformity Determination**

In determining whether emission threshold levels are exceeded, and that a conformity determination is required, agencies must consider direct and indirect emissions. Direct emissions are those that are caused by or initiated by the Federal agency action and occur at the same time and place as the action. Indirect emissions are those caused by the Federal agency action, but that occur later in time and/or may be removed in distance from the action. Temporary construction emissions must be considered in determining whether emission threshold levels are exceeded.

The general conformity rule adopted a definition of indirect emissions, which excludes emissions that may be attributable to the Federal agency action, but that the Federal agency has no authority to control. In addition to assessing direct emissions, FMCSA is responsible for assessing indirect emissions of criteria pollutants and precursors that are caused by a Federal agency action, are reasonably foreseeable, and can practicably be controlled by FMCSA through its continuing program responsibility. FMCSA may compare emissions with and without the proposed Federal agency action during the year in which emissions are projected to be greatest in determining whether emission threshold levels are exceeded.

If a Federal agency action does not exceed the threshold levels or is presumed to conform, the action may still be subject to a general conformity determination if it has regional significance. If the total of direct and indirect emissions of any pollutant from a Federal agency action represent ten percent or more of a maintenance or nonattainment area's total emissions of that pollutant, the action is considered to be a regionally significant activity and conformity rules apply. Parts of the overall Federal agency action that are exempt from conformity requirements (*e.g.*, emission sources covered by New Source Review (CAA Section 111)) should not be included in the analysis. The purpose of the regionally significant requirement is to capture those Federal agency actions that fall below threshold levels, but have the potential to impact the air quality of a region.

The conformity analysis would be conducted on the proposed action and would show whether the conformity requirements would apply and explain the basis for the conclusion, including if and how the following were used:

- Criteria pollutant(s) or precursors expected to be emitted, if any;
- Emissions of pollutants of concern occurring in a nonattainment or maintenance area;
- Whether the alternative is exempt from the CAA conformity requirements;
- Emissions estimates for pollutant(s) of concern, if needed.

For purposes of demonstrating conformity, present emission estimates, *i.e.*, tons per year, of only the pollutant(s) of concern. The CAA General Conformity rule (40 CFR 93.159) requires that emissions estimates use the latest planning assumption, the most accurate estimation techniques, current models, and the latest emission factors. Section 93.159(d)) requires emissions estimates for:

- The mandated attainment year in the CAA, or the farthest year in which emissions re specified in the maintenance plan, if applicable;
- The year during which the total of direct and indirect emission from the action is expected to be the greatest on an annual basis;
- Any year for which the applicable SIP specifies an emissions budget. The general conformity rule, in § 93.158, provides options for demonstrating conformity. Options include showing that the emissions resulting from the action are specifically accounted for in the SIP or in a SIP budget; that the emissions are accounted for in a SIP revision or a planned SIP revision to which the State has committed; that the action is specifically included in a transportation plan and transportation improvement program found to conform under the Transportation Conformity rule; or that enforceable mitigation measures will fully offset the emissions increases.

Documentation for a conformity determination must:

- Briefly describe how the conformity determination criteria would be met;
- Summarize how any conformity analysis was conducted based on the latest local or area-wide planning assumptions (*e.g.*, employment, population, travel, and congestion);
- Summarize the methodology for calculating emissions of the pollutant(s) of concern;
- Briefly describe the methodology (including assumptions and input data) for air quality modeling (for use in NEPA air quality section);
- Briefly describe any mitigation measures or offsets needed to fully offset the project's emissions and to demonstrate conformity; and
- Briefly describe the process for implementing and enforcing the mitigation measures or offsets.

In addition, the comparison of the proposed action with regard to conformity is required to show how the action would conform to the applicable implementation plan, and to the extent known, any mitigation measures or offsets needed to demonstrate conformity. If mitigation measures are necessary, they would be determined on a project-by-project basis.

A proposed action cannot be approved or initiated unless conformity does not apply or a positive conformity determination is issued (i.e., the action conforms to the SIP). If initial analysis does not indicate a positive conformity determination, alternative actions (including mitigation measures as part of the action) should be considered and further consultation, analysis, and documentation will be necessary.

If a proposed action is modified after the project has been determined to be below *de minimis* levels, all emissions from the proposed action must be reevaluated against the *de minimis* thresholds to determine if a conformity determination is necessary. In a Record of Decision (ROD) or Finding of No Significant Impact (FONSI), briefly describe any conformity determination(s). In a ROD, include any commitments to implement mitigation measures or offsets needed to achieve conformity with the applicable implementation plan, and reference the

preparation of a NEPA mitigation action plan.

If FMCSA has not made a needed final conformity determination at the time a final NEPA document is issued, issue the final conformity determination concurrent with the ROD, and in addition to describing the final conformity determination, provide responses to public comments on the draft determination. If a modification to the proposed action occurs after the final conformity determination has been issued, any increase in emissions must be below the *de minimis* levels or a new determination will be necessary.

Once the final conformity determination is issued, FMCSA must complete the action in five years, unless a continuous program to implement the action is in place. Otherwise, a new conformity determination is required.

**Appendix 15—Distribution of Environmental Impact Statements Distribution of Environmental Impact Statements**

CEQ regulations require distribution to the following:

**A. Draft EISs**

- Other agencies with jurisdiction by law or special expertise with respect to the environmental impacts involved or that are authorized to develop and enforce environmental standards (including cooperating agencies)

Federal
State
Local (including counties)
Tribal

- The applicant, if any
- Any person, organization, or agency requesting the entire EIS
- Indian tribes when the effects may be on a reservation
- Any agency that has requested to receive EISs on actions of the kind proposed
- Environmental Protection Agency

After distributing the EIS to the parties listed above, send five (5) copies to pertinent EPA Regional Offices and 5 copies to: U.S. Environmental Protection Agency, Office of Federal Activities, EIS Filing Section, Mail Code 2252–A, Room 7241, Ariel Rios Building (South Oval Lobby), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

For all deliveries by courier, including express delivery services other than the U.S. Postal Service, use 20004 as the zip code. If the documents are to be hand-delivered, ask the security guards to phone (202) 564–2400 for an escort to the Filing Section. Telephone inquiries can also be made to: (202) 564–7167 or (202) 564–7153.

**B. Final EISs**

- All of the above, plus
- Any person, organization, or agency that submitted substantive comments on the draft EIS

**C. Supplemental EISs**

- All of the above (A. and B.)

**D. Notice of NEPA-Related Hearings, Meetings, and Documents**

- **Federal Register**
- FMCSA Docket assigned to the project
- FMCSA's Office of Communications (MC–CM)
- Local newspapers of general circulation
- Newsletters (of the agency or other organizations)
- Those who requested a hearing or meeting or requested notices to the individual action (40 CFR 1506.6(b)(1))
- National organizations reasonably expected to be interested in the matter or who have requested notice regularly be provided (40 CFR 1506.6(b)(2))
- Potentially interested community organizations including small business associations (40 CFR 1506.6(b)(3)(vi))
- Owners and occupants of nearby or affected property (40 CFR 1506.6(b)(3)(viii))

*Distribution to Any or All of the Following Is Appropriate Where Scoping, Analysis, Public Participation, or Expressed Interest So Indicate*

- U.S. Senators for the States where the action will occur
- U.S. Representatives for the Districts where the action will occur
- Governors for the States where the action will occur
- Governing body of any Federally recognized Indian tribe that may be affected by the action.

- Elected officials of the local jurisdiction where the action will occur or that may be affected by the action:

- County commissioners, Township council, or equivalent
- Mayor
- Head of City Council
- City or County Executive
- City or County Manager, Administrator
- Cooperating agency(ies) where FMCSA is the lead agency
- U.S. Environmental Protection Agency
  (5 copies to headquarters and five copies to pertinent EPA Regional Offices where the action will occur)
- Public libraries
- Agencies with jurisdiction by law or expertise:

1. Federal agencies such as:
- U.S. Department of Interior, including
- National Park Service
- Fish and Wildlife Service (with appropriate documentation for coordination under the Endangered Species Act)
- U.S. Department of Justice
- U.S. Department of Commerce
- U.S. Department of Health and Human Services
- U.S. Department of Housing and Urban Development
- U.S. Army Corps of Engineers (with any permit application under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act)
- Advisory Council on Historic Preservation (with appropriate determination under Section 106 of the National Historic Preservation Act)
- Federal Emergency Management Agency (with appropriate determination under Executive Order 11988)
- U.S. Geological Survey
- U.S. Small Business Administration

2. State agencies such as:
- State Environmental Protection Agency, Environmental Quality Department, or Pollution Control Agency
- State Attorney(s) General
- State and Local Air Quality Board(s)
- State Historic Preservation Officer (with appropriate determination under Section 106 of the National Historic Preservation Act)
- State Department of Natural Resources
- State Department of Transportation, including
- State Motor Vehicle Administration
- State Motor Carrier Agency(ies)
- State Highway Patrols
- State Utility Commissions
- State Department of Public Safety
- State Fish and Game
- State and Local Parks and Recreation Agency(ies)
- State Land Use Board/Commission/Department
- Community Development Agency

3. Governments of Federally recognized Indian tribes and native entities within the State of Alaska potentially affected by the action, and/or specific pertinent agencies as directed by the tribal or native Alaskan government

4. County and Local agencies such as:
- County Planning Commission/Engineering Department
- City Landmark Commission and or Historic Preservation Commission
- Fire Department

- Police Department
- Building Department
- Land Use and/or Zoning Department or Commission
- Parks and Recreation

5. Non-governmental groups and organizations such as:

- Representatives of affected low-income and minority groups (with translations, etc., where needed)
- Non-Federally recognized Indian tribes
- Native Hawaiian groups (in Hawaii)
- Other indigenous groups where applicable
- Environmental groups (Audubon, Greenpeace, Friends of the Earth, Natural Resources Defense Council, Sierra Club, etc.)
- Industry groups (Chamber of Commerce, Downtown associations, American Trucking Associations, Inc., American Bus Association, Associated General Contractors, National Private Truck Council, United Motor Coach Association, etc.)
- Utility companies (gas, electric, water, etc.)
- Neighborhood groups
- Adjacent landowners
- Print and electronic media

**Appendix 16—List of Relevant Environmental Statutes and Executive Orders**

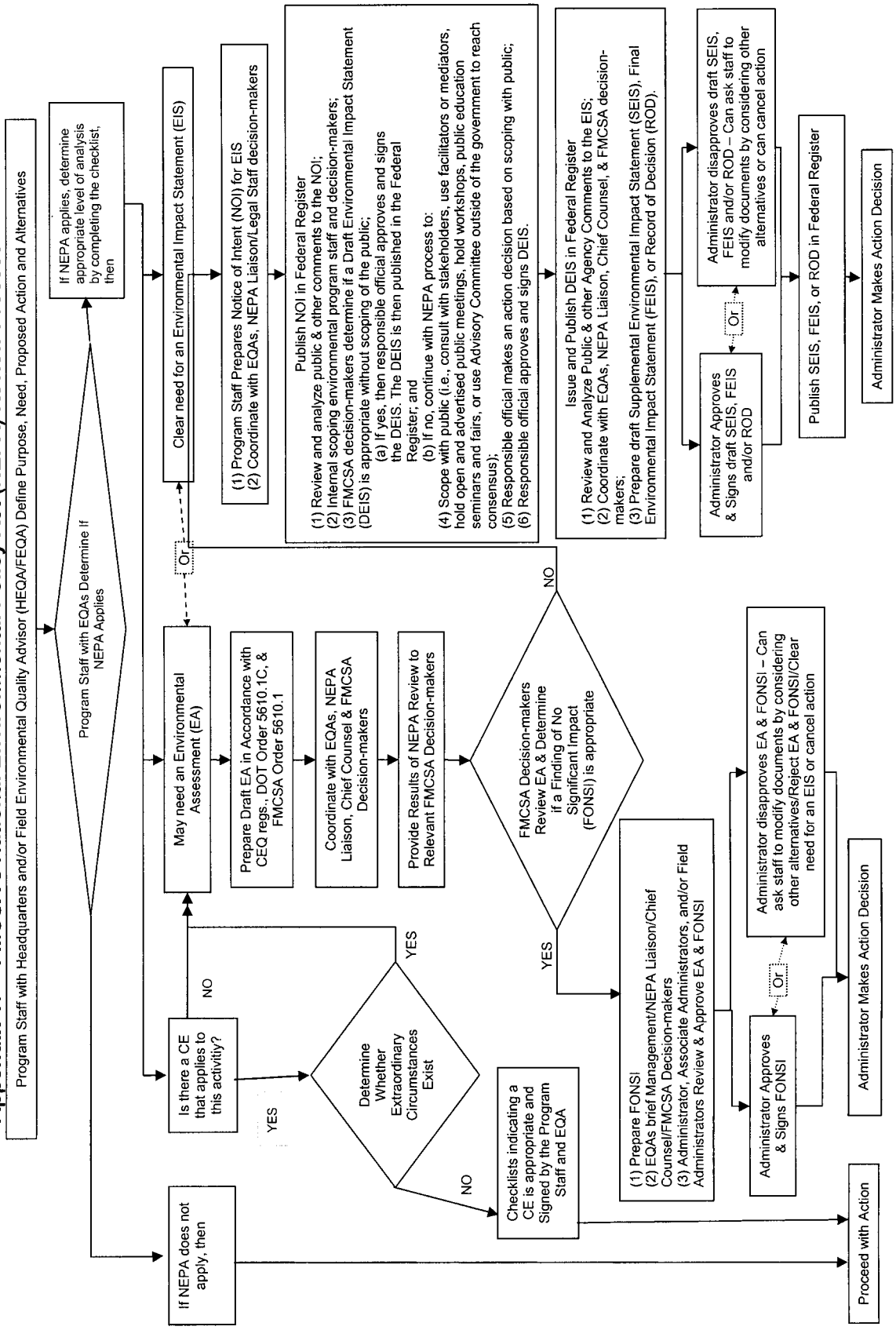
**List of Relevant Environmental Statutes and Executive Orders**

1. Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211, 66 FR 28355)
2. American Indian Religious Freedom Act (AIRFA) (42 U.S.C. 1996, *et seq.*)
3. Antiquities Act (16 U.S.C. 433, *et seq.*)
4. Archeological and Historic Preservation Act (AHPA) (16 U.S.C. 469)
5. Archeological Resources Protection Act (ARPA) (16 U.S.C. 470, *et seq.*)
6. Architectural Barriers Act (42 U.S.C. 4151, *et seq.*)
7. Clean Air Act (CAA) (Pub. L. 95–95 / 42 U.S.C. 7401, *et seq.*)
8. Clean Water Act of 1977 (CWA) (Pub. L. 95–217 / 33 U.S.C. 1251, *et seq.*)
9. Community Environmental Response Facilitation Act (CERFA) (42 U.S.C. 9620 *et seq.*)
10. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), also commonly referred to as SUPERFUND (Pub. L. 96–510 / 26 U.S.C. 4611, *et seq.*)
11. Consultation and Coordination With Indian Tribal Governments (E.O. 13175, 65 FR 67249)
12. Coral Reef Protection (E.O. 13089, 63 FR 32701).
13. Department of Transportation Act, Section 4(f) (Pub. L. 89–670 / 49 U.S.C. 303, Section 4(f), *et seq.*)
14. Developing and Promoting Biobased Products and Bioenergy (E.O. 13134, 64 FR 44639)
15. Emergency Planning and Community Right-to-Know Act (42 U.S.C. 11001–11050, *et seq.*)
16. Endangered Species Act of 1973 (ESA) (Pub. L. 93–205 / 16 U.S.C. 1531, *et seq.*)
17. Energy Efficiency and Water Conservation at Federal Facilities (E.O. 12902, 59 FR 11463)
18. Environmental Effects Abroad of Major Federal Actions (E.O. 12114, 44 FR 1957)
19. Environmental Review of Trade Agreements (E.O. 13141, 64 FR 63169)
20. Environmental Quality Improvement Act (Pub. L. 98–581 / 42 U.S.C. 4371, *et seq.*)
21. Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (E.O. 12898, 59 FR 7629)
22. Federal Compliance with Pollution Control Standards (E.O. 12088, 43 FR 47707)
23. Federal Insecticide, Fungicide, and Rodenticide Act (Pub. L. 86–139 / 7 U.S.C. 135, *et seq.* )
24. Federal Records Act (FRA) (44 U.S.C. 2101–3324, *et seq.*)
25. Federalism (E.O. 13132, 64 FR 43255)
26. Fish and Wildlife Act of 1956 (Pub. L. 85–888 / 16 U.S.C. 742, *et seq.*)
27. Fish and Wildlife Coordination Act (Pub. L. 85–624 / 16 U.S.C. 661, *et seq.*)
28. Fisheries Conservation and Recovery Act of 1976 (Pub. L. 94–265 / 16 U.S.C. 1801 *et seq.*)
29. Greening the Government Through Leadership in Environmental Management (E.O. 13148, 65 FR 24595)
30. Greening the Government Through Federal Fleet and Transportation (E.O. 13149, 65 FR 24607)
31. Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition (E.O. 13101, 63 FR 49643)
32. Historic Sites Act (16 U.S.C. 46, *et seq.*)
33. Indian Sacred Sites (E.O. 13007, 61 FR 26771)
34. The President Intergovernmental Review of Federal Programs (E.O. 12372, 47 FR 30959)
35. Invasive Species (E.O. 13112, 64 FR 6183)
36. Locating Federal Facilities on Historic Properties in our Nation's Central Cities (E.O. 13006, 61 FR 26071)
37. Magnuson-Stevens Fishery Conservation and Management Act as amended through October 11, 1996. (16 U.S.C. 1801, *et seq.*)
38. Marine Protected Areas (E.O. 13158, 65 FR 24909)
39. Marine Protection, Research, and Sanctuaries Act of 1972 (Pub. L. 92–532 / 16 U.S.C. 1431, *et seq.* and 33 U.S.C. 1401, *et seq.*)
40. Migratory Bird Treaty Act (16 U.S.C. 703–712, *et seq.*)
41. National Environmental Policy Act of 1969 (NEPA), (Pub. L. 91–190 /42 U.S.C. 4321, *et seq.*)
42. National Historic Preservation Act of 1966 (NHPA) (Pub. L. 89–665 / 16 U.S.C. 470, *et seq.*)
43. Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001, *et seq.*).
44. Noise Control Act of 1972 (Pub. L. 92–574 / 42 U.S.C. 4901, *et seq.*)
45. Implementation of the North American Free Trade Agreement (NAFTA (E.O. 12889, 58 FR 69681)
46. Procurement Requirements and Policies for Ozone Depleting Substances (E.O. 12843, 48 FR 21881)
47. Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101–13109, *et seq.*)
48. Protection and Enhancement of Cultural Environment (E.O. 11593, 36 FR 8921)
49. Protection and Enhancement of Environmental Quality (E.O. 11514, 35 FR 4247)
50. Protection of Children From Environmental Health Risks and Safety Risks (E.O. 13045, 62 FR 19885.)
51. Protection of Wetlands (E.O. 11990, 42 FR 26961)
52. Recreational Fisheries (E.O. 12962, 60 FR 307695)
53. Requiring Agencies to Purchase Energy Efficient Computer Equipment (E.O. 12845, 58 FR 21887)
54. Resource Conservation and Recovery Act of 1976 (RCRA), (Pub. L. 94–580 / 42 U.S.C. 6941, *et seq.*)
55. Responsibilities of Federal Agencies To Protect Migratory Birds (E.O. 13186, 66 FR 3853)
56. Safe Drinking Water Act (SDWA) (Pub. L. 93–523 / 42 U.S.C. 201, *et seq.*)
57. Toxic Substances Control Act (TOSCA) (7 U.S.C. 136, *et seq.*)
58. Wild and Scenic Rivers Act (Pub. L. 90–542 / 16 U.S.C. 1271, *et seq.*)

**Note:** All Public Law (Pub. L.) and DOT Order Numbers should be referenced as amended.

BILLING CODE 4910–EX–P

## Appendix 17 – FMCSA's National Environmental Policy Act (NEPA) Review Process




The Administrator signs all EA/FONSI and EIS/ROD documents (Unless Delegated to another Responsible Agency Official). Program Staff Implements Decision (with mitigation and/or monitoring where specified in EA/FONSI or EIS/ROD).

