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Presidential Documents

Title 3—

The President

Proclamation 7784 of May 7, 2004

Peace Officers Memorial Day and Police Week, 2004

By the President of the United States of America

A Proclamation

Law enforcement officers are among America's greatest heroes. Every day, these men and women protect our families, homes, businesses, and communities.

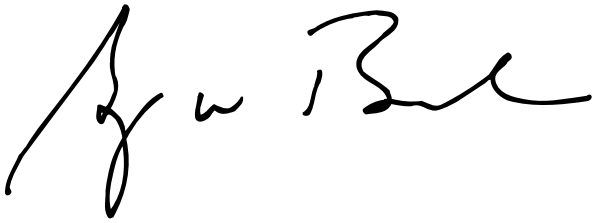
Our dedicated peace officers put themselves at great risk while working tirelessly on the front lines in the fight against crime, violence, and terrorism. According to the National Law Enforcement Officers Memorial Fund, last year, 145 law enforcement officers made the ultimate sacrifice and gave their lives in the line of duty, while thousands of others were injured protecting our citizens from harm. On Peace Officers Memorial Day and throughout Police Week, we honor the memory of the fallen and recognize those who devote their lives to enforcing our laws, bringing criminals to justice, and making America safer and better.

Over the past year, many in our law enforcement community have been activated as Reservists or members of the National Guard. We are grateful to these officers and all our military personnel for answering the call to service, for their commitment to duty, and for the sacrifices they are making in defense of freedom.

By a joint resolution approved October 1, 1962, as amended, (76 Stat. 676), the Congress has authorized and requested the President to designate May 15 of each year as "Peace Officers Memorial Day'' and the week in which it falls as "Police Week.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 15, 2004, as Peace Officers Memorial Day and May 9 through May 15, 2004, as Police Week. I call on all Americans to observe these events with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of May, 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.



[FR Doc. 04–11030
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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.

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ79

Prevailing Rate Systems; Change in Federal Wage System Survey Job

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to create a Federal Wage System appropriated fund optional survey job of Electronic Industrial Controls Mechanic, WG–11. The new title and grade level will best reflect the occupational title and the level of work used by private industry.

DATES: Effective Date: This regulation is effective on June 14, 2004.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez at (202) 606–2838; FAX at (202) 606–4264; or e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On August 12, 2003, the Office of Personnel Management (OPM) published a proposed rule (68 FR 47877) to change the title and grade level of the Federal Wage System (FWS) appropriated fund optional survey job, Industrial Electronic Controls Repairer. Since the new title and grade level closely reflect the occupational title and level of work used by private industry, the Department of Defense may be able to collect more private sector wage data for the occupation. The proposed rule had a 30-day comment period, during which we received no comments.

The Federal Prevailing Rate Advisory Committee (FPRAC) established a Survey Job Work Group (SJWG) to review FWS survey job descriptions. The SJWG recommended that OPM change the title of the optional survey job, ''Industrial Electronic Controls Repairer'' to ''Electronic Industrial Controls Mechanic'' because the new title conforms to the title of the FWS job grading standard for the occupation and corresponds to the title typically used by private industry. The SJWG also recommended that OPM change the grade level from WG–10 to WG–11 because the new grade level better reflects the level of work currently done by Federal blue-collar employees. FPRAC agreed with its working group and recommended that OPM make these changes.

Executive Order 12866 Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation would not have a significant economic impact on a substantial number of small entities because it would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

532.217 [Amended]

■ 2. In § 532.217 paragraph (c) table is amended by removing the job title entry ''Industrial Electronic Controls Repairer'', and its corresponding job grade ''10'', and adding in its place ''Electronic Industrial Controls Mechanic'', grade ''11.''

[FR Doc. 04–10869 Filed 5–12–04; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206–AK47

Pay Administration (General)

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to implement a provision of the National Defense Authorization Act for Fiscal Year 2004, which modified the hourly overtime pay cap for certain Federal employees who are exempt from the Fair Labor Standards Act of 1938, as amended.

EFFECTIVE DATE: May 13, 2004.

FOR FURTHER INFORMATION CONTACT: Vicki Draper by telephone at (202) 606–2858; by FAX at (202) 606–0824; or by e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing final regulations to implement a new hourly overtime pay provision established by section 1121 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136, November 24, 2003). Section 1121 amended 5 U.S.C. 5542(a)(2), which establishes an hourly overtime pay cap for certain employees who are exempt from the Fair Labor Standards Act of 1938, as amended (FLSA). Prior to the amendments made by section 1121, an employee whose rate of basic pay exceeded the minimum rate for GS–10 (including any applicable special rate of pay for law enforcement officers or special pay adjustment for law enforcement officers under section 403 or 404 of the Federal Employees Pay Comparability Act of 1990, respectively; a locality-based comparability payment under 5 U.S.C. 5304; and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law), received an overtime hourly rate of pay equal to one and one-half times the applicable minimum hourly rate of basic pay for GS–10. OPM's regulations implement section 1121 by establishing the hourly overtime pay cap for an employee whose rate of basic pay exceeds the applicable minimum rate for GS–10 at the higher of two rates: (1) One and one-

half times the applicable minimum hourly rate of basic pay for GS–10, or (2) the employee's hourly rate of basic pay. This amendment was effective on November 24, 2003, the date of enactment of Public Law 108–136. These regulations reflect the addition of 5 U.S.C. 5542(a)(5) made as part of Public Law 106–558 on December 21, 2000. Section 5542(a)(5) is applicable only to wildland firefighters who are exempt from the overtime pay provisions of the FLSA, and who are employees of the Department of the Interior or the United States Forest Service of the Department of Agriculture. While such employees are engaged in wildland fire suppression activities, they are entitled to an hourly overtime rate of pay equal to one and one-half times their hourly rate of basic pay. It is also appropriate to no longer mention 5 U.S.C. 5542(a)(4) in 5 CFR 550.113(b), because the overtime rate of pay provided for under that section is identical to that which would be made available under the new regulations.

Waiver of Notice of Proposed Rule Making

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, I find that good cause exists for waiving the general notice of proposed rule making. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making this rule effective in less than 30 days. These regulations implement a provision of Public Law 108–136, which became effective on November 24, 2003. The waiver of the requirements for proposed rulemaking and a delay in the effective date is necessary to ensure timely implementation of the law as intended by Congress.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Government employees, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, OPM is amending 5 CFR part 550 as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

■ 1. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5545a(h)(2)(B) and (i), 5547(b) and (c), 5548, and 6101(c); sections 407 and 2316, Pub. L. 105–277, 112 Stat. 2681–101 and 2681–828 (5 U.S.C. 5545a); E.O. 12748, 3 CFR, 1992 Comp., p. 316.

■ 2. In § 550.113, paragraph (b) is revised to read as follows:

§ 550.113 Computation of overtime pay.

* * * * *

(b) For each employee whose rate of basic pay exceeds the minimum rate for GS–10 (as determined under paragraph (a) of this section), the overtime hourly rate is equal to the greater of—(i) one and one-half times the applicable minimum hourly rate of basic pay for GS–10 (as determined under paragraph (a) of this section); or (ii) the employee's hourly rate of basic pay, except as provided in 5 U.S.C. 5542(a)(3) and (5).

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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA80

Fees for Official Inspection and Official Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is changing the fee schedule for official inspection and weighing services performed under the authority of the United States Grain Standards Act (USGSA), as amended. The USGSA provides the authority to charge and collect reasonable fees to cover the cost of performing official services. These fees also cover the costs associated with administrative and supervisory activities related to official services.

After a review of the financial status of GIPSA, including a comparison of the costs and revenues associated with official services, and administrative and supervisory activities; GIPSA is changing the fee schedule. These changes include eliminating provisions for the 3-month and 6-month contracts; increasing the 1-year contract hourly rate by approximately 20 percent and the non-contract hourly rate by 47 percent; increasing hourly rates for services not performed at an applicant's facility by approximately 11.5 percent; increasing unit fees for additional tests provided by GIPSA; eliminating the 6-level administrative tonnage fee and replacing it with regional administrative tonnage fees; eliminating the unit fee charged to delegated States for export ships and replacing it with a tonnage fee; increasing hourly fees for special weighing services by approximately 30 percent above the non-contract hourly rate; and establishing a $500 usage fee per facility when the GIPSA test car is used to test track scales.

These changes are needed to replenish the retained earnings accounts and to maintain a 3-month operating reserve. Further, maintaining GIPSA's financial stability will assure continued inspection and weighing services to the grain industry which will further facilitate the sound and orderly marketing of grain in domestic and export markets.

EFFECTIVE DATE: June 14, 2004.

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SUPPLEMENTARY INFORMATION:

Background

The USGSA (7 U.S.C. 71 *et seq.*) authorizes GIPSA to provide official grain inspection and weighing services, and to charge and collect reasonable fees for performing these services. The fees collected are to cover, as nearly as practicable, GIPSA's costs for performing these services, including related administrative and supervisory costs.

GIPSA adopted its current fee structure (61 FR 43301) effective October 1, 1996, for services provided by GIPSA employees. This fee structure change was needed because advances in technology had allowed exporters to improve operational efficiencies, which, in turn, had reduced the number of GIPSA personnel required to service certain facilities. The fee structure was changed from primarily using hourly fees to recover costs to a method that uses a mix of hourly and unit fees for its inspection and weighing services. Direct service costs are recovered through hourly fees charged for employees providing the inspection and weighing services. Administrative costs are recovered by a tonnage fee applied

to grain inspected and weighed as shipments from an export facility. Export grain companies are paying for direct labor costs and pay a share of the local and national administrative costs.

Since implementing the fees in 1996, GIPSA has adjusted hourly fees to correspond with annual Federal pay increases. This action is necessary since employee payroll costs account for approximately 84 percent of GIPSA's total operating budget. The current USGSA fees were published in the **Federal Register** on June 2, 2003, (68 FR 32623) and became effective on July 2, 2003.

GIPSA regularly reviews its programs to determine if the fees are adequate. Since implementing the fees in 1996, GIPSA has only experienced one year where the revenues exceeded the costs. Annual losses have been between $1 million to $1.7 million since 1996 except for the one positive year GIPSA revenue exceeded the costs by $88,000.

GIPSA recognizes the need to reduce inspection and weighing costs as much as possible before increasing fees. Therefore, GIPSA has taken action through the years to minimize payroll costs. These actions include utilizing employee buyouts to remove high-salaried, senior employees from the active employment list; taking advantage of employee attrition to reduce total staff by not hiring to fill vacant positions; hiring and scheduling more part-time and intermittent employees to better manage staff costs during fluctuating work periods; and reducing the amount of paid overtime via creative scheduling processes. Although GIPSA has observed a 14 percent reduction in paid hours and has reduced overtime pay by 2 percent, this is not enough to avoid continued financial losses.

GIPSA completed a review of the grain inspection and weighing programs and determined it was necessary to propose a change to the fees in order to replenish the retained earnings accounts and to maintain a 3-month operating reserve. On November 19, 2003, GIPSA proposed in the **Federal Register** (68 FR 65210) to amend the fees to recover employee costs directly related to services provided and to recover the costs associated with administering and supervising the grain inspection and weighing programs. This action would maintain GIPSA's financial stability to assure continued inspection and weighing services to the grain industry, which will further facilitate the sound and orderly marketing of grain in domestic and export markets.

To minimize the impact of the proposed action, GIPSA established fee rates that collect sufficient revenue to immediately cover operating expenses, while striving to create a 3-month operating reserve by fiscal year (FY) 2010. These fees were designed to collect sufficient annual revenue through FY 2007 to achieve an average estimated positive $1,000,000 balance annually based on an inspection volume of 80 million metric tons (MMT) per year. The cost of living projections used in calculating future salary and benefits out to FY 2007 were supplied by OMB as set forth in their **Federal Register** publication (68 FR 12388) on March 14, 2003. GIPSA will evaluate, every six months, the financial status of the grain inspection and weighing program to determine if it is meeting the goal of obtaining a 3-month operating reserve by FY 2010 and to determine if other adjustments are necessary. Although it has not done so in the recent past, GIPSA will ensure that future annual fee adjustments for Federal pay increases will take into account longevity pay, locality pay, and benefits. While GIPSA may not fully replenish its 3-month reserve until FY 2010, it is critical that action is taken to start to replenish it. GIPSA plans to gradually replenish a reserve rather than sharply increase fees in the short term to immediately replenish it.

GIPSA proposed changes to the fee schedule to collect fees to recover the cost of services and to recover the administrative and supervisory costs related to these services. The proposed changes included (1) eliminating provisions for the 3-month and 6-month contracts; (2) increasing the 1-year contract hourly rate by approximately 20 percent and the non-contract hourly rate by 47 percent; (3) increasing hourly rates for services not performed at an applicant's facility by approximately 11.5 percent; (4) increasing unit fees for additional tests provided by GIPSA; (5) eliminating the 6-level administrative tonnage fee and replacing it with regional administrative tonnage fees; (6) eliminating the unit fee charged to delegated States for export ships and replacing it with a tonnage fee; (7) increasing hourly fees for special weighing services by approximately 30 percent above the non-contract hourly rate; and (8) establishing a $500 usage fee per facility when the GIPSA test car is used to test track scales.

Contract and Hourly Rates. GIPSA has determined the hourly rates for services performed at export facilities by GIPSA employees do not cover total salary and benefits costs. Despite implementing changes to correspond to annual Federal pay increases totaling 30 percent over the years; salary and benefit costs have increased 36 percent due to increased employee benefit costs, longevity pay and locality pay. Increased employee cost (salaries and benefits) is not the only reason the hourly fees are not covering the costs of services at the export market.

When GIPSA established the hourly rates in 1996, certain assumptions were made to establish those rates. Those assumptions included the historic volume of grain moving through the export facilities, the number of hours needed to load that volume of grain, and the anticipated non-revenue producing time experienced by our employees. Hourly fees, both contract rate and non-contract rate, were established based on these assumptions. These assumptions, however, have not held true over the years due to the changes in grain marketing.

Grain marketing strategies and shortfalls in expected export volume have also had a negative effect on GIPSA's revenue. Since 1996, some grain exporting facilities have automated their material handling systems which requires fewer inspection and weighing personnel to provide service and makes the elevator more efficient. This improved efficiency has triggered a shift in locations where grain is loaded.

Since grain marketing strategies have shifted the movement of grain at the export market, GIPSA needed to re-evaluate the hourly rates charged at these facilities. GIPSA established a 3-month and 6-month contract rate for facilities that had fluctuating workloads; however, GIPSA had only one 3-month contract and one 6-month contract during FY 2002 and had none of these contracts in FY 2003. GIPSA has learned through the years of contracting that it is extremely difficult to accurately project an employees non-revenue producing time when utilizing 3-month and 6-month contracts. Therefore, GIPSA decided it is best to provide service with either a one-year contract or with the non-contract rate. Therefore, GIPSA proposed to abolish provisions for the 3-month and 6-month contracts.

GIPSA conducted a detailed, port-by-port evaluation of its costs and revenue streams for both contract and non-contract employees. GIPSA found that payroll increases caused by grade increases, longevity pay, and locality pay have exceeded the cost-of-living increases that GIPSA has charged annually. Further, GIPSA found that changes in grain distribution have increased non-revenue periods for certain workers. The evaluation showed the actual level of revenue-producing time likely to be expected from contract

and non-contract workers. Based on its evaluation, GIPSA has determined that to adequately cover service costs and start to replenish its reserves, it is necessary to increase the annual contract rate by approximately 20 percent and to increase the non-contract hourly rate by approximately 47 percent.

GIPSA also charges hourly fees for services performed at other than export facilities. These fees are designed to recover GIPSA employee salary and benefits costs along with a portion of administrative and supervisory costs. Again, despite fee increases to accommodate the annual Federal pay increases, the current fees do not sufficiently cover costs. Like the employee costs at export, employee service costs and employee administrative costs have increased due to increased employee benefit costs, increases in payroll caused by longevity pay, and increases in payroll due to locality pay. Costs not related to employees have also increased. These local and national administrative costs include rent, communications, utilities, and other administrative support services. Based on its evaluation, GIPSA identified the costs and determined these hourly rates need to increase by approximately 11.5 percent to recover the additional costs.

Unit Fees. In addition to hourly fees, GIPSA also charges unit fees for additional services. These unit fees are charged in addition to the hourly rate when the services are provided at an applicant's facility in an onsite laboratory. These unit fees are based on the cost of equipment and supplies needed to conduct the test. GIPSA also charges unit fees for services performed at other than an applicant's facility in a GIPSA laboratory and for some miscellaneous services. These unit fees are designed to recover the direct costs of the services (salary, equipment, and supplies) along with administrative and supervisory costs. GIPSA has not made any adjustments to the unit fees for services provided at an applicant's facility in an onsite laboratory since the fees were first promulgated in 1996. Due to the increased costs for providing services, GIPSA proposed to adjust the unit fees in section 800.71 to reflect these costs.

As GIPSA updates these unit fees, it also provides GIPSA a chance to remove obsolete services from the list. At one time, GIPSA offered aflatoxin tests using the thin-layer chromatography (TLC) method. GIPSA discontinued the use of this test in 1998 because of the hazardous chemical materials required to conduct the test and rapid test kits were available for field use which were safer and less expensive. GIPSA proposed to remove the method from the fee schedule since this test is no longer available. The unit fee for aflatoxin will recover the costs of the quick test kits currently used at field offices.

Administrative Tonnage Fee. GIPSA also utilizes a 6-level tonnage fee designed to recover the local and national administrative and supervisory costs which are not covered by unit fees and hourly fees assessed at other than export facilities. This fee is only charged to facilities in the United States that have export grain inspected by GIPSA.

The 6-level administrative tonnage fee is designed to reduce fees as the inspection volume increases. These fees have also been adjusted through the years to reflect the annual Federal pay raises. The following table illustrates how the fee levels are structured and indicates what was originally implemented in 1996 and what is current for the same levels.

ADMINISTRATIVE TONNAGE FEES

Metric ton ranges	1996 Fees ($ per metric ton)	Current fees ($ per metric ton)
1–1,000,000	0.090	0.1199
1,000,001–1,500,000	0.082	0.1094
1,500,001–2,000,000	0.042	0.0591
2,000,001–5,000,000	0.032	0.0437
5,000,001–7,000,000	0.017	0.0239
7,000,001 +	0.002	0.0109

When GIPSA introduced the 6-level tonnage fee in 1996, the World Agricultural Outlook Board projected grain exports to increase 2.5 percent annually, and reach 131 MMT by 2001. With this in mind, GIPSA decided to use 85 MMT as the target level for setting fees. This would be the breakeven point. GIPSA could expect to recover costs if billable tonnage were 85 MMT or more. Conversely, costs would exceed the revenues if billable tonnage were less than 85 MMT. Since 1996, GIPSA had only one year where the billable tonnage reached the 85 MMT mark at 85.2 MMT. Although GIPSA recovered the costs that year, the other years had losses between $1 million and $1.7 million. The decision to use 85 MMT as the breakeven basis for the administrative tonnage fee has contributed to the revenue shortfall.

Other changes in market practices further reduced revenue collected. Exports handled by the New Orleans Field Office facilities increased from 72 percent of the total tons serviced by GIPSA in FY 1996 to 79 percent in FY 2003. During the same period, the League City Field Office export tonnage decreased from 13 to 12 percent and the Portland Field Office volume declined from 10 to 7 percent. In addition, the Baltimore Field Office was closed due to no volume in FY 2002. These market shifts resulted in less revenue being collected per metric ton than originally predicted since the shift in New Orleans resulted in more tons loaded at a lower per-ton cost due to the 6-level fee structure. Export volume increased and the revenue per ton decreased.

GIPSA's analysis of the financial information for the 6-level administrative tonnage fee shows the revenues from it are not recovering the costs. To better recover field office administrative and supervisory costs in today's export grain marketing environment, GIPSA analyzed three potential changes to the current administrative tonnage fee: Alternative 1: specific field office tonnage fees; Alternative 2: a flat rate national administrative tonnage fee; and Alternative 3: increasing the current 6-level tonnage fee by 27 percent. The analysis used actual FY 2002 costs, revenue, and volume of export grain inspected by GIPSA.

The specific field office tonnage fee (Alternative 1) was designed to recover local overhead costs and a part of the national administrative costs. Local administrative costs were divided by the tonnage observed by that field office to determine the cost per ton needed by the field office to cover expenses.

National administrative costs were divided by the total export tons serviced by GIPSA at all field offices to determine the cost per ton needed to recover administrative costs at headquarters. The sum of the two per ton costs (local and national) was used to establish a specific field office tonnage fee. GIPSA determined the use of specific field office tonnage fees resulted in each field office collecting sufficient revenue to cover local administrative costs as well as headquarters administrative costs.

A flat rate national administrative tonnage fee (Alternative 2) was designed to recover total administrative costs but not necessarily each field office collecting revenues to recover the local costs. This tonnage fee was calculated by dividing GIPSA's total administrative costs (field offices and headquarters) by the total tons of U.S. export grain serviced by GIPSA. GIPSA determined the flat rate national administrative tonnage fee would collect the revenues to recover the total administrative costs but only the New Orleans Field Office received revenue to recover the field office administrative costs. All other field offices did not recover their local administrative costs.

GIPSA determined if increasing the current 6-level tonnage fee was to become a viable option, those fees would have to be increased by 27 percent (Alternative 3). Although all the field offices collected revenues to recover the total administrative costs of GIPSA; not all field offices collected revenue to offset their individual office costs. GIPSA is also concerned that shifting market trends may make the 6-level tonnage fee unreliable since the revenues are dependent on the volume of grain handled by each facility.

After considering these alternatives, GIPSA proposed adopting the specific field office administrative tonnage fee structure (Alternative 1). Under this fee structure, local export facilities financially support their field office administrative costs and every ton of grain exported from field office service areas is assessed an identical fee to cover headquarters costs. This will ensure that headquarters costs are collected regardless of where the grain is exported. This proposed tonnage fee also puts each field office in an independent financial position and encourages customers to work directly with each field office to continue the implementation of grain handling efficiencies while raising the awareness of local administrative and supervisory costs. This action should foster the further development and implementation of grain handling efficiencies by grain companies to reduce the cost of GIPSA services. Also, this process makes administrative and supervisory costs more transparent to the industry.

GIPSA developed the new administrative tonnage fees by projecting GIPSA costs to the FY 2007 level and assuming GIPSA billable tonnage will be 80 MMT. GIPSA determined the field office tonnage rates would be $0.167 per ton for elevators serviced by the League City Field Office, $0.067 per ton for elevators serviced by the New Orleans Field Office, $0.136 per ton for elevators serviced by the Portland Field Office, and $0.184 for elevators serviced by the Toledo Field Office.

When GIPSA implemented the administrative tonnage fees, it also provided for a monthly payment of administrative fees to level out the payments over the year based on the expected tonnage handled by a facility. This provision, located in section 800.73(e) of the regulations, was used to level out the tonnage rates over a year instead of paying in incremental levels. GIPSA reviewed the need to preserve this regulation and determined it was no longer needed. Proposing specific field office tonnage rates that will not change due to increased volume does not require a monthly payment program to level the costs. Further, the provision for the monthly payment process has not been used by industry. Therefore, GIPSA proposed to remove this provision from the regulations.

Delegated State Ship Fees. GIPSA also oversees the activities of delegated States and designated agencies that provide official services on behalf of GIPSA. To support this activity, GIPSA also charges a supervision fee to the agencies to recover this cost. The current fees for the supervision of inspection and weighing services performed by the agencies were published in the **Federal Register** on September 23, 1985, (50 FR 28303), and became effective on October 1, 1985. GIPSA currently assesses a $49.20 fee for every ship inspected by a delegated State. This fee is then passed on to the exporter by the delegated State.

As GIPSA evaluated the administrative and supervisory fees needed to cover field office and national administrative and supervisory costs, GIPSA also considered the contribution of revenue collected from official agencies to cover the costs of administration and supervision of their programs. GIPSA initiated this review by determining the total administrative and supervisory costs of overseeing the official agencies ($2,330,343) and the total number of metric tons inspected by official agencies in both the domestic and export markets (150,650,608 metric tons) to determine the overall cost per ton needed to cover these administrative and supervisory costs. This resulted in a need to collect $0.016 per metric ton.

In FY 2002, delegated States inspected 19,049,018 metric tons of grain (655 ships) and GIPSA collected $32,226 in revenues from the $49.20 per ship fee. This makes the current ship fee equivalent to $0.00169 per metric ton. This is short of the $0.016 per metric ton GIPSA calculated as needed to recover costs. Since the current ship fee is contributing very little to recover the costs of administration and supervision of the delegation and designation program, GIPSA proposed to change this fee from a unit fee to a tonnage fee. The tonnage fee would be set at $0.016 per ton since this is what GIPSA calculated as the amount needed to recover costs.

GIPSA proposed to change the fees shown in 7 CFR 800.71, Schedule C-Fees for FGIS Supervision of Official Inspection and Weighing Services Performed by Delegated States and/or Designated Agencies in the United States by removing the $49.20 unit fee for ships and replacing it with the $0.016 per ton fee which GIPSA determined is needed to help recover the cost of administration and supervision of the official agency program.

Special Weighing Services. GIPSA also provides special weighing services to the grain industry and other industries requiring accurate weights. These services include scale testing and certification, evaluations of weighing and material handling systems used to automate weighing functions, National Type Evaluation Program scale evaluations, mass standards calibration and reverification services, and special weighing projects. GIPSA provides these services through scale specialists located at certain field offices and in headquarters.