BILLING CODE 4910–EX–C

**Appendix 18—Special Areas of Consideration When Implementing NEPA**

This appendix supplements the information that appears in Chapter 2, FMCSA Responsible Parties, Duties, And Instructions For Implementing NEPA.

**1. Air Quality**

Both the Clean Air Act (CAA) and the National Environmental Policy Act (NEPA) require that air quality be considered in the preparation of environmental documents for any proposed action. The CAA also requires that all Federal actions conform to the State Implementation Plan (SIP). The Environmental Protection Agency's General Conformity Rule, 40 CFR parts 51 and 93 applies to FCMSA actions.

The level of detail in air quality analyses will vary considerably according to the action, the existing level of air quality in the area, and degree of controversy. The only pollutants of concern for a project analysis are those that would be directly affected by the action.

*See* Appendix 14 for guidance on the appropriate level of air quality analysis for a project.

**2. Noise**

In compliance with the Noise Control Act of 1972, the responsible FMCSA official must ensure that commercial motor vehicles (CMVs) and commercial motor vehicle equipment operated by motor carriers conform to the Interstate Motor Carrier Noise Emission Standards of the Environmental Protection Agency in 40 CFR part 202.

If an action involving a construction activity is proposed, an analysis of potential noise impacts should be prepared, including the following for each alternative under detailed study:

a. A brief description of noise sensitive areas (residences, businesses, schools, parks, etc.), including information on the number and types of activities which may be affected.

b. The extent of the impact (in decibels) at each sensitive area. This includes a comparison of the predicted noise levels with both the noise abatement criteria and the existing noise levels. (Traffic noise impacts occur when the predicted traffic noise levels approach or exceed the noise abatement criteria or when they substantially exceed the existing noise levels). The criterion used for defining a ''substantial increase'' in noise levels should be identified. Use of a table for this comparison is recommended for clarity.

c. Noise abatement measures which have been considered for each impacted area and activity and those measures that are reasonable and feasible and that would ''likely'' be incorporated into the proposed action. Estimated costs, decibel reductions and height and length of barriers should be shown for all abatement measures.

d. Noise impacts for which no prudent solution is reasonably available and the reasons why.

**3. Hazardous Materials**

The responsible FMCSA official must document whether the proposed action will result in impacts on the use, transportation, and storage of hazardous materials or on the number or severity of hazardous materials accidents or incidents.

An accident is defined as an event that occurs when the vehicle transporting the goods is involved in a collision. Any accident involving the shipment of hazardous materials would be considered as a hazardous materials accident regardless of whether any of the material was spilled or was exposed to the atmosphere. Similarly, a non-hazardous materials shipment accident would be considered as a non-hazardous materials shipment accident even if fuel from the tractor spilled during an accident. An event that occurs when the vehicle transporting the goods spills some of the hazardous materials cargo but is not involved in a collision is termed an enroute incident. An event resulting in the spill or release of hazardous materials material during loading or unloading is defined as a loading/unloading incident. The analysis must identify any moderate to significant adverse impacts to public safety and health, transportation, property damage, water resources, and biological resources from releases of hazardous materials associated with safety-related accidents and incidents. Also, mitigating measures and countermeasures should be identified.

The analysis of the action should also identify any impacts on water quality and public health and safety from oil and fuel leaks and spills, particularly from tankers, commercial motor vehicles (CMVs), and fuel storage tanks. Runoff of hazardous materials from roads, infrastructure construction, and deterioration of discarded vehicles have an impact on wetlands, surface and groundwater quality as well. The 1981 FHWA research report entitled ''Constituents of Highway Runoff'' and the 1987 report entitled ''Effects of Highway Runoff on Receiving Waters'' contain procedures for estimating pollutant loading from highway runoff and would be helpful in determining the level of potential impacts and appropriate mitigative measures.

To estimate the likely impacts of potential hazardous materials incidents/accidents, the following impact categories should be considered:

- Injuries and deaths
- Cleanup costs
- Property damage
- Evacuation
- Product loss
- Traffic incident delay
- Environmental damage

For guidance, consult FMCSA's Hazardous Materials Incident Prevention Manual (*http://www.fmcsa.dot.gov/factsfigs/accidenthm/forewhaz.htm*) and the Final Report on Comparative Risks of Hazardous Materials and Non-hazardous Materials Truck Shipment Accidents/Incidents, March 2001, prepared for FMCSA by Battelle (*http://www.fmcsa.dot.gov/Pdfs/HMRiskFinalReport.pdf*).

**4. Endangered Species**

a. *Responsibilities*. If an action involving a construction activity is proposed, the following requirements apply.

(1) During the scoping process, the responsible FMCSA official must request from the Regional Directors of the Fish and Wildlife Service (FWS) and the National Marine Fisheries Services (NMFS), information on whether any species which is listed, or proposed to be listed, on the Federal Endangered Species List may be present in the area of a proposed action.

(2) The responsible FMCSA official must ensure that an action enhances the continued existence of species' listed as endangered or threatened and is not likely to jeopardize the continued existence of such species. If a proposed action may affect any species that is listed, or is proposed for listing, as an endangered or threatened species, then the responsible FMCSA official must initiate informal or formal consultation with the following: Terrestrial Species—Department of Interior, FWS and for Marine Species—Department of Commerce, NMFS. Any consultation must be reflected in the resulting environmental documentation.

(3) When applicable, the responsible FMCSA Official must ensure that the environmental documentation in the case file includes the biological assessment, the results of the consultation process, the analysis of any procedures taken to avoid impacts on the species, and any other pertinent information to document compliance with this law.

b. *Public and Agency Involvement.* The responsible FMCSA official must coordinate with the FWS and the NMFS regarding the initiation of a consultation process, as well as to explore the necessity to prepare a biological assessment, as required by section 7 of the Endangered Species Act (ESA) (16 U.S.C. 1531, *et seq.*) and the ESA implementation regulations (50 CFR part 402). A copy of the EA, EIS, or any other public notice document prepared for a proposed action affecting, or potentially affecting, endangered species, must be sent to the Endangered Species Specialist of the appropriate FWS and NMFS field and regional offices.

c. *Content of NEPA Documentation.* Any EA or EIS for a proposed action must state the presence or absence of endangered species within the physical area of the action. If endangered species are likely to be present, the EA or EIS must describe the species, summarize the potential for effects on the species, and if necessary, summarize the biological assessment, the results of the consultation process, the analysis of any procedures taken to avoid impacts on the species, and any other pertinent information to document compliance with this law.

**5. National Historic Preservation Act (NHPA) and Related Executive Orders**

If an action involving a construction activity is proposed, the following requirements apply.

a. *General requirements.* The responsible FMCSA official must comply with the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470, *et seq.*) (NHPA), the regulations which implement the NHPA (36 CFR part 800), and E.O. 11593, 36 FR 8291, *Protection and Enhancement of the Cultural Environment.* The responsible FMCSA official must also take into account E.O. 13006, 61 FR 26071, *Locating Federal Facilities on Historic Properties in our Nation's Central Cities*, if the FMCSA action includes locating FMCSA facilities in metropolitan areas.

b. *Responsibilities Under Section 106 of the NHPA.*

(1) *General.* The responsible FMCSA official must comply with the NHPA Section 106 process regarding historic and cultural resources. Historic and cultural resources include any district, site, building, structure, or object significant in American history, architecture, archaeology, or culture. The regulations setting forth the NHPA Section 106 process were revised and finalized December 12, 2000 and became effective January 11, 2001 (65 FR 77697), and are codified at 36 CFR part 800. Citations to the NHPA Section 106 regulations refer to the regulation published in the December 12, 2000, **Federal Register** notice (65 FR 77697). When a FMCSA proposed action triggers the requirements of Section 106 and NEPA, the Section 106 process must be integrated with, and conducted concurrently with, any applicable NEPA environmental analysis, to the extent practicable (40 CFR 1502.25(a); 36 CFR 800.2(a)(4), 800.3(b) and 800.8).

(2) *Determine If an Undertaking is Present.* Before taking an action, the responsible FMCSA official must determine if the action is an ''undertaking'' in accordance with 36 CFR 800.16(y). If the action is an ''undertaking,'' the responsible official must determine whether it is a type of action that has the potential to cause effects on historic properties *if historic properties were present* (it is irrelevant whether historic properties are there or not at this point in the process). If it is a type of action that has the potential to cause effects on historic properties, then the responsible FMCSA official must investigate the action area to determine if the action may actually affect any resources listed, or eligible for listing, on the NRHP.

Criteria for evaluating eligibility for listing on the NRHP are given in 36 CFR 60.4. (In brief, 36 CFR 60.4 states that properties of historical, architectural, or archaeological significance should be considered for NRHP evaluation if they are associated with events and persons significant in our past, or that have distinctive character, artistic values or are the work of a master, or have yielded or are likely to yield important information in pre-history or history. This section provides specific criteria and should be referenced.) If the type of action is one that does not have the potential to cause effects on historic properties if historic properties were present, then the responsible official has no further obligations under Section 106.

(3) *For Undertakings, Identify the Appropriate SHPO/THPO and Consult.* If an FMCSA action is an undertaking that could affect historic properties, the responsible FMCSA official must identify the appropriate State Historic Preservation Officer (SHPO), appropriate Tribal Historic Preservation Officer (THPO), or appropriate Indian tribe (36 CFR 800.3(c) and (d)). The responsible official must consult the appropriate preservation officer or Indian tribe and plan to involve the public in carrying out and completing the Section 106 process in consultation with the SHPO/THPO (36 CFR 800.3(e)).

(4) *Public and Agency Involvement.* At all appropriate stages of the Section 106 process, the responsible FMCSA official must ensure proper public participation, as required by 36 CFR part 800. The extent of public involvement will depend upon the specific action and the historic resources involved. In most cases, the responsible official must provide the public with information about the undertaking and its effects on historic properties and seek public comment and input (36 CFR 800.2(d)(2)). Consulting parties should be identified in consultation with the SHPO/THPO (36 CFR 800.3(f)). Consulting parties can include the Advisory Council on Historic Preservation; the National Park Service, Indian tribes, Native Hawaiian Organizations; representatives of local governments; applicants for Federal assistance, permits, licenses and other approvals; and individuals and organizations with a demonstrated interest in the undertaking (36 CFR 800.2(b)–(c)).

c. *Content of NEPA Documentation.* Unless the NEPA process is being used to comply with NHPA per 36 CFR 800.8, to the extent practicable, EAs and EISs for actions that have the potential to, or will, significantly affect historic properties should summarize the results of the Section 106 process. The summary should include information on the presence or absence of historic properties; the significance of impacts to historic properties; any treatments/mitigation that may be developed to avoid significant adverse effects on historic properties, and a summary of the consultation and public notice efforts and results. The EA or EIS should also include a copy of any action Memorandum of Agreement/Programmatic Agreement developed in compliance with Section 106. EAs and EISs must fulfill the requirements of 36 CFR 800.8 when prepared as the main instrument for compliance with Section 106.

**6. Wetlands**

If an action involving a construction activity is proposed, the following requirements apply.

a. *Responsibilities.*

(1) FMCSA actions require compliance with the provisions of Executive Order 11990, Protection of Wetlands (except as noted in Section 1(b) of the order); and DOT Order 5660.1A, Preservation of the Nation's Wetlands.

(2) The responsible FMCSA official must coordinate with the applicant and the lead Federal agency when applicable, to ensure the action is

planned, constructed, and operated to assure the protection, preservation, and enhancement of wetlands to the fullest extent practicable.

(3) The responsible FMCSA official must document the effects of each action on wetlands in accordance with DOT Order 5660.IA.

b. *Public and Agency Involvement.* Appropriate opportunity for early review of proposals for new construction in wetlands should be provided to the public and to agencies with special interest in wetlands. When applicable, the public notice must state the acreage of wetlands taken or impacted. This will include the U.S. Fish and Wildlife Service, State wildlife and/or natural resources agencies, and other parties as appropriate.

c. *Content of NEPA Documentation.* Information developed in accordance with DOT Order 5660.IA, along with the ''Wetlands Findings,'' must be included in either the EA, EIS, or in the Environmental Analysis Checklist and/or CED if required. Any measures included with the proposed action to protect wetlands must also be summarized.

**7. Determinations Under Section 4(f) of the DOT Act [49 U.S.C. 303(c)]**

If an action involving a construction activity is proposed, the following requirements apply.

a. *Responsibilities.*

(1) Section 4(f) of the DOT Act states that ''The Secretary must not approve any program or action which requires the use of any land from a public park, recreation area, wildlife and waterfowl refuge, or historic site unless: (A) there is no feasible and prudent alternative to the use of such land; and (B) such program includes all possible planning to minimize harm to such park, recreation area, wildlife and waterfowl refuge, or historic site resulting from such use.'' Furthermore, direct use of the land is not the sole qualifier for considering 4(f). Should the action be in close proximity to affect the lands in question, one will normally prepare a 4(f) statement. See, DOT Order 5610.1C, for further direction.

(2) The responsible FMCSA official must ensure that Section 4(f) statements and determinations are prepared per Section 4(f) of the DOT Act of 1966, as amended (49 U.S.C. Section 303), and Section 12 of DOT Order 5610.1C.

(3) A 4(f) analysis consists of an investigation by the responsible FMCSA official who determines if there is use of 4(f) property. Even when there is no direct use of a 4(f) property, an analysis supporting this finding must be prepared. When there is use of 4(f) property, a 4(f) statement is required. Based on this 4(f) statement, a 4(f) determination will be prepared for signature by the appropriate area and district or Administrator level official. The 4(f) determination may be made part of the 4(f) statement.

b. *Integration of 4(f) Statement with EISs.* Originators of EISs for FMCSA actions requiring determinations under section 4(f) of the DOT Act must incorporate the required 4(f) determination in the EIS. The form and content of 4(f) statements, and data needed to support the 4(f) determinations and conclusion are contained in Appendix 13.

c. *Public and Agency Involvement.* The responsible FMCSA official must give the official having jurisdiction over the section 4(f) property, the Department of Interior, and as appropriate, the Department of Agriculture and the Department of Housing and Urban Development an opportunity to review all draft section 4(f) statements. When the 4(f) statement is contained within an EIS, consultation with the departments must be performed in accordance with procedures for review of the draft EIS. When the 4(f) statement is associated with a FONSI, the statement must be sent to the above Departments for review, using the same procedures and points of contact as used for an EIS.

d. *Legal Review.* District legal officers must provide legal sufficiency review of FMCSA section 4(f) determinations for actions that originate within their area. The Office of Chief Counsel must provide final legal sufficiency review of all other FMCSA section 4(f) determinations.

e. *Approval of 4(f) Statements.* The responsible FMCSA official has the authority to approve 4(f) statements.

**8. Other**

This section does not cover all environmental and historic and cultural resource mandates that may fall under the umbrella of the NEPA environmental planning process. For a more complete list of environmental and historic and cultural resource laws, consult Appendix 16.

[FR Doc. 04–4338 Filed 2–27–04; 8:45 am]

BILLING CODE 4910–EX–P

Federal Register

Monday,
March 1, 2004

# Part III

# Securities and Exchange Commission

## 17 CFR Parts 210, 228, et al.

## Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports; Final Rule

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 210, 228, 229, 240, 249, 270, and 274

**[Release Nos. 33–8392; 34–49313; IC–26357; File Nos. S7–40–02; S7–06–03]**

**RIN 3235–AI66 and 3235–AI79**

## Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; extension of compliance dates.

**SUMMARY:** We are extending the compliance dates that were published on June 18, 2003, in Release No. 33–8238 (68 FR 36636) for certain amendments to Rules 13a–15 and 15d–15 under the Securities Exchange Act of 1934, items 308(a) and (b) of Regulations S–K and S–B and the corresponding provisions in Forms 20–F and 40–F, that require companies, other than registered investment companies, to include in their annual reports a report of management on the company's internal control over financial reporting, and to evaluate, as of the end of each fiscal period, any change in the company's internal control over financial reporting that occurred during the period that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting. We are also extending the compliance dates for amendments to certain representations that must be included in the certifications required by Exchange Act Rules 13a–14 and 15d–14 and Investment Company Act of 1940 Rule 30a–2, regarding the company's internal control over financial reporting. The companies subject to these certification provisions include registered investment companies. Finally, we are extending the compliance date for an amendment to Investment Company Act Rule 30a–3 regarding the maintenance of internal control over financial reporting.

**DATES:** *Effective Date:* The effective date published on June 18, 2003, remains August 14, 2003.

*Compliance Dates:* The compliance dates are extended as follows: A company that is an ''accelerated filer,'' as defined in Exchange Act Rule 12b–2, must begin to comply with the management report on internal control over financial reporting requirement and the related registered public accounting firm report requirement in items 308(a) and (b) of Regulations S–K and S–B for its first fiscal year ending on or after November 15, 2004. A non-accelerated filer must begin to comply with these requirements for its first fiscal year ending on or after July 15, 2005. A foreign private issuer that files its annual report on Form 20–F or Form 40–F must begin to comply with the corresponding requirements in these forms for its first fiscal year ending on or after July 15, 2005.

A company must begin to comply with the provisions of Exchange Act Rule 13a–15(d) or 15d–15(d), whichever applies, requiring an evaluation of changes to internal control over financial reporting requirements with respect to the company's first periodic report due after the first annual report that must include management's report on internal control over financial reporting.

In addition, we are applying the extended compliance period to the amended portion of the introductory language in paragraph 4 of the certification required by Exchange Act Rules 13a–14(a) and 15d–14(a) that refers to the certifying officers' responsibility for establishing and maintaining internal control over financial reporting for the company, as well as paragraph 4(b). The amended language must be provided in the first annual report required to contain management's internal control report and in all periodic reports filed thereafter. The extended compliance dates also apply to the amendments of Exchange Act Rules 13a–15(a) and 15d–15(a) relating to the maintenance of internal control over financial reporting.

We are also extending the compliance period for registered investment companies to comply with the amended portion of the introductory language in paragraph 4 of the certification in Form N–CSR required by Investment Company Act Rule 30a–2(a) that refers to the certifying officers' responsibility for establishing and maintaining internal control over financial reporting for the company, as well as paragraph 4(b) of the certification in Form N–CSR. The amended language must be provided beginning with the first annual report filed on Form N–CSR for a fiscal year ending on or after November 15, 2004.[1] Registered investment companies must comply with the amendment to Investment Company Act Rule 30a–3(a) relating to the maintenance of internal control over financial reporting with respect to fiscal years ending on or after November 15, 2004.

The extended compliance period does not in any way affect the provisions of our other rules and regulations regarding internal controls that are in effect, including, without limitation, Exchange Act Rule 13b2–2.

**FOR FURTHER INFORMATION CONTACT:** Sean Harrison, Special Counsel, Division of Corporation Finance, at (202) 942–2910, or with respect to registered investment companies, Christian Broadbent, Senior Counsel, Division of Investment Management, at (202) 942–0721, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** On June 5, 2003,[2] the Commission adopted amendments to Items 307, 401 and 601 of Regulations S–B [3] and S–K;[4] added new Item 308 to Regulations S–B and S–K; amended Form 10–K,[5] Form 10–KSB,[6] Form 10–Q,[7] Form 10–QSB,[8] Form 20–F,[9] Form 40–F,[10] Rule 12b–15,[11] Rule 13a–14,[12] Rule 13a–15,[13] Rule 15d–14[14] and Rule 15d–15 [15] under the Securities Exchange Act of 1934;[16] amended Rules 1–02 and 2–02 [17] of Regulation S–X;[18] amended Rules 8b–15,[19] 30a–2 [20] and 30a–3 [21] under the Investment Company Act of 1940;[22] and amended Forms N–CSR [23] and N–SAR [24] under the Exchange Act and the Investment Company Act. Among other things, these amendments require companies, other than registered investment companies, to include in their annual reports a report of

[1] The amended language must also be provided in reports on Form N–Q following this report on Form N–CSR. On February 11, 2004, the Commission indicated that it would issue a release adopting rules that will require a registered management investment company to file its portfolio holdings with the Commission on Form N–Q not later than 60 days after the close of the first and third quarters of each fiscal year.

[2] *See* Release No. 33–8238 (June 5, 2003) (68 FR 36636) (the ''Adopting Release'').

[3] 17 CFR 228.10 *et seq.*

[4] 17 CFR 229.10 *et seq.*

[5] 17 CFR 249.310.

[6] 17 CFR 249.310b.

[7] 17 CFR 249.308a.

[8] 17 CFR 249.308b.

[9] 17 CFR 249.220f.

[10] 17 CFR 249.240f.

[11] 17 CFR 240.12b–15.

[12] 17 CFR 240.13a–14.

[13] 17 CFR 240.13a–15.

[14] 17 CFR 140.15d–14.

[15] 17 CFR 240.15d–15.

[16] 15 U.S.C. 78a *et seq.*

[17] 17 CFR 210.1–02 and 2–02.

[18] 17 CFR 210.1–01 *et seq.*

[19] 17 CFR 270.8b–15.

[20] 17 CFR 270.30a–2.

[21] 17 CFR 270.30a–3.

[22] 15 U.S.C. 80a–1 *et seq.*

[23] 17 CFR 249.331; 17 CFR 274.128.

[24] 17 CFR 249.330; 17 CFR 274.101.

management on the company's internal control over financial reporting, and to evaluate, as of the end of each fiscal quarter, or year in the case of a foreign private issuer filing its annual report on Form 20–F or 40–F, any change in the company's internal control over financial reporting that occurred during the period that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting.

In our June 2003 Adopting Release, we decided to provide a lengthy compliance period for the amendments requiring a report by management on a company's internal control over financial reporting. Specifically, we provided that a company that was an accelerated filer would have to begin complying with the new amendments in its annual report for its first fiscal year ending on or after June 15, 2004, and that a non-accelerated filer would have to begin complying in its annual report for its first fiscal year ending on or after April 15, 2005. We stated that a longer transition period was appropriate in light of both the substantial time and resources needed by companies to properly implement the rules, and the corresponding benefit to investors that would result from companies' proper implementation of the new requirements. We further noted that a longer transition period would provide additional time for the Public Company Accounting Oversight Board (the ''PCAOB'') to consider relevant factors in determining and implementing new standards for registered public accounting firms.[25] The PCAOB made a determination to set new standards and has been working expeditiously to do so. It held a public roundtable in July 2003 to discuss significant issues associated with the establishment of a new standard and issued a proposed standard on October 7, 2003.[26] The PCAOB received nearly 200 comment letters on the proposals and has completed its review and analysis of the public comment.

On January 23, 2004, representatives of five companies requested that the Commission extend the June 15, 2004, compliance date for accelerated filers.[27] In their request, these companies argued that it would be extremely difficult for companies to properly prepare for compliance with the new internal control over financial reporting requirements, and for auditors to properly implement a new standard that has not yet been finalized, for a fiscal year that is nearly complete. They further asserted that companies with June, July and August fiscal year ends that are in the process of documenting and evaluating controls have based these processes on the PCAOB's proposed standard. Several commenters on the PCAOB's proposed standard expressed similar concerns and requested that the Commission and the PCAOB provide additional time for compliance.[28]

We believe that an extension of compliance dates for the internal control reporting over financial reporting requirements is appropriate. We believe that the extension will benefit investors because this will help ensure that appropriate controls are in place for the first reporting process. Moreover, an extension will minimize the cost and disruption of implementing a new disclosure requirement under a current standard that will soon be superseded, and will provide companies and their auditors with a sufficient amount of time to perform additional testing or remediation of controls based on the final standard. We also, for good cause, find that, based on the reasons cited above, notice and solicitation of comment regarding extension of the compliance dates is impracticable, unnecessary, and contrary to the public interest.[29] In addition, for good cause and because the extension will relieve a restriction, the extension will be effective on March 1, 2004.

By the Commission.

Dated: February 24, 2004.

**Margaret H. McFarland,**

*Deputy Secretary.*

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BILLING CODE 8010–01–P

[25] Under the Sarbanes-Oxley Act, the PCAOB was granted authority to set auditing and attestation standards for registered public accounting firms to use in the preparation and issuance of audit reports on the financial statements of issuers. Under section 404(b) of the Act, the PCAOB is required to set standards for registered public accounting firms' attestations to, and reports on, management's assessment regarding its internal control over financial reporting.

[26] *See* PCAOB Release No. 2003–017, PCAOB Rulemaking Docket Matter No. 008.

[27] *See* letter to Mr. William H. Donaldson, Chairman of the Securities and Exchange Commission, and Mr. William J. McDonough, Chairman of the Public Company Accounting Oversight Board, from John G. Connors, Sr., Vice President and Chief Financial Officer, Microsoft Corporation, on behalf of Clayton C. Daley Jr., Chief Financial Officer, Proctor & Gamble; Richard J. Miller, Executive Vice President and Chief Financial Officer, Cardinal Health Corporation; Richard A. Galanti, Executive Vice President and Chief Financial Officer, Costco Wholesale Corporation and Michael J. Irwin, Executive Vice President and Chief Financial Officer, WD–40 Company, dated January 23, 2004.

[28] *See* letters regarding PCAOB Rulemaking Docket Matter No. 008 of: the American Institute of Certified Public Accountants, Deloitte & Touche LLP, PricewaterhouseCoopers LLP, Walt Disney Corporation and H.W. Willoughby. These letters are available at *www.pcaobus.org.*

[29] *See* section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 55s(b)(3)(B)) (an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are ''impracticable, unnecessary, or contrary to the public interest'').

Federal Register

Monday,
March 1, 2004

# Part IV

# Securities and Exchange Commission

**17 CFR Part 270**

**Prohibition on the Use of Brokerage Commissions To Finance Distribution; Proposed Rule**

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Part 270**

**[Release No. IC–26356; File No. S7–09–04]**

**RIN 3235–AJ07**

## Prohibition on the Use of Brokerage Commissions To Finance Distribution

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission is publishing for comment amendments to the rule under the Investment Company Act of 1940 that governs the use of assets of open-end management investment companies (''funds'') to distribute their shares. The amended rule would prohibit funds from paying for the distribution of their shares with brokerage commissions. The proposed amendments are designed to end a practice that is fraught with conflicts of interest and may be harmful to funds and fund shareholders.

**DATES:** Comments must be received on or before May 10, 2004.

**ADDRESSES:** To help us process and review your comments more efficiently, comments may be sent to us in either paper or electronic format. Comments should not be sent by both methods. 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 may be submitted to the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–09–04; 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 also be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

**FOR FURTHER INFORMATION CONTACT:** Hester Peirce, Senior Counsel, or Penelope W. Saltzman, Senior Counsel, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission (''SEC'' or ''Commission'') is requesting public comment on proposed amendments to rule 12b–1 [17 CFR 270.12b–1] under the Investment Company Act of 1940 [15 U.S.C. 80a] (''Investment Company Act'' or ''Act'').[2] The Commission is also requesting comment on whether additional amendments to rule 12b–1 are needed to address other issues that have arisen under the rule.

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## I. Background

Investment companies buy and sell large amounts of securities each year. In 2002 alone, mutual fund securities transactions totaled approximately $7.8 trillion.[3] Fund advisers choose which broker or dealer will effect transactions (''executing broker''), and often use commissions from these transactions to reward brokers or dealers for selling fund shares (''selling brokers''). Recently, our staff examined a number of funds and broker-dealers to obtain a better understanding of how fund brokerage commissions are used by advisers to pay for the promotion and sale of fund shares and how this practice may affect funds and fund shareholders.

Our staff found that the use of brokerage commissions to facilitate the sale of fund shares is widespread among funds that rely on broker-dealers to sell their shares. Selling brokers appear to have significant leverage over funds because the number of distribution channels is limited, and fund complexes compete to seek a prominent position in them.[4] This leverage permits selling brokers to demand additional payments from fund advisers from their own assets (''revenue sharing'') or through the direction of fund brokerage. These payments can purchase prominence (or better ''shelf space'') in an increasingly crowded fund marketplace.[5]

In many cases, meeting the increasing compensation demands of selling brokers has caused funds' distribution-related fees (*i.e.*, sales loads[6] and rule 12b–1 fees[7]) to reach the National Association of Securities Dealers (''NASD'') limits (or ''caps'') on such fees (which we describe below).[8] Fund advisers often use brokerage commissions to generate additional revenue to finance distribution.[9] Brokers have, in turn, based their demands for greater compensation from funds on the apparent availability of these supplemental revenues. As a result, funds have allocated, over time, an increasing share of their brokerage commissions to support distribution. Our staff estimates that brokerage commissions may compose approximately twenty percent of annual expenditures for fund distribution.

### *A. Current Practices*

The broker's cost of executing large, institutional brokerage transactions such as those effected for funds is often substantially less than the commission (or mark-up or mark-down)[10] that funds

[1] We do not edit personal or identifying information, such as names or e-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] Unless otherwise noted, all references to statutory sections are to the Investment Company Act of 1940.

[3] Investment Company Institute, Mutual Fund Fact Book 83 (2003) (reporting approximately $4 trillion in total purchases and approximately $3.8 trillion in total sales of portfolio securities by equity, hybrid, and bond funds). This figure does not include purchases and sales by money market funds.

[4] *See* Rich Blake, How High Can Costs Go?, Institutional Investor, May 2001, at 56, 62 (''With thousands of funds and just a handful of national full-service brokerages, wire houses like Merrill, PaineWebber, and Smith Barney held the upper hand.'').

[5] *Id.* at 62–63 (''Just as fund companies need to cut through the clutter of all the funds available for sale, they must also attract the attention of the average sales person, who might familiarize himself with just a handful of funds among hundreds in any given asset category.'').

[6] Sales loads represent explicit charges paid by fund shareholders to reimburse the fund's principal underwriter and distributor for sales efforts on behalf of the fund. Investors may pay sales loads at the time of purchase (a ''front-end load'') or at the time of redemption (a ''back-end load''). *See* section 2(a)(35) of the Act [15 U.S.C. 80a–2(a)(35)] (defining the term ''sales load''); rule 22d–1 [17 CFR 270.22d–1] (exemption permitting scheduled variations in sales loads); and rule 6c–10 [17 CFR 270.6c–10] (exemption permitting sales loads to be charged after purchase, but before or at the time of redemption).

[7] ''Rule 12b–1 fees'' or ''12b–1 fees'' are fees paid out of fund assets pursuant to a distribution plan adopted under rule 12b–1 under the Act. 17 CFR 270.12b–1. *See infra* note and accompanying text.

[8] *See infra* note and accompanying text.

[9] *See* Rich Blake, Misdirected Brokerage, Institutional Investor, June 2003, at 47, 49 (''But there's another critical reason that fund companies have resisted including commission payments in a 12b–1 marketing plan. Doing so would cause them to exceed a NASD limit on how much any fund investor can be asked to pay in brokerage compensation.'').

[10] Broker-dealers, at times, may execute portfolio securities transactions on a principal basis. In those cases, the firms would be compensated through mark-ups or mark-downs rather than through commissions. Nothing in this Release or our

actually pay on most of their transactions.[11] The adviser to a fund complex, which controls the allocation of fund brokerage, can use the excess of brokerage commissions paid over execution costs to purchase goods or services from the executing broker or third parties. Fund advisers often choose to use excess brokerage commissions to buy a place for the fund in the selling broker's distribution network. The use of excess commissions to pay for distribution costs has resulted in intricate business arrangements between fund advisers and securities firms that sell their shares.

Under the simplest of these arrangements, an adviser directs transactions in fund portfolio securities to a selling broker. The selling broker executes trades on behalf of the fund and credits to the fund a portion of the commission it receives to pay for distribution-related services. If the selling broker lacks the capacity to execute the fund's securities transactions, the adviser may implement a more complicated arrangement. The adviser may select another broker to execute the transaction and require the executing broker to ''step out'' a portion of its commission to pay the selling broker.[12] Alternatively, the executing broker may retain a portion of the commission as compensation for its execution services and set the remainder aside pending the adviser's designation of the selling brokers to which the remainder will be directed.[13] In an ''introducing broker'' arrangement, a clearing broker executes the transaction, forwards the entire commission to the selling broker (''introducing broker''), and periodically charges the selling broker for its execution services.[14]

Some fund advisers and selling brokers enter into an agreement that sets forth a target dollar amount of commissions to be paid over a period of time to the selling broker as compensation for distributing fund shares.[15] A typical arrangement covers all of the funds in a complex that are subject to sales or dealer agreements between the selling broker and the funds' principal underwriter.[16] If the funds do not generate the specified dollar amount of commissions during the year, the difference may be paid by the funds' adviser or carried forward into the next year. If the selling broker's overall compensation for distributing the shares of a fund complex falls below agreed-upon levels, the selling broker may reduce its selling efforts for the funds. As described below, these arrangements are covered by rule 12b–1.

*B. Current Regulatory Requirements*

Fund brokerage is an asset of the fund, and therefore must be used for the fund's benefit.[17] Use of fund assets to pay selling brokers or otherwise finance the sale of fund shares is regulated by rule 12b–1, which we adopted under our authority in section 12(b) of the Act.[18] Section 12(b) makes it unlawful for a fund ''to act as a distributor of securities of which it is the issuer, except through an underwriter, in contravention of such rules and regulations'' as we prescribe. Section 12(b) was intended to protect funds from bearing excessive sales and promotion expenses.[19] Rule 12b–1 permits funds to use their assets to pay distribution-related costs. In order to rely on rule 12b–1, a fund must adopt ''a written plan describing all material aspects of the proposed financing of distribution'' that is approved by fund shareholders and fund directors.[20] We included these and other conditions in the rule to address concerns about the conflicts of interest arising from allowing funds to finance distribution.[21]

Rule 12b–1 does not itself limit the amount of distribution costs that a fund can assume, nor does it explicitly address the extent to which fund brokerage can be used to reward brokers for promoting the sale of fund shares. Two NASD rules address these matters.

First, NASD Conduct Rule 2830(d) prohibits NASD members (*i.e.*, broker-dealers) from selling shares of funds that impose excessive sales charges.[22] The rule deems a sales charge to be excessive if it exceeds the rule's caps. A

concept release, Request for Comments on Measures to Improve Disclosure of Mutual Fund Transaction Costs, Investment Company Act Release No. 26313 (Dec. 18, 2003), is intended to modify our views expressed in a recent SEC Interpretation, Commission Guidance on the Scope of Section 28(e) of the Exchange Act, Exchange Act Release No. 45194 (Dec. 27, 2001).

[11] *See, e.g.*, Miles Livingston and Edward S. O'Neal, *Mutual Fund Brokerage Commissions,* 19 J. Fin. Res. 273, 290 (1996) (''Fund managers on average pay substantially more than the commissions available to large traders. * * * Assuming an average attainable rate of 2 cents per share, two-thirds of the median commission per trade * * * is payment for services other than trade execution.''). *See also* Jennifer S. Conrad *et al., Institutional Trading and Soft Dollars,* 56 J. Fin. 397, 406 n.11 (2001).

[12] Although the selling broker might not perform any execution services in connection with the portfolio transactions, it typically is responsible for the confirmation of a specified portion of the trade (*i.e.*, a particular amount of securities). The excess of the selling broker's compensation over the value of its confirmation services in connection with the trade is compensation for the selling broker's distribution efforts.

[13] The adviser designates the recipient selling brokers periodically (*e.g.*, quarterly). The selling brokers typically provide no services in connection with the fund's portfolio securities transactions.

[14] There are several variants on these arrangements for compensating the selling broker for distribution with commissions from a transaction that is executed primarily or exclusively by another broker.