Scale specialists are highly specialized individuals who are trained in scale operation and the operation of test equipment. Scale specialists are in a different job classification and grade level than inspectors or weighers because of their unique responsibility. Consequently, they are classified at a higher grade level. On average, scale specialist costs are 30 percent higher than the cost of agricultural commodity graders. Therefore, GIPSA needs to set the hourly fee for special weighing services at a level approximately 30 percent higher than the fee established for non-contract services.

GIPSA also owns and operates five railroad test cars that are used to test and calibrate railroad master scales and commercial track scales. The National Bureau of Standards (NBS) master scale testing program transferred to GIPSA in 1980 under an agreement between NBS, the Association of American Railroads (AAR), and then, the Federal Grain Inspection Service. Under this agreement, GIPSA is responsible for maintaining the master scale in Chicago and annual testing and calibration of other railroad master scales located throughout the United States.

GIPSA's railroad track scale testing program is funded by the service agreement with AAR and by revenues collected from non-AAR customers. The railroad track scale testing program costs have exceeded revenue for the last several years by approximately $25,000 per year. This is due to hourly fees not fully recovering the cost of the service representative and an increase in the cost of maintaining the aging test cars and other equipment used in the program. Consequently, the total funding and revenue are not meeting the cost of the program.

Although the test cars GIPSA uses in this program are properly maintained to provide an accurate service, more frequent repair services are needed due to the age of the test cars. This is increasing the cost of the program. Eventually, GIPSA will need to replace test cars in order to continue providing this valuable service to the railroad industry. GIPSA had solicited bids to build a new car; however, the initial bid cost was in excess of $200,000 and GIPSA did not have the funds to cover that cost. To collect the funds needed to maintain and replace test cars, GIPSA proposed to implement a user fee of $500 per facility when the test car is used to test commercial track scales. Implementing a specific fee for the use of the test cars will assure that only those companies that use the test cars are contributing towards the expenses directly related to the test cars. These expenses include both the maintenance of the test cars and costs associated with the replacement of the test cars.

GIPSA has determined that applying a $500 service fee to the 50 locations serviced by GIPSA for using the GIPSA test car, in addition to the hourly fee for the service representative, should raise sufficient funds to recover the annual loses of $25,000. GIPSA, by recovering this annual financial loss, will be able to maintain the test cars in good repair and initiate retained earnings to contribute towards the purchase of new test cars in the future. GIPSA will not apply the $500 usage fee to the AAR scales tested under the agreement since AAR's costs are covered through the service agreement.

In summary, GIPSA is authorized by the USGSA to charge and collect reasonable fees for performing official inspection and weighing services. The fees are to cover, as nearly as practicable, GIPSA's costs for performing inspection and weighing services, including related administrative and supervisory costs. GIPSA has determined the current fees are not recovering these costs despite efforts to reduce these costs over the years.

Accordingly, on November 19, 2003, GIPSA published in the **Federal Register** (68 FR 65210) a proposal to change the fee schedule. The proposed changes included (1) eliminating provisions for the 3-month and 6-month contracts; (2) increasing the 1-year contract hourly rate by approximately 20 percent and the non-contract hourly rate by 47 percent; (3) increasing hourly rates for services not performed at an applicant's facility by approximately 11.5 percent; (4) increasing unit fees for additional tests provided by GIPSA; (5) eliminating the 6-level administrative tonnage fee and replacing it with regional administrative tonnage fees; (6) eliminating the unit fee charged to delegated States for export ships and replacing it with a tonnage fee; (7) increasing hourly fees for special weighing services by approximately 30 percent above the non-contract hourly rate; and (8) establishing a $500 usage fee per facility when the GIPSA test car is used to test track scales.

The changes should generate additional average annual revenues as noted in the following table.

Changes to fee schedule	FY 02 revenue	Projected annual revenue	Projected annual revenue increase
Eliminating 3-month and 6-month contracts	$31,063	$0	$(31,063)
Increasing 1-year contract and non-contract hourly rates	16,220,331	18,515,129	2,294,798
Increasing hourly rates not at facility	13,886	16,928	3,042
Increasing unit fees for testing services	677,854	930,110	252,256
Substituting regional tonnage fee for 6-level administrative fee	4,845,464	6,905,679	2,060,215
Substituting tonnage fee for unit fees on delegated State ship inspections	32,226	304,784	272,558
Increasing hourly fees for special weighing services	426,195	519,552	93,357
Establishing test car usage fee	0	25,000	25,000
Totals	22,247,019	27,217,182	4,970,163

The changes are needed to restore the retained earnings accounts and to maintain a 3-month operating reserve. GIPSA has projected that the changes to the fee schedule should gradually replenish the retained earnings account and the 3-month operating reserve. The following table illustrates how gradually restoring the fund is projected over time.

Projected Financial Position for GIPSA

	FY 03	FY 04	FY 05	FY 06	FY 07
Shortfall in Retained Earnings	$1,945,000	$1,573,000	$ − $926,000	− $2,705,000	− $3,740,000
3-Month Operating Reserve	6,475,000	6,680,000	6,853,000	7,034,000	7,219,000
Total Need	8,420,000	8,253,000	5,927,000	4,329,000	3,479,000

GIPSA will evaluate the financial status of the grain inspection and weighing program every six months to determine if it is meeting the goal of obtaining a 3-month operating reserve by FY 2010. Using the projected information in the above table, GIPSA will assess if the revenue collection trend is comparable to the financial objectives of the table. GIPSA will consider further adjusting the fees if it becomes apparent that GIPSA's goal to restore the retained earnings accounts and to obtain a 3-month operating reserve is not achievable by FY 2010. Although it has not done so in the recent past, GIPSA will ensure that future annual fee adjustments for Federal pay increases will take into account longevity pay, locality pay, and benefits.

Maintaining GIPSA's financial stability will assure continued inspection and weighing services to the grain industry which will further facilitate the sound and orderly marketing of grain in domestic and export markets.

Comment Review

GIPSA received five comments in response to the proposed rulemaking published November 19, 2003, in the **Federal Register** (68 FR 65210). Three grain industry associations prepared a joint response to the proposal while the other comments received were from two grain companies exporting grain from the State of Washington, a comment from the State of Washington Department of Agriculture, and an individual commentor.

The joint comment from the three grain trade associations opposed the hourly fee increases for contract and non-contract services and hourly fees for services not performed at an applicant's facility. Their comments indicated GIPSA should not rely on fee increases to offset rising costs. Rather, GIPSA must continue to pursue cost cutting, increase productivity, and reconfigure its work force to mitigate price increases. An additional comment was received from an individual opposing the proposal. The comment asserted that the USDA budget was too high and the Department should cut costs.

As stated in the background, GIPSA has taken action over the years to minimize payroll costs. This is a significant area of focus for GIPSA since we know payroll costs account for approximately 84 percent of GIPSA's total operating budget. GIPSA, however, is also bound by Federal personnel rules and cannot change employee salaries and benefits. Consequently, GIPSA has implemented management and inspection scheduling actions to minimize these costs over time while operating within the Federal personnel rules. GIPSA will continue to explore ways to reduce costs. However, it is necessary to make fee adjustments now to recover revenue to offset both current and projected costs.

The joint comment from the three grain associations also expressed opposition to the proposed $0.016 per metric ton delegated State ship fee. Their opposition was based on their conclusion that the delegated State ship fee would be doubled when official inspections and weighing services are performed on a vessel. This would result in a total $0.032 per metric ton for these ships.

The ship fees in Schedule C, Tables 1 and 2 are listed as separate fees for inspection and weighing. However, when a ship is inspected and weighed at the same time, only one fee is assessed per ship. This was the intent of footnote 3 in these tables. To further clarify this application of the fee, GIPSA will amend the footnote to make it clear that only one fee is assessed per ship when both inspection and weighing services are provided at the same time.

The opposing comment also questioned why the delegated State service fee for ships was different than the tonnage fee for GIPSA services. GIPSA operates two independent programs within the official inspection and weighing system. One program is the original inspection and weighing services provided by GIPSA employees. The other program is the supervision and administration of official inspection and weighing services provided by delegated States and designated agencies.

GIPSA's regional tonnage fees for ships are intended to recover costs directly associated with the administration and supervision of GIPSA services. It includes local administrative costs as well as a portion to cover headquarters administrative costs. The local administrative cost portion of the fee is determined by dividing the local costs by the amount of tons inspected and/or weighed by the office. The national or headquarters cost portion of the fee is determined by taking the total headquarters cost to manage the program and dividing it by the amount of tons inspected and/or weighed by GIPSA nationally.

The fee for ships inspected and or weighed by delegated States is calculated in a similar way. All headquarters costs to manage the program are divided by the total tons inspected and/or weighed by the delegated States and designated agencies. Since the fees for supervision and administration of delegated States and designated agencies are a national fee, the local costs are also divided by the total tons.

The comments received from the two grain companies exporting grain from Washington and from the State of Washington opposed payment of the delegated State ship fee based on the cooperative agreement signed between the State of Washington and GIPSA.

Section 800.71 of the regulations provides that the fees shown in Schedule C apply to official inspection and weighing services performed by delegated States and designated agencies in the United States, except for those State agencies that are delegated additional responsibilities by GIPSA. These States, currently Washington and California, are assessed annual charges as stated in the State's Delegation of Authority document.

GIPSA has a long-standing agreement with these States whereby each State pays direct compensation to GIPSA for local costs along with a portion to cover headquarters administrative costs. Although Washington and California are excluded from the Schedule C fees due to the agreements between GIPSA and the States, the other delegated States are not excluded. Therefore, GIPSA will proceed with the $0.016 per metric ton fee for ships serviced by delegated States.

Executive Orders 12866 and 12988

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB). GIPSA prepared a Regulatory Impact Assessment (RIA) consisting of a statement of the need for the proposed action, an examination of alternative approaches, and an analysis of the benefits and costs.

Need for Action. The USGSA requires GIPSA to charge and collect reasonable fees for performing official inspection and weighing services. The fees are to cover, as nearly as practicable, GIPSA's costs for performing inspection and weighing services, including related administrative and supervisory costs.

GIPSA changed the inspection and weighing fees in 1996 (61 FR 43301) from using predominately hourly fees to the current method of using a mixture of hourly fees, unit fees, and tonnage fees. Hourly fees are designed to recover the salary and benefit costs for those employees (pool) that perform work at an export grain elevator. Unit fees are designed to recover the costs of tests along with administrative and

supervisory costs. Tonnage fees are designed to recover local and national administrative and supervisory costs.

GIPSA implemented the new fees expecting exports to increase. Export volume is a critical condition since GIPSA determined a minimum of 85 MMT of billable tonnage was needed to break even. Since implementing the fees in 1996, GIPSA has only experienced one year where the revenues exceeded the costs. That year the billable tonnage reached 85 MMT. The other years had billable tonnage below the 85 MMT target and costs exceeded the revenues in those years due to the changes in grain marketing. Annual losses have been between $1 million to $1.7 million since 1996; except for the one positive year GIPSA revenue exceeded the costs by $88,000.

The continued financial deficits prompted GIPSA to initiate a detailed analysis of the user fees and operating costs to determine why revenues were not supporting the costs and to determine what action was needed. At the same time, it must be recognized that the U.S. grain market is very dynamic and constantly changing which makes it difficult to precisely predict and project long-term market trends. Transportation costs, grain handling costs, global pricing, environmental conditions, crop quality conditions, phytosanitary issues, and crop production are some of the issues that influence the changing grain market.

Since implementing the fees in 1996, GIPSA has adjusted hourly fees to correspond with annual Federal pay increases. This action is necessary since employee payroll costs account for approximately 84 percent of GIPSA's total operating budget. Although these fee adjustments were made through the years, GIPSA costs continue to exceed its revenues.

GIPSA recognizes the need to reduce inspection and weighing costs as much as possible before increasing fees. Therefore, GIPSA has taken action through the years to minimize payroll costs. These actions include utilizing employee buyouts to remove high-salaried, senior employees from the active employment list; taking advantage of employee attrition to reduce total staff by not hiring to fill vacant positions; hiring and scheduling more part-time and intermittent employees to better manage staff costs during fluctuating work periods; and reducing the amount of paid overtime via creative scheduling processes. Although GIPSA has observed a 14 percent reduction in paid hours and has reduced overtime pay by 2 percent, this is not enough to avoid continued financial losses.

GIPSA's financial review detected where the program losses were occurring. GIPSA has determined the hourly fees for services performed at the export elevator are not recovering the full cost of the pool. The base salary and benefits for the pool have increased beyond the annual Federal pay increase adjustments. Locality pay was not factored into the yearly cost-of-living increases nor was longevity pay increases. When the current fee was first established in 1996, the base contract hourly fee was based on a GS–9, step 5 pay level which was the average pay level for the pool. Today the average pool pay level is a GS–9, step 8. This equates to an average additional annual salary cost of $3,500 per GS–9 inspector. Locality pay may also increase this cost by an additional 9 percent to 18 percent depending on the geographic location of the employee.

Benefits paid to employees have also increased. In FY 1996, employee benefit costs averaged 19 percent. Since that time, overall benefit costs have increased 6 percent and now average 25 percent. Many factors have lead to this increase. Health and life insurance premiums have increased along with Office of Worker's Compensation Program (OWCP) costs. GIPSA pays all OWCP costs since the government is self insured. Since FY 1996, some employees have converted to the new Federal Employees Retirement System (FERS) and all new employees are in FERS. The FERS is patterned after a typical retirement system used by non-Federal companies in that the employer must pay into social security and matches contributions into a 401(k) plan.

Grain marketing strategies and export volume have also had a negative effect on GIPSA's revenue. Since FY 1996, some grain exporting facilities have automated their material handling systems which requires fewer inspection and weighing personnel to provide service and makes the elevator more efficient. This improved efficiency has triggered a shift in locations where export grain is loaded. For example, the New Orleans Field Office facilities increased their export capacity from 72 percent of the total tons serviced by GIPSA in FY 1996 to 78.6 percent in FY 2002. During the same timeframe, the League City Field Office export tonnage decreased from 13 to 12 percent and the Portland Field Office volume declined from 10 to 7 percent. These market shifts resulted in less revenue being collected per metric ton than originally planned because of the 6-level administrative tonnage fee. The New Orleans Field Office exports average revenue was $0.048 per ton in 2002 while League City average revenue was $0.090 per ton and Portland's average revenue was $0.098 per ton. GIPSA estimates this shift in grain movements resulted in a revenue loss of approximately $660,000. Further, billable tonnage is not reaching the 85 MMT targeted in the 1996 fee schedules as the break even point. Therefore, revenue predictions based on billable tonnage were higher than what was actually billed.

GIPSA has evaluated the administrative tonnage fee and determined it is not recovering its share of local and national administrative and supervisory costs because of increased employee costs not related to annual pay increases, shifting grain exports to lower revenue per ton markets, and exports not reaching the 85 MMT mark to break even. Local and national costs such as rent, communications, utilities, and other administrative support services have also increased since 1996. Adjustments to the fees during the years have not compensated for these cost increases.

As GIPSA reviewed its financial status, it also concluded that unit fees are not recovering the cost of providing the service, supervision fees charged to delegated States for ships are not sufficient compared to the quantity of grain that is inspected and weighed, and the track scale testing program is not producing the revenue needed to maintain the testing program.

GIPSA charges unit fees for additional services provided at an applicant's facility in an onsite GIPSA laboratory. These unit fees are charged in addition to the hourly rate. These unit fees are designed to recover the costs of the equipment and supplies needed to provide the service. GIPSA has not made any adjustments to these unit fees since they were first promulgated in 1996.

Currently, GIPSA assesses $49.20 per ship to delegated States for providing official inspection and weighing services. This fee is collected to recover administrative and supervision costs of the official agencies. GIPSA has determined the delegated States should be contributing $0.016 per ton towards administrative and supervisory costs. However, the $49.20 per ship fee is only recovering an amount equivalent to $0.00169 per ton.

GIPSA also provides special weighing services to the industry. These services include scale testing and certification, evaluations of weighing and material handling systems, National Type

Evaluation Program scale evaluations, mass standards calibration and reverification services, and special weighing projects. GIPSA provides these services through scale specialists located at certain field offices and in headquarters. Scale specialists are in a different job classification and grade level than inspectors or weighers because of their unique responsibility. Consequently, they are classified at a higher grade level. On average, scale specialist costs are 30 percent higher than the cost of agricultural commodity graders. Therefore, GIPSA needs to set the hourly fee for special weighing services at a level approximately 30 percent higher than the fee established for non-contract services.

The track scale testing program also uses special weighing equipment (test cars) to test track scales. These cars require maintenance and need to be replaced in the future. To assist in recovering the costs associated with these railcars, GIPSA would charge a $500 unit fee each time the car is used at a facility.

GIPSA has concluded that despite efforts to reduce the cost of services, including administrative and supervisory activities, the revenues collected from the current user fees are less than the costs associated with these services. Consequently, GIPSA must re-evaluate the design and application of user fees to recover the costs of providing service in order to place the agency in a sound financial status. GIPSA is statutorily required to charge fees to cover the cost of service. To do this, GIPSA has projected the potential costs out to FY 2007 and plans to replenish the operating reserve fund back to its 3-month level by FY 2010. The cost of living projections used in calculating future salary and benefits were supplied by OMB as published in the **Federal Register** (68 FR 12388) on March 14, 2003. Additionally, GIPSA is also adjusting the projected billable tonnage to set full cost recovery from 85 MMT to 80 MMT. GIPSA believes that this revised projection is necessary because annual billable tonnage has averaged near 80 MMT from 1996 to 2002. The 80 MMT does not include export grain shipments serviced by delegated States, land carrier exports to Mexico and Canada serviced by designated agencies, small shipments exported under the 15,000 metric ton exemption program, or other export shipments not requiring Federal services.

GIPSA has determined that this action is needed to recover the costs of providing services and to maintain a professional workforce to inspect and weigh grain for the grain industry. In doing so, GIPSA will continue to facilitate the orderly marketing of grain in the domestic and export markets.

Alternatives. Various methods were considered by which the objectives of the rule could be accomplished. GIPSA thoroughly evaluated the method of structuring fees prior to the implementation of the last major fee schedule revision in 1996. GIPSA determined at that time that the combination of hourly fees and unit fees provided customers with the information they need to determine the costs of specific inspection and weighing services because the fees are more specific.

The design and implementation of the administrative tonnage fee to recover local and national administrative and supervisory costs is another important component of this proposal. GIPSA evaluated and compared three different alternatives for charging administrative tonnage fees: Alternative 1: establishing an administrative tonnage fee specific to each field office, Alternative 2: establishing a fixed rate national administrative tonnage fee, or Alternative 3: increasing the current 6-level administrative tonnage rates by 27 percent.

GIPSA analyzed the various alternatives in relation to each field office area because each field office is unique when considering the number of employees, the number and types of elevators serviced, and the volume of grain exported from that area. FY 2002 information for each field office was used to analyze and compare the expected revenues for the various alternatives because the information is the most current and is indicative of recent marketing trends. This information was used to detail the cost recovery by each field office.

Table 1 indicates the 5 GIPSA export field offices (the Baltimore office was closed in November 2002), the number of elevators in each field office area, the number of metric tons inspected, the amount of revenue collected from the tonnage fee for each field office, the field office administrative cost related to tonnage revenue, the headquarters administrative cost related to tonnage revenue, the amount of both the field office and headquarters administrative cost, and the amount each field office was deficient. Table 1 demonstrates that some offices did not cover their individual administrative and supervisory costs (*i.e.*, Baltimore, Portland, and Toledo) and all failed to cover the total administrative and supervisory costs of the combined field office and headquarters cost as a result of the employee cost increases and the changes in grain marketing.

TABLE 1.—ACTUAL ADMINISTRATIVE METRIC TONNAGE FEES AND COSTS (FY 2002 DATA)

Field office	No. elev.	FY 2002 tons inspected	FY 2002 ton revenue	Field Office admin. cost	F/O portion of H.Q. admin. cost [1]	Total F/O & H.Q admin. cost	Amt. short for cost recovery
Baltimore	3	$876,586	$110,952	$120,717	$38,394	$159,112	$(48,160)
League City	7	10,071,370	905,972	880,749	441,126	1,321,875	(415,904)
New Orleans	13	64,622,607	3,126,212	778,759	2,830,470	3,609,229	(483,017)
Portland	3	4,142,092	406,895	416,166	181,424	597,589	(190,695)
Toledo	6	2,555,750	295,433	353,006	111,942	464,948	(169,514)
Total	32	82,268,405	4,845,464	2,549,397	3,603,356	6,152,753	(1,307,290)

[1] Headquarters cost portion per field office calculated by dividing the total amount of headquarters cost by the total number of metric tons inspected. That amount ($0.0438 per ton) was then multiplied by the number of tons inspected by each field office.

Table 2 indicates the average revenue per ton collected by each office, the component amounts of administrative and supervisory revenues per ton needed to meet field office and headquarters costs, and the estimated cost per metric ton calculated for each alternative. There are differences in the actual average revenue collected per ton in each office for FY 2002. This ranges from $0.048 per ton in New Orleans to $0.127 per ton in Baltimore. These

differences are due to the 6-level administrative tonnage fee which decreases the amount per ton collected as the total tonnage increases. Under Alternative 3, these differences in revenue collected from each field office would continue because the current 6-level administrative tonnage fee would remain in effect.

TABLE 2.—ADMINISTRATIVE TONNAGE FEE COMPARISON (FY 2002 DATA)

Field office	Actual FY 02 revenue per ton	Dollars per ton needed to recover F/O & H.Q. costs per ton		Dollars per ton needed to recover total overhead		
		F/O	H.Q.[1]	Alternative 1—regional per ton total overhead	Alternative 2—one admin fee per ton	Alternative 3—increase ranges ton fee by 27%
Baltimore	$0.127	$0.138	$0.044	$0.182	$0.075	$0.162
League City	0.090	0.087	0.044	0.131	0.075	0.115
New Orleans	0.048	0.012	0.044	0.056	0.075	0.062
Portland	0.098	0.100	0.044	0.144	0.075	0.126
Toledo	0.116	0.139	0.044	0.183	0.075	0.149

[1] $0.0438 rounded to $0.044.

The administrative and supervisory cost attributed to headquarters in Table 2 is $0.044 (rounded from $0.0438) per metric ton inspected. This amount is determined by dividing the amount of headquarters cost ($3,603,356 from Table 1) by the number of total metric tons inspected (82,268,405 tons from Table 1). The administrative cost of each office is determined by dividing the offices administrative cost (from Table 1) by the number of metric tons inspected by each office (from Table 1).

In Table 2, establishing an administrative tonnage fee specific to each field office (Alternative 1) is arrived at by combining the calculated field office tonnage rate with the headquarters tonnage rate. This results in the unique field office tonnage rate required to cover the entire field office administrative costs and the field office portion of the national administrative cost. Establishing a fixed rate national administrative tonnage fee (Alternative 2) tonnage rates is arrived at by taking the total administrative costs (all field office costs plus headquarters costs) divided by the total billable tonnage. This results in a single tonnage fee that is applicable to all GIPSA customers. Increasing the current 6-level administrative tonnage fee (Alternative 3) is determined by taking the current tonnage rate tables and increasing them by 27 percent. The 27 percent increase is what GIPSA determined the shortage was in the revenue to the costs.

Table 3 shows the projected administrative tonnage revenues based on the tonnage fees from Table 2. The projected information shows all offices collect sufficient revenues to cover the local administrative and supervisory costs as well as the headquarters cost when the regional tonnage fees are used (Alternative 1). The other alternatives cover the total cost of administration and supervision; however, some offices do not collect the revenues needed to support the field office costs and some do not cover the total of the field office cost combined with a portion of the headquarters administrative cost as a result of the employee cost increases and the changes in grain marketing.

TABLE 3.—ADMINISTRATIVE TONNAGE FEE REVENUE COMPARISON (FY 2002 DATA)

Field office	FY 02 ton	Total needed F/O & H.Q. administrative cost	Alternative 1—regional per ton revenue	Alternative 2—one admin fee per ton revenue	Alternative 3—increase ranges ton fee by 27% revenue
Baltimore	876,586	$159,112	$159,112	$65,569	$142,019
League City	10,071,370	1,321,875	1,321,875	753,339	1,159,644
New Orleans	64,622,607	3,609,229	3,610,173	4,833,775	4,006,405
Portland	4,142,092	597,589	597,589	309,829	520,826
Toledo	2,555,750	464,948	467,039	191,170	380,394
Total	82,268,405	6,152,753	6,155,789	6,153,682	6,209,288

All alternatives collect the targeted amount needed to fully fund both field and headquarters overhead in total. GIPSA believes each field office should collect sufficient revenue from customers to support the local field office administrative and supervisory costs in addition to their share of the national administrative and supervisory costs. This would put each field office in an independent financial position and would encourage customers to work directly with each field office and headquarters to continue the implementation of grain handling efficiencies while raising the awareness of local administrative and supervisory costs.

The national administrative fee approach (Alternative 2) relies heavily on the New Orleans Field Office to support the administrative and supervisory costs of the other offices. The alternative to increase the current 6-level tonnage fee structure by 27 percent (Alternative 3) results in the same situation. After a complete evaluation, GIPSA believes the regional tonnage method (Alternative 1) is the best approach to collect revenues for these

costs. Under Alternative 1, users of the service would be paying their share of the local costs of operating and maintaining a field office in their port area.

GIPSA is establishing new administrative tonnage fees based on the concept of Alternative 1. These tonnage fees are calculated to recover the projected increases in administrative and supervisory costs related to employee costs as determined by the OMB estimates and based on a minimum 80 MMT of billable tonnage.

Table 4 lists the expected tonnage and the expected administrative and supervisory costs for field offices and headquarters projected out to FY 2007. This information was then used to determine the specific field office tonnage rate needed to recover field office costs and the tonnage rate needed to recover the headquarters cost. The field office tonnage rate in Table 4 was determined by dividing the projected field office cost by the projected tonnage.

TABLE 4.—PROJECTED ADMINISTRATIVE METRIC TONNAGE FEES AND COSTS (FY 2007 PROJECTION)

Field office	No. elev.	Projected tons inspected	Projected F/O admin. cost	Projected admin. tonnage fee for field offices [1]	Projected total F/O & H.Q. admin. cost
Baltimore	Field office was closed and elevators and costs redistributed to other field offices				
League City	7	9,130,000	$1,048,000	$0.115	$1,522,760
New Orleans	14	63,330,000	946,000	0.015	4,239,160
Portland	3	5,335,000	447,000	0.084	724,420
Toledo	8	2,253,000	296,000	0.131	413,156
Total	32	80,048,000	2,737,000	(2)	.....

[1] The projected fees for some locations are lower than or equal to those of FY 2002. This is due to changes in expected export volumes, redistribution of workload and costs due to the closing of the Baltimore Field Office, and certain one-time costs.

[2] The projected fee needed to recover the headquarters cost ($0.052) was calculated by dividing the total amount of headquarters cost ($4,154,000) by the total number of metric tons inspected.

Table 5 combines the field office tonnage rates with the headquarters tonnage rates to calculate the specific field office tonnage rate. The projected tonnage rate was used to calculate the projected revenue for each field office by multiplying the projected tons for each field office by the specific field office rate. The projected revenue for each office was compared to the projected total costs (field office and headquarters) for each field office (from Table 4) to determine if each field office collected sufficient revenues to cover their costs.

TABLE 5.—PROJECTED COSTS AND REVENUES COLLECTED BY FIELD OFFICE (FY 2007 PROJECTION)

Field office	Projected tons inspected	Projected administrative tonnage fee		Projected fees and revenue		
		F/O	H.Q.	Projected tonnage fee ($/ton) [1]	Projected revenue ($)	Projected cost/revenue balance ($)
League City	9,130,000	$0.115	$0.052	$0.167	$1,524,710	$1,950
New Orleans	63,330,000	0.015	0.052	0.067	4,243,110	3,950
Portland	5,335,000	0.084	0.052	0.136	725,560	1,140
Toledo	2,253,000	0.131	0.052	0.183	412,299	(857)
Total	80,048,000	.....	.....	.....	6,905,679	.....

[1] The projected fees for some locations are lower than or equal to those of FY 2002. This is due to changes in expected export volumes, redistribution of workload and costs due to the closing of the Baltimore Field Office, and certain one-time costs.

Table 5 demonstrates that the projected tonnage fees produce revenues to cover, as nearly as practicable, overall costs for each field office. The Toledo Field Office calculated tonnage rate, however, does not cover their costs. Therefore, GIPSA increased their rate by one-tenth of a cent per ton to fully recover their costs.

As GIPSA evaluated the administrative and supervisory fees needed to cover field office and national administrative and supervisory costs, GIPSA also considered the contribution of revenue collected from official agencies to cover the costs of administration and supervision of their programs. GIPSA initiated this review by determining the total administrative and supervisory costs of overseeing the official agencies ($2,330,343) and the total number of metric tons inspected by official agencies in both the domestic and export markets (150,650,608 metric tons) to determine the overall cost per ton needed to cover these administrative and supervisory costs. This resulted in $0.016 per metric ton to cover administration and supervision of official agencies.

Currently, GIPSA assesses $49.20 per ship to delegated States for providing official inspection and weighing services. This fee is then passed on to the exporter by the delegated State. In FY 2002, delegated States exported 19,049,018 metric tons of grain (655 ships) and GIPSA collected $32,226 in revenues from the $49.20 per ship fee. This makes the current ship fee equivalent to $0.00169 per metric ton. This is far less than the $0.016 per metric ton GIPSA calculated was needed to recover costs. Since the current ship fee is contributing very little to recover the costs of administration and supervision of the

delegation and designation program, GIPSA is changing this fee from a unit fee to a tonnage fee. The tonnage fee is set at $0.016 per ton since this is what GIPSA calculated as the amount needed to recover costs.

Summary of Benefits. This rule will allow GIPSA to collect revenues from our customers to support direct service costs along with the administrative and supervisory costs of providing these services. The revenues collected from this rule will provide GIPSA the resources needed to replenish the retained earnings account to a 3-month operating reserve. This increase in fees is needed to recover the costs of providing service and to provide the financial foundation for GIPSA to maintain a highly skilled and professional work force to inspect and weigh grain. The action would also foster further development of grain handling efficiencies implemented by grain companies. This would further reduce the cost of GIPSA services by reducing the number of employees needed to provide service. These combined actions would assist GIPSA in fulfilling its mission to facilitate the marketing of grain in domestic and export markets by assuring continued inspection and weighing services to the grain industry.

User fees promote the internalization of the real cost of providing inspection and weighing services in consumer transaction decisions. User fees also achieve savings in Government expenditures, and, therefore, reduce the tax support necessary for the system to operate at a given level. These tax funds can then be used in other programs or to reduce taxes overall and, thus, diminish the efficiency losses associated with the generation of taxes (deadweight loss plus collection costs). The revision of user fees helps ensure that the user fees adequately reflect the cost of performing the services over time.

Summary of Costs. GIPSA has determined that the total cost to the grain industry to implement the changes will be approximately $5 million per year. This represents an approximate 21 percent increase in revenues or an average increase of 6.5 cents per ton. These calculations are based on the assumptions that the projected OMB employee costs for continued annual Federal pay increases will increase a total of 17.38 percent from FY 2002 to FY 2007 and GIPSA will collect revenue from a minimum of 80 MMT per year which was used to establish the tonnage fee. GIPSA will collect this additional revenue by (1) increasing the 1-year contract hourly rate by approximately 20 percent and the non-contract hourly rate by 47 percent and eliminating provisions for the 3-month and 6-month contracts; (2) increasing hourly rates for services not performed at an applicant's facility by approximately 11.5 percent; (3) increasing unit fees for additional tests provided by GIPSA; (4) eliminating the 6-level administrative tonnage fee and replacing it with regional administrative tonnage fees; (5) eliminating the unit fee charged to delegated States for export ships and replacing it with a tonnage fee; (6) increasing hourly fees for special weighing services by approximately 30 percent above the non-contract hourly rate; and (7) establishing a $500 usage fee per facility when the GIPSA test car is used to test track scales.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in Sec. 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this rule would not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to provisions of this rule.

Paperwork Reduction Act and Government Paperwork Elimination Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements included in this rule have been submitted for approval to the Office of Management and Budget (OMB). The rule would require applicants to complete Form FGIS–4, Application and Agreement for Contract Services, if they intend to enter into a one-year contract service agreement with GIPSA. Copies of this information collection can be obtained from Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.

GIPSA is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Civil Rights Review

In promulgating this regulation, GIPSA considered the potential civil rights implications on minorities, women, or persons with disabilities and prepared a Civil Rights Impact Analysis to ensure that no person or group shall be discriminated against on the basis of race, color, sex, national origin, religion, age disability, or marital or family status. GIPSA has considered potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group will be discriminated against on the basis of race, color, sex, national origin, religion, age, disability, or marital or familial status. The rule will apply in the same manner to all persons and groups whose activities are regulated, regardless of race, gender, national origin, or disability. Information indicates that the rule will have no effect on protected populations.

Regulatory Flexibility Act Certification

GIPSA has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The USGSA (7 U.S.C. 71 *et seq.*) authorizes GIPSA to provide official grain inspection and weighing services, and to charge and collect reasonable fees for performing these services. The fees collected are to cover, as nearly as practicable, GIPSA's costs for performing these services, including related administrative and supervisory costs.

GIPSA adopted its current fee structure (61 FR 43301) effective October 1, 1996, for services provided by GIPSA employees. This fee structure change was needed because advances in technology had allowed exporters to improve operational efficiencies, which, in turn, had reduced the number of GIPSA personnel required to service certain facilities. The fee structure was changed from primarily using hourly fees to recover costs to a method that uses a mix of hourly and unit fees for its inspection and weighing services. Direct service costs are recovered through hourly fees charged for employees providing the inspection and weighing services. Administrative costs are recovered by a tonnage fee applied to grain inspected and weighed as shipments from an export facility. Export grain companies are paying for direct labor costs and pay a share of the local and national administrative costs.

Since implementing the fees in 1996, GIPSA has adjusted hourly fees to correspond with annual Federal pay increases. This action is necessary since employee payroll costs account for approximately 84 percent of GIPSA's total operating budget. The current USGSA fees were published in the

Federal Register on June 2, 2003, (68 FR 32623) and became effective on July 2, 2003.

GIPSA regularly reviews its programs to determine if the fees are adequate. Since implementing the fees in 1996, GIPSA has only experienced one year where the revenues exceeded the costs. Annual losses have been between $1 million to $1.7 million since 1996 except for the one positive year GIPSA revenue exceeded the costs by $88,000.

GIPSA recognizes the need to reduce inspection and weighing costs as much as possible before increasing fees. Therefore, GIPSA has taken action through the years to minimize payroll costs. These actions include utilizing employee buyouts to remove high-salaried, senior employees from the active employment list; taking advantage of employee attrition to reduce total staff by not hiring to fill vacant positions; hiring and scheduling more part-time and intermittent employees to better manage staff costs during fluctuating work periods; and reducing the amount of paid overtime via creative scheduling processes. Although GIPSA has observed a 14 percent reduction in paid hours and has reduced overtime pay by 2 percent, this is not enough to avoid continued financial losses.

GIPSA has completed a review of the grain inspection and weighing programs and has determined it is necessary to amend the fees in order to replenish the retained earnings accounts and to maintain a 3-month operating reserve. These changes are targeted to recover employee costs directly related to services provided and to recover the costs associated with administering and supervising the grain inspection and weighing programs. Maintaining GIPSA's financial stability will assure continued inspection and weighing services to the grain industry which will further facilitate the sound and orderly marketing of grain in domestic and export markets.

To minimize the impact of a fee increase, GIPSA has decided to establish fee rates that collect sufficient revenue to immediately cover operating expenses, while striving to create a 3-month operating reserve by FY 2010. These fees are designed to collect sufficient annual revenue through FY 2007, to achieve an average estimated positive $1,000,000 balance annually based on an inspection volume of 80 MMT per year. The cost of living projections used in calculating future salary and benefits out to FY 2007 were supplied by OMB as set forth in their **Federal Register** publication (68 FR 12388) on March 14, 2003. GIPSA will evaluate, every six months, the financial status of the grain inspection and weighing program to determine if it is meeting the goal of obtaining a 3-month operating reserve by FY 2010 and to determine if other adjustments are necessary. Although it has not done so in the recent past, GIPSA will ensure that future annual fee adjustments for Federal pay increases will take into account longevity pay, locality pay, and benefits.

Under the provisions of the United States Grain Standards Act, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA at 32 export facilities and by delegated States at 19 export facilities. All of these facilities are owned by multi-national corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the Small Business Administration. Further, the regulations are applied equally to all entities.

The USGSA (7 U.S.C. 87f–1) requires the registration of all persons engaged in the business of buying grain for sale in foreign commerce. In addition, those individuals who handle, weigh, or transport grain for sale in foreign commerce must also register. The USGSA regulations (7 CFR 800.30) define a foreign commerce grain business as persons who regularly engage in buying for sale, handling, weighing, or transporting grain totaling 15,000 metric tons or more during the preceding or current calendar year. At present, there are 90 registrants registered to export grain. While most of the 90 registrants are large businesses, we assume that some may be small.

GIPSA also provides nonmandatory inspection and weighing services at other than export locations. Approximately 75 different applicants receive nonmandatory inspection services each year and approximately 50 different locations receive track scale tests as a miscellaneous service each year. While most of these applicants are large businesses, we assume that the final rule should not significantly affect many small businesses requesting these official services. Furthermore, any of these applicants that wish to avoid the fee increase may do so by using an alternative source for these services. Such a decision should not prevent the business from marketing its product or conducting business as usual.

GIPSA has determined that the total cost to the grain industry to implement the final rule will be approximately $5 million per year. This represents an approximate 21 percent increase in revenues or an average increase of 6.5 cents per ton. These calculations are based on the assumptions that the projected OMB employee costs for continued annual Federal pay increases will increase a total of 17.38 percent from FY 2002 to FY 2007 and GIPSA will collect revenue from a minimum of 80 MMT per year which was used to establish the tonnage fee.

Most users of the official inspection and weighing services do not meet the requirements for small entities. Further, GIPSA is required by statute to make services available and to recover, as nearly as practicable, the costs of providing such services. Additionally, GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this proposed rule. Therefore, Donna Reifschneider, Administrator, GIPSA, has certified that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 7 CFR Part 800

Administrative practice and procedure; Grain.

■ For the reasons set out in the preamble, 7 CFR part 800 is amended as follows:

PART 800—GENERAL REGULATIONS

■ 1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

■ 2. Section 800.71 (a) is amended by revising Schedule A and Tables 1 and 2 in Schedule C to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

Schedule A.—Fees for Official Inspection and Weighing Services Performed in the United States

TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY [1]

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and overtime [2]	Holidays
(1) Inspection and Weighing Services Hourly Rates (per service representative):				
1-year contract ($ per hour)	36.00	37.60	43.00	64.00
Noncontract ($ per hour)	64.00	64.00	64.00	64.00
(2) Additional Tests (cost per test, assessed in addition to the hourly rate): [3]				
(i) Aflatoxin (rapid test kit method)				$10.00
(ii) Corn oil, protein, and starch (one or any combination)				2.25
(iii) Soybean protein and oil (one or both)				2.25
(iv) Wheat protein (per test)				2.25
(v) Sunflower oil (per test)				2.25
(vi) Vomitoxin (qualitative)				12.50
(vii) Vomitoxin (quantitative)				18.50
(viii) Waxy corn (per test)				2.25
(ix) Fees for other tests not listed above will be based on the lowest noncontract hourly rate				
(x) Other services				
(a) Class Y Weighing (per carrier):				
(1) Truck/container				.30
(2) Railcar				1.25
(3) Barge				2.50
(3) Administrative Fee (assessed in addition to all other applicable fees, only one administrative fee will be assessed when inspection and weighing services are performed on the same carrier):				
(i) All outbound carriers serviced by the specific field office (per-metric ton):				
(a) League City				0.167
(b) New Orleans				0.067
(c) Portland				0.136
(d) Toledo				0.184

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).

[2] Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.

[3] Appeal and reinspection services will be assessed the same fee as the original inspection service.

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1 2]

(1) Original Inspection and Weighing (Class X) Services	
(i) Sampling only (use hourly rates from Table 1)	
(ii) Stationary lots (sampling, grade/factor, & checkloading):	
(a) Truck/trailer/container (per carrier)	$20.00
(b) Railcar (per carrier)	29.70
(c) Barge (per carrier)	187.50
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.04
(iii) Lots sampled online during loading (sampling charge under (i) above, plus):	
(a) Truck/trailer container (per carrier)	12.00
(b) Railcar (per carrier)	25.00
(c) Barge (per carrier)	128.10
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.04
(iv) Other services	
(a) Submitted sample (per sample—grade and factor)	12.00
(b) Warehouseman inspection (per sample)	21.00
(c) Factor only (per factor—maximum 2 factors)	5.70
(d) Checkloading/condition examination (use hourly rates from Table 1, plus an administrative fee per hundredweight if not previously assessed) (CWT)	0.04
(e) Reinspection (grade and factor only. Sampling service additional, item (i) above)	13.00
(f) Class X Weighing (per hour pre service representative)	64.00
(v) Additional tests (excludes sampling):	
(a) Aflatoxin (rapid test kit method)	30.00
(b) Corn oil, protein, and starch (one or any combination)	10.00
(c) Soybean protein and oil (one or both)	10.00
(d) Wheat protein (per test)	10.00
(e) Sunflower oil (per test)	10.00
(f) Vomitoxin (qualitative)	31.00
(g) Vomitoxin (quantitative)	38.50
(h) Waxy corn (per test)	10.00
(i) Canola (per test—00 dip test)	10.00
(j) Pesticide Residue Testing: [3]	
(1) Routine Compounds (per sample)	216.00
(2) Special Compounds (per hour per service representative)	115.00

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1] [2]—Continued

(k) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1	
(2) Appeal inspection and review of weighing service.[4]	
(i) Board Appeals and Appeals (grade and factor)	82.00
(a) Factor only (per factor—max 2 factors)	43.00
(b) Sampling service for Appeals additional (hourly rates from Table 1)	
(ii) Additional tests (assessed in addition to all other applicable fees):	
(a) Aflatoxin (rapid test kit method)	30.00
(b) Corn oil, protein, and starch (one or any combination)	17.70
(c) Soybean protein and oil (one or both)	17.70
(d) Wheat protein (per test)	17.70
(e) Sunflower oil (per test)	17.70
(f) Vomitoxin (per test—qualitative)	41.00
(g) Vomitoxin (per test—quantitative)	47.00
(h) Vomitoxin per test—HPLC Board Appeal)	141.00
(i) Pesticide Residue Testing: [3]	
(1) Routine Compounds (per sample)	216.00
(2) Special Compounds (per hour per service representative)	115.00
(j) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1	
(iii) Review of weighing (per hour per service representative)	82.60
(3) Stowage examination (service-on-request): [3]	
(i) Ship (per stowage space) (minimum $255.00 per ship)	51.00
(ii) Subsequent ship examinations (same as original) (minimum $153.00 per ship).	
(iii) Barge (per examination)	41.00
(iv) All other carriers (per examination)	16.00

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

[2] An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72(b).

[3] If performed outside of normal business, 1½ times the applicable unit fee will be charged.

[4] If, at the request of the Service, a file sample is located and forwarded by the Agency, the Agency may, upon request, be reimbursed at the rate of $2.65 per sample by the Service.

TABLE 3.—MISCELLANEOUS SERVICES [1]

(1) Grain grading seminars (per hour per service representative) [2]	$64.00
(2) Certification of diverter-type mechanical samplers (per hour per service representative) [2]	64.00
(3) Special weighing services (per hour per service representative): [2]	
(i) Scale testing and certification	83.20
(ii) Scale testing and certification of railroad track scales	83.20
(iii) Evaluation of weighing and material handling systems	83.20
(iv) NTEP Prototype evaluation (other than Railroad Track Scales)	83.20
(v) NTEP Prototype evaluation of Railroad Track Scale	83.20
(vi) Use of GIPSA railroad track scale test equipment per facility for each requested service. (Track scales tested under the Association of American Railroads agreement are exempt.)	500.00
(vii) Mass standards calibration and reverification	83.20
(viii) Special projects	83.20
(4) Foreign travel (per day per service representative)	510.00
(5) Online customized data EGIS service:	
(i) One data file per week for 1 year	500.00
(ii) One data file per month for 1 year	300.00
(6) Samples provided to interested parties (per sample)	3.00
(7) Divided-lot certificates (per certificate)	1.75
(8) Extra copies of certificates (per certificate)	1.75
(9) Faxing (per page)	1.75
(10) Special mailing (actual cost).	
(11) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1).	

[1] Any requested service that is not listed will be performed at $64.00 per hour.

[2] Regular business hours—Monday through Friday—service provided at other than regular hours charged at the applicable overtime hourly rate.

* * * * *

Schedule C—Fees for FGIS Supervision of Official Inspection and Weighing Services Performed by Delegated States and/or Designated Agencies in the United States [1]

TABLE 1

Inspection services (bulk or sacked grain)	Official inspection or reinspection services
(1) Official sample lot inspection service:	
(i) For official grade and official factor determinations:	
(a) Truck or trailer (per inspection) [2]	$0.30
(b) Boxcar or hopper car (per inspection) [2]	0.95
(c) Barge (per inspection) [2]	6.15
(d) Ship (per metric ton) [3]	0.016
(e) All other lots (per inspection) [2 4]	0.30
(ii) For official factor or official criteria determinations:	
(a) Factor determination (per inspection) (maximum 2 factors) [5]	0.20
(b) Official criteria [2 6]	0.20
(2) Stowage examination certificates:	
(i) Ship (per stowage certificate)	3.00
(ii) Other carriers (per stowage certificate)	0.20
(3) Warehouseman's sample-lot inspection service or submitted sample inspection service:	
(i) For official grade and official factor determination (per inspection)	0.30
(ii) For official factor or official factor determinations:	
(a) Factor determination (per inspection) (maximum 2 factors) [5]	0.20
(b) Official criteria [2 6]	0.20
(4) Reinspection services:	
(i) Truck, boxcar, hopper car, barge, ship, warehouseman's sample-lot, submitted sample, factor determination, and all other lots (per sample inspected)	0.30
(ii) Official criteria [2 6]	0.20

Note: The footnotes for table 1 are shown at the end of table 2.

TABLE 2

Official services (bulk or sacked grain)	Official weighing services	
	(Class X)	(Class Y)
Official weighing services:		
(i) Truck or trailer (per carrier)	$0.30	$0.20.
(ii) Boxcar or hopper car (per carrier)	0.95	0.25.
(iii) Barge (per carrier)	6.15	1.55.
(iv) Ship [3 7]	0.016/metric ton	12.30/ship.
(v) All other lots (per lot or part lot) [4]	0.30	0.20.

[1] The fees include the cost of supervision functions performed by the Service for official inspection and weighing services performed by delegated States and\or designated agencies.
[2] A fee shall be assessed for each carrier or sample inspected if a combined lot certificate is issued or a uniform loading plan is used to determine grade.
[3] A fee shall be assessed per ship regardless of the number of lots or sublots loaded at a specific service point. A fee shall not be assessed for divided-lot certificates. Only one fee is assessed when inspection and weighing services are performed on the same ship at the same time.
[4] Inspection services for all other lots include, but are not limited to, sampling service, condition examinations, and examination of grain in bins and containers. For weighing services, all other lots include, but are not limited to, seavans, and inhouse bin transfers.
[5] Fees shall be assessed for a maximum of two factors. If more than two factors are determined, fees are assessed at rates in table 1 (1)(i) or (3)(i) above, as applicable, based on carrier or type sample represented.
[6] Official criteria includes, but is not limited to, protein and oil analyses. A fee shall be assessed for each sample tested.
[7] A Class Y ship fee shall be assessed for shipments destined for domestic markets only.

* * * * *

§ 800.73 [Amended]

■ 3. Section 800.73, paragraph (e) is removed; paragraph (f) is redesignated as (e); and paragraph (g) is redesignated as (f).

Marianne Plaus,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 04–10632 Filed 5–12–04; 8:45 am]

BILLING CODE 3410–EN–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 352

RIN 3064–AC58

Access of Persons With Disabilities to FDIC Programs, Activities, Facilities, and Electronic and Information Technology

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending its regulations to update certain information and implement section 508 of the Rehabilitation Act. Section 508 requires each Federal agency or department to ensure that the electronic and information technology (EIT) they develop or procure allows individuals with disabilities access to EIT comparable to the access of those who are not disabled, unless the agency would incur an undue burden.

DATES: Effective Date: This final rule shall be effective June 14, 2004.

FOR FURTHER INFORMATION CONTACT: Earl F. McJett, Information Management Analyst, Office of Diversity and Economic Opportunity, (202) 416–4320, or Joan S. Bunning, Counsel, Legal

Division, (202) 898–8834, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

On March 20, 1986, the FDIC promulgated 12 CFR Part 352 to implement the spirit of section 504 of the Rehabilitation Act of 1973 (the Rehabilitation Act) (29 U.S.C. 794), as amended. Section 504 prohibits discrimination on the basis of disability as it applies to programs and activities conducted by various agencies. Although the FDIC did and still does not believe that Congress contemplated that section 504 should cover non-appropriated, independent regulatory agencies such as the FDIC, it voluntarily chose to promulgate this regulation pursuant to section 504. See 51 FR 9638 (1986).

The Workforce Investment Act of 1998 (the WIA) (Pub. L. 105–220, 112 Stat. 936) amending section 508 of the Rehabilitation Act (29 U.S.C. 794d), was signed into law on August 7, 1998. As amended, section 508 requires each Federal agency or department to ensure that the EIT it develops or procures allows individuals with disabilities access comparable to those who are not disabled, unless the agency would incur an undue burden. In addition, the amended section 508 requires the Architectural and Transportation Barriers Compliance Board (Access Board) to publish standards defining EIT and setting forth the technical and functional performance criteria necessary to accessibility for such technology. The WIA was effective as of August 7, 2000. The statute required the Access Board to publish its final standards by February 7, 2000.

On July 13, 2000, the Military Construction Appropriations Act for Fiscal Year 2001 (Pub. L. 106–246, 114 Stat. 511) was signed into law. Section 2405 of that statute amended section 508 to delay the section's effective date for enforcement to 6 months from the publication of the Access Board's final standards. The Access Board's final standards were published on December 21, 2000 (65 FR 80500). The effective date for enforcement of section 508 became June 21, 2001.

II. The Proposed Rule

The FDIC has proposed to amend its regulations to reflect these legal requirements and to update regulations to reflect current terminology, practice, and procedures.[1] On November 24, 2003 the draft Final Rule was approved by the Board and subsequently published in the **Federal Register**.