[15] *See, e.g.*, Misdirected Brokerage, *supra* note, at 50 (explaining that typically an executive of the adviser enters into an ''almost invariably oral agreement[]'' with an executive of the broker to trade a combination of cash, revenue sharing payments, and fund brokerage commissions ''for a precious commodity: privileged access to the brokerage's sales force'').

[16] These arrangements may raise issues under section 17(d) [15 U.S.C. 80a–17(d)] of the Act and rule 17d–1 [17 CFR 270.17d–1] thereunder. Section 17(d) of the Act and rule 17d–1, prohibit funds from, among other things, entering into a joint enterprise or other joint arrangement or profit-sharing plan with any affiliated person, unless prior approval has been granted by Commission order. A fund may be an ''affiliated person'' of another fund if, for example, the funds are under the common control of the same investment adviser. *See* section 2(a)(3)(C) of the Investment Company Act [15 U.S.C. 80a–2(a)(3)(C)]. Pursuant to rule 17d–1 under the Investment Company Act, affiliated funds may apply for an order from the Commission permitting the use of a joint arrangement to finance the distribution of their shares. *See, e.g.*, College Retirement Equities Fund, Inc., Investment Company Act Release Nos. 19591 (July 23, 1993) (notice) [58 FR 40681 (July 29, 1993)] and 19645 (Aug. 19, 1993) (order). Absent such an order, an arrangement to compensate a selling broker for distribution on a complex-wide basis may constitute a prohibited joint distribution arrangement pursuant to which the brokerage commissions paid by one fund are used to finance the distribution of the shares of another fund in the same fund complex. *See* generally Payment of Asset-Based Sales Loads by Registered Open-End Management Investment Companies, Investment Company Act Release No. 16431 (June 13, 1988) [53 FR 23258 (June 21, 1988)].

[17] *See* Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV, Investment Advisers Act Release No. 1862 (Apr. 5, 2000) [65 FR 20524 (Apr. 17, 2000)], at text following n. 166 (''Client brokerage, however, is an asset of the client, not the adviser.''). *See also* American Bar Association, Fund Director's Guidebook, 59 Bus. Law. 201, 243 (2003) (''Brokerage commissions are assets of the fund, and the fund's directors are ultimately responsible for determining policies governing brokerage practices.''). But *see* Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934 and Related Matters, Exchange Act Release No. 23170 (Apr. 23, 1986) [51 FR 16004 (Apr. 30, 1986)] (''Section 28(e) Interpretive Release'') (noting that section 28(e) allows a money manager to consider benefits derived by other accounts he manages when determining the reasonableness of commissions an account is paying).

[18] 15 U.S.C. 80a–12(b).

[19] Investment Trusts and Investment Companies, Hearings on H.R. 10065 Before a Subcomm. of the House Comm. on Interstate and Foreign Commerce, 76th Cong., 3d Sess. 112 (1940) (statement of David Schenker).

[20] Rule 12b–1(b).

[21] Bearing of Distribution Expenses by Mutual Funds, Investment Company Act Release No. 11414 (Oct. 28, 1980) [45 FR 73898 (Nov. 7, 1980)] (''1980 Adopting Release'').

[22] NASD Conduct Rule 2830 (Investment Company Securities). Paragraph (d) (Sales Charge) prohibits members from selling the shares of a fund ''if the sales charges described in the prospectus are excessive.''

fund's sales load (whether charged at the time of purchase or redemption) may not exceed 8.5 percent of the offering price if the fund does not charge a rule 12b–1 fee.[23] The aggregate sales charges of a fund with a rule 12b–1 fee may not exceed 7.25 percent of the amount invested,[24] and the amount of the asset-based sales charge (the rule 12b–1 fee) may not exceed 0.75 percent per year of the fund's average annual net assets.[25] Under the cap, therefore, an increase in the fund's sales load could reduce the permissible level of payments a selling broker may receive in the form of 12b–1 fees. The NASD designed the rule so that cumulative charges for sales-related expenses, no matter how they are imposed, are subject to equivalent limitations.[26]

Second, NASD Conduct Rule 2830(k), the ''Anti-Reciprocal Rule,'' prohibits NASD members from conditioning their efforts in distributing a fund's shares on the receipt of the fund's brokerage commissions.[27] An exception to the Anti-Reciprocal Rule permits NASD members to sell shares of funds that follow a disclosed policy ''of considering sales of their shares as a factor in the selection of broker/dealers to execute portfolio transactions, subject to best execution.'' [28] Broker-dealers may not, however, condition their promotion or sale of fund shares on the receipt of brokerage commissions from the fund.[29]

We approved this exception to the NASD's rules in 1981, shortly after adopting rule 12b–1.[30] We concluded that, in light of the adoption of rule 12b–1, ''it is not inappropriate for investment companies to seek to promote the sale of their shares through the placement of brokerage without the incurring of any additional expense.'' [31] We recognized the conflicts of interest and stated that we expected fund boards, before adopting a policy permitting the ''consider[ation] of the sale of an investment company's shares as a factor in the selection of broker-dealers to execute portfolio transactions, subject to the requirements of best execution,'' to ''carefully weigh the possible advantages to the investment company and its shareholders and the possible abuses that may stem from the adviser's use of portfolio brokerage to encourage the sale of investment company shares.'' [32]

Because, as noted above, fund brokerage is an asset of the fund, a fund's use of its brokerage to promote the sale of its shares is generally viewed as a payment by the fund and thus subject to rule 12b–1.[33] In approving the exception to the NASD's Anti-Reciprocal Rule in 1981, however, we concluded that the practice of merely considering selling brokers' sales efforts when allocating brokerage would be addressed by the NASD rules governing broker-dealers and advisers' fiduciary obligations to seek best execution, rather than by Commission rules governing the use of fund assets for distribution.

## II. Discussion

Our decision in 1981 to approve the exception to the NASD's Anti-Reciprocal Rule was based on a view that merely factoring sales efforts into the selection of brokers, consistent with the investment adviser's fiduciary duties to the fund, was essentially benign. When a fund could choose among several brokers that could provide best execution, a decision to favor a selling broker could be made ''without the incurring of any additional expense.'' [34] Moreover, the ''mere allocation'' of brokerage to promote the sale of fund shares could benefit existing shareholders of funds that were in ''net redemption,'' that is, fund assets were shrinking and the ratio of fund expenses to fund assets was rising.

Our review of current practices, however, suggests that many arrangements that direct brokerage to reward selling brokers for distribution constitute more than mere allocation of brokerage, and are not consistent with our 1981 rationale for approving the exception to the NASD's Anti-Reciprocal Rule. The use of multiple broker-dealers for execution, step-outs, and other arrangements described above explicitly quantify the value of the distribution component of fund brokerage commissions and belie the notion that fund advisers are merely ''considering'' the selling efforts of the broker(s) involved. Rather, these arrangements bear all the hallmarks of barter arrangements in which the fund advisers trade brokerage (a fund asset) for sales efforts. Moreover, that brokerage commissions could instead be used to offset other fund costs rebuts the notion that the use of fund brokerage to finance distribution imposes no additional costs on the fund. Foregoing an opportunity to seek lower commission rates, to use brokerage to pay custodial, transfer agency and other fund expenses,[35] or to obtain any available cash rebates, is a real and meaningful cost to fund shareholders.

While the benefits to funds and their shareholders of using fund brokerage to promote the sale of fund shares are unclear, the benefits to fund advisers are clear. Fund advisers' compensation is based on a percentage of assets under management. A larger fund typically generates more advisory fees. Fund advisers have an incentive to use fund assets to increase the size of the fund and therefore promote the growth of

[23] NASD Conduct Rule 2830(d)(1)(A). If the fund also charges a service fee, the maximum aggregate sales charge may not exceed 7.25% of the offering price. NASD Conduct Rule 2830(d)(1)(D).

[24] NASD Conduct Rule 2830(d)(2)(B). If the fund also charges a service fee, the maximum aggregate sales charge may not exceed 6.25% of the amount invested. NASD Conduct Rule 2830(d)(2)(A).

[25] NASD Conduct Rule 2830(d)(2)(E)(i).

[26] The NASD, when it amended the sales charge rule to encompass asset-based sales charges (rule 12b–1 fees), explained its intention to ''assure a level playing field'':

[Asset-based sales charges] are the only type of mutual fund sales compensation that currently is not subject to NASD regulation. With the advent of these new methods of assessing sales charges on mutual funds, the NASD believed the Rules of Fair Practice should be amended specifically to encompass all sales charges. The NASD desired to take steps to assure a level playing field among all members selling mutual fund shares. Moreover, it believed additional amendments were necessary to prevent circumvention of the existing maximum sales charge rule because it had become possible for funds to use 12b–1 plans, either separately or in combination with initial or deferred sales loads, to charge investors more for distribution than could have been charged as an initial sales load under the existing maximum sales charge rule.

Order Approving Proposed Rule Change Relating to the Limitation of Asset-Based Sales Charges as Imposed by Investment Companies, Exchange Act Release No. 30897 (July 7, 1992) [57 FR 30985 (July 13, 1992)], at text accompanying n. 9.

[27] NASD Conduct Rule 2830(k) (Execution of Investment Company Portfolio Transactions).

[28] NASD Conduct Rule 2830(k)(7)(B).

[29] *See, e.g., infra* note 42 (describing SEC and NASD actions relating to Morgan Stanley's program for giving marketing preferences to funds in exchange for cash and brokerage commissions).

[30] Order Approving Proposed Rule Change and Related Interpretation under Section 36 of the Investment Company Act, Investment Company Act Release No. 11662 (Mar. 4, 1981) [46 FR 16012 (Mar. 10, 1981)] (''1981 Release'').

[31] *Id.* (emphasis added). Nonetheless, we emphasized that the directors of a fund have a ''continuing duty to assure that the company's brokerage allocation practices are designed to obtain best price and execution and to avoid any unnecessary trading.'' *Id.*

[32] *Id.* The exception to the Anti-Reciprocal Rule is conditioned on the fund disclosing its practice of considering distribution of its shares in selecting executing brokers. NASD Conduct Rule 2830(k)(7)(B).

[33] Rule 12b–1 applies to both ''direct'' and ''indirect'' financing activity that is primarily intended to result in the sale of fund shares. Rule 12b–1(a)(2). When we adopted the rule, we noted that ''there can be no precise definition of what types of expenditures constitute indirect use of fund assets.'' 1980 Adopting Release, *supra* note.

[34] 1981 Release, *supra* note 30.

[35] *See* Payment for Investment Company Services with Brokerage Commissions, Investment Company Act Release No. 21221 (July 21, 1995) [60 FR 38918 (July 28, 1995)] (requiring funds, in calculating the cost of various services, to account for amounts paid with commission dollars).

their advisory fees.[36] An adviser that uses fund assets to promote the sale of fund shares may be able to avoid having to pay fees out of its own pocket (''revenue sharing''). Although fund advisers have similar conflicts with respect to the use of other fund assets that flow through a rule 12b–1 plan, the use of fund brokerage exacerbates the conflicts and complicates efforts to control them because of the practical limitations on the ability of fund directors to monitor and evaluate the motivations behind the selection of brokers to effect portfolio securities transactions.[37]

We believe that the way brokerage has been used to pay for distribution involves unmanageable conflicts of interest that may harm funds and fund shareholders.[38] The intense competition we observe among fund advisers to secure a prominent position in the selling brokers' distribution systems (''shelf space'') creates powerful incentives for fund advisers to direct brokerage based on distribution considerations rather than quality and price considerations. These incentives may adversely affect decisions about how and where to effect portfolio securities transactions, and thus affect the quality of portfolio transactions.[39] Pressures to generate brokerage commissions may also lead to an increase in portfolio turnover rates, which may drive up fund costs and harm performance.[40] At a minimum, this practice disadvantages funds that, because of investment considerations, do not actively trade their portfolios.[41]

We are also concerned about the effect of this practice on the relationship between broker-dealers and their customers.[42] Receipt of brokerage commissions by a broker-dealer in exchange for shelf space creates an incentive for the broker to recommend funds that best compensate the broker rather than ones that meet the customer's investment needs.[43] Because of the lack of transparency of brokerage transactions and their value to a broker-dealer, customers may not have appreciated the extent of this conflict. Finally, the direction of valuable fund brokerage to compensate brokers for the sale of fund shares may permit brokers to circumvent the NASD's rules against excessive sales charges,[44] thus undermining the protections afforded fund shareholders by those rules and by section 22(b) of the Act, which authorized them.[45]

*A. Proposed Ban on Directed Brokerage*

In light of these concerns, we are proposing amendments to rule 12b–1 under the Act to prohibit funds from compensating a broker-dealer for promoting or selling fund shares by directing brokerage transactions to that broker.[46] The rule would also prohibit step-out and similar arrangements designed to compensate selling brokers for selling fund shares.[47]

We request comment on the proposed ban on the use of brokerage commissions to pay brokers for selling fund shares.[48]

[36] Bearing of Distribution Expenses by Mutual Funds, Investment Company Act Release No. 10252 (May 23, 1978) [43 FR 23589 (May 31, 1978)], at text following n.5 (''The fact that mutual fund advisers are paid fees based on a percentage of the fund's assets causes the growth of the fund through the sale of additional shares generally to be in the adviser's interest.'').

[37] *See, e.g.*, Letter from Matthew P. Fink, President, Investment Company Institute, to William H. Donaldson, Chairman, SEC (Dec. 16, 2003) (*http://www.ici.org/statements/cmltr/03_sec_soft_com.html#P37_12572*) (''ICI Letter'') (noting that the use of brokerage commissions to finance distribution ''can give rise to the appearance of a conflict of interest, as well as the potential for actual conflicts, given the fact-specific nature of the best execution determination'').

[38] We came to a similar conclusion in 1966 when we examined similar reciprocal brokerage practices in a report to Congress discussing the public policy implications of investment company growth. Securities and Exchange Commission, Report on the Public Policy Implications of Investment Company Growth, H.R. Rep. No. 89–2337, at 186 (1966) (''PPI Report'') (the use of brokerage commissions for sales of fund shares has ''an adverse effect on mutual funds and their shareholders''). At the time, the Commission believed that such practices could be addressed through reform of commission rate schedules by the securities exchanges to permit volume discounts on large trades. Id. at 187. *See* also Wharton School of Finance and Commerce, A Study of Mutual Funds, H.R. Rep. No. 87–2274, at 539 (1962). Even after the elimination of fixed commission rates, the problems identified in 1966 persist.

[39] *See, e.g.*, Kent Knudson, Mutual Fund Distribution Payments: Navigating the Conflicts, 3 J. of Investment Compliance 25, 26 (Winter 2002–2003) (noting that while any type of distribution payment gives rise to conflicts, ''it would seem that soft-dollar arrangements using fund commissions to incentivize or support dealers that sell fund shares pose heightened concerns, especially when such arrangements may encourage an adviser to pay more than going market rates for trading commissions''). *See also* In re Kingsley, Jennison, McNulty & Morse Inc., Investment Advisers Act Release No. 1396 (Dec. 23, 1993) [51 SEC 904] (finding conflict of interest in adviser's soft dollar arrangement with a broker even though the arrangement did not result in adviser's client paying higher than the market commission rate for transactions executed by the broker; conflict existed because by selecting that broker, the adviser avoided having to pay for the soft dollar benefits out of its own assets).

[40] PPI Report, supra note 38, at 174 (''A high portfolio turnover rate may result from a bona fide judgment that a policy of active trading is most likely to lead to optimum investment performance, especially during periods of great volatility. But it may also result from the managers' decision to generate a substantial volume of brokerage commissions for the purpose of stimulating the sale of new shares.''). See also Note, The Use of Brokerage Commissions to Promote Mutual Fund Sales: Time to Give Up the ''Give-Up'', 68 Colum. L. Rev. 334, 339 (1968) (''But even where true churning does not exist, the pressure to create give-ups may push a doubtful transaction over the line into execution.'') (footnote omitted).

[41] *See* PPI Report, supra note 38, at 17, 174, and 180.

[42] *See, e.g.*, In re Morgan Stanley, Inc., Securities Act Release No. 8339 (Nov. 17, 2003) (finding broker-dealer had willfully violated section 17(a)(2) of the Securities Act [15 U.S.C. 77q(a)(2)], rule 10b–10 [17 CFR 240.10b–10] under the Securities Exchange Act of 1934 (''Exchange Act''), and NASD Conduct Rule 2830(k) by failing to disclose to its clients who purchased fund shares that it was being paid by certain fund companies, with a combination of cash and brokerage commissions, to make special efforts to market those funds); NASD Charges Morgan Stanley with Giving Preferential Treatment to Certain Mutual Funds in Exchange for Brokerage Commission Payments, NASD News Release (Nov. 17, 2003) (announcing companion NASD action for violation of NASD Conduct Rule 2830(k) by, among other things, favoring the distribution of shares of particular funds on the basis of brokerage commissions to be paid by the funds). *See also* Laura Johannes and John Hechinger, Conflicting Interests: Why a Brokerage Giant Pushes Some Mediocre Mutual Funds, Wall St. J., Jan. 9, 2004, at A1.

[43] *See* Ruth Simon, Why Good Brokers Sell Bad Funds, Money, July 1991, at 94.

[44] *See* supra notes 22 through 26 and accompanying text.

[45] 15 U.S.C. 80a–22(b). Although we need not address the question today, the use of fund brokerage commissions to finance distribution for the economic benefit of the fund's adviser also raises troubling questions under section 17(e)(1) of the Investment Company Act. 15 U.S.C. 80a–17(e)(1) (making it unlawful for any affiliated person of a fund, ''acting as agent, to accept from any source any compensation * * * for the purchase or sale of any property to or for [the fund] except in the course of such person's business as an underwriter or broker''). *See, e.g.*, In re Duff & Phelps Investment Management Co., Inc., Investment Company Act Release No. 25200 (Sept. 28, 2001) (finding that adviser ''willfully violated section 17(e)(1)'' by directing a fund's brokerage transactions to a broker-dealer in return for client referrals); In re Fleet Investment Advisors Inc. (as successor to Shawmut Investment Advisers, Inc.), Investment Advisers Act Release No. 1821 (Sept. 9, 1999) (finding that affiliated adviser's receipt of client referrals in return for the direction of fund brokerage commissions was compensation in violation of section 17(e)(1)); In re Provident Management Corp., Investment Advisers Act Release No. 277 (Dec. 1, 1970) (finding that fund affiliates violated and/or aided and abetted in the violation of section 17(e)(1) by directing fund brokerage to brokers that provided commission recapture and free sales material to the fund's primary retail distributor).

[46] Proposed rule 12b–1(h)(1). The rule would prohibit funds from financing distribution of fund shares through the direction of any service related to effecting a fund brokerage transaction, including performing or arranging for the performance of any function related to the processing of that transaction (*e.g.*, transmission of an order for execution, execution of an order, or clearance and settlement of the transaction). The prohibition would include the direction of brokerage from transactions executed by government securities brokers and dealers and municipal securities dealers.

[47] Proposed rule 12b–1(h)(2). In addition to step-outs, the rule would prohibit, for example, the use of arrangements in which a portion of a fund's brokerage commissions are ''rebated'' to an account maintained for the fund and later paid to a selling broker.

[48] We note that the NASD recently filed with us a proposed rule change to eliminate the exception

Continued

• Are our concerns about this practice justified?

• Are there alternative measures that we could take to address the use of brokerage commissions to finance distribution?

• Would brokerage commissions be reduced by eliminating the use of commissions to pay for distribution? Would there be greater competition in commission rates?

• If we ban this practice, would the primary effect be to increase brokers' demands on advisers to make payments out of their assets, *i.e.*, revenue sharing? Are we correct in our assumption that properly disclosed revenue sharing payments present more manageable conflicts for funds and broker-dealers? [49]

• If our assumption is incorrect, should we take additional steps to address revenue sharing concerns? If so, what steps should we take?

We also seek comment on whether we should propose instead that funds provide more complete disclosure to shareholders of the use of brokerage commissions to pay brokers for selling fund shares or otherwise modify or relocate the disclosures we currently require. Funds currently must disclose certain information relating to arrangements by which brokerage commissions are used to compensate broker-dealers for selling fund shares. A fund must disclose in the fee table in its prospectus the amounts paid pursuant to the 12b–1 plan, as a percentage of its average net assets.[50] A fund also must describe in its statement of additional information (''SAI'') the material aspects of the fund's plan and any agreements related to the implementation of the plan, including the dollar amounts spent on specific kinds of distribution activities, including the compensation paid to selling broker-dealers.[51] In addition, a fund's SAI must describe how the fund selects brokers to effect securities transactions, including a description of any factors the fund will consider in selecting brokers, and identification of the products or services the fund receives that it considers in making its selection.[52] Rule 10b–10 under the Exchange Act, the general confirmation rule governing broker-dealers, requires disclosure regarding the source and extent of payments to broker-dealers in selling fund shares, including payments to broker-dealers in the form of portfolio brokerage commissions.[53] Recently, we proposed rules requiring brokers to provide improved disclosure, at the point of sale and in mutual fund confirmation statements, of the receipt of brokerage commissions and revenue sharing payments in the sale of fund shares.[54] We considered whether modifications to the disclosure requirements would adequately address the problems we describe above. Our concern with this approach, however, is that it may not be effective in preventing funds and fund shareholders from being harmed by the conflicts of interest that surround the use of fund brokerage to pay for distribution. In addition, the complicated nature of the various arrangements for using brokerage commissions may be difficult for investors to comprehend and to compare across different funds.

• Should we increase or revise the disclosure requirements concerning the use of brokerage commissions to pay brokers for selling fund shares? Instead of banning directed brokerage, is there a disclosure-based alternative that would adequately address the concerns discussed above. If so, what should be the format of these disclosures? Where should these disclosures be located—in the prospectus, the SAI, or the annual reports?

• Should the disclosures be quantitative (*e.g.*, discuss the amount of brokerage commissions) or qualitative (*e.g.*, discuss the nature of the arrangements and the potential conflicts of interest), or both? Could a single quantitative measure accurately disclose the costs under the many different arrangements through which brokerage commissions are used to pay for distribution?

• Would the disclosures enable shareholders, either directly or based on

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to the Anti-Reciprocal Rule, which, as discussed above, permits NASD members to sell shares of funds that follow a disclosed policy ''of considering sales of their shares as a factor in the selection of broker/dealers to execute portfolio transactions, subject to best execution.'' NASD Conduct Rule 2830(k)(7)(B). The NASD's proposal also would prohibit a broker-dealer from selling a fund if the broker-dealer knows of an arrangement under which the fund directs portfolio securities transactions to pay for distribution of fund shares. Proposed Amendment to Rule Relating to Execution of Investment Company Portfolio Transactions, NASD Rule Filing 2004–027 (Feb. 10, 2004) (*http://www.nasdr.com/pdf-text/rf04_27.pdf*). Pursuant to Exchange Act Section 19(b) [15 USC. 78s(b)] and rule 19b–4 [17 CFR 240.19b–4], we will publish notice of and seek comment on the NASD's proposed rule.

[49] *See* Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, and Other Confirmation Requirement Amendments, and Amendments to the Registration Form for Mutual Funds, Investment Company Act Release No. 26341 (Jan. 29, 2004) [69 FR 6438 (Feb. 10, 2004)] (''Disclosure Requirements Release'').

[50] Item 3 of Form N–1A requires all funds to provide a fee table that discloses, among other things, ''Distribution [and/or Service] (12b–1) Fees.'' This phrase is defined in instruction 3.b. to Item 3 as including ''all distribution or other expenses incurred during the most recent fiscal year under a plan adopted pursuant to rule 12b–1.'' The information must be based upon a fund's most recent fiscal year, but the information must be restated if there have been any changes that would materially affect the information that is disclosed in the table. Instructions 3.d.(i)–(ii) to Item 3 of Form N–1A. Miscellaneous expenses paid through brokerage commissions must be reflected in the amount of expenses and expense ratio in a fund's statement of operations, which is part of its semi-annual and annual reports to shareholders and financial statements. *See* Investment Company Act Release No. 21221, *supra* note 35, and rule 6.07(g) of Regulation S–X under the 1933 Act. In addition, a fund's brokerage commissions, including the portion that is used to pay for distribution, are reflected in the fund's net asset value, and are consequently reflected in the fund's performance calculations, regardless of whether the amounts are paid pursuant to a 12b–1 plan. *See* Items 2(c)(2) and 21 of Form N–1A.

[51] Item 15(g) of Form N–1A. This item also requires the fund to disclose (i) whether the fund participates in any joint distribution activities with another fund, and (ii) whether the fund's investment adviser (or any other interested person of the fund) has a direct or indirect interest in the financial operation of the 12b–1 plan or any related agreements. *Id.* In addition, a fund's statement of operations, must disclose the total dollar amounts that the fund paid under the 12b–1 plan. *See* rule 30d–1 under the Investment Company Act (requiring certain information in a fund's semi-annual and annual reports to shareholders) and rule 6–07(f) of Regulation S–X (requiring a fund's statement of operations to provide a statement of all amounts that were paid by the fund in accordance with a 12b–1 plan).

[52] Item 16(c) of Form N–1A. This disclosure is not as specific, however, as the disclosure required concerning research services a fund receives that factor into its selection of brokers. A fund that directs brokerage to a broker because of research services provided must state the amount of the transactions and related commissions. *See* item 16(d) of Form N–1A.

[53] *See* Disclosure Requirements Release, *supra* note 49, at text accompanying nn. 35 and 36.

[54] Proposed rule 15c2–2 under the Exchange Act would require confirmation statements for fund share purchases, among other disclosures, to state: (i) The amount of any dealer concession the broker-dealer will earn in connection with the transaction, expressed in dollars and as a percentage of the net amount invested; and (ii) the amount directly or indirectly earned by the broker-dealer and any of its associated persons in connection with revenue sharing payments or brokerage commissions from the fund complex over the four most recent calendar quarters, expressed as a percentage of the total net asset value of the securities issued by the fund complex sold by the broker-dealer over that period. The rule also would require the confirmation to disclose the amount of revenue sharing or brokerage commissions the broker-dealer might receive in connection with the transaction, calculated by multiplying the percentage expressing the amount of revenue sharing or brokerage commission by the net amount invested in the transaction. *See* Disclosure Requirements Release, *supra* note 49. Proposed rule 15c–3 would require brokers, dealers, and municipal securities dealers to provide specific information to investors at the point of sale (or before they purchase fund shares), including (i) an estimate of the asset-based sales charge and service fee that, in the year following the purchase, the fund would incur in connection with the shares purchased if net asset value does not change, and (ii) whether the selling broker, dealer, or municipal securities dealer receives brokerage commissions from the fund complex. *See id.*

assessments by investment analysts, to choose between funds that engage in these types of arrangements?

• What costs would a fund likely incur in making these disclosures?

• Should we revise the disclosure requirements and ban the use of brokerage commissions in the manner described above? Should we revise the disclosure requirements and ban only certain types of arrangements under which brokerage commissions are used to finance distribution?

*B. Policies and Procedures*

We are also proposing to require that any fund (or its adviser) that directs any portfolio securities transactions to a selling broker-dealer implement policies and procedures designed to ensure that its selection of brokers to effect portfolio securities transactions is not influenced by considerations about the sale of fund shares.[55] These procedures must be reasonably designed to prevent: (i) The persons responsible for selecting broker-dealers to effect transactions in fund portfolio securities (*e.g.*, trading desk personnel) from taking broker-dealers' promotional or sales efforts into account in making those decisions;[56] and (ii) the fund, its adviser or principal underwriter, from entering into any agreement under which the fund directs brokerage transactions or revenue generated by those transactions to a broker-dealer to pay for distribution of the fund's shares.[57] The fund's board of directors, including a majority of its independent directors, must approve the policies and procedures.[58]

The policies and procedures that the rule would require are more specific than those we recently required all funds and investment advisers to adopt.[59] The proposed requirement is designed to ensure the active monitoring of brokerage allocation decisions when executing brokers also distribute the fund's shares.

• Is it appropriate to require funds that execute transactions through their selling brokers to implement policies and procedures to ensure that distribution considerations do not affect execution decisions?

• Is the scope of the proposed policies and procedures appropriate? Should we include different or additional objectives?

• Would these policies and procedures be effective in preventing funds and broker-dealers from circumventing the ban on paying distribution-related expenses with brokerage commissions?

• Should we adopt other measures to help the fund monitor the use of fund brokerage? The rule would require the board of directors to approve the policies and procedures. Should we also require the board of directors to monitor the fund's adherence to the policies and procedures, or to approve the allocation of brokerage? Should we require the fund's adviser to report to the board on its decisions regarding brokerage allocation? Are there other measures we should require the board to take to ensure that brokerage decisions are not influenced by brokers' distribution efforts?

• Should we require a fund's chief trading officer (or another official of the fund or its adviser) to certify periodically that the selection of brokers to execute the fund's portfolio securities transactions was made without taking into account the brokers' promotion or sale of shares issued by the fund or any other fund?

• Should we include a safe harbor in the rule for funds that execute portfolio securities transactions with a selling broker? If so, what conditions should we include in the safe harbor? Would the absence of a safe harbor affect the ability of funds to obtain best execution?

## III. General Request for Comment

We request comment on the proposed rule amendments described above, including suggestions for additional provisions or changes, and comments on other matters that might have an effect on the proposal. We encourage commenters to provide data to support their views.

## IV. Request for Comment on Further Amendments to Rule 12b–1

We also request comment on whether we should propose additional changes to rule 12b–1 to address other issues that have arisen under the rule, or propose to rescind the rule.[60] As our staff has noted, the current practice of using 12b–1 fees as a substitute for a sales load is a substantial departure from the use of the rule envisioned by the Commission when we adopted the rule in 1980.[61] As a result, its provisions may not address a number of matters that today face funds and fund shareholders.[62] The comments we receive will help us consider whether to propose further amendments.

One approach on which we would particularly like to receive comment would refashion rule 12b–1 to provide that funds deduct distribution-related costs directly from shareholder accounts rather than from fund assets. Under this

[55] Proposed rule 12b–1(i). As with all other portfolio securities transactions, the fund's adviser has a fiduciary duty to seek best execution. The adviser must see that these portfolio securities transactions are executed ''in such a manner that the client's total cost or proceeds in each transaction is most favorable under the circumstances.'' In re Kidder, Peabody & Co., Inc., Investment Advisers Act Release No. 232 (Oct. 16, 1968). *See also* Section 28(e) Interpretive Release, *supra* note 17; Applicability of the Commission's Policy Statement on the Future Structure of the Securities Markets to Selection of Brokers and Payment of Commissions by Institutional Managers, Investment Company Act Release No. 7170, [1971–72 Transfer Binder] Fed. Sec. L. Rep. (CCH) 78,776 (May 17,1972) (advisers ''must assign executions and pay for brokerage services in accordance with the reliability and quality of those services and their value and expected contribution to the performance of the account they are managing'').

[56] Proposed rule 12b–1(i)(1).

[57] Proposed rule 12b–1(i)(2). The policies and procedures should be designed to reach any arrangement or other understanding, whether binding or not, between a fund and a broker-dealer, including an understanding to direct brokerage to a government securities broker or dealer or a municipal securities dealer.

[58] Proposed rule 12b–1(i).

[59] *See* Compliance Programs of Investment Companies and Investment Advisers, Investment Company Act Release No. 26299 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)].

[60] When we adopted the rule, we noted: ''The Commission and its staff will monitor the operation of the rules closely and will be prepared to adjust the rules in light of experience to make the restrictions on use of fund assets for distribution either more or less strict.'' *See* 1980 Adopting Release, *supra* note 21.

[61] Division of Investment Management, SEC, Report on Mutual Fund Fees and Expenses 81 (2000) (''Staff Fee Report''). *See also* William P. Dukes and James B. Wilcox, *The Difference Between Application and Interpretation of the Law as it Applies to SEC Rule 12b–1 Under the Investment Company Act of 1940*, 27 New Eng. L. Rev. 9 (1992).

[62] We have, however, responded to the evolution of rule 12b–1 plans in a number of ways, including, for example, approving NASD rules capping the amount of fund distribution expenses (*see supra* notes 22 through 26, and accompanying text), and adopting a rule permitting multiple classes of shares. *See* rule 18f–3 under the Investment Company Act [17 CFR 270.18f–3]. *See also* Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple Class and Master-Feeder Funds; Class Voting on Distribution Plan, Investment Company Act Release No. 20915 (Feb. 23, 1995) [60 FR 11876 (Mar. 2, 1995)]. In 2000, our staff recommended that we revisit rule 12b–1 in light of ''changes in the manner in which funds are marketed and distributed and the experience gained from observing how rule 12b–1 has operated since it was adopted in 1980.'' Staff Fee Report, *supra* note 61. More recently, the staff has stated that it will continue to assess the issues raised by rule 12b–1 in light of the recommendations in the Staff Fee Report and changes in distribution practices since the rule's adoption. *See* Memorandum from Paul F. Roye, Director, SEC Division of Investment Management, to William H. Donaldson, Chairman, SEC (June 9, 2003) (*http://financialservices.house.gov/media/pdf/02–14–70%20memo.pdf*). Former Chairman Pitt called for a reexamination of distribution practices. Harvey L. Pitt, Chairman, SEC, Speech to the Investment Company Institute General Membership Meeting (May 24, 2002). *See also* Brooke A. Masters, *Counting the Costs of Fund Fees; Investigators' Attention Turns to Legal, Lucrative ''Advertising'' Charges*, Washington Post, Dec. 4, 2003, at E1; Craig A. Rubinstein, *Excessive Mutual Fund Advisory Fees: Give-Ups in Rule 12b–1 Clothing?*, 14 Ann. Rev. Banking L. 385, 404 (1995) (recommending that we consider repealing rule 12b–1).

approach, a shareholder purchasing $10,000 of fund shares with a five percent sales load could pay a $500 sales load at the time of purchase, or could pay an amount equal to some percentage of the value of his or her account each month until the $500 amount is fully paid (plus carrying interest).[63] If the shareholder redeemed before the amount was fully paid, the proceeds of the redemption would be reduced by the unpaid amount.[64] As with other sales charges, the account-based fees would be subject to NASD caps.[65]

This approach may have a number of advantages compared to current arrangements under which the fund pays fees pursuant to a rule 12b–1 plan approved by shareholders and overseen by fund directors. First, the amounts charged and their effect on shareholder value would be completely transparent to the shareholder because the amounts will appear on the shareholder's account statements. Second, existing shareholders would not pay the costs of selling to new fund shareholders'costs that often may yield them few benefits. Third, long-term shareholders would no longer, as a result of paying a share of 12b–1 fees over a lengthy period, pay amounts that exceed their fair share of distribution costs.[66]

A shareholder account-based approach to distribution payments would help to eliminate the substantial conflicts of interest presented by the use of fund assets to pay for distribution. As a result, the role of fund directors in approving methods of distribution could be eliminated (or substantially circumscribed), freeing their time to address other significant matters. Rule 12b–1's shareholder voting requirements could be eliminated, reducing fund expenses. The detailed regulatory requirements of rule 12b–1 and NASD rule 2830(d) designed to address these conflicts could be substantially reduced or eliminated, reducing related legal and compliance costs that fund shareholders have ultimately born.[67]

A shareholder account-based approach to distribution payments also could simplify investing in funds and eliminate many of the problems with fund sales practices we see today. Funds would no longer need to have separate classes of shares based on rule 12b–1 fees, which many shareholders have found very confusing.[68] Fund prospectuses would be shorter and more understandable. Sales practice abuses associated with the existence of separate classes could also be eliminated.[69]

• We request comment on these ideas, particularly from shareholders who pay 12b–1 fees and fund directors who are charged with supervising funds' 12b–1 plans. Would a shareholder account-based approach make sense?

Some have suggested that, instead of modifying rule 12b–1, we should rescind the rule.[70]

Critics of the rule often argue that it no longer serves the purposes for which it was intended.[71] Others contend that rescinding the rule would harm funds and fund shareholders.[72] We request comment on whether we should propose to rescind the rule.

• If we were to rescind the rule, what would be the consequences for funds, fund shareholders, fund advisers, and brokers that sell fund shares? How would elimination of the rule affect the aggregate amount of shareholder expenses? What alternate methods of financing distribution would funds and advisers use?

• Should the fund's adviser or principal underwriter pay all promotional expenses, or are there certain distribution expenses that should be paid with fund assets?

• Funds often pay for administrative services provided by third parties with asset-based fees.[73] If we were to propose to rescind rule 12b–1, should we also propose restrictions on the use of asset-based fees to ensure that distribution expenses are not improperly characterized as, *e.g.*, shareholder account servicing expenses?

• If we were to rescind rule 12b–1, would particular types of funds, such as

[63] In choosing between paying a front-end load or spreading the payment of the load over time, a shareholder would have to take into consideration, among other factors, the possibility that payment of loads through periodic automatic redemptions (to the extent that the loads exceed distributions) may result in the shareholder realizing capital gains or losses.

[64] Funds today may charge account-based distribution fees. *See* rule 6c–10 under the Investment Company Act, and Exemption for Certain Open-end Management Investment Companies to Impose Deferred Sales Loads, Investment Company Act Release No. 22202 (Sept. 9, 1996) [61 FR 49011 (Sept. 17, 1996)] (referring to these distribution arrangements as ''installment loads'').