The Notice of Proposed Rulemaking was published in the **Federal Register** on November 24, 2003, 68 FR 65850, and the public comment period for this notice ended on January 23, 2004.

III. Comments on the Proposed Rule

During the sixty day public comment period which ended on January 23, 2004 no comments were received. Therefore, the FDIC publishes this final rule without revision.

IV. The Final Rule

Section 352.1 Purpose

This section has been amended to state that the purpose of the regulation is to implement and update the requirements of section 508 of the Rehabilitation Act of 1973, as amended by the WIA, in addition to section 504 of the Rehabilitation Act.

Section 352.2 Application

This section has been amended to state that Part 352 applies to EIT access in addition to the agency's programs and activities. It also updates references to certain components of the FDIC such as the Office of Legislative Affairs and lists the FDIC's Internet website as one of the agency programs or activities to which Part 352 applies.

Section 352.3 Definitions

This section has been amended to include definitions specifically pertaining to EIT, to update terminology by substituting the term ''individual with a disability'' for ''handicapped person,'' and to define references in the regulation to section 508 and pertinent statutes.

Section 352.4 Nondiscrimination in Any Program or Activity Conducted by FDIC

This section was previously designated 352.5. Current § 352.4 is deleted. This section pertained to a self-imposed requirement that the FDIC must evaluate its program to implement section 504 of the Rehabilitation Act within one year of the regulation's effective date. This self-evaluation has been conducted by the FDIC. The current § 352.4 is therefore unnecessary.

The new § 352.4 states that no qualified individual with a disability shall be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination on the basis of that disability in FDIC programs or activities.

Section 352.5 Accessibility to Electronic and Information Technology

With respect to technology access, this new section states that the FDIC will ensure that employees and the public with disabilities will have access to EIT comparable to those without disabilities, unless an undue burden would be imposed on the FDIC.

Section 352.6 Employment

This section has been amended to provide that no qualified individual with a disability shall, on the basis of that disability, be subjected to discrimination in employment in any program or activity conducted by the FDIC. The section further provides that the definitions, requirements, and procedures of the Rehabilitation Act that pertain to employment discrimination, as reflected in the Rehabilitation Act's implementing regulations, will apply to FDIC employment.

Section 352.7 Accessibility of Programs and Activities: Existing Facilities

This section has been amended to make plain that the FDIC shall operate its programs and activities to be readily accessible to and usable by persons with disabilities.

Section 352.8 Program Accessibility: New Construction and Alterations

This section has been amended to provide that each building or part of a building where FDIC programs or activities will occur which is either new or substantially altered for the FDIC shall be fashioned for ready access and use by individuals with disabilities.

Section 352.9 Communications

This section has been amended to provide that the FDIC shall take appropriate steps to effectively communicate with participants in FDIC programs and activities. The section has also been amended to refer to individuals with disabilities rather than handicapped persons and to the Office of Diversity and Economic Opportunity (ODEO) rather than the superseded Office of Equal Employment Opportunity. The section has also been amended to provide the current address and telephone numbers of ODEO for those who wish to contact that FDIC component.

[1] In addition to the proposed revisions to Part 352, the FDIC issued a directive on September 28, 2001, number 2710.11, that sets forth complaint procedures for individuals with disabilities, both federal employees and members of the public, who have been denied access to EIT. FDIC issued a directive on July 18, 2003, number 2711.1, that contains the corporate policy on section 508 of the Rehabilitation Act.

Section 352.10 Compliance Procedures

This section has been amended to provide that the section applies to claims of discrimination on the basis of disability in FDIC programs and activities or the denial of access to EIT. The section has also been amended to update and correct references to the Office of Diversity and Economic Opportunity (ODEO), the procedures for filing and processing complaints alleging disability discrimination in FDIC programs or activities and denial of access to EIT. Moreover, the section has been amended to shorten the time period during which the FDIC must reach a finding with respect to a complaint alleging discrimination on the basis of disability in FDIC programs and activities and denial of access to EIT from 180 to 120 days.

Section 352.11 Notice

This section has been amended to include a reference to EIT and section 508.

V. Effective Date

This final rule takes effect 30 days after the date of its publication in the **Federal Register**, consistent with the delayed effective date requirement of the Administrative Procedure Act. See 5 U.S.C. 553(d).

VI. Paperwork Reduction Act

The final rule does not involve any collections of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information has been submitted to the Office of Management and Budget for review.

VII. Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b) the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The final rule describes how the FDIC will implement section 508 of the Rehabilitation Act to ensure that the EIT the agency develops and procures will allow individuals with disabilities access to EIT comparable to the access of those who are not disabled, unless the agency would incur an undue burden. It requires no specific or general action from any state nonmember bank nor does it impose any new reporting, recordkeeping or other compliance requirements. Accordingly, the requirements relating to an initial and final regulatory flexibility analysis are not applicable.

VIII. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

IX. Small Business Regulatory Enforcement Fairness Act

Section 804 of the Small Business Regulatory Flexibility Enforcement Fairness Act (''SBREFA''), 5 U.S.C. 801 *et al.*, defines ''rule'' to exclude any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties. The amendments to Part 352 are intended to ensure that individuals with disabilities are provided with access to EIT comparable to the access of those who are not disabled, thus putting individuals with disabilities in a position of parity. The amendments therefore do not substantially affect the rights or obligations of non-agency parties. Therefore, the rule is not covered by SBREFA and is not being reported to Congress.

List of Subjects in 12 CFR Part 352

Access, Civil rights, Electronic and information technology, Equal employment opportunity, Federal building and facilities, Individuals with disabilities.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation hereby revises Part 352 of chapter III of Title 12 of the Code of Federal Regulations as follows:

PART 352—NONDISCRIMINATION ON THE BASIS OF DISABILITY

Sec.

352.1 Purpose.
352.2 Application.
352.3 Definitions.
352.4 Nondiscrimination in any program or activity conducted by the FDIC.
352.5 Accessibility to electronic and information technology.
352.6 Employment.
352.7 Accessibility of programs, and activities: Existing facilities.
352.8 Program accessibility: New construction and alterations.
352.9 Communications.
352.10 Compliance procedures.
352.11 Notice.

Authority: 12 U.S.C. 1819(a); 29 U.S.C. 794d.

§ 352.1 Purpose.

(a) One purpose of this part is to implement the spirit of section 504 of the Rehabilitation Act of 1973 (the Rehabilitation Act) as amended by section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 and the Workforce Investment Act of 1998. Section 504 prohibits discrimination on the basis of disability in programs and activities conducted by a federal executive agency. Although the FDIC does not believe that Congress contemplated coverage of non-appropriated, independent regulatory agencies such as the FDIC, the FDIC has chosen to promulgate this final regulation to ensure that, to the extent practicable, persons with disabilities are provided with equal access to FDIC programs and activities.

(b) This part is also intended to implement section 508 of the Rehabilitation Act as amended. Section 508 requires each federal agency or department to ensure that the electronic and information technology they procure allows individuals with disabilities access to that technology comparable to the access of those who are not disabled, unless the agency would incur an undue burden.

§ 352.2 Application.

(a) This part applies to all programs, activities, and electronic and information technology developed, procured, maintained, used or conducted by the FDIC. The following programs and activities involve the direct provision of benefits and services to, or participation by, members of the public:

(1) Attending Board of Directors meetings open to the public and all other public meetings;

(2) Making inquiries or filing complaints at the FDIC Office of Legislative Affairs and Office of Public Affairs;

(3) Using the FDIC library in Washington, DC;

(4) Using the FDIC Web site on the Internet;

(5) Visiting an insured bank at which they conducted business (or an alternative liquidation site selected by the FDIC) and which has become insolvent, or been purchased by another bank under FDIC supervision, for the purpose of:

(i) Collecting FDIC checks for the insured amount of their deposits previously held in such bank; and/or

(ii) Discussing with FDIC representatives matters related to the repayment of debts which they

previously owed to such bank, prior to its failure or purchase by another bank under FDIC supervision;

(6) Seeking employment with the FDIC;

(b) This regulation governs the conduct of FDIC personnel in their interaction with employees of insured banks and employees of other state or federal agencies while discharging the FDIC's statutory obligations as insurer and/or receiver of financial institutions. It does not apply to financial institutions insured by the FDIC.

(c) Although application for employment and employment with the FDIC are programs and activities of the FDIC for purposes of this regulation, they shall be governed only by the standards set forth in § 352.6 of this part.

§ 352.3 Definitions.

For purposes of this part, the term—

(a) ''Auxiliary aids'' means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, the FDIC programs or activities, and Electronic and Information Technology set forth in § 352.2.

(b) ''Electronic and Information Technology'' (''EIT'') has the same meaning as ''information technology'' except EIT also includes any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term EIT includes, but is not limited to, telecommunication products (such as telephones), information kiosks and transaction machines, worldwide web sites, multimedia, and office equipment (such as copiers and fax machines).

(c) ''Facility'' means all or any portion of buildings, structures, equipment, roads, walks, parking lots and other real or personal property. As used in this definition, ''personal property'' means only furniture, carpeting and similar features not considered to be real property.

(d) ''Individual with a disability'' means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(e) ''Qualified individual with a disability'' means—

(1) With respect to any FDIC program or activity in which a person is required to perform services or to achieve a level of accomplishment, an individual with a disability who meets the essential eligibility requirements and can achieve the purpose of the program or activity without modifications in the program or activity that the FDIC can determine on the basis of a written record would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with a disability who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity;

(3) With respect to employment, an individual with a disability as defined in 29 CFR 1630.2(g), which is made applicable to this part by § 352.6.

(f) ''Sections 504 and 508'' mean sections 504 and 508 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794 and 794d)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955), and the Workforce Investment Act of 1998 (Pub. L. 105–220, 112 Stat. 936). As used in this regulation, sections 504 and 508 shall be applied only to the programs, activities, and EIT conducted by the FDIC as set forth in §§ 352.2 and 352.3(b) of this regulation.

§ 352.4 Nondiscrimination in any program or activity conducted by the FDIC.

In accordance with section 504 of the Rehabilitation Act, no qualified individual with a disability shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any program or activity conducted by the FDIC.

§ 352.5 Accessibility to electronic and information technology.

(a) In accordance with section 508 of the Rehabilitation Act, the FDIC shall ensure, absent an undue burden, that the electronic and information technology the agency develops, procures, maintains or allows:

(1) Individuals with disabilities who are FDIC employees or applicants to have access to and use of information and data that is comparable to the access to and use of information and data by FDIC employees or applicants who are not individuals with disabilities; and

(2) Individuals with disabilities who are members of the public seeking information or services from the FDIC to have access to and use of information and data that is comparable to the access to and use of information and data by members of the public who are not individuals with disabilities.

(b) When development or procurement of electronic and information technology that meets the standards published by the Architectural and Transportation Barriers Compliance Board, 36 CFR 1194, would pose an undue burden, the FDIC shall provide individuals with disabilities covered by paragraph (a) of this section with the information and data by an alternative means of access that allows the individuals to use the information and data.

§ 352.6 Employment.

No qualified individual with a disability shall, on the basis of that disability, be subjected to discrimination in employment in any program or activity conducted by the FDIC. The definitions, requirements, and procedures (including those pertaining to employment discrimination complaints) of sections 501 of the Rehabilitation Act of 1973, as established in 29 CFR parts 1614 and 1630, shall apply to employment in the FDIC.

§ 352.7 Accessibility of programs and activities: Existing facilities.

The FDIC shall operate each of the programs or activities set forth in § 352.2 of this part so that when viewed in its entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

§ 352.8 Program accessibility: New construction and alterations.

Each building or part of a building, whether newly constructed, or substantially altered, in which FDIC programs or activities will be conducted, shall be designed, constructed or altered so as to be readily accessible to, and usable by, individuals with disabilities.

§ 352.9 Communications.

(a) The FDIC shall take appropriate steps to ensure effective communication with participants in FDIC programs, activities and EIT.

(1) The FDIC shall furnish appropriate auxiliary aids where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, the FDIC programs or activities.

(i) In determining what type of auxiliary aid is necessary, the FDIC shall give primary consideration to any reasonable requests of the individual with a disability.

(ii) The FDIC need not provide individually prescribed devices, readers

for personal use or study, or other devices of a personal nature.

(2) Where the FDIC communicates by telephone, it shall use telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems with hearing impaired participants and beneficiaries.

(b) The FDIC shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, facilities and EIT. Interested persons may obtain such information by calling, writing or visiting the FDIC Office of Diversity and Economic Opportunity (ODEO), located at 801 17th Street, NW., Washington, DC 20434. The ODEO telephone number is (202) 416–4000 and (202) 416–2487 (TDD).

(c) The FDIC shall provide information at a primary entrance to each of its facilities where programs or activities are conducted, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

§ 352.10 Compliance procedures.

(a) *Applicability.* Paragraph (b) of this section applies to employment complaints. The remaining sections concern complaints alleging disability discrimination in FDIC programs or activities and denial of technology access.

(b) *Employment complaints.* The FDIC shall process complaints alleging employment discrimination on the basis of disability according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR parts 1614 and 1630 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) *Informal process.* A complainant shall first exhaust informal administrative procedures before filing a formal complaint alleging disability discrimination in FDIC programs or activities, or a denial of technology access. The FDIC's Office of Diversity and Economic Opportunity shall be responsible for coordinating implementation of this section. An aggrieved individual initiates the process by filing an informal complaint with ODEO within 180 calendar days from the date of the alleged disability discrimination or denial of access to electronic information technology. An informal complaint with respect to any FDIC program or activity must include a written statement containing the individual's name and address which describes the FDIC's action in sufficient detail to inform the FDIC of the nature and date of the alleged violation of these regulations. An informal complaint for denial of technology access must clearly identify the individual and the manner in which the EIT was inaccessible. All informal complaints shall be signed by the complainant or one authorized to do so on his or her behalf. Informal complaints filed on behalf of third parties shall describe or identify (by name if possible) the alleged victim of discrimination or denial of technology access. During the informal resolution process, ODEO has 30 days to attempt a resolution of the matter. If the aggrieved individual elects to participate in mediation, the period for attempting informal resolution will be extended for an additional 60 calendar days. If the matter is not resolved informally, the individual will be provided written notice of the right to file a formal complaint. All complaints should be sent to the FDIC's Office of Diversity and Economic Opportunity, 801 17th Street, NW., Washington, DC 20434.

(d) If the FDIC receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complainant to the appropriate government entity.

(e) *Formal complaints.* The individual must file a written formal complaint within 15 calendar days after receiving the notice of a right to file a formal complaint. Formal complaints must be filed with the FDIC Chairman or the ODEO Director. Within 120 days of the receipt of such a complaint for which it has jurisdiction, the FDIC shall notify the complainant of the results of the investigation in a letter containing—

(1) A finding regarding the alleged violations;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(f) Appeals of the findings or remedies must be filed by the complainant within 30 days of receipt from the FDIC of the letter required by § 352.10 (e). The FDIC may extend this time for good cause.

(g) Timely appeals shall be accepted and processed by the FDIC Chairman or ODEO Director.

(h) The FDIC Chairman or ODEO Director shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the FDIC Chairman or ODEO Director determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make a determination on the appeal.

(i) The time limits set forth in (e) and (h) above may be extended for an individual case when the FDIC Chairman or ODEO Director determines that there is good cause, based on the particular circumstances of that case.

(j) The FDIC may delegate its authority for conducting complaint investigations to other federal agencies or independent contractors, except that the authority for making the final determination may not be delegated.

§ 352.11 Notice.

The FDIC shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the FDIC, and make such information available to them in such manner as the Chairman or designee finds necessary to apprise such persons of the protections against discrimination under section 504 or technology access provided under section 508 and this regulation.

* * * * *

Dated at Washington, DC, this 6th day of April, 2004.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 04–10806 Filed 5–12–04; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–145–AD; Amendment 39–13618; AD 2004–09–28]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Lockheed Model L–1011 series airplanes, that currently requires the implementation of a corrosion prevention and control program either by accomplishing specific tasks or by revising the maintenance inspection program to include such a program. This action

requires accomplishment of new specific tasks and visual inspections for corrosion of certain structural areas and repair if necessary, or revision of the maintenance inspection program. This amendment relates to the recommendations of the Airworthiness Assurance Task Force assigned to review Model L–1011 series airplanes, which indicate that, to ensure long-term continued operational safety, various structural inspections should be accomplished. The actions specified by this AD are intended to prevent structural failure of the airplane due to corrosion.

DATES: Effective June 17, 2004.

The incorporation by reference of Lockheed Document Number LR 31889, ''Corrosion Prevention and Control Program, TriStar L–1011,'' including Revision D, Appendices A, B, C, and D, dated August 15, 1999, as listed in the regulations, is approved by the Director of the Federal Register as of June 17, 2004.

The incorporation by reference of Lockheed Document Number LR 31889, ''Corrosion Prevention and Control Program, TriStar L–1011,'' dated March 15, 1991, including ''Errata Sheet, LR 31889, Corrosion Prevention and Control Program, TriStar L–1011,'' issued September 29, 1992; as listed in the regulations, was approved previously by the Director of the Federal Register as of December 17, 1993 (58 FR 60775, November 18, 1993).

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Martin Aircraft & Logistics Centers, 120 Orion Street, Greenville, South Carolina 29605. 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 FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Carl Gray, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6031; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–20–03, amendment 39–8710 (58 FR 60775, November 18, 1993), which is applicable to all Lockheed Model L–1011 series airplanes, was published in the **Federal Register** on April 25, 2001 (66 FR 20760). The action proposed to continue to require visual inspections, and repair if necessary, of certain structures, or a revision of the FAA-approved maintenance inspection program, as required by AD 93–20–03. The action also proposed to require accomplishment of various visual inspections for corrosion of certain structures, and repair, if necessary; or incorporation of Revision D of Lockheed Document Number LR 31889, ''Corrosion Prevention and Control Program, TriStar L–1011,'' dated August 15, 1999 (''the Document''), into the FAA-approved maintenance inspection program.

Comments

Interested persons have had an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. The sole commenter, the manufacturer, requests that certain paragraphs of the proposed AD be revised to correct and to convey the intent of the AD.

Request To Revise Paragraph (c)(1)

The commenter suggests rewording paragraph (c)(1) of the proposed AD as follows:

(1) Accomplish corrosion tasks C–55–320–05 Note 4 and C–55–330–05 Note 1, per Revision D of the Document. Thereafter, accomplish these corrosion tasks at intervals not to exceed 5 years.

The commenter contends that the proposed AD did not specify the affected Notes of the tasks, and would therefore require the whole task to be repeated at intervals of 5 years. The commenter explains that Note 4 to task C–55–320–05 was revised in Revision A of the Document to require bolt removal for inspection; the rest of this task is required by AD 93–20–03.

We agree with the request, for the reasons provided by the commenter. Although AD 93–20–03 is superseded by this AD, its requirements are restated in paragraphs (a) and (b) of this AD. Paragraph (c)(1) of this final rule has been revised accordingly.

Request To Revise Paragraph (c)(2)

The commenter suggests rewording paragraph (c)(2) of the proposed AD as follows:

(2) Accomplish corrosion task C–57–540–02 Note 5 per Revision D of the Document. Thereafter, accomplish this corrosion task at intervals not to exceed 5 years.

Again, the proposed AD did not specify the affected Note in paragraph (c)(2). The commenter explains that, based on operator experience, the Structures Working Group (SWG) approved changing the repetitive interval in Note 5 from 10 years to 5 years; this change became effective in Revision B of the Document. As written, the proposed AD would also affect the other notes of the task; as a result, the Note 3 task would be required at 5-year intervals instead of the desired 2.5-year intervals.

We agree with the request, for the reasons provided by the commenter and as discussed previously. Paragraph (c)(2) of this final rule has been revised accordingly.

Request To Revise Paragraph (c)(3)

The commenter suggests rewording paragraph (c)(3) of the proposed AD as follows:

(3) Accomplish corrosion task C–57–530–04 Note 3 per revision D of the Document. Thereafter, accomplish this corrosion task at intervals not to exceed 5 years.

Without reference to Note 3 in paragraph (c)(3), the proposed AD would require repetition of all actions of the task within 5-year intervals. The commenter explains that Note 3 was added in Revision B of the Document to address the upper wing access panels in the zones for this task. The rest of task C–57–530–04 is required by AD 93–20–03.

We agree with the request, for the reasons provided by the commenter and as discussed previously. Although AD 93–20–03 is superseded by this AD, its requirements are restated in paragraphs (a) and (b) of this AD. It is therefore necessary only to refer to Note 3 in paragraph (c). Paragraph (c)(3) of this final rule has been revised accordingly.

Request To Revise Paragraph (d)

The commenter requests that paragraph (d) of the proposed AD be revised as follows:

(d) . . . ., in accordance with the procedures specified in Task C–55–350–01 Note 1 of Revision D of the Document. Thereafter, repeat this inspection at intervals not to exceed 15 years.

The commenter explains that inspection of the stabilizer bearing within 15-year intervals is required by Note 1 of the task, per Revision D of the Document.

The rest of the task is required by AD 93–20–03.

We agree with the request for the reasons provided by the commenter and as discussed previously. Paragraph (d) of this final rule has been revised accordingly.

Request To Revise Paragraph (j)

The commenter requests that paragraph (j) of the proposed AD be revised to refer to Revision ''D'' (instead of Revision ''4'') of the Document. The commenter considers this a typographical error. We agree. This final rule has been revised accordingly.

Explanation of Change to Existing Requirements

The FAA has changed all references to a ''detailed visual inspection'' in the existing AD to ''detailed inspection'' in this action.

Conclusion

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

Cost Impact

There are approximately 187 Lockheed Model L–1011 series airplanes of the affected design in the worldwide fleet. We estimate that 117 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 93–20–03 take about 20 work hours per inspection to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $152,100, or $1,300 per airplane, per inspection cycle.

The new visual inspections required by this AD will take about 249 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $1,893,645, or $16,185 per airplane.

Revising the maintenance inspection program, if accomplished, would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this action is estimated to be $65 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD, 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 removing amendment 39–8710 (58 FR 60775, November 18, 1993), and by adding a new airworthiness directive (AD), amendment 39–13618, to read as follows:

2004–09–28 Lockheed: Amendment 39–13618. Docket 2000–NM–145–AD. Supersedes AD 93–20–03, Amendment 39–8710.

Applicability: All Model L–1011 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the airplane due to corrosion, accomplish the following:

Restatement of the Requirements of AD 93–20–03:

Note 1: This AD refers to Lockheed Document Number LR 31889, ''Corrosion Prevention and Control Program, TriStar L–1011,'' dated March 15, 1991, including ''Errata Sheet, LR 31889, Corrosion Prevention and Control Program, TriStar L–1011,'' issued September 29, 1992; and Revision D, dated August 15, 1999 (hereafter, those publications are referred to as ''the Document''), for corrosion tasks, definitions of corrosion levels, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in the Document. Where there are differences between the AD and the Document, the AD prevails.

Note 2: As used throughout this AD, the term ''the FAA'' is defined differently for different operators, as follows: For those operators complying with paragraph (a) or (c) of this AD, ''the FAA'' is defined as ''the Manager of the Atlanta Aircraft Certification Office (ACO).'' For those operators operating under 14 CFR Part 121 or 129, and complying with paragraph (b) or (d) of this AD, ''the FAA'' is defined as ''the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office.''

Corrosion Tasks

(a) Except as provided in paragraph (b) of this AD, complete each of the corrosion tasks specified in Section 4 of the Document in accordance with the procedures of the Document, and the schedule specified in paragraphs (a)(1) and (a)(2) of this AD. Corrosion task numbers C–32–710–01 (nose landing gear) and C–32–730–01 (main landing gear, left and right) are not required to be accomplished as part of this AD.

Note 3: A ''corrosion task,'' as defined in Section 4 of the Document, includes inspections; procedures for a corrective action, including repairs, under identified circumstances; application of corrosion inhibitors; and other follow-on actions.

Note 4: Corrosion tasks completed in accordance with the Document before the effective date of this AD may be credited for compliance with the initial corrosion task requirements of paragraph (a)(1) of this AD.

Note 5: Where non-destructive inspection (NDI) methods are employed, in accordance with Section 4 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with 14 CFR 43.13.

(1) Complete the initial corrosion task of each ''airplane area'' specified in Section 4 of the Document as follows:

(i) For airplane areas that have not yet exceeded the ''implementation age'' (IA) for a corrosion task as of one year after December 17, 1993 (the effective date of AD 93–20–03, amendment 39–8710): Initial compliance must occur no later than the IA plus the repeat (R) interval.

(ii) For airplane areas that have exceeded the IA for a particular corrosion task, as of one year after December 17, 1993: Initial compliance must occur within one R interval for that task, measured from a date one year after December 17, 1993.

(iii) For airplanes that have reached or exceeded 20 years after the date of manufacture as of one year after December 17, 1993: Initial compliance must occur for each corrosion task within one R interval for that task, but not to exceed 6 years, measured from a date one year after December 17, 1993, whichever occurs first.

(iv) Notwithstanding paragraph (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this AD, for airplane areas that exceed the IA for that area, the operator must accomplish the initial corrosion task for each such area at a minimum rate equivalent to one such area per year, beginning one year after December 17, 1993.

Note 6: This paragraph does not require inspection of any area that has not exceeded the IA for that area.

Note 7: This minimum rate requirement may cause an undue hardship on some small operators. In those circumstances, requests for adjustments to the implementation rate will be evaluated on a case-by-case basis under the provisions of paragraph (h) of this AD.

(2) Repeat each corrosion task at a time interval not to exceed the R interval specified in the Document for that task.