[65] *See supra* notes through and accompanying text.

[66] Although classes of shares carrying rule 12b–1 fees may be structured to convert to classes without rule 12b–1 fees, those conversions typically do not occur for a substantial period of time, *e.g.*, ten years.

[67] Fund distributors could also benefit. Unlike rule 12b–1 fees, which are subject to annual renewal by fund directors, an account-based distribution fee could provide a dependable and legally certain flow of payments, that are unaffected by any shrinkage in fund assets. *See* John Shipman, *B-ware: Shares with Back-End Loads Can Sting Investors and Fund Companies*, Barron's, Jan. 6, 2003, at L10 (''[N]ow that the bear market has battered many portfolios, 12b–1 and back-end fees are being drawn from a shrinking base of assets, producing lower-than-expected cash flows.''); Tom Leswing, *Munder B Share Sales Continue to Sting Parent*, Ignites.com, Oct. 17, 2002 (*http://www.ignites.com/*) (reporting Comerica's $5 million charge against third-quarter revenues as a result of a decline in its subsidiary's revenue from 12b–1 fees corresponding to a decline in assets under management).

[68] *See, e.g.*, Timothy Middleton, Abecedarians, Take Note: Classes Multiply, N. Y. Times, Nov. 26, 1996, at 8 (''Fund companies have shown great ingenuity in creating share classes that, while legal, may leave buyers baffled.''); Andrew Leckey, Understanding Shares Isn't As Easy As ABC, Chi. Trib., Aug. 7, 2001, at 7 (''Mutual fund share classes have become a confusing alphabet soup for investors who put money into so-called ''load'' mutual funds that require a sales charge.''). *See also* Gregg Greenberg, *Mutual Fund Class Warfare*, TheStreet.com, Dec. 3, 2003 (*http://www.thestreet.com/funds/gregggreenberg/10129505.html*).

[69] Recently, we have instituted a number of actions against firms and registered representatives for selling Class B shares, which generated higher commissions than class A shares, to clients for whom Class A shares were more suitable. *See, e.g.*, In re Prudential Securities, Inc., Exchange Act Release No. 48149 (July 10, 2003); In re Morgan Stanley DW Inc., Exchange Act Release No. 48789 (Nov. 17, 2003); In re Kissinger, Exchange Act Release No. 48178 (July 15, 2003). The NASD also has instituted actions for Class B sales practice abuses. *See, e.g.*, NASD Brings Enforcement Action for Class B Mutual Fund Share Sales Abuses and Issues Investor Alert on Class B Shares, NASD News Release, June 25, 2003 (''Today's action is part of a larger, ongoing focus of NASD on the sale of Class B mutual fund shares. In the last two years NASD has brought more than a half dozen significant enforcement cases involving sales violations of Class B shares.'').

[70] *See, e.g.*, Neil Weinberg, Let the Sun Shine, Forbes, Dec. 22, 2003, at 72; Rubinstein Article, *supra* note 62.

[71] *See, e.g., Oversight Hearing on Mutual Funds: Hidden Fees, Misgovernance and Other Practices that Harm Investors, Hearings Before the Subcommittee on Financial Management, the Budget, and International Security of the Senate Committee on Governmental Affairs* 108th Cong., 2d Sess. (Jan. 27, 2004) (statement of Travis B. Plunkett, Legislative Director, Consumer Federation of America).

[72] *See, e.g.*, Masters, *Counting the Costs of Fund Fees, supra* note (''Mutual fund company officials defend 12b–1 fees, saying the charge has opened up a wider range of investment options for the more than 60 percent of mutual fund investors who buy through brokers.''); Stephen Schurr, *False Advertising; The Truth About 12b–1 Fees,* TheStreet.com, Aug. 31, 2003 (*http://www.thestreet.com/_tscs/funds/stephenschurr/10107579.html*) (''[T]o the Investment Company Institute, which represents the fund industry, 12b–1 fees serve a vital function to individuals and have actually helped drive fund expenses down over the past 20 years.'').

[73] *See, e.g.*, Investment Company Institute, *Use of Rule 12b–1 Fees by Mutual Funds in 1999*, Fundamentals, Apr. 2000, at 2 (Figure 2) (*http://www.ici.org/stats/res/fm-v9n1.pdf*) (finding, based on a survey of 95 fund complexes, that 32% of 12b–1 fees are used to pay for administrative services). In addition to imposing asset-based sales charges, NASD rules permit an asset-based ''service fee'' of up to 0.25% to cover ''payments by an investment company for personal service and/or the maintenance of shareholder accounts.'' NASD Conduct Rules 2830(b)(9) (defining ''Service fees'') and 2830(d)(5) (prohibiting NASD members from selling a fund if its service fee, as disclosed in its prospectus, exceeds 0.25%).

funds with fewer net assets or newer funds, be disproportionately disadvantaged?

• How would rescission of rule 12b–1 affect distribution arrangements, *e.g.*, fund supermarkets and other arrangements that anticipate the receipt of 12b–1 fees?

• If we rescind the rule, should we propose a new rule that would prohibit the use of fund assets to pay for sales and distribution expenses?

## V. Cost-Benefit Analysis

We are sensitive to the costs and benefits that result from our rules. The proposed amendments would prohibit the use of brokerage commissions to compensate broker-dealers for the distribution of fund shares. We encourage commenters to identify, discuss, analyze, and supply relevant data regarding these or any additional costs and benefits.

### *A. Benefits*

The proposed amendments would benefit funds and their shareholders. An increasing number of funds are using a limited number of distribution channels, and the broker-dealers who control these channels routinely demand supplemental payments (in addition to the compensation they receive in the form of sales charges) for access to that distribution network. We have found that one form of supplemental compensation comes from directed brokerage arrangements, pursuant to which fund advisers direct brokerage commissions from fund portfolio securities transactions to selling brokers. A prohibition on using directed brokerage to pay for distribution would reduce the ability of selling brokers to demand supplemental distribution payments, and may reduce commission rates that funds pay to the extent that these payments would be excluded from the commission rate.

Fund brokerage is a valuable fund asset and thus should be used in the manner that most benefits the fund and its shareholders. Using excess brokerage commissions to finance distribution currently imposes a cost on funds, because those brokerage commissions are unavailable to pay for other services for the fund. Because this cost is difficult to quantify, however, fund shareholders may not realize the true cost of financing distribution in this manner. The difficulty of quantifying the cost to the fund of brokerage financing makes the conflicts of interest accompanying the direction of fund brokerage particularly acute. Our staff's recent review of directed brokerage practices has raised questions about whether fund advisers and broker-dealers, rather than funds and fund shareholders, are the beneficiaries of these arrangements.

The proposed amendments, by prohibiting the practice of directing brokerage for distribution, would address this conflict of interest. The proposal would benefit fund shareholders by prohibiting the adviser from considering distribution as a factor in selecting an executing broker. Funds would be able to use the entire amount of the brokerage commission to purchase execution and other services of direct benefit to funds and their shareholders. By removing distribution as a factor in the selection of selling brokers, the proposed amendments will enhance the likelihood that advisers will select brokers based on the quality and cost of execution.

### *B. Costs*

The proposed amendments might decrease the commissions received by broker-dealers and might impose new costs on investment advisers and funds. The elimination of brokerage commissions as a source of distribution financing could reduce the amount of compensation that broker-dealers receive for selling fund shares and could dissuade them from selling fund shares. Selling brokers are likely to seek to make up for any shortfall from other sources. To the extent that distribution fees do not currently exceed the NASD's caps, funds may institute or increase fees deducted from fund assets under a rule 12b–1 plan. Alternatively, advisers may increase the payments that they make to broker-dealers out of their own assets, which are likely to cause advisers' costs to rise.

We assume that a great majority of, if not all, funds are likely to find that, for some portfolio transactions, the broker-dealer who can provide best execution also distributes the fund's shares. Thus, we assume that all funds will incur costs in order to comply with the requirement for policies and procedures contained in the proposed amendments. Specifically, they or their advisers would be required to institute policies and procedures reasonably designed to prevent: (i) The persons responsible for selecting broker-dealers to effect transactions in fund portfolio securities (*e.g.*, trading desk personnel) from taking broker-dealers' promotional or sales efforts into account in making those decisions; and (ii) the fund, its adviser or principal underwriter, from entering into any agreement under which the fund directs brokerage transactions or revenue generated by those transactions to a broker-dealer to pay for distribution of the fund's shares. We do not anticipate that drafting or implementing these policies and procedures will be costly.

By narrowing the options for financing distribution of fund shares, the proposed amendments could impose costs on funds and their advisers. If the remaining methods of financing distribution are not adequate, funds may not grow as quickly as they otherwise would have. Advisers, whose compensation is generally tied to net assets, may experience slower growth in their advisory fees, and fund shareholders may not benefit from the economies of scale that accompany asset growth.[74]

### *C. Request for Comment*

We request comment on the potential costs and benefits identified in the proposal and any other costs and benefits that may result from the proposed amendments. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission also requests information regarding the impact of the proposed rule on the economy on an annual basis. Commenters are requested to provide data to support their views.

## VI. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act mandates 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.[75]

As discussed above, the proposed amendments would prohibit funds from compensating selling brokers with commissions generated from fund portfolio securities transactions. This new prohibition could promote efficiency by eliminating brokers' selling efforts, which are not indicative of their execution capabilities, as a factor that fund advisers use in selecting an executing broker. Efficiency also would be enhanced because, if commissions are not used to finance the distribution of a fund's shares, lower commission rates may be available or the fund may be able to obtain other services more directly beneficial to it and its shareholders.

[74] Historically, however, fund shareholders have not always enjoyed lower expenses as a result of increased assets.

[75] 15 U.S.C. 80a–2(c).

We do not anticipate that these proposed amendments would harm competition. All funds would be precluded from using this form of compensation. In addition, the amendments should reduce incentives that broker-dealers currently have to base their fund recommendations to customers on payment for distribution. The amendments also could foster greater competition in brokerage commission rates by unbundling distribution from execution. Thus, the proposed amendments are designed to enhance competition.

The proposed amendments would prohibit a fund from relying on its selling brokers to effect fund portfolio securities transactions unless the fund has policies and procedures in place designed to ensure the active monitoring of brokerage allocation decisions when executing brokers also distribute the fund's shares. Thus, funds would not be unnecessarily limited in their choice of executing brokers, and the proposed amendments would not have adverse effects on competition in the provision of brokerage services. We do not anticipate that the proposed amendments would affect capital formation.

We request comment on whether the proposed amendments will affect efficiency, competition, or capital formation. Would the proposed amendments materially affect the efficiency, competition, and capital formation of funds, advisers, or broker-dealers? Comments will be considered by the Commission in satisfying its responsibilities under section 2(c) of the Investment Company Act. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

## VII. Paperwork Reduction Act

The proposed amendments contain a ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995.[76] We are submitting this proposal 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 proposed amendments would add ''collection of information requirements'' to the existing collection of information requirements under rule 12b–1 of the Investment Company Act of 1940. The title for the collection of information requirements associated with the proposed amendments is ''Rule 12b–1 under the Investment Company Act, 'Distribution of Shares by Registered Open-End Management Investment Company.' '' 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. The approved collection of information associated with rule 12b–1, which would be revised by the proposed amendments, displays OMB control number 3235–0212.

Rule 12b–1 permits funds to use their assets to pay distribution-related costs. In order to rely on rule 12b–1, a fund must adopt ''a written plan describing all material aspects of the proposed financing of distribution'' that is approved by fund shareholders and fund directors. Any material amendments to the rule 12b–1 plan similarly must be approved by fund directors, and any material increase in the amount to be spent under the plan must be approved by fund shareholders. In considering a rule 12b–1 plan, the fund board must request and evaluate information reasonably necessary to make an informed decision. Rule 12b–1 also requires the fund to preserve for six years copies of the plan, any related agreements and reports, as well as minutes of board meetings that describe the factors considered and the basis for implementing or continuing a rule 12b–1 plan.

To eliminate a practice that is fraught with conflicts of interest and may be harmful to funds and fund shareholders, we propose to amend rule 12b–1 to prohibit funds from paying for the distribution of their shares with brokerage commissions. The proposed amendments would require funds that use their selling brokers to execute securities transactions to implement, and their boards of directors (including a majority of independent directors) to approve, policies and procedures. The policies and procedures would have to be reasonably designed to prevent: (i) The persons responsible for selecting broker-dealers to effect transactions in fund portfolio securities from taking broker-dealers' promotional or sales efforts into account in making those decisions; and (ii) the fund, its adviser or principal underwriter, from entering into any agreement under which the fund directs brokerage transactions or revenue generated by those transactions to a broker-dealer to pay for distribution of the fund's shares. This requirement includes the following new information collections: (i) A fund's documentation of its policies and procedures, and (ii) the approval by the board of directors of those policies and procedures.

The new information collection requirements would be mandatory. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.[77]

The current annual information collection burden for rule 12b–1 is 621,700 hours. We estimate that, if the proposed amendments are adopted, the burden will increase to 628,833 hours. Our staff estimates that there are approximately 6,185 mutual fund portfolios with rule 12b–1 plans.[78] We anticipate that, if the proposed amendments are adopted, all of the approximately 3,100 active open-end funds will implement the policies and procedures required to use their selling brokers to execute portfolio securities transactions.[79]

Based on conversations with fund representatives, Commission staff estimates that for each of the 6,185 mutual fund portfolios that currently have a rule 12b–1 plan, the average annual burden of complying with the rule is 100 hours to maintain the plan and the total burden hours per year for all fund portfolios is 618,500 hours.[80] In the first year after adoption of the proposed amendments, we estimate that each fund will spend 10 hours to comply with the new information collection requirement, for a total of 31,000 additional burden hours in the first year.[81] The aggregate burden for all funds in the first year after adoption, therefore, is estimated to be 649,500 hours.[82] We estimate that the average weighted annual burden for all funds over the three-year period for which we are requesting approval of the information collection burden will be approximately 628,833 hours.[83]

If a currently operating fund seeks to adopt a new rule 12b–1 plan or materially increase the amount it spends for distribution under its rule 12b–1

[76] 44 U.S.C. 3501 to 3520.

[77] *See* section 31(c) of the Investment Company Act [15 U.S.C. 80a–30(c)].

[78] This estimate, which is based on information filed with the Commission by funds, reflects an adjustment from our previous estimate of 6,217.

[79] We have estimated the information collection burdens associated with the policies and procedures required by the proposed amendments at the fund level, rather than the fund portfolio level, because we anticipate that one set of policies and procedures will cover a fund consisting of multiple portfolios.

[80] 6,185 fund portfolios × 100 hours per fund portfolio = 618,500 hours. This estimate takes into account the time needed to prepare quarterly reports to the board of directors, the board's consideration of those reports, and the board's annual consideration of the plan's continuation.

[81] 3,100 funds × 10 hours per fund = 31,000 hours.

[82] 618,500 hours to comply with existing requirements + 31,000 hours to comply with the new requirements = 649,500.

[83] 649,500 hours in year 1 + 618,500 hours in year 2 + 618,500 hours in year 3/3 years = 628,833 hours/year.

plan, existing rule 12b–1 requires that the fund obtain shareholder approval. As a consequence, the fund will incur the cost of a proxy. Based on conversations with fund representatives, Commission staff estimates that three funds per year prepare a proxy in connection with the adoption or material amendment of a rule 12b–1 plan. We do not anticipate that the proposed amendments would result in an increase in the number of proxies prepared. The staff further estimates that the cost of each fund's proxy is $30,000.[84] Thus, the total aggregate annual cost burden of rule 12b–1 for funds is $90,000.

We request comment on whether these estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), we solicit 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 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. S7–09–04. OMB is required to make a decision concerning the collection 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 this collection of information should be in writing, refer to File No. S7–09–04, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services.

## VIII. 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 proposed amendments to rule 12b–1, which governs the use of fund assets to finance the distribution of fund shares.

### *A. Reasons for the Proposed Action*

As described more fully in Section I of this Release, the proposed amendments are necessary to address the practice of directing brokerage commissions to particular broker-dealers in order to compensate them for selling fund shares, a practice we believe is fraught with conflicts of interests and may be harmful to funds and fund shareholders.

### *B. Objectives of the Proposed Action*

As described more fully in Section II of this Release, the objectives of the proposed amendments, which would apply to all funds, are to prohibit funds from paying for distribution of fund shares with brokerage commissions and to ensure the active monitoring of brokerage allocation decisions when executing brokers also distribute the fund's shares.

### *C. Legal Basis*

The amendments to rule 12b–1 are being proposed pursuant to the authority set forth in sections 12(b) [15 U.S.C. 80a–12(b)] and 38(a) [15 U.S.C. 80a–37(a)] of the Investment Company Act.

### *D. Small Entities Subject to the Rule and Proposed 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.[85] Of approximately 5,124 registered investment companies, approximately 204 are small entities.[86] As discussed above, the proposed amendments would prohibit all funds, regardless of size, from using portfolio brokerage commissions to finance distribution. All funds that use selling brokers to execute portfolio transactions would be required to implement policies and procedures. We have no reason to expect that small entities would be disproportionately affected by the proposed amendments. We request comment on the effects and costs of the proposed amendments on small entities.

### *E. Reporting, Recordkeeping, and Other Compliance Requirements*

The proposed amendments do not include any new reporting or recordkeeping requirements. The proposed amendments would introduce a new prohibition, applicable to all funds, including small entities, on the use of fund brokerage commissions to compensate selling brokers. In addition, all funds, including small entities, would be prohibited from using selling brokers to execute portfolio transactions unless they have implemented policies and procedures reasonably designed to prevent: (i) the persons responsible for selecting broker-dealers to effect transactions in fund portfolio securities from taking broker-dealers' promotional or sales efforts into account in making those decisions; and (ii) the fund, its adviser or principal underwriter, from entering into any agreement under which the fund directs brokerage transactions or revenue generated by those transactions to a broker-dealer to pay for distribution of the fund's shares. The board of directors would have to approve these policies and procedures.

### *F. Duplicative, Overlapping, or Conflicting Federal Rules*

We have not identified any federal rules that duplicate, overlap, or conflict with the proposed amendments. The requirement that funds that use their selling brokers to execute portfolio securities transactions implement policies and procedures is encompassed by the more general requirement for compliance policies and procedures contained in rule 38a–1 under the Investment Company Act.[87] The policies and procedures that the proposed amendments would require are more specific than those we recently required all funds and investment advisers to adopt and are designed to ensure the active monitoring of brokerage allocation decisions when a fund's executing brokers also distribute the fund's shares. If a fund has implemented policies and procedures under the proposed amendments, it would be able to incorporate those policies and procedures into the

[84] This estimate, which is based on staff conversations with representatives of funds, reflects an adjustment from our previous estimate of $15,000 per proxy.