(b) As an alternative to the requirements of paragraph (a) of this AD: Prior to one year after December 17, 1993, revise the FAA-approved maintenance inspection program to include the corrosion prevention and control program specified in the Document; or to include an equivalent program that is approved by the FAA. In all cases, the initial corrosion task for each airplane area must be completed in accordance with the compliance schedule specified in paragraph (a)(1) of this AD. Corrosion task numbers C–32–710–01 (nose landing gear) and C–32–730–01 (main landing gear, left and right) are not required to be accomplished as part of this AD.

(1) Any operator complying with paragraph (b) of this AD may use an alternative recordkeeping method to that otherwise required by 14 CFR 91.417 or 121.380 for the actions required by this AD, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance inspection program.

(2) Subsequent to the accomplishment of the initial corrosion task, extensions of R intervals specified in the Document must be approved by the FAA.

New Requirements of This AD

(c) Except as provided in paragraph (e) of this AD, within 5 years after the effective date of this AD: Complete each of the corrosion tasks at the times specified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD in accordance with the procedures specified in the Document. (Corrosion tasks number C–32–710–01 (nose landing gear) and C–32–730–01 (main landing gear, left and right) are not required to be accomplished as part of this AD.)

Note 8: A ''corrosion task,'' as defined in Section 4 of the Document, includes inspections; procedures for a corrective action, including repairs, under identified circumstances; application of corrosion inhibitors; and other follow-on actions.

Note 9: Corrosion tasks completed in accordance with the Document before the effective date of this AD may be credited for compliance with the initial corrosion task requirements of paragraph (a)(1) of this AD.

Note 10: Where non-destructive inspection (NDI) methods are employed, in accordance with Section 4 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR Section 43.13.

(1) Accomplish corrosion tasks C–55–320–05, Note 4; and C–55–330–05, Note 1; per Revision D of the Document. Thereafter, accomplish these corrosion tasks at intervals not to exceed 5 years.

(2) Accomplish corrosion task C–57–540–02, Note 5, per Revision D of the Document. Thereafter, accomplish this corrosion task at intervals not to exceed 5 years.

(3) Accomplish corrosion task C–57–530–04, Note 3, per Revision D of the Document. Thereafter, accomplish this corrosion task at intervals not to exceed 5 years.

(4) Accomplish corrosion task C–53–310–03, per Revision D of the Document. Thereafter, accomplish this corrosion task at intervals not to exceed 10 years.

Inspection of the Horizontal Stabilizer

(d) Within 15 years' time-in-service, or 5 years after the effective date of this AD, whichever occurs later: Conduct a free-play inspection of the horizontal stabilizer pivot bearing, disassemble ALL horizontal stabilizer pivot bearing assemblies, and perform a detailed inspection of the pivot bearing assembly components to detect corrosion, in accordance with the procedures specified in Task C–55–350–01, Note 1, of Revision D of the Document. Thereafter, repeat this inspection at intervals not to exceed 15 years.

Note 11: This paragraph does not require inspection of any area that has not exceeded the IA for that area.

Note 12: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Acceptable Alternative Compliance With Certain Requirements

(e) As an alternative to the requirements of paragraphs (c) and (d) of this AD: Within 90 days after the effective date of this AD, revise the FAA-approved maintenance program to incorporate and implement Revision D of Lockheed Document Number LR 31889, ''Corrosion and Protection Control Program, TriStar L–1011,'' dated August 15, 1999.

Accommodating Scheduling Requirements

(f) To accommodate unanticipated scheduling requirements of paragraph (c) or (d) of this AD, it is acceptable for an R interval to be increased by up to 10%, but not to exceed 6 months. The FAA must be informed, in writing, of any such extension within 30 days after such adjustment of the schedule.

(g)(1) If, during any inspection conducted in accordance with this AD, Level 3 corrosion is determined to exist in any airplane area, accomplish the actions specified in either paragraph (g)(1)(i) or (g)(1)(ii) of this AD within 7 days after such determination. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(i) Submit a report of that determination to the FAA and complete the corrosion task in the affected areas on all Model L–1011 series airplanes in the operator's fleet; or

(ii) Submit to the FAA for approval one of the following:

(A) A proposed schedule for performing the corrosion tasks in the affected areas on the remaining Model L–1011 series airplanes in the operator's fleet, which is adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for that schedule; or

(B) Data substantiating that the Level 3 corrosion found is an isolated occurrence.

Note 13: Notwithstanding the provisions of Section 1 of the Document, which would permit corrosion that otherwise meets the definition of Level 3 corrosion (*i.e.*, which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it ''can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet,'' this paragraph requires that data substantiating any such finding be submitted to the FAA for approval.

(2) The FAA may impose schedules other than those proposed, upon finding that such changes are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(3) Within the time schedule approved under paragraph (g)(1) or (g)(2) of this AD, accomplish the corrosion tasks in the affected areas of the remaining Model L–1011 series airplanes in the operator's fleet.

(h) If, as a result of any inspection after an initial inspection conducted in accordance

with the requirements of this AD, it is determined that corrosion findings exceed Level 1 in any area, within 60 days after such determination, implement a means, approved by the FAA, to reduce future findings of corrosion in that area to Level 1 or better.

(i) Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of corrosion tasks required by this AD must be established in accordance with paragraph (i)(1) or (i)(2) of this AD, as applicable:

(1) For airplanes previously maintained in accordance with this AD, the first corrosion task in each airplane area to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each corrosion task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first corrosion task for each airplane area to be performed by the new operator must be accomplished prior to further flight or in accordance with a schedule approved by the FAA.

(j) Reports of Level 2 and Level 3 corrosion must be submitted at least quarterly to Lockheed Martin Aircraft & Logistics Centers in accordance with Section 5 of Revision D of the Document.

Note 14: Reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

Alternative Methods of Compliance

(k) In accordance with 14 CFR 39.19, the Manager, Atlanta ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(l) Except as otherwise specified in this AD, the actions must be done in accordance with Lockheed Document Number LR 31889, ''Corrosion Prevention and Control Program, TriStar L–1011,'' dated March 15, 1991, including ''Errata Sheet, LR 31889, Corrosion Prevention and Control Program, TriStar L–1011,'' issued September 29, 1992; and Lockheed Document Number LR 31889, ''Corrosion Prevention and Control Program, TriStar L–1011,'' including Appendices A, B, C, and D, Revision D, dated August 15, 1999; as applicable. Revision D contains the following effective pages (the revision level of this document is listed only on the title pages of this document):

Page no.	Revision level shown on page	Date shown on page
Active Page Record, Page 0.5	D	August 15, 1999.

(1) The incorporation by reference of Lockheed Document Number LR 31889, ''Corrosion Prevention and Control Program, TriStar L–1011,'' including Appendices A, B, C, and D, Revision D, dated August 15, 1999; is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Lockheed Document Number LR 31889, ''Corrosion Prevention and Control Program, TriStar L–1011,'' dated March 15, 1991, including ''Errata Sheet, LR 31889, Corrosion Prevention and Control Program, TriStar L–1011,'' issued September 29, 1992; was approved previously by the Director of the Federal Register as of December 17, 1993 (58 FR 60775, November 18, 1993).

(3) Copies may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(m) This amendment becomes effective on June 17, 2004.

Issued in Renton, Washington, on April 27, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–10245 Filed 5–12–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Chlortetracycline and Decoquinate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Pennfield Oil Co. The ANADA provides for the use of single-ingredient, chlortetracycline and decoquinate Type A medicated articles to make two-way combination drug Type B and Type C medicated feeds for calves, beef and nonlactating dairy cattle.

DATES: This rule is effective May 13, 2004.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68144, filed ANADA 200–359 for use of PENNCHLOR (chlortetracycline) and DECCOX (decoquinate) single-ingredient Type A medicated articles to make two-way combination drug Type B and Type C medicated feeds for calves, beef and nonlactating dairy cattle. Pennfield Oil Co.'s ANADA 200–359 is approved as a generic copy of Alpharma, Inc.'s NADA 141–147. The ANADA is approved as of March 19, 2004, and the regulations are amended in 21 CFR 558.195 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under

authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.195 [Amended]

■ 2. Section 558.195 is amended in paragraph (e)(2)(iii) in the ''Limitations'' column by removing ''CTC (chlortetracycline) Type A medicated articles under NADA 141–147'' and by adding in its place ''chlortetracycline Type A medicated articles under NADA 141–147 and ANADA 200–359'' and by adding as the last sentence ''Chlortetracycline as provided by Nos. 046573 and 053389 in § 510.600(c) of this chapter.''; and in paragraph (e)(2)(iii) in the ''Sponsor'' column by adding ''053389'' after ''046573''.

Dated: April 23, 2004.

Catherine P. Beck,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 04–10829 Filed 5–12–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 50

Administrative Changes

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: We are amending our regulations to: reflect organizational changes and updated filing procedures; correct clerical errors; and make conforming changes to rule text.

EFFECTIVE DATE: May 13, 2004.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939, *Nichols-Marvin@msha.gov,* (202)693–9440 (telephone), (202)693–9441 (facsimile). This rule is available in alternative formats, such as large print, and is also available at *http://www.msha.gov,* under ''Rules and Regs.''

SUPPLEMENTARY INFORMATION:

A. Background

This final rule updates 30 CFR part 50 to reflect current mailing addresses and office closings. Additionally, the final rule recognizes our practice of providing the public with electronic access to forms and allowing mine operators to submit reports electronically. Finally, the rule corrects errors and makes a conforming change in the rule text.

Because this final rule deals with agency management and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(a)(2) and (b)(3)(A), and the usual 30-day delay in the effective date is not required.

B. Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. E.O. 12866 Regulatory Planning and Review

This final rule is not a ''regulatory action'' under section 3 of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. The rule is an administrative action reflecting organizational and procedural changes in a federal agency. Because the rule is limited to agency organization and management, it falls within the exclusion set forth in section 3(d)(3) of the Executive Order.

D. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments, or by the private sector.

List of Subjects in 30 CFR Part 50

Investigations, Mine safety and health, Reporting and record keeping requirements.

■ Accordingly, Chapter I of Title 30 of the Code of Federal Regulations is amended as follows:

PART 50—NOTIFICATION, INVESTIGATION, REPORTS AND RECORDS OF ACCIDENTS, INJURIES, ILLNESSES, EMPLOYMENT, AND COAL PRODUCTION IN MINES

■ 1. The authority citation for Part 50 continues to read as follows:

Authority: 29 U.S.C. 577a; 30 U.S.C. 951, 957, 961.

§ 50.2 [Amended]

■ 2. In § 50.2(h), the comma after the term ''Accident means'' is removed.

§ 50.10 [Amended]

■ 3. In § 50.10:
■ a. In the first sentence, the phrase ''or Subdistrict'' is removed.
■ b. In the second sentence, the phrase ''or Subdistrict'' is removed.

§ 50.11 [Amended]

■ 4. In § 50.11(a), in the first sentence, the phrase ''or Subdistrict'' is removed.
■ 5. In § 50.11(b)(8), the word ''ocurrence'' is changed to ''occurrence.''

§ 50.12 [Amended]

■ 6. In § 50.12, the phrase ''or Subdistrict'' is removed.

§ 50.20 [Amended]

■ 7. In § 50.20(a):
■ a. In the second sentence, the phrase ''MSHA Metal and Nonmetal Mine Safety and Health District Offices and from MSHA Coal Mine Safety and Health Subdistrict Offices'' is revised to read ''the MSHA District Office.''
■ b. In the last sentence, the phrase ''5 through 11'' is revised to read ''5 through 12.''

§ 50.20–1 [Amended]

■ 8. In § 50.20–1:
■ a. In the second sentence, the phrase ''Denver Safety and Health Technology Center'' is revised to read ''MSHA Office of Injury and Employment Information.''
■ b. In the third sentence, the phrase ''or Subdistrict'' is removed.
■ c. In the fifth sentence, the phrase ''Denver Safety and Health Technology Center'' is revised to read ''MSHA Office of Injury and Employment Information.''
■ d. At the end of the paragraph, add ''You may also submit reports by facsimile, 888–231–5515. To file electronically, follow the instructions on the MSHA Internet site, *http://www.msha.gov.* For assistance in electronic filing, contact the MSHA help desk at 877–778–6055.''

§ 50.20–4 [Amended]

■ 9. In § 50.20–4(a), in the second sentence, the phrase ''Health and Safety District of Subdistrict office'' is revised to read ''District Office.''

§ 50.20–6 [Amended]

■ 10. In § 50.20–6(b)(7)(ii), the term ''Disease'' is revised to read ''Diseases.''
■ 11. In § 50.20–6(b)(7)(v), the term ''ulta-violet'' is revised to read ''ultra-violet.''

§ 50.30 [Amended]

■ 12. Amend § 50.30(a) as follows:
■ a. In the first sentence, the phrase ''Denver Safety and Health Technology Center'' is revised to read ''MSHA Office of Injury and Employment Information.''

■ b. In the second sentence, the phrase ''MSHA Metal and Nonmetal Mine Safety and Health District Offices and from MSHA Coal Mine Safety and Health Subdistrict Offices'' is revised to read ''the MSHA District Office.''

■ c. At the end of the paragraph, add ''You may also submit reports by facsimile, 888–231–5515. To file electronically, follow the instructions on the MSHA Internet site at *http://www.msha.gov.* For assistance in electronic filing, contact the MSHA help desk at 877–778–6055.''

§ 50.30–1 [Amended]

■ 14. In § 50.30–1(a), in the second sentence, the phrase ''Health and Safety District or Subdistrict'' is revised to read ''District.''

Dated: May 7, 2004.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 04–10872 Filed 5–12–04; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–244–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; non-approval of amendment.

SUMMARY: We are not approving an amendment to the Kentucky regulatory program (the ''Kentucky program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky transferred $3,000,000 from the Kentucky Bond Pool Fund (the Fund) on June 19, 2003, and $840,000 on March 1, 2004, to the Commonwealth's General Fund for the 2002–2003 fiscal year.

EFFECTIVE DATE: May 13, 2004.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (859) 260–8400. Internet address: *bkovacic@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16 and 917.17.

II. Submission of the Proposed Amendment

By telefax dated March 20, 2002, Kentucky asked us to informally review the proposed transfer of $3,000,000 from the Fund to its General Fund (Administrative Record No. KY–1528). By letter dated March 20, 2002, we expressed concern about the transfer and directed Kentucky to submit the amendment formally. We also advised Kentucky that under 30 CFR 732.17(g), the proposed transfer could not take effect until approved by OSM as an amendment to the approved State program (Administrative Record No. KY–1528). On March 18, 2003, we sent a second letter to Kentucky stating that we had become aware of the proposed transfer of funds in House Bill 269, which had been recently passed by the Kentucky General Assembly (Administrative Record No. KY–1575). We reiterated our concerns with the transfer and referred to our letter dated March 20, 2002. We emphasized that ''no such change to laws or regulations shall take effect for purposes of a State program until approved as an amendment.''

By letter dated May 22, 2003, Kentucky sent us an amendment to its program (Administrative Record No. KY–1580) under SMCRA (30 U.S.C. 1201 *et seq.*). Kentucky submitted a portion of House Bill 269, the executive branch budget bill, promulgated by the 2003 Kentucky General Assembly. Specifically, Kentucky transferred $3,000,000 from the Fund established in Kentucky Revised Statute (KRS) 350.700 to the Commonwealth's General Fund for the 2002–2003 fiscal year. The transfer appears on page 225, line 21 and is listed under Part V, Section J, item 5 of House Bill 269; the effective date of the transfer was June 19, 2003.

By letter dated July 10, 2003, we requested additional information from Kentucky in the form of a financial analysis (Administrative Record No. KY–1584). We asked that the analysis specifically demonstrate that the transfer of funds would not adversely impact the Fund's ability to complete the reclamation plan for any area which may be in default at any time as required by 30 CFR 800.11(e). By letter dated August 14, 2003, Kentucky responded by stating the Madison Consulting Group would perform an actuarial review of the Fund (Administrative Record No. KY–1599). By letter dated March 3, 2004, the Department for Natural Resources (formerly the Department for Surface Mining Reclamation and Enforcement) transmitted the Kentucky Bond Pool Actuarial Report to us (Administrative Record No. KY–1615).

The actuarial review covers the time period July 1, 2000, through June 30, 2003, and takes into account that $3,000,000 was transferred from the Fund on June 19, 2003, with an additional $840,000 to be transferred from the Fund on March 1, 2004. The full text is available for you to read at the locations listed above at **ADDRESSES.** The key findings of the report are summarized here. The report concluded that the Fund:

1. Should be able to ''reasonably withstand the failure of any two of its member companies'' to be actuarially sound and viable on a long-term basis (p. 7);

2. Is ''currently not able to reasonably provide for the 'two failure' funding scenario up to a 75 percent confidence level'' (p. 8);

3. Needs to increase its assets ''so as to provide for potential liabilities and future growth'' (p. 8); and

4. Is in a less favorable financial situation than the last analysis completed for the period ending June 30, 2000 (p. 8).

We announced receipt of the proposed amendment in the July 16, 2003, **Federal Register** (68 FR 41980), and in the same document invited public comment and provided an opportunity for a public hearing on the adequacy of the proposed amendment.

The public comment period closed on August 15, 2003.

The additional information in the form of the actuarial analysis report was announced in the March 30, 2004, **Federal Register** (69 FR 16511), when we reopened the public comment period that closed on April 14, 2004. We received comments from three private organizations and two Federal agencies.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

Kentucky transferred $3,000,000 from the Fund established in KRS 350.700 to its General Fund on June 19, 2003, and an additional $840,000 on March 1, 2004. Neither of these transfers was submitted to OSM prior to implementation in accordance with 30 CFR 732.17(g). Section 509(c) of SMCRA and the Federal regulations at 30 CFR 800.11(e) authorize OSM to approve an alternative bonding system if that system achieves the objectives and purposes of the Federal bonding system. Under this authority, OSM approved the provisions of KRS 350.700 on July 18, 1986 (51 FR 26002), and March 9, 1987 (52 FR 7132). OSM also approved, in part, revisions to the Fund on August 18, 1992 (57 FR 37086).

In the July 18, 1986, notice, we approved Kentucky's bond pool as established in Senate Bill (SB) 130. The provisions of SB 130 stipulated that bond pool monies would be collected and placed in an interest-bearing account and used for the following purposes only: (1) To reclaim permit areas covered by the Fund in the event of bond forfeiture; (2) to cover administrative costs of the Fund; (3) to fund audits and actuarial studies required for the Fund; and (4) to cover operating and legal expenses of the bond pool commission. In our approval, we noted that 30 CFR 800.11(e) authorizes approval of an alternate bonding system (ABS) if the regulatory authority will have available sufficient money to complete the reclamation plan for any areas in default at any time and if the ABS provides an economic incentive for the permittee to comply with all reclamation provisions. We found that the Kentucky ABS achieved the objectives and purposes of Section 509 of SMCRA in that it provided for funding in an amount sufficient to ensure the completion of the reclamation plan and it did not alter the approved Kentucky requirements for liability under the bond for the mining operation and the operator's liability period. We also noted that the Fund should accrue at a rate as to provide sufficient opportunity to observe the operation of the Fund to determine the adequacy of amounts and fees. We determined that the Fund should be sufficient to supplement reduced operator bonds to the extent necessary to reclaim defaulted sites to standards in the reclamation plan, at least until such time as there is sufficient data available to determine the adequacy of the program. If the Fund was found to be inadequate to supplement member bonds in the event of member default on reclamation obligations, or could not replenish itself at a sufficient rate to avoid delays in reclamation of forfeited sites, we would require an adjustment in the Fund limits and/or fees collected for the Fund (51 FR 26004–5). Subsequent revisions to Kentucky's bond pool provisions did not alter the basis for our original approval.

Based on our review and the findings presented in the Kentucky Bond Pool Actuarial Report, we find that Kentucky's transfer of funds in the amount of $3,840,000 violates the basis for our 1986 approval by directing funds to other nonapproved uses. Further, such transfers are not consistent with the requirements of SMCRA and the Federal regulations at 30 CFR 800.11(e) that require that the ABS ensures that the regulatory authority has sufficient funds available to complete the reclamation plan for any areas which may be in default at any time. Therefore, we cannot approve the amendment. The transfer of funds seriously jeopardizes Kentucky's ability to provide for the completion of reclamation plans as required by the Federal regulations and represents a significant departure from the terms of OSM's approvals of Kentucky's alternative bonding system on July 18, 1986.

To avoid any action required by 30 CFR part 732, we are therefore requesting that Kentucky do the following. Within 60 days of the date of publication of this decision in the **Federal Register**, Kentucky should either replenish the $3,840,000 into the Fund or provide us with a written description of a plan to accomplish this action. Additionally, until the Fund is replenished, Kentucky should not initiate any actions that further jeopardize the solvency of the Fund such as increasing the number of participants or adding acreage. In short, use of the Fund to provide new financial guarantees is hereby suspended.

IV. Summary and Disposition of Comments

Public Comments

We solicited public comments on July 16, 2003, and provided an opportunity for a public hearing on the amendment. Two commenters responded. Because no one requested an opportunity to speak, a hearing was not held. Upon receipt of the actuarial study, we reopened the public comment period on March 30, 2004, for fifteen days (69 FR 16511). Two commenters responded.

The Coal Operators & Associates, Inc. (COA) submitted comments by letter dated August 6, 2003 (Administrative Record No. KY–1597). The COA encourages OSM to disapprove the transfer of $3,840,000 from the Fund to the General Fund because such transfers could make the bond pool financially unsound in that sufficient funds would not be available to cover any reclamation liability that might be incurred by a permittee's financial failure. We agree and are not approving the amendment as discussed in ''OSM's Findings'' above. The COA also submitted comments on April 2, 2004, (Administrative Record No. KY–1620) in response to the reopened comment period. The COA reiterated its strong opposition to the transfer of funds and encouraged OSM to disapprove the amendment. As stated earlier, we are not approving the amendment.

The Kentucky Resources Council, Inc. (KRC) submitted comments by an electronic mail message dated August 10, 2003 (Administrative Record No. KY–1598). The KRC states that the amendment must be disapproved unless and until Kentucky can produce an actuarial study demonstrating that the transfer of funds will not adversely affect the ability of the Fund to assure reclamation of all properties insured under the Fund. We agree and based, in part, on the findings presented in the Kentucky Bond Pool Actuarial Report, we are not approving the amendment as discussed in ''OSM's Findings'' above. The KRC further urges OSM to take prompt action to require that permitted operations obtain individual performance bond coverage if the alternative bonding mechanism fails to meet the requirements of Section 509(c) of SMCRA. Because we have not found the ABS in violation of SMCRA or the Federal regulations, we believe such action would be premature. Finally, the KRC states that in the event that the funds have already been transferred in violation of 30 CFR 733.11 and 732.17, OSM should direct that no further risks be incurred by the State bond pool, including no new operators and no new

acreage, until the State either restores the funds or demonstrates solvency of the Fund. We agree, as discussed in ''OSM's Findings'' above.

Financial Assurance Consulting Services (FACS) submitted comments on April 14, 2004 (Administrative Record No. KY–1622), in response to the reopened comment period. FACS recommends that OSM not approve the amendment and offers four reasons in support of its recommendation. They are: (1) The proposed transfer of funds is not in accordance with Federal regulations and further erodes the bond pool not deemed currently sufficient by the actuarial report; (2) approval of the transfer would set a precedent that could jeopardize the integrity of other bonding systems approved by OSM, and may result in additional transfers on monies if legislatures view bond pools as an available source of funds; (3) Kentucky's bond pool funds must be available to the regulatory authority in the same manner conventional bonds are to guarantee reclamation, as required by SMCRA (The transfer of funds jeopardizes that availability.); and (4) the integrity of the Kentucky Fund must be protected and Kentucky should be required to do so. Kentucky should be required to reimburse the Fund for the amount of monies transferred. Also, FACS recommends a program amendment to assure that bond monies are not jeopardized, and suggests that an insured trust/escrow account be substituted for the current trust and agency account. Further, FACS recommends that OSM require Kentucky to implement some kind of procedure or mechanism for having the legislature reimburse the bond pool fund for monies already transferred. In response, we note that because we have not found the ABS in violation of SMCRA or the Federal regulations, we believe any actions such as these would be premature. Otherwise, however, we agree on all points and are not approving the amendments as discussed in ''OSM's Findings'' above. We are also requesting that Kentucky replenish the Fund in the amount of the $3,840,000.

Federal Agency Comments

According to 30 CFR 732.17(h)(11)(i), on July 16, 2003, we solicited comments on the amendment submitted on May 22, 2003, from various Federal agencies with an actual or potential interest in the Kentucky program. Two commenters responded. By letter dated July 28, 2003, the Department of Labor, Mine Safety and Health Administration, commented that the proposed amendment had no apparent impact on its program (Administrative Record No. KY–1596). By an electronic mail message dated July 31, 2003, the U.S. Fish and Wildlife Service commented that it was concerned that Kentucky's proposed transfer of funds from the Bond Pool Fund to the General Fund sets ''an extremely bad precedence for future activities of this nature'' (Administrative Record No. KY–1595). We agree and are not approving the amendment as discussed in ''OSM's Findings'' above.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). Because the provisions of this amendment do not relate to air or water quality standards, we did not request EPA's concurrence.

V. OSM's Decision

Based on the above findings, we are not approving the amendment as submitted by Kentucky on May 22, 2003. We are requesting that within 60 days of publication of this decision in the **Federal Register**, Kentucky either replenish the $3,840,000 into the Fund or submit to us a written description of a plan to accomplish this action. Additionally, Kentucky should not initiate any actions that would further jeopardize the Fund's solvency, such as increasing the number of participants or adding additional acreage. The use of the Fund to provide new financial guarantees is hereby suspended.

To implement this decision, we are amending the Federal regulations at 30 CFR part 917 which codify decisions concerning the Kentucky program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that Kentucky's program demonstrate that it has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the Kentucky program, we will recognize only the statutes, regulations, and other materials we have approved, together with any consistent implementing policies, directives, and other materials. We will require Kentucky to enforce only approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications that warrant the preparation of a takings implication assessment. This determination is based on an analysis of the action being taken by OSM. Our decision not to approve the State program amendment and, therefore, the transfer of $3,840,000 from the Fund to the Commonwealth's General Fund will not affect the use or value of private property within the meaning of Executive Order 12630.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society

and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is our decision on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). This determination is based on an analysis of the action being taken. The decision by OSM not to approve the State program amendment and, therefore, the transfer of $3,840,000 from the Fund to the Commonwealth's General Fund is an administrative action that does not impose new obligations or requirements on small entities as determined by the size standard of the Small Business Administration at 13 CFR 121.201.

Small Business Regulatory Enforcement Fairness Act

For the reasons previously stated, this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates

For the reasons previously stated, this rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 21, 2004.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 917 is amended as set forth below:

PART 917—KENTUCKY

■ 1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 917.17 is amended by revising the section heading and adding paragraph (c) to read as follows:

§ 917.17 State regulatory program amendments not approved.

* * * * *

(c) The amendment to Kentucky's program transferring $3,840,000 from the Kentucky Bond Pool Fund to the Commonwealth's General Fund for the 2002–2003 fiscal year is not approved. The use of the Fund to provide new financial guarantees is hereby suspended.

* * * * *

[FR Doc. 04–10746 Filed 5–12–04; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R07–OAR–2004–MO–0001; FRL–7661–4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving a revision to the Missouri State Implementation Plan (SIP) which updates changes to the non-regulatory portion of the Inspection and Maintenance (I/M) Program for the St. Louis area. The original SIP for the centralized St. Louis I/M program was approved in 2000 and the program was implemented in April 2000. Due to a regulatory amendment, the SIP was revised in 2002. At that time, the non-regulatory portion of the SIP was not revised. Approval of this revision will ensure consistency between the description of the program included in the approved SIP and the current Missouri program description.

DATES: This direct final rule will be effective July 12, 2004, without further notice, unless EPA receives adverse comment by June 14, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R07–OAR–2004–MO–0001, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://docket.epa.gov/rmepub/.* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the

system, select ''quick search;'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: Alan Banwart *banwart.alan@epa.gov.*

4. Mail: Alan Banwart, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

5. Hand Delivery or Courier: Deliver your comments to Alan Banwart, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to RME ID No. R07–OAR–2004–MO–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Alan Banwart at (913) 551–7819, or by e-mail at *banwart.alan@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a SIP?
What Is the Federal Approval Process for a SIP?
What Does Federal Approval of a State Regulation Mean to Me?
What Is Being Addressed in This Document?
Have the Requirements for Approval of a SIP Revision Been Met?
What Action Is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

A request to revise the non-regulatory portion of the Vehicle Inspection and Maintenance (I/M) SIP for the St. Louis area was submitted to us. The SIP for the St. Louis I/M program was approved in 2000 and the program was implemented in April 2000. Due to a regulatory amendment, the SIP was revised in 2002. At that time, the non-regulatory portion of the SIP was not revised. The non-regulatory portion is the narrative description of the current I/M program. While the narrative description does not change regulatory requirements, some portions are necessary to meet the requirements of the Federal I/M rule. Other portions of the description are for informational purposes and do not address SIP elements required by the Federal rule. This revision will ensure consistency between the program description in the SIP and the current Missouri program description.

The information submitted on October 1, 2003, included a signed

approval of the Missouri SIP by the Missouri Air Conservation Commission (MACC), all public notice articles and a record of the public hearing. It also included the Missouri SIP for the Vehicle Inspection and Maintenance Program for the St. Louis Maintenance Area. There were 14 parts of the SIP submitted which included the non-regulatory section of the SIP and 13 SIP attachments: (1) State of Missouri Statutory Authority; (2) State of Missouri I/M Rules and Regulations; (3) Memorandums of Understanding; (4) I/M Contract with ESP Missouri, Inc.; (5) State of Missouri I/M Budget: Fiscal Year 2000; (6) MOBILE6 Input and Output Files; (7) MOBILE6 Sample Calculations; (8) Number of Vehicles in the I/M Program, Number of Exempt Vehicles in the I/M Program and Number of Private and Local Government Fleets in the I/M Program; (9) Procedures and Specifications; (10) ZIP Code Listing Covering the I/M Program; (11) Public Education Plan; (12) Missouri Department of Revenue's Contract with Fee Offices; (13) State of Missouri Rule 11 CSR 50–2.400 Emissions Test Procedures for Franklin County.

The required public's comments section was submitted to the EPA on August 21, 2003.

On November 5, 2003, MDNR submitted a letter that included the correct material identifying and describing the program that was missing or out-dated from the original submittal. Attachment 2: State of Missouri I/M Rules and Regulations replaced the outdated information with the latest revision of 10 CSR 10–5.375 and 10 CSR 10–5.380. This submittal also included a new title for Attachment 5: State of Missouri I/M Budget: Fiscal Year 2004.

On December 19, 2003, MDNR sent Attachment 7: MOBILE 6 Sample Calculations, to the EPA via email, because the original attachment did not contain any information concerning the calculation.

For clarification, a list of the significant changes between the old and new non-regulatory SIP provisions is provided below.

Section A—Applicability

Updated census population of the counties in I/M area.

Section C—I/M Performance Standard for the Enhanced and Basic Program

The Program now uses MOBILE 6 instead of MOBILE 5b to determine if the performance standard is met.

Section D—Network Type and Program Evaluation

With MOBILE 6 as the new performance standard model, a comparison with the Gateway Clean Air Program (GCAP) and the Basic EPA Performance Standard was done to show that GCAP was meeting the standard. Here are the results:

COMPOSITE EMISSION FACTOR AT 19.6 MILES PER HOUR

Types of program	VOC (gpm)	CO (gpm)	NO_X (gpm)
No I/M Controls	1.45	15.91	2.54
EPA Basic Performance Standard	1.38	15.04	2.53
Missouri I/M Program	1.26	13.42	2.41
EPA Enhanced Performance Standard	1.22	13.24	2.39

This demonstration meets the requirements of 40 CFR 51.372(a)(2). This element was previously approved based on the model applicable at the time of the prior approval in 2000.

Section G—Vehicle Fleet Coverage Using Diagnostic Inspection

Updated number of government agencies and their fleet vehicles in the I/M area.

Section H—Test Procedures and Standards

Phase-in of On-Board Diagnostics II (OBD II) began in January 2003, becoming mandatory in 2005. This replaces the initial OBD system. This revision reflects the revised program approved by EPA.

Section K—Waivers and Compliance Enforcement

Minimum expenditure for repairing a failing vehicle in order to receive a waiver in the enhanced area has been increased from $75 to $200 for 1971–1980 vehicles and $200 to $450 for 1981 and newer vehicles. The program description is revised to describe this change.

Section M—Quality Assurance

More detail is given on the requirements of conducting an overt audit. This revision describes the previously approved regulatory amendment.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations and including 40 CFR part 51, subpart S, Inspection and Maintenance Program Requirements.

What Action Is EPA Taking?

The EPA is approving the non-regulatory SIP revisions and we are processing this action as a direct final action because the revisions make routine changes to a non-regulatory portion of the SIP which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

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 a state submission 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 provisions 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 submission describing implementation of a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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 CAA. 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 CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 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 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 16, 2004.

James B. Gulliford,

Regional Administrator, Region 7.

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

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

■ 2. In § 52.1320, the table in paragraph (e) is amended by adding an entry at the end of the table to read as follows:

§ 52.1320 Identification of Plan.

* * * * *

(e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
Vehicle I/M Program	St. Louis	10/1/03	05/13/04 [FR page citation].	

[FR Doc. 04–10874 Filed 5–12–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7660–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion for the Florence Land Recontouring Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region II Office announces the deletion of the Florence Land Recontouring Landfill Superfund Site (Site) from the National Priorities List (NPL). Within the NPL, this Site is listed as being located in the Township of Florence. However, portions of the Site are also located in the Townships of Mansfield and Springfield, Burlington County, New Jersey. The NPL constitutes appendix B to the

National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA and the State of New Jersey, through the Department of Environmental Protection (NJDEP), have determined that all appropriate remedial actions have been implemented at the Site and no further fund-financed remedial action is appropriate under CERCLA. Moreover, EPA and NJDEP have determined that the Site poses no significant threat to public health or the environment.

EFFECTIVE DATE: May 13, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Austin, Remedial Project Manager, New Jersey Remediation Branch, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866, phone: (212) 637–3954; fax: (212) 637–4429; e-mail: *austin.mark@epa.gov.*

SUPPLEMENTARY INFORMATION: To be deleted from the NPL is: The Florence Land Recontouring Landfill Superfund Site, Townships of Florence, Mansfield, and Springfield, Burlington County, New Jersey.

A Notice of Intent to Delete for the Site was published in the **Federal Register** on February 18, 2004 (69 FR 7613). The closing date for comments on the Notice of Intent to Delete was March 19, 2004. EPA received no comments regarding this action. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, any site or portion thereof deleted from the NPL remains eligible for remedial actions in the unlikely event that conditions at the site warrant such action in the future. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: March 31, 2004.

Jane M. Kenny,

Regional Administrator, Region 2.

■ For the reasons set out in the preamble, part 300, title 40 of Chapter I of the Code of Federal Regulations, is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR., 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended under New Jersey (NJ) by removing the Site name ''Florence Land Recontouring Landfill'' and the City/County ''Florence Township.''

[FR Doc. 04–10891 Filed 5–12–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Part 217

[DFARS Case 2003–D004]

Defense Federal Acquisition Regulation Supplement; Multiyear Procurement Authority for Environmental Services for Military Installations

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 827 of the National Defense Authorization Act for Fiscal Year 2003. Section 827 authorizes DoD to enter into multiyear contracts for environmental remediation services for military installations.

EFFECTIVE DATE: May 13, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0296; facsimile (703) 602–0350. Please cite DFARS Case 2003–D004.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 68 FR 43332 on July 22, 2003, to implement Section 827 of the National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314). Section 827 amended 10 U.S.C. 2306c to provide authority for DoD to enter into multiyear contracts for environmental remediation services for military installations. Two sources submitted comments on the interim rule. A discussion of the comments is provided below.

1. *Comment:* The interim rule is a major step forward for environmental remediation that can be accomplished within 5 years. However, the rule should provide for limited authority beyond 5 years where practicable and in the best interest of the Government.

DoD Response: The recommended change is not feasible, since 10 U.S.C. 2306c limits multiyear contracting authority for services to not more than 5 years.

2. *Comment:* DFARS 232.703–1(1)(iii), which addresses incremental funding, must be sustained and clarified to provide the ability to cash flow expensive remedial projects that cannot be fully funded within a single year appropriation.

DoD Response: No change to the incremental funding policy in DFARS 232.703–1(1)(iii) is necessary for implementation of this rule.

3. *Comment:* There is confusion within DoD as to what constitutes environmental services and environmental construction. DoD should clarify that all actions taken to remediate contamination under the DERA program constitute environmental services.

DoD Response: The recommended clarification is outside the scope of this DFARS case.

4. *Comment:* The definition of ''military installation'' or the list in DFARS 217.171(a)(1)(v) should specifically include industrial property to remove any question as to whether the remediation services can be used at both active and former government-owned-contractor-operated industrial plants currently or previously owned by DoD.

DoD Response: The definition of ''military installation'' in DFARS 217.103 and the list in DFARS 217.171(a)(1)(v) are consistent with the provisions of 10 U.S.C. 2306c as amended by Section 827 of Public Law 107–314. The multiyear contracting authority provided by the rule applies to environmental remediation services that meet the criteria at DFARS 217.171(a)(1)(v).

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because application of the rule is limited to contracts for environmental remediation services at military installations or sites formerly used by DoD. Before using the multiyear contracting authority provided by the rule, the head of the agency must determine that certain conditions exist, to include a determination that use of a multiyear contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operations.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 217

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR Part 217, which was published at 68 FR 43332 on July 22, 2003, is adopted as a final rule without change.

[FR Doc. 04–10881 Filed 5–12–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2003–D099]

Defense Federal Acquisition Regulation Supplement; Berry Amendment Changes

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Sections 826 and 827 of the National Defense Authorization Act for Fiscal Year 2004. Sections 826 and 827 provide exceptions to the domestic source requirements of the Berry Amendment. Section 826 applies to the acquisition of food, specialty metals, and hand or measuring tools needed to support contingency operations or to fulfill other urgent requirements. Section 827 applies to the acquisition of waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives.

DATES: Effective date: May 13, 2004.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before July 12, 2004, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments via the Internet at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcom.* As an alternative, respondents may e-mail comments to: *dfars@osd.mil.* Please cite DFARS Case 2003–D099 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2003–D099.

At the end of the comment period, interested parties may view public comments on the Internet at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS 225.7002–1 contains requirements for the acquisition of certain items from domestic sources in accordance with the Berry Amendment (10 U.S.C. 2533a). DFARS 225.7002–2 provides exceptions to these requirements. This interim rule adds new exceptions to DFARS 225.7002–2 to implement Sections 826 and 827 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). Section 826 applies to the acquisition of food, specialty metals, and hand or measuring tools when needed to support contingency operations or when the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency. Section 827 applies to the acquisition of waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives. A corresponding change is made to the clause at DFARS 252.225–7012.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the exceptions to domestic source requirements authorized by the rule are limited to acquisitions of items needed to support contingency operations, to fulfill requirements that are of unusual and compelling urgency, or to produce propellants and explosives. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D099.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Sections 826 and 827 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). Sections 826 and 827 provide exceptions to the domestic source requirements of the Berry Amendment (10 U.S.C. 2533a). Section 826 applies to the acquisition of food, specialty metals, and hand or measuring tools needed to support contingency operations or to fulfill other urgent requirements. Section 827 applies to the acquisition of waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives. Sections 826 and 827 became effective on November 24, 2003. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

■ 2. Section 225.7002–2 is amended as follows:

■ a. By redesignating paragraphs (f) through (i) and (j) through (m) as paragraphs (g) through (j) and (l) through (o), respectively; and

■ b. By adding new paragraphs (f) and (k) to read as follows:

225.7002–2 Exceptions.

* * * * *

(f) Acquisitions of food, specialty metals, or hand or measuring tools—

(1) In support of contingency operations; or

(2) For which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR 6.302–2.

* * * * *

(k) Acquisitions of waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

■ 3. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read ''(MAY 2004)''; and

■ b. In paragraph (b), in entry ''252.225–7012'', by removing ''(FEB 2003)'' and adding in its place ''(MAY 2004)''.

■ 4. Section 252.225–7012 is amended as follows:

■ a. By revising the clause date to read ''(MAY 2004)'';

■ b. By redesignating paragraphs (c)(3) through (5) as paragraphs (c)(4) through (6), respectively; and

■ c. By adding a new paragraph (c)(3) to read as follows:

252.225–7012 Preference for Certain Domestic Commodities.

* * * * *

(c) * * *

(3) To waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives;

* * * * *

[FR Doc. 04–10880 Filed 5–12–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 252

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement to update clause dates and references.

EFFECTIVE DATE: May 13, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350.

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Part 252 is amended as follows:

■ 1. The authority citation for 48 CFR Part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

■ 2. Section 252.212–7001 is amended as follows:

■ a. In paragraph (b), in entry ''252.225–7016'', by removing ''(APR 2003)'' the first place it appears and adding in its place ''(MAY 2004)''; and

■ b. In paragraph (b), in entry ''252.232–7003'', by removing ''(DEC 2003)'' and adding in its place ''(JAN 2004)''.

252.225–7016 [Amended]

■ 3. Section 252.225–7016 is amended as follows:

■ a. By revising the clause date to read ''MAY 2004''; and

■ b. In paragraph (d), in the first sentence, by removing ''225.7019–3'' and adding in its place ''225.7009–3''.

[FR Doc. 04–10882 Filed 5–12–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040112010–4114–02 ; I.D. 050604B]

Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Commercial Haddock Harvest

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

ACTION: Removal of haddock trip limit.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), is eliminating the daily and maximum haddock trip limits for the groundfish fishery specified at 50 CFR 648.86(a) for the remainder of the 2004 fishing year, through April 30, 2005. Accordingly, there is no trip limit on the amount of haddock that can be harvested or landed for the rest of the fishing year for vessels subject to these regulations. The Regional Administrator has projected that less than 75 percent of the haddock target total allowable catch (TAC) will be harvested for the 2004 fishing year under the restrictive daily possession and trip limits. This action is intended to allow fishermen to catch the haddock TAC, without exceeding the TAC.

DATES: Effective May 7, 2004 through April 30, 2005.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Policy Analyst, 978–281–9141.

SUPPLEMENTARY INFORMATION: Framework Adjustment 33 to the NE Multispecies Fishery Management Plan (FMP), which became effective May 1, 2000, implemented the current haddock trip limit regulations (65 FR 21658, April 24, 2000). To ensure that haddock landings do not exceed the appropriate target TAC, Framework 33 established a haddock trip limit of 3,000 lb (1,360.8 kg) per NE multispecies day-at-sea (DAS) fished and a maximum trip limit of 30,000 lb (13,608 kg) of haddock for the period May 1 through September 30; and 5,000 lb (2,268 kg) of haddock per DAS and 50,000 lb (22,680 kg) per trip from October 1 through April 30.

Framework 33 also provided a mechanism to adjust the haddock trip limit based upon the percentage of TAC that is projected to be harvested. Section 648.86(a)(1)(iii)(B) specifies that, if the Regional Administrator projects that less than 75 percent of the haddock target TAC will be harvested in the fishing year, the trip limit may be adjusted or eliminated. Further, this section stipulates that NMFS will publish notification in the **Federal Register** informing the public of the date of any changes to the trip limit.

The Supplemental Environmental Impact Statement (SEIS) prepared for Amendment 13 to the FMP (Amendment 13) estimated the total target TAC for the Gulf of Maine (GOM) and Georges Bank (GB) haddock stocks during the 2004 fishing year at 29,686 metric tons (mt) (65,445,755 lb), including both U.S. and Canadian landings. The Canadian quota for eastern GB haddock was set at 9,900 mt (21,825,540 lb). Therefore, the U.S. portion of the total target TAC for haddock for the 2004 fishing year is the difference between the entire haddock target TAC and the Canadian quota, or 19,786 mt (43,620,216 lb). This amount includes the target TAC for the GOM and GB haddock stocks as well as a haddock TAC of 5,100 mt (11,243,460 lb) specific to the Eastern U.S./Canada Management Area.

Based on recent historical fishing practices and an assessment of the impacts of management measures contained within Amendment 13 on haddock landings during the 2004 fishing year, the Regional Administrator has projected that less than 75 percent of the haddock target TAC for the 2004 fishing year (14,840 mt or 32,715,162 lb) will be harvested by April 30, 2005, under the restrictive daily possession and trip limits. In addition, this projection indicates that eliminating the daily and maximum trip limits for haddock would not likely precipitate haddock landings reaching the Eastern U.S./Canada Management Area haddock TAC of 5,100 mt (11,243,460 lb). The Regional Administrator has therefore determined that eliminating the 3,000–lb (1,360.8–kg) and 5,000–lb (2,268–kg) daily haddock possession limits as well as the associated 30,000–lb (13,608–kg) and 50,000–lb (22,680–kg) per trip possession limits for May 1 through September 30, 2004, and October 1, 2004 through April 30, 2005, respectively, will ensure that at least 75 percent of the target TAC will be harvested for the 2004 fishing year without exceeding the haddock target TAC or the TAC for the Eastern U.S./Canada Management Area. In order to prevent the TAC from being exceeded, the Regional Administrator will monitor haddock landings and may adjust this possession limit again through publication of a notification in the **Federal Register**, pursuant to § 648.86(a)(1)(iii), if necessary.

Classification

The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is unnecessary and contrary to the public interest. To further delay the elimination of the haddock trip limits is contrary to the public interest because it would unnecessarily result in wasteful discards and prevent the haddock fishery from achieving optimum yield. Moreover, the public had opportunity to comment on the adjustment of haddock trip limits and its consequences at the time the trip limits were implemented.

This action relieves a restriction by eliminating unnecessary daily and maximum trip limits for haddock for the remainder of the 2004 fishing year. These limits were implemented to prevent the target TAC for haddock from being exceeded. The target TAC for haddock has not been exceeded since 1996. Eliminating these restrictions would allow the fishing industry to harvest at least 75 percent of the target TAC for haddock during the 2004 fishing year. Further, eliminating these restrictions would allow vessels to possess and land haddock in excess of the daily and maximum trip limits, thereby preventing biological waste and providing an opportunity to offset some of the adverse economic impacts resulting from the implementation of Amendment 13 to the NE Multispecies FMP. Therefore, because this rule relieves a restriction pursuant to 5 U.S.C.553(d)(1) of the Administrative Procedure Act, the Assistant Administrator for Fisheries, NOAA, waives the 30–day delay in effectiveness date for this final rule.

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

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

Dated: May 7, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–10805 Filed 5–7–04; 3:38 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 93
Thursday, May 13, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 126

RIN 3245–AF13

HUBZone Program

AGENCY: Small Business Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The U.S. Small Business Administration (SBA) is seeking comments on an issue involving the Historically Underutilized Business Zone (HUBZone) Program and agricultural commodities purchased by the U.S. Department of Agriculture (USDA). According to the Small Business Act, in the case of a contract for the procurement by the USDA of agricultural commodities, a qualified HUBZone Small Business Concern (SBC) may not purchase the commodity from a subcontractor if the subcontractor will supply the commodity in substantially the final form in which it is to be supplied to the Government. The SBA is seeking comments on how to define ''substantially the final form'' with respect to this statutory requirement.

In addition, on January 28, 2002, the SBA proposed amendments to its regulations that implement the HUBZone Program. SBA believes that one issue in the proposed rule merits further public comment. This issue, which is addressed in this Advance Notice of Proposed Rule Making (ANPRM), relates to a provision in the proposed regulation that defined the term ''employee.''

This ANPRM and request for comments are intended to stimulate dialogue on these two issues.

DATES: All interested parties are invited to submit written comments. Comments must be received on or before July 12, 2004.

ADDRESSES: Mail written comments to Michael P. McHale, Associate Administrator for the HUBZone Program (AA/HUB), 409 3rd Street, SW., Washington, DC 20416, via facsimile (202) 205–7167, or submit them via e-mail to *hubzone@sba.gov.* You may also submit comments electronically to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Michael P. McHale, AA/HUB, (202) 205–8885 or *hubzone@sba.gov.*

SUPPLEMENTARY INFORMATION: The HUBZone Program was established pursuant to the HUBZone Act of 1997 (HUBZone Act), Title VI of the Small Business Reauthorization Act of 1997, Public Law 105–135, enacted December 2, 1997. The purpose of the HUBZone Program is ''to provide for Federal contracting assistance to qualified HUBZone small business concerns.'' 15 U.S.C. 657a(a).

On January 28, 2002, the U.S. Small Business Administration (SBA) published a proposed rule (67 FR 8739) to address amendments to the HUBZone Act made by the Small Business Reauthorization Act of 2000 (Reauthorization Act). Those amendments included provisions affecting the eligibility requirements for small business concerns owned by Native American Tribal Governments and Community Development Corporations, and the addition of new HUBZone areas called redesignated areas. The proposed rule addressed these statutory amendments, clarified several regulations, and made some technical changes, including changes to Web site addresses.

The proposed rule also addressed the statutory amendments made by the Reauthorization Act regarding agricultural commodities purchased by the U.S. Department of Agriculture (USDA). The amendment provides that, in connection with a USDA HUBZone procurement of agricultural commodities, or an unrestricted procurement for such commodities in which a qualified HUBZone SBC seeks a price evaluation preference, a qualified HUBZone SBC prime contractor may not purchase a commodity from a subcontractor if the subcontractor will supply the commodity in substantially the final form in which it is to be supplied to the Government. 15 U.S.C. 632(p)(5)(A)(i)(III)(cc). The Reauthorization Act defines ''agricultural commodity'' as having the same meaning as in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602). According to 7 U.S.C. 5602, an ''agricultural commodity'' means any agricultural commodity, food, feed, fiber, or livestock (including livestock and insects), and any product thereof.

These statutory provisions were intended to address a perceived inequity that could result due to application of the HUBZone price evaluation preference. Because offers for commodities tend to fall within a narrow range of prices, application of the HUBZone 10% price evaluation preference could create a windfall for a small group of HUBZone SBCs that could, after contract award, simply subcontract to purchase the commodity being procured and sell the commodity to the Government at inflated or other than fair and reasonable prices. Congress believed that this scenario is more problematic when the USDA purchases raw products, as opposed to processed ones. With processed commodities, other variables come into play that can increase the range of costs and hence the range of offers, as well as the need to subcontract.