[85] 17 CFR 270.0–10.

[86] 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.

[87] 17 CFR 270.38a–1.

policies and procedures it maintains pursuant to rule 38a–1.

*G. Significant Alternatives*

The Regulatory Flexibility Act directs us 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.

Establishing different standards for small entities is not feasible because we believe that a complete ban on the use of brokerage commissions to finance distribution is necessary in light of the intensity of the conflicts of interest that surround the practice. It would be inappropriate to apply a different standard for small entities, whose advisers may face even greater pressure than advisers to larger funds to take all measures to enhance distribution. Shareholders of small funds should receive the same protection as shareholders in large funds. Nevertheless, we request comment on whether we should modify the proposed amendments in any way to reduce the burden on small entities.

We do not believe that clarification, consolidation, or simplification of the compliance requirements is feasible. The proposed amendments contain a straightforward ban on the use of brokerage commissions to finance distribution. The special requirements applicable to a fund that uses a selling broker to execute its portfolio securities transactions are likewise clear. We request comment on ways to clarify, consolidate, or simplify any part of the proposed amendments.

We do not believe that the use of performance rather than design standards is feasible. The proposed amendments would prohibit the use of brokerage commissions to finance distribution because the experience of our staff, including a recent staff review of brokerage commission practices, has led us to believe that the conflicts surrounding this practice are unmanageable. The requirement in the proposed amendments that funds that rely on selling brokers to execute transactions must have in place policies and procedures to prevent the persons making brokerage allocation decisions from taking fund sales into account and to prohibit directed brokerage agreements is a performance standard, because it permits funds or their advisers to implement policies and procedures tailored to their organizations.

We believe that it would be impracticable to exempt small entities from the proposed ban. Doing so would deny to small funds and their shareholders the protection that we believe they are due. We request comment on whether small entities and their shareholders could be afforded equal protection other than through a ban on the use of brokerage to finance fund sales. We also believe that it would be impracticable to exempt small entities that effect fund portfolio transactions through a selling broker from the requirement that they implement policies and procedures.

*H. Solicitation of Comments*

We encourage 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 amendments and will be 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 to the following E-mail address: *rule-comment@sec.gov.* All comment letters should refer to File No. S7–09–04.; this file number should be included in the subject line if E-mail is used.[88]

## IX. Statutory Authority

The Commission is proposing amendments to rule 12b-1 under the Investment Company Act pursuant to the authority set forth in sections 12(b) [15 U.S.C. 80a-12(b)] and 38(a) [15 U.S.C. 80a-37(a)] of the Investment Company Act.

## Text of Proposed Rules

For reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

[88] Comments on the IRFA will be placed in the same public file that contains comments on the proposed amendments themselves.

## 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 270.12b–1 is amended by adding new paragraphs (h) and (i) to read as follows:

### § 270.12b–1 Distribution of shares by registered open-end management investment company.

* * * * *

(h) Notwithstanding any other provision of this section, a company may not compensate a broker or dealer for any promotion or sale of shares issued by that company by directing to the broker or dealer:

(1) The company's portfolio securities transactions; or

(2) Any remuneration, including but not limited to any commission, mark-up, mark-down, or other fee (or portion thereof) received or to be received from the company's portfolio transactions effected through any other broker (including a government securities broker) or dealer (including a municipal securities dealer or a government securities dealer); and

(i) Notwithstanding any other provision of this section, a company may not direct its portfolio securities transactions to a broker or dealer that promotes or sells shares issued by the company, unless the company (or its investment adviser) has implemented, and the company's board of directors (including a majority of directors who are not interested persons of the company) has approved, policies and procedures reasonably designed to prevent:

(1) The persons responsible for selecting brokers and dealers to effect the company's portfolio securities transactions, from taking into account the brokers' and dealers' promotion or sale of shares issued by the company or any other registered investment company; and

(2) The company, and any investment adviser and principal underwriter of the company, from entering into any agreement (whether oral or written) or other understanding under which the company directs, or is expected to direct, portfolio securities transactions, or any remuneration described in paragraph (h)(2) of this section, to a broker (including a government securities broker) or dealer (including a municipal securities dealer or a government securities dealer) in

consideration for the promotion or sale of shares issued by the company or any other registered investment company.

By the Commission.

Dated: February 24, 2004.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–4426 Filed 2–27–04; 8:45 am]

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Federal Register

Monday,
March 1, 2004

# Part V

# Department of Housing and Urban Development

## 24 CFR Part 3284

## Manufactured Housing Program: Minimum Payments to States; Proposed Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 3284**

**[Docket No. FR–4868–P–01]**

**RIN 2502–AI16**

## Manufactured Housing Program: Minimum Payments to States

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the minimum payments to states approved as State Administrative Agencies under the National Manufactured Housing Construction and Safety Standards Act of 1974 in order to provide for a more equitable guarantee of minimum funding from the Department's appropriation for this program and to avoid the differing per-unit payments to the states that have occurred under the present rule. This rule would base the minimum payments to states upon their participation in production or siting of new manufactured homes.

**DATES:** *Comment Due Date:* March 31, 2004.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Facsimile (FAX) comments will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** William W. Matchneer III, Administrator, Office of Manufactured Housing Programs, Room 9156, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–6401. (This is not a toll-free number.) Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

On August 13, 2002, HUD published a final rule, at 67 FR 52832, on the Manufactured Housing Program Fee. The August 13, 2002 rule modified the amount of the fee collected from manufacturers to fund HUD's responsibilities under the program and ensured that states would receive at least a steady level of funding from the fees collected by HUD. Based on program experience, HUD is proposing to amend 24 CFR 3284.10, entitled, ''Payments to states.'' At the same time, the Department will submit to the Manufactured Housing Consensus Committee (MHCC) a draft proposal to amend 24 CFR 3282.307 to increase the amounts paid out of fee collections to approved and conditionally approved states according to an established formula set forth in that section. In accordance with section 604(b) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) (the Act), the MHCC will have 120 days to comment on the proposed increase before it is published as a proposed rule for public comment.

### Minimum Payments

The rule published August 13, 2002, in part, prescribed minimum payments to each state participating in the manufactured housing program as a State Administrative Agency under regulations implementing section 620(e)(3) of the Act (42 U.S.C. 5419(e)(3)). Section 620(e)(3) states that ''the Secretary shall continue to fund the states having approved state plans in the amounts which are not less than the allocated amounts, based on the fee distribution system in effect on [December 26, 2000].''

In the previous rule, the Department implemented that statutory requirement by establishing the yearly payment to the approved states at not less than the amount paid to that state for the 12 months ending on December 26, 2000. That minimum amount was based upon payments that had been made when production levels were believed to be low enough to establish a reasonable minimum payment to each approved state. The Department had hoped that implementing the requirement in this way would provide additional certainty to those states in their budget cycles.

However, production and sales of new homes in some states have continued to decline to significantly lower levels than during the year 2000. As a result, the August 2002 rule would now require inequitable payments among approved states, in addition to inequitable payments between approved states and other states. Under that rule, some states would receive more funding than other states for each unit of manufactured housing produced or sited in those states. For example, State A—a fully approved state in which the production and siting level has decreased by 30 percent since the current rule's base year of 2000 (the levels in some states have decreased by more)—may, in effect, receive a total of $17.00 or more per unit sited and produced in State A, because that payment would represent a pro rata portion of the inflated base year amount. But State B—in which production and siting level has remained steady or has increased, or which is not an approved state—will still be paid a total of $11.50 per unit sited and produced in State B, as prescribed by 24 CFR 3282.307.

Although some inequity might have been foreseen during the formulation of the August 2002 rule, the Department was not expecting the imbalances that have now resulted nor did any commenter raise the concern. Therefore, in order to ensure a more equitable distribution of funds, the Department has determined that it should implement the statutory requirement in a way that is more directly based on the distribution system in effect at the time of the amendments to the Act. The statutory requirements would be implemented in a final rule that would assure that amounts established in the formula used to distribute funds to states (see 24 CFR 3282.307(b)) will not be decreased below their current levels, *i.e.*, $9 for each transportable section first located within an approved state and $2.50 for each transportable section produced in an approved state.

The Department also has found that the current rule allows uncertainty about which states are considered approved for purposes of the minimum payment requirement. Conditionally approved states are permitted to participate in the program and carry out their state plans, pursuant to 24 CFR 3282.302(c), but this same section also provides that conditionally approved states shall not be considered approved for all purposes. The Act permits the Department to continue its previous practice of making formula payments to conditionally approved states that are paid using fee collections. See section 620(c) of the Act, (42 U.S.C. 5419(c)), authorizing fee amounts to be used for program activities engaged in by HUD before December 27, 2000. By contrast, the protection provided in the new section 620(e)(3) of the Act—for minimum payments—is a new provision and is applicable only to states having ''approved State plans'' (42 U.S.C. 5419(e)(3)). This section may appropriately cover only fully approved states, especially in light of the language in § 3282.302(c) that provides that conditional approval allows a state to participate in the program but does not constitute approval of a state plan.

As the Department proposes to amend the rule, all states receiving amounts allocated from the fees collected from manufacturers will be paid the same per-unit amounts determined in accordance with the per-unit formula in 24 CFR 3282.307(b). In the event that the formula amounts are changed in the future, however, the proposed revision in 24 CFR 3284.10 would ensure that each fully approved state would be paid not less than $9 for each transportable section first located within that state and $2.50 for each transportable section produced in that state. It is not likely that, in the future, HUD would reduce these amounts, which have been in effect for over 10 years and are currently paid to all participating states. Therefore, the proposed approach to revising § 3284.10 builds on the language in § 3282.307(b) that provides for distribution of a portion of the fees among both fully approved and conditionally approved states.

The Department is proposing to revise § 3284.10 to specify that each fully approved state would continue to receive payments that are *no less than:* (1) $9.00 for each transportable section of new manufactured housing that is first located on the premises of a retailer or purchaser in that state; and (2) $2.50 for each transportable section of new manufactured housing that is produced in that state. Providing this guarantee to fully approved states complies with both the requirement in section 620(e)(3) of the Act and 24 CFR 3282.302(c). These minimum payments also are consistent with the amounts specified in § 3282.307 for distribution to all participating states, but do not prevent HUD from amending § 3282.307 in any future rulemaking to increase the amounts actually distributed to those states. In fact, in an action that is separate from this rulemaking, HUD will present to the MHCC a draft proposal to amend § 3282.307(b) to increase the amount paid to an approved or conditionally approved state for each transportable section of new manufactured housing that is produced in that state. In accordance with requirements established in section 604(b) of the Act (42 U.S.C. 603(b)), HUD must provide the MHCC 120 days to review and submit comments on the draft proposal to amend § 3282.307 before HUD publishes the proposal in the **Federal Register** for public comment. The ability of HUD to adopt any additional increases in the amounts paid to participating states will depend on HUD receiving appropriated amounts that are sufficient to fund its program responsibilities, including the new responsibilities for national installation and dispute resolution programs and support of the Manufactured Housing Consensus Committee.

In addition to being more equitable for the participating states, HUD believes, after some experience and upon further consideration, that this proposed method of implementing the new statutory requirement concerning minimum payments to the states would simplify the related administrative burdens of HUD and the states. For many years, HUD and the states have been making and receiving payments based on the manufacturing location and first siting of new homes, pursuant to the provisions in § 3282.307. Payments will continue to be made to all participating states using the same system under which HUD and the states have been operating for years. The proposed revised implementation of the statutory provision on minimum payments would be based on the same methodology used for compliance with § 3282.307; therefore, the revised approach would not require any new payment or accounting structures and would implement the statutory requirement seamlessly.

Finally, by removing the reference to ''calendar year,'' the revised rule would permit the Department to obligate money due the states from fee collections on the federal fiscal year to which the program is subject for operational authority through the appropriations process. Under the current rule, the payment to the states is calculated on a calendar year basis, and accurate calculation of the unmet balance can only be done after the close of the calendar year. In December 2000, however, the manufactured housing program became subject to the federal government's annual fiscal year (October through September) appropriations process. Because the two annual schedules—calendar year for payments to states, and fiscal year for program operations—do not coincide, the program's budgeting and reconciliation processes are complicated unnecessarily, and the potential for inadvertent violations of governmentwide budgeting requirements is increased.

## Findings and Certifications

### *Justification for 30-Day Comment Period*

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. However, the Department is shortening its usual 60-day public comment period to 30 days for this proposed rule. Because of its experience with the rule published as final in August 2002, the Department does not expect to receive detailed or numerous comments on this proposed rule. Persons likely to comment on this rule also will be familiar with the underlying requirement because of the recent rulemaking that addressed the same subject. The Department seeks a quick resolution of any changes to the implementation of the statutory requirement concerning minimum payments, which will restore equitable distribution of funds to participating states, simplify the administrative procedures of the states and the Department, and will minimize any nuisance resulting from development of unnecessary accounting structures.

### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538)(UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the UMRA.

### *Environmental Impact*

In accordance with 24 CFR 50.19(c)(6) of the HUD regulations, this rule sets forth fiscal requirements which do not constitute a development decision that affects the physical condition of specific project areas or building sites, and therefore is categorically excluded from the requirements of the National Environmental Policy Act and related federal laws and authorities.

### *Regulatory Flexibility Act*

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule would not have a significant economic impact on a substantial number of small entities. This rule will affect only states that participate in the manufactured housing program, and will have a negligible economic impact. Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's program responsibilities.

### *Executive Order 13132, Federalism*

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from

publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

*Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

**List of Subjects in 24 CFR Part 3284**

Consumer protection, Manufactured homes.

Accordingly, for the reasons discussed in this preamble, HUD proposes to amend 24 CFR part 3284 as follows:

## PART 3284—MANUFACTURED HOUSING PROGRAM FEE

1. The authority citation for 24 CFR Part 3284 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 5419, and 5424.

2. Revise § 3284.10 to read as follows:

**§ 3284.10 Minimum payments to states.**

For each transportable section of each new manufactured housing unit produced or sited in a state that has a state plan fully approved pursuant to § 3282.302 of this chapter, HUD will pay such state a total amount that is the greater of the amount established pursuant to § 3282.307 of this chapter, or the amount determined by adding:

(a) $9.00, if after leaving the manufacturing plant, the transportable section is first located on the premises of a retailer or purchaser in that state (or $0, if it is not); and

(b) $2.50, if the transportable section is produced in a manufacturing plant in that state (or $0, if it is not).

Dated: January 30, 2004.

**John C. Weicher,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 04–4480 Filed 2–25–04; 2:00 pm]

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## CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT MARCH 1, 2004

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**S. 610/P.L. 108–201**
NASA Flexibility Act of 2004 (Feb. 24, 2004; 118 Stat. 461)