Thus, a qualified HUBZone SBC prime contractor that is awarded a HUBZone contract to supply commodities to the USDA may subcontract unless the subcontractor or vendor supplies the commodity in ''substantially the final form in which it is to be supplied to the Government.'' In other words, the qualified HUBZone SBC may subcontract the requirement, but the HUBZone SBC is expected to ''process'' or somehow change the commodity in some way, rather than merely acting as a pass-through.

SBA is seeking comments addressing the amount or level of processing necessary to satisfy the requirement that the subcontracted product not be in substantially the same form as that supplied to the Government. Specifically, SBA seeks comments relating to whether cleaning, blending, sorting/sizing or bagging a commodity, or any combination of these processes, results in the changed commodity that is contemplated by the statute.

For example, let us assume that the USDA has a requirement for shelled peanuts and a qualified HUBZone SBC bids on the requirement. Which, if any, of the following processes if performed by the HUBZone SBC would sufficiently change the commodity so that it was not in substantially the final form in which

it is to be supplied to the Government: (1) Bagging already cleaned and shelled peanuts; (2) cleaning, sorting and bagging already shelled peanuts; and (3) shelling, cleaning, sorting and bagging peanuts?

In addition, assume that the qualified HUBZone SBC had received a shipment of shelled and bagged peanuts several months ago, before submitting a bid on the USDA's requirement, and that this shipment was now simply part of the qualified HUBZone SBC's inventory. Would a contract to that qualified HUBZone SBC violate the statute?

Similarly, should the blending of grains or the sizing of peas, beans and lentils be considered sufficient processes by themselves to receive a HUBZone price evaluation preference, or would they have to be in conjunction with other processes (*e.g.*, bagging)?

SBA notes that the HUBZone program is designed to create jobs and promote economic development in distressed areas through small businesses. Where a HUBZone firm makes a capital investment in equipment (*e.g.*, bagging equipment) and hires five to ten people to run that equipment, the underlying purposes of the program are being met. The question becomes whether capital investment and job creation generally should have any effect on whether the HUBZone price evaluation preference should be applied.

SBA invites comments on this issue regarding agricultural commodities, including: (1) Comments specifically addressing the examples set forth above; (2) other examples pertinent to the issue; (3) comments on definitions for ''substantially the final form in which it is to be supplied to the Government;'' (4) any other comments relating to the purchase of commodities by the USDA and the HUBZone program; (5) whether SBA needs to define or address the difference between producer and manufacturer as it relates to the purchase of agricultural commodities; and (6) whether SBA should redefine the term subcontract as it relates to agricultural commodities, and if so, how.

In the same proposed rule, SBA also proposed to amend the definition of the term ''employee.'' Currently, the regulations provide that an ''employee'' of a concern includes ''full-time equivalents.'' SBA proposed removing the provision concerning ''full-time equivalents'' because SBA believes it is confusing. Instead, SBA proposed a definition that would allow persons employed on a full-time or part-time basis to be considered employees of the concern. The rule also stated that SBA would use a ''totality of circumstances'' analysis to determine whether a person is an employee. The proposed definition is similar to the one used for size, set forth in part 121 of SBA's regulations.

Relatedly, SBA proposed allowing leased or temporary employees to be counted as employees of the concern for purposes of HUBZone eligibility. It is believed that such employees comprise approximately 2–5% of the U.S. work force. Further, small businesses employ approximately 40% of these types of workers. SBA believes that counting leased, temporary and part-time employees as employees for HUBZone eligibility would fulfill the statutory purpose and intent of the HUBZone Act by providing more job opportunities for HUBZone residents, albeit temporary or part-time.

The proposed definition of the term ''employee'' also stated that volunteers would not be counted. The proposed rule defined a volunteer as a person who receives no compensation for work performed. SBA intended the term compensation to be read broadly and to encompass more than wages. Thus, a person who receives food, housing, or other non-monetary compensation in exchange for work performed would not be considered a volunteer under that proposed regulation. SBA believes that allowing volunteers to be counted as employees would not fulfill the purpose of the HUBZone Act—job creation and economic growth in underutilized communities.

SBA received three comments expressing concerns over the proposed definition of employee. One commenter believed the proposed rule could cause a large-scale shift of workers from full-time equivalent to leased or part-time status with reduced benefits. Another commenter asserted that this change would weaken the nexus between participating firms and the HUBZone areas. In addition, one commenter expressed concern that companies could intentionally exploit the change and hire temporary employees for the sole purpose of obtaining HUBZone certification, or to receive HUBZone contracts. One commenter recommended that, to prevent such abuse, the definition of employee should include a requirement that a certain percentage of HUBZone employees must be paid the same as, or have the same classifications as, non-HUBZone employees. Another commenter believed that an individual should be required to work a certain number of hours before he or she is counted as an employee for the purpose of the 35% HUBZone residency requirement, registering a concern that a company could circumvent the 35% requirement by hiring various HUBZone residents to work one, two or some other number of minimum hours per week. We believe that the approach suggested by this commenter makes sense, and ask for comments as to what minimum number of hours an employee should work to count in determining compliance with the 35% residency requirement.

One commenter stated that using a totality of circumstances test to determine whether part-time employees are bona fide employees and permitting non-monetary compensation to be relevant in the calculation invites arbitrariness. Another commenter stated that the definition of volunteer was too narrow.

Meanwhile, several commenters believed that the proposed rule would create more job opportunities for HUBZone residents and agreed that leased and temporary employees represent a substantial portion of today's workforce. One commenter alleged that several firms are using the current exemption for leased and temporary employees to qualify for the program by claiming only a few employees, when in reality, they have many employees, all of whom are leased and very few of whom live in HUBZone. One commenter supported the proposed rule, but suggested that SBA expand the definition to allow employees of co-employer arrangements to be treated as employees of a HUBZone SBC.

In light of the foregoing, SBA believes it needs further input from the public on the definition of the term ''employee'' for HUBZone Program purposes. Specifically, SBA encourages comments addressing: (1) Why part-time employees should not be included as ''employees;'' (2) the impact of including leased and temporary employees as ''employees;'' (3) whether SBCs understand and properly calculate full-time equivalents; (4) whether employees from co-employer arrangements should be treated as ''employees;'' and (5) any other issue relevant to the definition of ''employee'' for HUBZone program purposes.

Comments on any other aspect of the HUBZone Program are also welcome. SBA reminds commenters that all submissions by commenters are available to the public upon request.

Dated: May 6, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–10853 Filed 5–12–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. FHWA–2001–11130]

RIN 2125–AE29

Work Zone Safety and Mobility

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); request for comments.

SUMMARY: The FHWA proposed in an earlier notice of proposed rulemaking (NPRM) to amend its regulation that governs traffic safety and mobility in highway and street work zones. In response to this NPRM, the FHWA received several comments that raised concerns about the flexibility and scalability in the implementation of the provisions of the proposed rule. The FHWA believes that these comments raise valid points, and has decided to issue this supplemental notice to address the comments received in response to the NPRM.

DATES: Comments must be received by June 14, 2004.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, or submit electronically at *http://dmses.dot.gov/submit* or fax comments to (202) 493–2251. Alternatively, comments may be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov.* All comments must include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Scott Battles, Office of Transportation Operations, HOTO–1, (202) 366–4372; or Mr. Raymond Cuprill, Office of the Chief Counsel, HCC–30, (202) 366–0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code for Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site. An electronic copy of this document may also be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's Home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

Pursuant to the requirements of section 1051 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), (Pub. L. 102–240, 105 Stat. 1914; Dec. 18, 1991), the FHWA developed a work zone safety program to improve work zone safety at highway construction sites. The FHWA implemented this program through non-regulatory action by publishing a notice in the **Federal Register** on October 24, 1995 (60 FR 54562). This notice established the National Highway Work Zone Safety Program (NHWZSP) to enhance safety at highway construction, maintenance and utility sites. In this notice, the FHWA indicated the need to update its regulation on work zone safety (23 CFR 630, subpart J).

As a first step in considering amending its work zone safety regulation, the FHWA published in the **Federal Register** an advance notice of proposed rulemaking (ANPRM) on February 6, 2002, at 67 FR 5532. The ANPRM solicited information on the need to amend the regulation to better respond to the issues surrounding work zones, namely the need to reduce recurrent roadwork, the duration of work zones, and the disruption caused by work zones. We received several comments in response to the ANPRM.

As a result of the comments received on the ANPRM, the FHWA published a notice of proposed rulemaking (NPRM) on May 7, 2003, at 68 FR 24384 to facilitate consideration of the broader safety and mobility impacts of work zones in a more coordinated and comprehensive manner.

The primary message that the NPRM conveyed was that the trends of increased road construction, growing traffic, increased crashes, and public frustration with work zones call for a more broad-based understanding, examination, and management of the safety and mobility impacts of work zones. The provisions proposed in the NPRM were intended to facilitate consideration and management of the broader safety and mobility impacts of work zones in a more coordinated and comprehensive manner, starting early in project development and continuing through implementation. These provisions would help State Departments of Transportation (DOTs) meet current and future work zone safety and mobility challenges, and serve the needs of the American people.

The provisions proposed in the NPRM were intended to facilitate consideration and management of the broader safety and mobility impacts of work zones in a coordinated and comprehensive manner across project development stages. While most of the respondents agreed with the intent and the concepts proposed in the NPRM, they identified the need for flexibility and scalability in the implementation of the provisions of the proposed rule. They noted that some of the terms used in the proposed rule were ambiguous and lent themselves to subjective interpretation, and that there was a noticeable negative tone in the proposal. Respondents also commented that the documentation requirements in the proposal would impose time and resource burdens on State DOTs. The FHWA is issuing this SNPRM to address these concerns raised by the respondents.

Work zone safety and mobility issues, and the need to update 23 CFR 630, Subpart J, were discussed in the NPRM around the following three key themes:

(1) Work Zone Safety and Mobility Issues and Trends

- *More Work Zones.* Work zones are a necessary part of meeting the need to maintain and upgrade our aging highway infrastructure. With most of our highways at or near the end of their

service life, system preservation (resurfacing, restoration, rehabilitation, reconstruction) is a key responsibility of transportation agencies throughout the nation and this implies more work zones. Work zones cause safety and mobility impacts on the traveling public, businesses, highway workers, and transportation agencies, resulting in an overall loss in productivity and growing frustration.

• *Growing Traffic Volumes and Congestion.* At the same time, in many locations, traffic volumes continue to grow and create more congestion. As vehicle travel continues to increase significantly faster than miles of roadway, we have a growing congestion problem that is exacerbated by work zones.

• *Work Zone Safety Continues to be a Concern.* Work zone crashes continue to grow, resulting in fatalities and injuries to motorists and highway workers.

• *More Work is being Done Under Traffic and Contractors are under Added Pressure.* Current operating environments require work to be done near moving traffic, placing additional pressure on contractors to expedite construction and minimize disruption by reducing their work hours, compressing their schedules and shifts, and increasing the amount of night work. We need to ensure safety while preserving mobility and also need to be aware of the quality of work implications of such operating circumstances.

• *Customers are Dissatisfied with Work Zones.* In addition to increased road construction, growing traffic, and increases in crashes, our customers have indicated that work zones are one of the major reasons for their dissatisfaction with highway travel. Public frustration with work zones indicates that more effort is required to meet the needs and expectations of the American public.

(2) Need for More Comprehensive Assessment and Management of Work Zone Safety and Mobility Impacts

• The above stated work zone safety and mobility issues and trends indicate that we need to broaden our perspective on work zones, and be more comprehensive in our understanding, assessment, and management of work zone safety and mobility impacts.

• Over the years, highway professionals have devised and implemented several strategies and innovative practices for minimizing the disruption caused by work zones, while ensuring successful project delivery. However, the current and expected level of investment activity in highway infrastructure (a significant portion of which is for maintenance and reconstruction of existing roadways) implies that increasingly, work will be done near traffic. Therefore, it is important that we broaden our understanding of work zone impacts and develop comprehensive mitigation measures that address both work zone safety and mobility.

(3) Current Regulation is Narrow and Outdated

• The current regulation has a broadly stated purpose of providing guidance and establishing procedures to ensure that adequate consideration is given to motorists, pedestrians, and construction workers on all Federal-aid construction projects. However, the content of the current regulation is focused primarily on the development of traffic control plans (TCPs), the operation of work zones on two-lane-two-way roadways, and other provisions that address project responsibility, pay items, training, and process review and evaluation.

• The provisions in the current regulation primarily address the issue of traffic control through the work zone itself. At the time this regulation was written (*i.e.*, at the beginning stages of rehabilitation and reconstruction activity), work zone issues were just emerging. TCPs for work zones are still essential; however, today's environment includes new challenges due to growing congestion, increasing reconstruction and public frustration with work zones. The impacts of work zones may extend to an area much bigger than the actual work area, and may be felt on the corridor on which the work is being performed, adjacent and(or) alternate routes, alternate modes, and the immediate transportation network. In order to be able to address these new challenges, we need to clearly understand the broader safety and mobility impacts of work zones, and appropriately adopt additional strategies for sustained transportation management and operations, performance measurement and assessment, and public information and outreach.

The FHWA published an NPRM on May 7, 2003, that proposed to facilitate assessment of the broader safety and mobility impacts of work zones in a coordinated and comprehensive manner across project development stages, and development of broader transportation management strategies to minimize these work zone impacts.

The NPRM proposed several key provisions, which were intended to bring about a change in how highway projects are planned, designed and built, so as to account for the safety and mobility of the traveling public and the safety of highway workers. These proposals included the following:

(1) Change the title of 23 CFR 630, Subpart J to ''Work Zone Safety and Mobility.''

(2) Change the structure of the regulation to include separate ''Policy Level'' and ''Project Level'' provisions, with a clear connection between the two levels.

(3) Allow State transportation departments (hereinafter referred to as ''States'') to develop and adopt work zone safety and mobility policies. These policies would support the systematic consideration of the safety and mobility impacts of work zones during project development; and address the safety and mobility needs of all road users, workers, and other affected parties on Federal-aid highway projects.

(4) Retain the current ''Training'' requirement, and expand it to include transportation management in addition to traffic control related training.

(5) Modify the current ''Process Review and Evaluation'' requirements to provide flexibility to States with regard to the conduct of the reviews, and the frequency and the type of reviews.

(6) Allow States to analyze work zone crash data to correct deficiencies on projects, and to continually improve work zone practices and procedures. This would also encourage States to collect and analyze work zone mobility data.

(7) Allow States to conduct work zone impacts analysis during project development to better understand individual project characteristics and the associated work zone impacts. This would facilitate better decisionmaking on alternative project options and design strategies, and the development of appropriate work zone impact mitigation measures.

(8) Allow States to develop Transportation Management Plans (TMPs) for projects as determined by the State's policy and the results of the work zone impacts analysis. A TMP would include requirements for a TCP, and if necessary for the project, a Transportation Operations Plan (TOP) and a Public Information and Outreach Plan (PIOP).

(9) Include provisions that would allow States to be more creative and performance oriented in their procurement processes by allowing flexibility to choose either method-based or performance-based specifications for their contracts. In the case of method-based specifications,

this would require unit pay items for implementing the TCP.

Why Are We Issuing This SNPRM?

We received a substantial number of comments (62 total respondents) in response to the NPRM from both the public sector and private industry. While most of the respondents agreed with the intent and the concepts proposed in the NPRM, they recommended that the proposed provisions be revised and altered so as to make them practical for application in the field. The four major issues that the respondents raised are as follows:

(1) The need for State flexibility and scalability in the implementation of the provisions of the proposed rule.

(2) Some of the terms used in the proposed rule are ambiguous and lend themselves to subjective interpretation.

(3) The negative tone in the proposal with respect to the current state of work zone safety and mobility in general.

(4) The documentation requirements in the proposal would impose additional time and resource burdens on State Departments of Transportation (DOTs).

The issues raised by the respondents made it clear that the language as proposed in the NPRM was inadequate for real-world application. Therefore, in this SNPRM we are proposing to revise the regulatory language to reflect the following three key changes.:

(1) We propose to remove and clarify ambiguous terminology, and make the provisions more positive sounding.

(2) We propose to reorganize the content and soften and clarify the language, and provide clear explanation of the intent of the provisions.

(3) We propose to provide for appropriate room and flexibility to States to address the most critical issues of flexibility, scalability, and documentation needs.

We believe that we have addressed all comments received in response to the NPRM that are within the scope of this rulemaking, and the need to broaden the current thinking with respect to preserving the safety and mobility of our transportation system when performing work on our highways.

Summary Discussion of Comments Received on the NPRM

The following discussion provides an overview of the comments received in response to the NPRM. While this section provides an overview, the next section provides a detailed analysis and discussion of the comments on specific sections of the NPRM, along with and FHWA's proposed resolution.

Profile of Respondents

We received a total of 62 responses to the docket. About 61 percent of the respondents were from the public sector or represented public sector interests, 26 percent of the respondents were from the private sector or catered to private sector interests, 10 percent of the respondents represented both public and private sector interests, while the remaining 3 percent did not indicate their affiliation.

The break up of the agency types of the different respondents present the following statistics: About 59 percent of the respondents belonged to DOTs (either State or local); 3 percent of the respondents were contractors; 6 percent of the respondents were either private individuals or consultants; 6 percent of the respondents represented private sector equipment/technology providers; 23 percent of the respondents represented trade associations and special interest groups, including the American Traffic Safety Services Association (ATSSA), the American Road Transportation Builders Association (ARTBA) and the Associated General Contractors (AGC) of America; and 3 percent of the respondents did not indicate their agency affiliations.

The respondents represented a good cross-section of job categories, ranging from all aspects of DOT function, to engineering/traffic/safety/design, to construction and utilities.

The American Association of State Highway and Transportation Officials (AASHTO) provided a consolidated response to the NPRM on behalf of its member States. Several State DOTs provided their responses through AASHTO's response, while others submitted their comments individually. In general, AASHTO indicated that it fully supports the goals of increased safety and mobility throughout our Nation's work zones, but that some of the mandatory provisions in the proposed NPRM language would impose additional time, resource and financial burdens on the States and restrict their ability to perform their responsibilities effectively within the available constraints.

Overall Summary of Comments

This discussion provides a summary of the comments on the NPRM, and provides an overview of what the FHWA proposes to do in response.

Overall Position of Respondents. About 32 percent of the respondents generally supported the provisions proposed in the NPRM, about 60 percent of the respondents agreed with the intent and the concepts but did not agree with many of the mandatory provisions, about 2 percent of the respondents were neutral, and the position of the remaining 6 percent of the respondents was unclear.

Of the 32 percent respondents who were supportive, 3 percent belonged to DOTs, 2 percent were contractors, 3 percent were private individuals and consultants, 6 percent were equipment/technology providers, and 18 percent were from trade associations/special interest groups. These respondents were not necessarily supportive of all the provisions in the individual sections, but rather their overall position on the NPRM was supportive. In fact, many of these respondents provided suggestions on modifications and revised language for specific provisions as they deemed appropriate.

For example, the Maryland State Highway Administration (MD–SHA) concurred with most provisions as proposed in the NPRM, and with the increased emphasis on consideration of work zone safety and mobility during all phases of project development, while providing specific recommendations for changing the language in some of the sections. For instance, they suggested that we include examples of ''other affected parties'' in § 630.1002, ''Purpose.''

Of the 60 percent of respondents who agreed with the intent and concepts proposed but did not agree with the mandatory provisions, 55 percent belonged to DOTs, 2 percent were contractors, 2 percent were from trade associations/special interest groups, and the remaining 1 percent did not indicate their agency affiliation. These respondents expressed support for the intent and general concepts proposed, but also indicated that blanket mandatory requirements should not be imposed to achieve the desired results. For example, many DOTs and the AASHTO commented that the provisions proposed under § 630.1012(b)(1), ''Work Zone Impacts Analysis'' should be provided as guidance as to what a work zone impacts analysis may entail, rather than requiring all the activities to be performed for all projects.

The overall position of the respondents clearly indicates that the majority of the respondents are supportive of the intent and concepts proposed in the NPRM, but they do not support mandatory requirements. Therefore, in this SNPRM we propose to alter the provisions in order to remove certain mandatory requirements that are overly restrictive. For example, in the SNPRM regulatory language, we are

proposing to remove the mandatory requirement for conducting a work zone impacts analysis which was proposed in § 630.1012(b)(1) of the NPRM. We are instead proposing to embed the work zone impacts analysis in the proposed requirement for a TMP. The regulatory language that was proposed for the work zone impacts analysis in the NPRM is now proposed to be provided as guidance for DOTs as to how work zone impacts analysis may be conducted for individual projects.

The major issues raised by the respondents are discussed in the following paragraphs.

Need for State flexibility and scalability in the implementation of the provisions of the proposed rule. In general, many of the respondents indicated that the provisions of the proposed rule need to be flexible enough for States to be able to apply them appropriately to the different types of projects located in a wide range of areas. Such flexibility would eliminate additional efforts, resources, and time that may not always be required for smaller projects.

For example, the State DOTs of North Dakota, South Dakota, Nebraska, Montana and Idaho commented that the rule needs to differentiate between provisions for ''metropolitan'' and ''rural'' areas. They cited that the costs and efforts involved in implementing some of the mobility related provisions will be too prohibitive to justify any benefits in rural areas. Similarly, several States also indicated that the rule needs to distinguish between provisions for ''congested'' and ''non-congested'' areas. Further, several respondents indicated that short-term and maintenance/utility type work zones are not very clearly addressed in the NPRM, such as, providing waivers for maintenance/short-term work zones from the provisions in § 630.1012(b)(1), ''Work Zone Impacts Analysis,'' and § 630.1012(b)(2), ''Transportation Management Plan (TMP).''

The FHWA understands the need for such flexibility, which is why the proposed provisions in the NPRM were written in general terms which would allow States to customize the provisions according to their unique operating environments and individual project needs. For example, in § 630.1012(b)(1), ''Work Zone Impacts Analysis,'' of the NPRM, the language states that the scope and level of detail of the impacts analysis will vary based on the States' policies, and their understanding of the anticipated severity of work zone impacts due to the project. It also provides that if the State determines that a project is expected to have minimal sustained work zone impacts, they may exempt the project from the impacts analysis. However, the language when put in context with the remaining provisions in the section did not clearly indicate that States may exempt specific types of projects from the impacts analysis by providing policy level waivers for those projects. The FHWA proposes to remove the mandatory need for an impacts analysis, which is embedded indirectly in the TMP section of this proposal. We have included such flexibility (where appropriate) in all other sections of this proposal, which are discussed in detail in the following section.

Some of the terms used in the proposed rule are ambiguous and lend themselves to subjective interpretation. There was an overwhelming observation by many respondents that some of the terms used in the proposed rule are very ambiguous and that they lend themselves to subjective interpretation. The AASHTO and several DOTs further added that these terms, when used in the context of the proposed provisions, leave the States open to potential liability. Some of the ambiguous terminology includes, ''other affected parties,'' which is cited in §§ 630.1002(a), 630.1006, and 630.1008 of the NPRM; the terms ''assure'' and ''ensure,'' which are cited in §§ 630.1004, 630.1008, and 630.1012(b)(2)(iii)(A); the term ''adequate,'' which is cited in §§ 630.1002(a), 630.1012(b)(2)(iii)(b); and the term ''workers,'' which is cited in §§ 630.1002(a) and 630.1006. Further, several respondents also indicated that it is impossible to always consider ''all road users'' in conducting the impacts analysis and developing TMPs. Several respondents also commented on the intent of the term ''encourage,'' which is used many times in the proposed rule.

The FHWA agrees with the above observations, and we have either eliminated or clarified these and other ambiguous terms. The details of these revisions are provided in the Discussion of Comments section.

There is a noticeable negative tone in the proposed regulatory language, with respect to the current state of work zone safety and mobility in general. Several respondents, especially DOTs, feel that the language proposed in the NPRM conveys a ''negative tone'' about the current state of work zone safety and mobility and seems to imply that DOTs are not taking enough efforts to address these issues. Therefore, they recommend that we remove the ''negative tone'' from the document.

The FHWA would like to clarify our position because we do not mean to imply that the efforts of State DOTs are inadequate, but rather, that the provisions in the current regulation are inadequate to meet current and future work zone safety and mobility issues. We are of the opinion that we need to act now and correct the regulations so that we can meet our responsibility of providing to the American public a safe and efficient transportation system. We have made an attempt to remove any phraseology that conveys a ''negative tone'' in this supplemental notice.

For example, in § 630.1004, ''References'' of the NPRM, there is language which implies that the Manual On Uniform Traffic Control Devices (MUTCD)[1] does not address all the actions that should be taken to mitigate safety and mobility impacts of work zones. This provides a connotation that the MUTCD is inadequate or incomplete in its standards and guidance. In response, we propose to remove that section, and relocate the language and make it more positive sounding. Throughout this proposal, we have made several such changes which are discussed in detail in the Discussion of Comments on individual sections of the NPRM.

The documentation requirements in the proposal would impose additional time, resource, and financial burdens on States. Several respondents, primarily State DOTs and the AASHTO commented that additional documentation requirements for work zone planning, assessment and implementation activities would place excessive time, resource, and financial burdens on the States, and may divert money and effort from the actual implementation of projects.

For example, the Florida Department of Transportation (FDOT) commented that the FHWA should partner with individual States in the review of the State's work zone practices and offer suggestions for improvements rather than create more plans, documents, and data, which may require the creation and maintenance of databases and files.