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| 1600–1899 | (869–050–00017–2) | 61.00 | Jan. 1, 2003 |
| 1900–1939 | (869–050–00018–1) | 29.00 | [4] Jan. 1, 2003 |
| 1940–1949 | (869–050–00019–9) | 47.00 | Jan. 1, 2003 |
| *1950–1999 | (869–052–00021–3) | 46.00 | Jan. 1, 2004 |
| 2000–End | (869–050–00021–1) | 46.00 | Jan. 1, 2003 |
| **8** | (869–050–00022–9) | 58.00 | Jan. 1, 2003 |
| **9 Parts:** | | | |
| 1–199 | (869–050–00023–7) | 58.00 | Jan. 1, 2003 |
| *200–End | (869–052–00025–6) | 58.00 | Jan. 1, 2004 |
| **10 Parts:** | | | |
| 1–50 | (869–050–00025–3) | 58.00 | Jan. 1, 2003 |
| 51–199 | (869–050–00026–1) | 56.00 | Jan. 1, 2003 |
| 200–499 | (869–050–00027–0) | 44.00 | Jan. 1, 2003 |
| 500–End | (869–050–00028–8) | 58.00 | Jan. 1, 2003 |
| **11** | (869–050–00029–6) | 38.00 | Feb. 3, 2003 |
| **12 Parts:** | | | |
| 1–199 | (869–050–00030–0) | 30.00 | Jan. 1, 2003 |
| 200–219 | (869–050–00031–8) | 38.00 | Jan. 1, 2003 |
| *220–299 | (869–052–00033–7) | 61.00 | Jan. 1, 2004 |
| 300–499 | (869–050–00033–4) | 43.00 | Jan. 1, 2003 |
| 500–599 | (869–050–00034–2) | 38.00 | Jan. 1, 2003 |
| 600–899 | (869–050–00035–1) | 54.00 | Jan. 1, 2003 |
| 900–End | (869–050–00036–9) | 47.00 | Jan. 1, 2003 |
| **13** | (869–050–00037–7) | 47.00 | Jan. 1, 2003 |
| **14 Parts:** | | | |
| 1–59 | (869–050–00038–5) | 60.00 | Jan. 1, 2003 |
| 60–139 | (869–050–00039–3) | 58.00 | Jan. 1, 2003 |
| 140–199 | (869–050–00040–7) | 28.00 | Jan. 1, 2003 |
| 200–1199 | (869–050–00041–5) | 47.00 | Jan. 1, 2003 |
| 1200–End | (869–050–00042–3) | 43.00 | Jan. 1, 2003 |
| **15 Parts:** | | | |
| 0–299 | (869–050–00043–1) | 37.00 | Jan. 1, 2003 |
| 300–799 | (869–050–00044–0) | 57.00 | Jan. 1, 2003 |
| 800–End | (869–050–00045–8) | 40.00 | Jan. 1, 2003 |
| **16 Parts:** | | | |
| 0–999 | (869–050–00046–6) | 47.00 | Jan. 1, 2003 |
| 1000–End | (869–050–00047–4) | 57.00 | Jan. 1, 2003 |
| **17 Parts:** | | | |
| 1–199 | (869–050–00049–1) | 50.00 | Apr. 1, 2003 |
| 200–239 | (869–050–00050–4) | 58.00 | Apr. 1, 2003 |
| 240–End | (869–050–00051–2) | 62.00 | Apr. 1, 2003 |
| **18 Parts:** | | | |
| 1–399 | (869–050–00052–1) | 62.00 | Apr. 1, 2003 |
| 400–End | (869–050–00053–9) | 25.00 | Apr. 1, 2003 |
| **19 Parts:** | | | |
| 1–140 | (869–050–00054–7) | 60.00 | Apr. 1, 2003 |
| 141–199 | (869–050–00055–5) | 58.00 | Apr. 1, 2003 |
| 200–End | (869–050–00056–3) | 30.00 | Apr. 1, 2003 |
| **20 Parts:** | | | |
| 1–399 | (869–050–00057–1) | 50.00 | Apr. 1, 2003 |
| 400–499 | (869–050–00058–0) | 63.00 | Apr. 1, 2003 |
| 500–End | (869–050–00059–8) | 63.00 | Apr. 1, 2003 |
| **21 Parts:** | | | |
| 1–99 | (869–050–00060–1) | 40.00 | Apr. 1, 2003 |
| 100–169 | (869–050–00061–0) | 47.00 | Apr. 1, 2003 |
| 170–199 | (869–050–00062–8) | 50.00 | Apr. 1, 2003 |
| 200–299 | (869–050–00063–6) | 17.00 | Apr. 1, 2003 |
| 300–499 | (869–050–00064–4) | 29.00 | Apr. 1, 2003 |
| 500–599 | (869–050–00065–2) | 47.00 | Apr. 1, 2003 |
| 600–799 | (869–050–00066–1) | 15.00 | Apr. 1, 2003 |
| 800–1299 | (869–050–00067–9) | 58.00 | Apr. 1, 2003 |
| 1300–End | (869–050–00068–7) | 22.00 | Apr. 1, 2003 |
| **22 Parts:** | | | |
| 1–299 | (869–050–00069–5) | 62.00 | Apr. 1, 2003 |
| 300–End | (869–050–00070–9) | 44.00 | Apr. 1, 2003 |
| **23** | (869–050–00071–7) | 44.00 | Apr. 1, 2003 |
| **24 Parts:** | | | |
| 0–199 | (869–050–00072–5) | 58.00 | Apr. 1, 2003 |
| 200–499 | (869–050–00073–3) | 50.00 | Apr. 1, 2003 |
| 500–699 | (869–050–00074–1) | 30.00 | Apr. 1, 2003 |
| 700–1699 | (869–050–00075–0) | 61.00 | Apr. 1, 2003 |
| 1700–End | (869–050–00076–8) | 30.00 | Apr. 1, 2003 |
| **25** | (869–050–00077–6) | 63.00 | Apr. 1, 2003 |
| **26 Parts:** | | | |
| §§ 1.0–1–1.60 | (869–050–00078–4) | 49.00 | Apr. 1, 2003 |
| §§ 1.61–1.169 | (869–050–00079–2) | 63.00 | Apr. 1, 2003 |
| §§ 1.170–1.300 | (869–050–00080–6) | 57.00 | Apr. 1, 2003 |
| §§ 1.301–1.400 | (869–050–00081–4) | 46.00 | Apr. 1, 2003 |
| §§ 1.401–1.440 | (869–050–00082–2) | 61.00 | Apr. 1, 2003 |
| §§ 1.441–1.500 | (869–050–00083–1) | 50.00 | Apr. 1, 2003 |
| §§ 1.501–1.640 | (869–050–00084–9) | 49.00 | Apr. 1, 2003 |
| §§ 1.641–1.850 | (869–050–00085–7) | 60.00 | Apr. 1, 2003 |
| §§ 1.851–1.907 | (869–050–00086–5) | 60.00 | Apr. 1, 2003 |
| §§ 1.908–1.1000 | (869–050–00087–3) | 60.00 | Apr. 1, 2003 |
| §§ 1.1001–1.1400 | (869–050–00088–1) | 61.00 | Apr. 1, 2003 |
| §§ 1.1401–1.1503–2A | (869–050–00089–0) | 50.00 | Apr. 1, 2003 |
| §§ 1.1551–End | (869–050–00090–3) | 50.00 | Apr. 1, 2003 |
| 2–29 | (869–050–00091–1) | 60.00 | Apr. 1, 2003 |
| 30–39 | (869–050–00092–0) | 41.00 | Apr. 1, 2003 |
| 40–49 | (869–050–00093–8) | 26.00 | Apr. 1, 2003 |
| 50–299 | (869–050–00094–6) | 41.00 | Apr. 1, 2003 |
| 300–499 | (869–050–00095–4) | 61.00 | Apr. 1, 2003 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 500–599 | (869–050–00096–2) | 12.00 | [5]Apr. 1, 2003 |
| 600–End | (869–050–00097–1) | 17.00 | Apr. 1, 2003 |
| **27 Parts:** | | | |
| 1–199 | (869–050–00098–9) | 63.00 | Apr. 1, 2003 |
| 200–End | (869–050–00099–7) | 25.00 | Apr. 1, 2003 |
| **28 Parts:** | | | |
| 0–42 | (869–050–00100–4) | 61.00 | July 1, 2003 |
| 43–End | (869–050–00101–2) | 58.00 | July 1, 2003 |
| **29 Parts:** | | | |
| 0–99 | (869–050–00102–1) | 50.00 | July 1, 2003 |
| 100–499 | (869–050–00103–9) | 22.00 | July 1, 2003 |
| 500–899 | (869–050–00104–7) | 61.00 | July 1, 2003 |
| 900–1899 | (869–050–00105–5) | 35.00 | July 1, 2003 |
| 1900–1910 (§§ 1900 to 1910.999) | (869–050–00106–3) | 61.00 | July 1, 2003 |
| 1910 (§§ 1910.1000 to end) | (869–050–00107–1) | 46.00 | July 1, 2003 |
| 1911–1925 | (869–050–00108–0) | 30.00 | July 1, 2003 |
| 1926 | (869–050–00109–8) | 50.00 | July 1, 2003 |
| 1927–End | (869–050–00110–1) | 62.00 | July 1, 2003 |
| **30 Parts:** | | | |
| 1–199 | (869–050–00111–0) | 57.00 | July 1, 2003 |
| 200–699 | (869–050–00112–8) | 50.00 | July 1, 2003 |
| 700–End | (869–050–00113–6) | 57.00 | July 1, 2003 |
| **31 Parts:** | | | |
| 0–199 | (869–050–00114–4) | 40.00 | July 1, 2003 |
| 200–End | (869–050–00115–2) | 64.00 | July 1, 2003 |
| **32 Parts:** | | | |
| 1–39, Vol. I | | 15.00 | [2]July 1, 1984 |
| 1–39, Vol. II | | 19.00 | [2]July 1, 1984 |
| 1–39, Vol. III | | 18.00 | [2]July 1, 1984 |
| 1–190 | (869–050–00116–1) | 60.00 | July 1, 2003 |
| 191–399 | (869–050–00117–9) | 63.00 | July 1, 2003 |
| 400–629 | (869–050–00118–7) | 50.00 | July 1, 2003 |
| 630–699 | (869–050–00119–5) | 37.00 | [7]July 1, 2003 |
| 700–799 | (869–050–00120–9) | 46.00 | July 1, 2003 |
| 800–End | (869–050–00121–7) | 47.00 | July 1, 2003 |
| **33 Parts:** | | | |
| 1–124 | (869–050–00122–5) | 55.00 | July 1, 2003 |
| 125–199 | (869–050–00123–3) | 61.00 | July 1, 2003 |
| 200–End | (869–050–00124–1) | 50.00 | July 1, 2003 |
| **34 Parts:** | | | |
| 1–299 | (869–050–00125–0) | 49.00 | July 1, 2003 |
| 300–399 | (869–050–00126–8) | 43.00 | [7]July 1, 2003 |
| 400–End | (869–050–00127–6) | 61.00 | July 1, 2003 |
| **35** | (869–050–00128–4) | 10.00 | [6]July 1, 2003 |
| **36 Parts** | | | |
| 1–199 | (869–050–00129–2) | 37.00 | July 1, 2003 |
| 200–299 | (869–050–00130–6) | 37.00 | July 1, 2003 |
| 300–End | (869–050–00131–4) | 61.00 | July 1, 2003 |
| **37** | (869–050–00132–2) | 50.00 | July 1, 2003 |
| **38 Parts:** | | | |
| 0–17 | (869–050–00133–1) | 58.00 | July 1, 2003 |
| 18–End | (869–050–00134–9) | 62.00 | July 1, 2003 |
| **39** | (869–050–00135–7) | 41.00 | July 1, 2003 |
| **40 Parts:** | | | |
| 1–49 | (869–050–00136–5) | 60.00 | July 1, 2003 |
| 50–51 | (869–050–00137–3) | 44.00 | July 1, 2003 |
| 52 (52.01–52.1018) | (869–050–00138–1) | 58.00 | July 1, 2003 |
| 52 (52.1019–End) | (869–050–00139–0) | 61.00 | July 1, 2003 |
| 53–59 | (869–050–00140–3) | 31.00 | July 1, 2003 |
| 60 (60.1–End) | (869–050–00141–1) | 58.00 | July 1, 2003 |
| 60 (Apps) | (869–050–00142–0) | 51.00 | [8]July 1, 2003 |
| 61–62 | (869–050–00143–8) | 43.00 | July 1, 2003 |
| 63 (63.1–63.599) | (869–050–00144–6) | 58.00 | July 1, 2003 |
| 63 (63.600–63.1199) | (869–050–00145–4) | 50.00 | July 1, 2003 |
| 63 (63.1200–63.1439) | (869–050–00146–2) | 50.00 | July 1, 2003 |
| 63 (63.1440–End) | (869–050–00147–1) | 64.00 | July 1, 2003 |
| 64–71 | (869–050–00148–9) | 29.00 | July 1, 2003 |
| 72–80 | (869–050–00149–7) | 61.00 | July 1, 2003 |
| 81–85 | (869–050–00150–1) | 50.00 | July 1, 2003 |
| 86 (86.1–86.599–99) | (869–050–00151–9) | 57.00 | July 1, 2003 |
| 86 (86.600–1–End) | (869–050–00152–7) | 50.00 | July 1, 2003 |
| 87–99 | (869–050–00153–5) | 60.00 | July 1, 2003 |
| 100–135 | (869–050–00154–3) | 43.00 | July 1, 2003 |
| 136–149 | (869–150–00155–1) | 61.00 | July 1, 2003 |
| 150–189 | (869–050–00156–0) | 49.00 | July 1, 2003 |
| 190–259 | (869–050–00157–8) | 39.00 | July 1, 2003 |
| 260–265 | (869–050–00158–6) | 50.00 | July 1, 2003 |
| 266–299 | (869–050–00159–4) | 50.00 | July 1, 2003 |
| 300–399 | (869–050–00160–8) | 42.00 | July 1, 2003 |
| 400–424 | (869–050–00161–6) | 56.00 | July 1, 2003 |
| 425–699 | (869–050–00162–4) | 61.00 | July 1, 2003 |
| 700–789 | (869–050–00163–2) | 61.00 | July 1, 2003 |
| 790–End | (869–050–00164–1) | 58.00 | July 1, 2003 |
| **41 Chapters:** | | | |
| 1, 1–1 to 1–10 | | 13.00 | [3]July 1, 1984 |
| 1, 1–11 to Appendix, 2 (2 Reserved) | | 13.00 | [3]July 1, 1984 |
| 3–6 | | 14.00 | [3]July 1, 1984 |
| 7 | | 6.00 | [3]July 1, 1984 |
| 8 | | 4.50 | [3]July 1, 1984 |
| 9 | | 13.00 | [3]July 1, 1984 |
| 10–17 | | 9.50 | [3]July 1, 1984 |
| 18, Vol. I, Parts 1–5 | | 13.00 | [3]July 1, 1984 |
| 18, Vol. II, Parts 6–19 | | 13.00 | [3]July 1, 1984 |
| 18, Vol. III, Parts 20–52 | | 13.00 | [3]July 1, 1984 |
| 19–100 | | 13.00 | [3]July 1, 1984 |
| 1–100 | (869–050–00165–9) | 23.00 | [7]July 1, 2003 |
| 101 | (869–050–00166–7) | 24.00 | July 1, 2003 |
| 102–200 | (869–050–00167–5) | 50.00 | July 1, 2003 |
| 201–End | (869–050–00168–3) | 22.00 | July 1, 2003 |
| **42 Parts:** | | | |
| *1–399 | (869–050–00169–1) | 60.00 | Oct. 1, 2003 |
| 400–429 | (869–050–00170–5) | 62.00 | Oct. 1, 2003 |
| 430–End | (869–050–00171–3) | 64.00 | Oct. 1, 2003 |
| **43 Parts:** | | | |
| 1–999 | (869–050–00172–1) | 55.00 | Oct. 1, 2003 |
| *1000–end | (869–050–00173–0) | 62.00 | Oct. 1, 2003 |
| **44** | (869–050–00174–8) | 50.00 | Oct. 1, 2003 |
| **45 Parts:** | | | |
| 1–199 | (869–050–00175–6) | 60.00 | Oct. 1, 2003 |
| 200–499 | (869–050–00176–4) | 33.00 | [9]Oct. 1, 2003 |
| 500–1199 | (869–050–00177–2) | 50.00 | Oct. 1, 2003 |
| 1200–End | (869–050–00178–1) | 60.00 | Oct. 1, 2003 |
| **46 Parts:** | | | |
| 1–40 | (869–050–00179–9) | 46.00 | Oct. 1, 2003 |
| 41–69 | (869–050–00180–2) | 39.00 | Oct. 1, 2003 |
| 70–89 | (869–050–00181–1) | 14.00 | Oct. 1, 2003 |
| 90–139 | (869–050–00182–9) | 44.00 | Oct. 1, 2003 |
| 140–155 | (869–050–00183–7) | 25.00 | [9]Oct. 1, 2003 |
| 156–165 | (869–050–00184–5) | 34.00 | [9]Oct. 1, 2003 |
| 166–199 | (869–050–00185–3) | 46.00 | Oct. 1, 2003 |
| 200–499 | (869–050–00186–1) | 39.00 | Oct. 1, 2003 |
| 500–End | (869–050–00187–0) | 25.00 | Oct. 1, 2003 |
| **47 Parts:** | | | |
| 0–19 | (869–050–00188–8) | 61.00 | Oct. 1, 2003 |
| 20–39 | (869–048–00186–7) | 45.00 | Oct. 1, 2002 |
| 40–69 | (869–050–00190–0) | 39.00 | Oct. 1, 2003 |
| 70–79 | (869–050–00191–8) | 61.00 | Oct. 1, 2003 |
| 80–End | (869–050–00192–6) | 61.00 | Oct. 1, 2003 |
| **48 Chapters:** | | | |
| 1 (Parts 1–51) | (869–050–00193–4) | 63.00 | Oct. 1, 2003 |
| 1 (Parts 52–99) | (869–050–00194–2) | 50.00 | Oct. 1, 2003 |
| 2 (Parts 201–299) | (869–050–00195–1) | 55.00 | Oct. 1, 2003 |
| 3–6 | (869–050–00196–9) | 33.00 | Oct. 1, 2003 |
| 7–14 | (869–050–00197–7) | 61.00 | Oct. 1, 2003 |
| 15–28 | (869–050–00198–5) | 57.00 | Oct. 1, 2003 |
| 29–End | (869–050–00199–3) | 38.00 | [9]Oct. 1, 2003 |
| **49 Parts:** | | | |
| 1–99 | (869–050–00200–1) | 60.00 | Oct. 1, 2003 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 100–185 | (869–050–00201–9) | 63.00 | Oct. 1, 2003 |
| 186–199 | (869–050–00202–7) | 20.00 | Oct. 1, 2003 |
| 200–399 | (869–050–00203–5) | 64.00 | Oct. 1, 2003 |
| 400–599 | (869–050–00204–3) | 63.00 | Oct. 1, 2003 |
| 600–999 | (869–050–00205–1) | 22.00 | Oct. 1, 2003 |
| 1000–1199 | (869–050–00206–0) | 26.00 | Oct. 1, 2003 |
| 1200–End | (869–048–00207–8) | 33.00 | Oct. 1, 2003 |
| **50 Parts:** | | | |
| 1–16 | (869–050–00208–6) | 11.00 | Oct. 1, 2003 |
| 17.1–17.95 | (869–050–00209–4) | 62.00 | Oct. 1, 2003 |
| 17.96–17.99(h) | (869–050–00210–8) | 61.00 | Oct. 1, 2003 |
| 17.99(i)–end | (869–050–00211–6) | 50.00 | Oct. 1, 2003 |
| 18–199 | (869–050–00212–4) | 42.00 | Oct. 1, 2003 |
| 200–599 | (869–050–00213–2) | 44.00 | Oct. 1, 2003 |
| 600–End | (869–050–00214–1) | 61.00 | Oct. 1, 2003 |
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| Complete set (one-time mailing) | | 298.00 | 2002 |

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2003. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2003. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2003. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2003. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2003. The CFR volume issued as of October 1, 2001 should be retained.

## TABLE OF EFFECTIVE DATES AND TIME PERIODS—MARCH 2004

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

| DATE OF FR PUBLICATION | 15 DAYS AFTER PUBLICATION | 30 DAYS AFTER PUBLICATION | 45 DAYS AFTER PUBLICATION | 60 DAYS AFTER PUBLICATION | 90 DAYS AFTER PUBLICATION |
|---|---|---|---|---|---|
| March 1 | March 16 | March 31 | April 15 | April 30 | June 1 |
| March 2 | March 17 | April 1 | April 16 | May 3 | June 1 |
| March 3 | March 18 | April 2 | April 19 | May 3 | June 1 |
| March 4 | March 19 | April 5 | April 19 | May 3 | June 2 |
| March 5 | March 22 | April 5 | April 19 | May 4 | June 3 |
| March 8 | March 23 | April 7 | April 22 | May 7 | June 7 |
| March 9 | March 24 | April 8 | April 23 | May 10 | June 7 |
| March 10 | March 25 | April 9 | April 26 | May 10 | June 8 |
| March 11 | March 26 | April 12 | April 26 | May 10 | June 9 |
| March 12 | March 29 | April 12 | April 26 | May 11 | June 10 |
| March 15 | March 30 | April 14 | April 29 | May 14 | June 14 |
| March 16 | March 31 | April 15 | April 30 | May 17 | June 14 |
| March 17 | April 1 | April 16 | May 3 | May 17 | June 15 |
| March 18 | April 2 | April 19 | May 3 | May 17 | June 16 |
| March 19 | April 5 | April 19 | May 3 | May 18 | June 17 |
| March 22 | April 6 | April 21 | May 6 | May 21 | June 21 |
| March 23 | April 7 | April 22 | May 7 | May 24 | June 21 |
| March 24 | April 8 | April 23 | May 10 | May 24 | June 22 |
| March 25 | April 9 | April 26 | May 10 | May 24 | June 23 |
| March 26 | April 12 | April 26 | May 10 | May 25 | June 24 |
| March 29 | April 13 | April 28 | May 13 | May 28 | June 28 |
| March 30 | April 14 | April 29 | May 14 | June 1 | June 28 |
| March 31 | April 15 | April 30 | May 17 | June 1 | June 29 |