The FHWA agrees. Our intent was for States to document their decisionmaking steps and rationale during project development, so that they may use that information to ensure smooth and effective project delivery, and as valuable input for planning,

[1] The MUTCD is approved by the FHWA and recognized as the national standard for traffic control on all public roads. It is incorporated by reference into the Code of Federal Regulations at 23 CFR part 655. It is available on the FHWA's web site at *http://mutcd.fhwa.dot.gov* and is available for inspection and copying at the FHWA Washington, DC Headquarters and all FHWA Division Offices as prescribed at 49 CFR part 7.

designing and implementing future projects of the same kind. Such formalized documentation and recordkeeping may actually serve as valuable lessons learned that will expedite decisionmaking and delivery on future projects. Nevertheless, we understand that such documentation may not always be practical for all situations and projects, and therefore, we have made changes to the provisions being proposed in this supplemental notice eliminating the requirement for formalized documentation and recordkeeping. Referring back to the impacts analysis example, we have eliminated the mandatory requirement for conducting a work zone impacts analysis for all projects, as proposed in the NPRM at § 630.1012(b)(1), ''Work Zone Impacts Analysis.''

Need for additional FHWA clarification, guidance, training, and education in the implementation of the proposed rule. Several respondents, both from the public and private sectors, commented that the FHWA would have to provide additional clarification on the intent and application of some of the proposed provisions. Further, they also cited that it would benefit practitioners greatly if the FHWA were to provide training and educate practitioners on the many new proposed concepts and requirements in the new rule.

Specifically, the AASHTO noted that the lack of clarity in some of the provisions increased the potential for inconsistent application of the proposed rule by the FHWA Division Offices from State to State.

Several respondents cited the need for FHWA guidance on project classification (small, medium, and large) as applicable to work zone impacts—either in separate guidance documents or in the regulation itself. Subsequently, respondents indicated that the FHWA should develop performance requirements for projects and work zones of different types.

Respondents also indicated that the FHWA should provide additional guidance as to what ''work zone impacts analysis'' would entail, and that a ''pilot'' program or project should be developed to test these rules.

The contracting community raised several concerns about the application of ''performance specifications,'' because the use of performance specifications is in a very nascent stage and that currently available technical information and guidance on this topic is very limited.

In specific response to the lack of clarity in some of the provisions that were proposed in the NPRM, we have clarified the language, and have attempted to provide concise explanations for the modified language that we are proposing in this notice. Although, we are limited by the need for brevity and directness in the rule language. We have provided clear explanations on the implications of the proposed provisions in the preamble. These explanations may be found in the Discussion of comments section which discusses specific comments and the FHWA's proposed resolution on the different sections.

The provisions proposed in the NPRM do not address safety. Several respondents, primarily from the private sector, commented that even though the purpose of the new rule is to address both safety and mobility, the provisions do not seem to emphasize the importance of safety. Most private sector respondents including, the AGC, the ARTBA, and the ATSSA, and some contractors and consultants noted that safety should not be compromised for motorist convenience and mobility. Contractors and the private sector also see ''higher speeds'' as a natural outcome of improvement in mobility, thereby giving them the impression that safety will eventually be compromised. They did not provide any specific recommendations for modification, but generally feel that there is a strong overtone of mobility in the proposal.

In response to this concern, we would like to assert that maintaining safety is the primary mission of the FHWA, and saving lives and reducing crashes are some of our critical objectives. The provisions proposed in the NPRM were intended to re-emphasize the importance of both traffic and worker safety and, at the same time, convey the notion that preservation of mobility, and construction efficiency and quality are vital to ensuring that we meet the needs of the traveling public during highway construction projects, and provide for a safe and efficient transportation system.

We believe that ''safety'' and ''mobility'' are inextricably linked, and that improvement in safety leads to improvement in mobility and vice-versa. For example, improvement in safety reduces the occurrences of traffic incidents, which reduces the resultant incident induced traffic congestion and delays. Similarly, the preservation of mobility and smooth traffic flow, reduces speed variations and thereby reduces the risk of crashes. It is generally accepted that the probability of crashes increases under heavy traffic conditions due to decrease in maneuverability and increases in motorist agitation and frustration, and therefore improvement in mobility, will also lead to preservation of safety.

Further, we would like to note that improvement in mobility does not automatically translate to ''higher operating speeds,'' which may lead to crashes. Improvement in mobility simply means the reduction of drastic delays, congestion, and dead-stops as a result of work zones. What we mean by improvement in work zone mobility, is providing for motorists to pass through the work zone at or below the posted speed limit for the work zone without experiencing any intolerable work zone induced delays or congestion. Nevertheless, in the provisions that we are proposing in this supplemental notice, we have made an attempt to further emphasize the importance of traffic control, and also recognize it as the most important component of the TMP. Further, the transportation operations (TO) and public information (PI) components that we are proposing as part of the TMP also provide for sustained monitoring and management of work zone safety from an operational perspective and enhance the overall safety of the work zone.

Discussion of Comments on Specific NPRM Sections and Proposed FHWA Resolution

Overview of the Organization of This Section

This section consists of a detailed discussion on the comments received to specific NPRM sections and the proposed FHWA resolution in response to these comments. For each section that was proposed in the NPRM, the following information is presented:

- Percentage breakdown of the position of the respondents with regards to the provisions proposed in that section;
- Major issues cited by the respondents—both public sector (primarily DOTs and the AASHTO) and private sector (private individuals, consultants, trade associations); and
- Proposed FHWA action in response to the comments and explanation of the provisions being proposed in the SNPRM.

The following paragraphs show percentages of the position of respondents, categorized by their respective agency types. For example, Supportive—50 percent, Oppose—10 percent, Don't Mandate—20 percent, Neutral—10 percent, Unclear—5 percent, and No Response—5 percent. The purpose of presenting the NPRM responses along the lines of percentages is not to assign statistical significance to the responses, but to present a general cross-section of the responses, and to present a general idea of the

respondents' position on different issues.

The rationale for assigning the different position statements is explained as follows:

- Supportive—If it is explicitly stated by the respondent, or it is apparent from the respondent's comments or tone.
- Oppose—If the respondent is explicitly opposed to the provisions, or it is apparent from the respondent's comments or tone.
- No Mandate—This is when the respondent supports the provision, but does not think that it should be mandated, but rather it should be provided as guidance.
- Neutral—If the respondents do not explicitly indicate whether they are supportive or opposed, but they do have some general comments which indicate the respondents' understanding of the proposed provisions. As a general rule, respondents whose position is marked as neutral may actually be supportive of the provisions, but since their position is not very clear from their comments, we assigned their position as neutral.
- Unclear—A respondent's position is assigned as unclear when his/her comments do not necessarily lend themselves to making a conclusive inference about what his/her position is. Sometimes, respondents either do not completely understand the provision, or they initiate a discussion, or address a subject outside the scope of this rulemaking.
- No Response—When the respondent has not provided specific comments on that particular section, or when the respondent's general feeling about that particular issue cannot be ascertained from his/her overall comments, or comments on other issues, we do not assign a specific response to that position.

Section 630.1002, Purpose

- In general, the majority of the respondents supported the proposed language in this section. About 66 percent of the respondents were supportive, 2 percent were neutral, and the remaining 32 percent did not provide a specific response to this section.
- Major issues cited by the respondents. Public sector agencies indicated the need to clarify the terminology used, such as, ''assure,'' ''adequate consideration,'' ''all road users,'' ''workers,'' and ''other affected parties.'' They also suggested that we combine paragraphs (a) and (b) and remove the negative tone from the language. Private sector respondents also indicated the need to clarify and better define the terminology.
- Proposed FHWA action in response to the comments, and overview of the provisions being proposed in the SNPRM. We propose to clarify the language and remove the above cited subjective terminology to remove ambiguity. We propose to combine paragraphs (a) and (b) and remove the ''negative tone'' from the language. We also propose to combine the MUTCD reference from § 630.1004, ''References'' of the NPRM, and remove the ''negative tone'' from the language. We also propose to reorganize the content to directly convey the purpose of this regulation. We propose to add language that promotes the idea of systematic consideration and management of the work zone impacts of projects.

Section 630.1004, References

- Percentage breakdown of the position of the respondents with regards to the provisions proposed in this section. In general, a majority of the respondents supported the proposed language in this section. About 55 percent of the respondents were supportive and the remaining 45 percent did not provide a specific response to this section.
- Major issues cited by the respondents. Most respondents commented that they support this section, and the reference to the MUTCD. However, they suggested that it be revised to remove the ''negative tone''.
- Proposed FHWA action in response to the comments, and overview of the provisions being proposed in the SNPRM. We propose to modify the rule outline for clarity and simplicity. Therefore, we propose to delete section § 630.1004 and incorporate the main essence of the language in the preceding section, § 630.1002, ''Purpose.''

Section 630.1006, Definitions and Explanation of Terms

- The majority of the respondents supported the proposed language in this section. About 63 percent of the respondents were supportive, 2 percent were opposed, 1 percent did not agree with mandatory provisions in this regard, 2 percent were neutral, and the remaining 32 percent of the respondents did not provide a specific response to this section.
- Major issues cited by the respondents. Most respondents suggested that we modify existing definitions to clarify terminology and to make them more complete. Several State DOTs and the AASHTO suggested that we add some new definitions, such as, ''other affected parties,'' and ''highway workers.'' Private sector respondents noted the need to define ''Work Zone Mobility'' and ''Internal Traffic Control Plan.''
- Proposed FHWA action in response to the comments, and overview of the provisions being proposed in the SNPRM. We propose to remove the definition for Public Information and Outreach Plan (PIOP), because we do not require a PIOP in the proposed rule. We propose to change the TCP to Temporary Traffic Control (TTC) Plan to be consistent with the most recent edition of the MUTCD. We propose to remove the TMP definition from this section and include it in the TMP provisions in § 630.1012(a), because it is referenced only once in the rule. We propose to remove the TOP definition, becuase we do not require a TOP in the proposed rule. We propose to retain the definition for ''Work Zone,'' and to update it to be consistent with the most recent edition of the MUTCD. We propose to retain the definitions for ''Work Zone Crash,'' and ''Work Zone Impacts.'' We also propose to add definitions for, ''Highway Workers,'' ''Mobility,'' and ''Safety.'' We do not propose to include a definition for ''Internal Traffic Control Plan.'' Even though internal traffic control plans are important for worker safety, we believe that it is not an issue that is under the purview of this regulation.

Section 630.1008, Policy

- A majority of the respondents supported the proposed language in this section. About 56 percent of the respondents were supportive, 2 percent were opposed, 2 percent did not agree with mandatory provisions in this regard, 3 percent were neutral, and the remaining 37 percent of the respondents did not provide a specific response to this section.
- Major issues cited by the respondents. While most respondents were either supportive of the section or did not provide any specific comments, they did suggest that we clarify the terminology, such as, ''other affected parties,'' ''assure,'' and ''consistent with.'' Private sector respondents suggested the idea of making this regulation applicable to the National Highway System (NHS) as well as utility and maintenance operations.
- Proposed FHWA action in response to the comments, and overview of the provisions being proposed in the SNPRM. Though we did not receive substantial negative reaction to this section, in reviewing all the comments in response to the NPRM, and modifying the language for this SNPRM, we determined that this section is redundant. Therefore, we propose to

eliminate this section to incorporate the concepts of the language removed in the proposed § 630.1006, ''Work zone safety and mobility policy.''

Section 630.1010, Implementation

• Percentage breakdown of the position of the respondents with regards to the provisions proposed in this section. A majority of the respondents supported the proposed language in this section. About 53 percent of the respondents were supportive, 6 percent were opposed, 2 percent did not agree with mandatory provisions in this regard, 3 percent were neutral, and the remaining 36 percent of the respondents did not provide a specific response to this section.

• Major issues cited by the respondents. The State DOTs and the AASHTO remarked that this section should be rewritten to clearly indicate that any FHWA review of State activities beyond that required to ensure compliance with the rule is nonbinding on the State. They also suggested that we clarify vague terms like ''appropriate actions,'' and ''results intended.'' Further, they observed that the first and second sentences seem to contradict each other, and that there are no defined goals for a State's efforts to be measured and deemed a success. Private sector respondents commented that we need to clarify the use of the term ''assure,'' and that the FHWA review of revisions in established policies and procedures should be for more than just information purposes.

• Proposed FHWA action in response to the comments, and overview of the provisions being proposed in the SNPRM. We propose to move the implementation section to the end, and make changes to reflect the above comments. The new ''Implementation'' provision is § 630.1014. We propose to remove vague terms like, ''appropriate actions,'' and ''results intended.'' We also propose to remove the term ''assure'' as it is hard to clarify. Many States commented that there are no defined goals for a State's efforts to be measured and deemed a success. Therefore, we propose new language to convey a partnership approach, rather than a strictly regulatory approach to implementing the provisions in the new rule.

Section 630.1012(a), State Transportation Department Policy

• Percentage breakdown of the position of the respondents with regards to the provisions proposed in this section. About 24 percent of the respondents were supportive, 2 percent were opposed, 48 percent did not agree with mandatory provisions in this regard, and the remaining 26 percent of the respondents did not provide a specific response to this section.

• Major issues cited by the respondents. The State DOTs and the AASHTO feel that this section is redundant with § 630.1008, ''Policy'', and that it should be deleted. They suggested that we clarify the language and remove subjective terms, such as ''severity,'' ''all road users,'' ''affected parties,'' and ''departments.'' They are very supportive of the use of a team approach, but indicated that clear definitions are needed, and that more direction is needed on processes, reviews and exemptions.

Private sector respondents were generally supportive of the provisions in this section. They indicated that the regulations need to make clear that the ''work zone safety and mobility policy'' of State DOTs is an internal review process for the State DOT and that it is not subject to validation, confirmation or review by any other public or private organization. They also remarked that we need to clarify the language and provide more guidance to State DOTs in implementing the work zone safety and mobility policies.

With regards to the ''Training'' provisions, the State DOTs and the AASHTO noted that we need to remove the mandatory requirement for training. They also commented that we need to clarify the terminology in this section, such as, ''all persons responsible,'' and ''adequate training.'' They also remarked that this section poses many open ended questions and opens up liability implications. For example, ''is the State responsible for training contractors and consultants''?

Private sector respondents were generally supportive of the ''Training'' provisions, but they indicated the need to eliminate ambiguity and subjectivity in the terminology in using terms like ''adequate'' and ''responsible persons.''

In reference to the process review section, the States were generally pleased with the ''encouraging'' tone and the positive nature of this section, but they requested that we clarify terms such as, ''departments.''

With reference to the ''Performance Data'' section, the States expressed concern that crash data cannot be analyzed quickly enough to make changes to ongoing projects. Additionally, the States commented that the language has a ''negative tone'', and seemed to imply that work zones are always designed to have deficiencies. They also remarked that collection of mobility performance data may be very expensive, and may strain the resources of the States.

Private sector respondents also noted that mobility data collection may be very expensive. They suggested that the FHWA develop guidelines and standards for analysis of safety and mobility data, and provide common benchmarks for reference and analysis, such as guidance or regulations on more uniform data collection and on how the data will be collected, recorded, and analyzed in a standard format. They also suggested that data on worker fatalities and injuries should be collected and analyzed.

• Proposed FHWA action in response to the comments, and overview of the provisions being proposed in the SNPRM. We propose to make the ''Work zone safety and mobility policy'' provision a separate section. We also propose to move the ''Training,'' ''Process review and evaluation,'' and ''Work zone performance data'' provisions to a new section entitled, ''Agency Level Processes.'' This reorganization collects these agency level processes within one section.

We propose to combine the NPRM provisions under § 630.1012(a)(2), ''Training,'' § 630.1012(a)(3), ''Performance review and evaluation,'' and § 630.1012(a)(4), ''Work zone performance data'' into a new section entitled, ''Agency-level processes and procedures.'' We propose to modify the language for these provisions to correspond to the language proposed in the NPRM. We also propose a new provision entitled, ''Impact assessment and management procedures'' under the ''Agency-level processes and procedures'' section.

We believe that we have responded to the State DOTs' concern that crash data cannot be analyzed quickly enough to make changes to ongoing projects, by proposing to remove the related language, and by changing the terminology to require management of the safety and mobility impacts of projects during implementation by using crash data. We propose to remove the negative tone and the implication that work zones are always designed to have deficiencies. We propose to partially adopt the AASHTO's proposed language, to make the wording less negative. We propose to add more detail about data resources/data elements and to explain the benefits of data.

We propose to retain the ''shall'' clause in this section as we believe that it is an essential requirement to help manage safety during project implementation. This is further reinforced by the National Transportation Safety Board (NTSB)

recommendation to the FHWA in ''School Bus Run-off-Bridge Accident, Omaha, Nebraska, October 13, 2001,'' Highway Accident Report, NTSB/HAR–04/01, PB2004–916201, Notation 7610, Adopted February 10, 2004.[2] The NTSB made the following recommendation to the FHWA in this regard:

''Incorporate into the Manual for Uniform Traffic Control Devices the stricter criteria on work zone safety and management contained in the Federal-Aid Policy Guide, 23 Code of Federal Regulations 630 J, Subchapter G-Engineering and Traffic Operations, Part 630-Preconstruction Procedures, Subpart J-Traffic Safety in Highway and Street Work Zones, to include continuously monitoring traffic accident experience in work zones to detect and correct safety deficiencies existing in individual projects. Further, the traffic accident reports necessary to accomplish this should be obtained monthly, directly from local traffic law enforcement agencies. (H–04–01)

In the ''Training'' provisions, we propose to remove the term ''all persons responsible,'' and replace it with ''personnel'' to remove subjectivity from the language. We propose to add personnel responsible for enforcement, in addition to personnel responsible for development, design, implementation, operation, and inspection of work zone related transportation management and traffic control. We also propose to remove the ambiguous phrase, ''adequate training.'' To the second sentence of the training provision, we propose to add language to convey that training updates should reflect changing agency processes and procedures, in addition to changing industry trends.

The AASHTO and most DOTs were generally pleased with the ''encouraging'' tone and the positive nature of the ''Performance review and evaluation section.'' However, the FHWA is charged with the responsibility of making sure that Federal Aid Highway funded projects meet the requirements set forth in Title 23, United States Code, ''Highways'' and accomplish this, in part, through information gathered by the States' periodic process review. Therefore, we propose to change it to a mandatory requirement rather than an encouraging statement. The need to make this requirement mandatory is further emphasized by the recommendations made by the NTSB in its report entitled, ''School Bus Run-off-Bridge Accident, Omaha, Nebraska, October 13, 2001.'' The NTSB made the following recommendation to the FHWA in this regard:

''Require divisional offices to participate in the States'' work zone safety inspections and diligently monitor and evaluate the results of those inspections in conformance with the Federal-Aid Policy Guide, 23 Code of Federal Regulations 630 J, Subchapter G—Engineering and Traffic Operations, Part 630—Preconstruction Procedures, Subpart J—Traffic Safety in Highway and Street Work Zones. (H–04–02)''

However, flexibility is still offered to the States in the conduct of these reviews. We propose to change the term ''departments'' to ''offices.'' We also propose to provide examples for personnel from the different offices within the State DOT. Finally, we propose to add text to indicate what will be done with the results of the review and evaluation.

Section 630.1012(b), Project Impact Analysis and Management Procedures

• Percentage breakdown of the position of the respondents with regards to the provisions proposed in this section. About 18 percent of the respondents were supportive, 1 percent were opposed, 47 percent did not agree with mandatory provisions in this regard, and the remaining 34 percent of the respondents did not provide a specific response to this section.

• Major issues cited by the respondents. The following are the major comments made by the State DOTs and the AASHTO in response to this section:

(1) This section should be guidance and not a mandatory requirement.

(2) The FHWA needs to clarify or delete subjective terms like, ''severity.''

(3) If a requirement is imposed, there should be flexibility for States to exempt projects or classes of projects from the impacts analysis requirement or parts of it.

(4) The individual activities listed under the impacts analysis should not be mandated. Revise the provisions to indicate that they are not always required, but may be appropriate on certain types of projects that meet certain conditions.

(5) In general, most of the State DOTs and the AASHTO agree with the concept of a TMP.

(6) The FHWA needs to rewrite and clarify some of the terms to remove subjectivity and ambiguity.

(7) The three separate plans proposed under the TMP, namely the TCP, TOP and PIOP should not be required, because this increases the documentation requirements. Instead of a TMP with three constituent plans, it would be more efficient to have one integrated TMP which may consist of any or all of traffic control, transportation operations and public information components.

(8) The FHWA needs to make the regulatory language more like guidance than an absolute requirement, especially with respect to the constituent elements of the TMP.

(9) The FHWA needs to remove language that seems to indicate that all the components in the TMP are mandatory, for example, change the phrases, ''transportation operations requirements,'' and ''public information and outreach requirements'' to ''transportation operations strategies,'' and ''public information and outreach strategies.''

(10) The State DOTs and the AASHTO strongly opposed the mandatory unit pay items for individual TCP components, as they believe that State DOTs would lose their flexibility in contracting. These commenters remarked that this section is overly restricting and it takes away from the flexibility in current contracting options available to States. These commenters acknowledged that there needs to be a distinct pay item requirement for the TCP in the Plans, Specifications and Estimates (PS&Es), but there need not always be unit pay items for all the components of the TCP.

The following are the major comments made by private sector respondents:

(1) The FHWA needs to clarify the terminology and revise the language to improve overall readability.

(2) Private companies involved in short duration work zones were very concerned about the need to perform a detailed impacts analysis for small utility/maintenance type projects.

(3) The way the provisions are written, it exposes the States/contractors to legal liability and lawsuits; especially because the impacts analysis is written as a mandatory clause that should account for impacts on all affected parties.

(4) The regulation should make it very clear that the impacts analysis is an internal review process and that it is not subject to review by any private/public entity.

(5) Contractors are skeptical of ''contractor developed TMPs'' and of ''performance based specifications'' because it could increase their liability exposure.

(6) The FHWA needs to indicate that all portions of the TMP should be

[2] National Transportation Safety Board (NTSB) Accident Report, ''School Bus Run-off-Bridge Accident, Omaha, Nebraska, October 13, 2001,'' Highway Accident Report, NTSB/HAR–04/01, PB2004–916201, Notation 7610, Adopted February 10, 2004. This report may be obtained by writing the NTSB at National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, D.C. 20594. An electronic copy may be downloaded at the following URL: *http://www.ntsb.gov/publictn/2004/HAR0401.pdf.*

developed in consultation with contractors and other required entities.

(7) The FHWA needs to try and exempt short duration and emergency work from a PIOP.

(8) The FHWA needs to remove the need for three separate plans and combine them into one integrated TMP with traffic control, transportation operations and public information components. The FHWA should add a note ''for designated projects'' in the regulatory language, to clearly indicate that all three components of the TMP are expected to apply to major projects.

(9) In stark contrast to the sentiments of the public sector, private sector respondents strongly supported unit pay item requirements for individual TCP components because contractors believe that this would ensure a fair playing field, thereby leveling the competition between multiple bidders. They suggested that the FHWA develop model contract specifications, special orders, and unit pricing for safety items that apply to federally supported roadway construction contracts, which they believe will level the playing field for contractors who place a high emphasis on safety. They further suggested that we need to include ''worker safety and health'' requirements in bid specifications. Some private sector respondents, primarily road building industry trade associations and contractors, recommend either regulatory language or guidance on the use of positive separation.

• Proposed FHWA action in response to the comments, and overview of the provisions being proposed in the SNPRM. The following are the major proposed changes in this notice:

(1) We propose to include a new section, entitled ''Significant projects,'' which introduces the concept of projects with significant work zone impacts, and consists of requirements for States to develop and update a list of its significant projects. We propose language to define a significant project as one that, ''alone or in combination with other concurrent projects nearby is anticipated to cause sustained work zone impacts (as defined in § 630.1004 of the proposal) that are greater than what is considered tolerable based on agency policy and/or engineering judgment.'' Identification of significant projects will help stratify the application of TMPs with the TO and PI components only to such significant projects. Such classification of certain projects as significant will also help the State allocate resources more effectively to projects, and apply a systematic approach for identifying, characterizing, and managing work zone impacts.

In the same section on ''Significant projects,'' we also propose to add language that would require States to designate all Interstate system projects that occupy a location for more than three days with either intermittent or continuous lane closures, as significant. We propose to allow exceptions to this requirement, if in the judgment of the State, a specific Interstate system project does not cause sustained work zone impacts. Exceptions may be granted by the FHWA based on the agency's ability to show that the specific Interstate system project does not have sustained work zone impacts.

(2) We propose to retain the concept of the ''Project impact analysis and management procedures'' section, but changed its title to ''Project-level procedures,'' and made it more concise and straightforward. We propose to remove the requirement for conducting a work zone impacts analysis. We propose to retain the requirement to develop TMPs for projects, but clearly indicate that the transportation operations (TO) public information (PI) components of the TMP shall be required only for significant projects (as defined in the ''Significant Projects'' section). We would like to note that the impacts analysis concepts are indirectly embedded into the TMP, wherein, the scope, content, and degree of detail for TMPs may vary based on the State's policy and its understanding of the expected work zone impacts of the project.

(3) The proposed language for the ''Project-level procedures'' section is more concise. We propose to change the term ''TCP'' to ''TTC plan'' to be consistent with the most recent edition of the MUTCD.

(4) As in the NPRM, we propose that the TTC plan be mandatory for all projects, and require that the TTC plan be consistent with Part 6 of the MUTCD. We propose to add language to require TTC plans to be consistent with the work zone hardware recommendations in Chapter 9 of the AASHTO Roadside Design Guide.[3]

We also propose to add language to convey that, while developing and implementing TTC plans, States shall maintain pre-existing roadside safety features at an equivalent or better level than existed prior to project implementation. These additions are a result of the NTSB's recommendations to the FHWA in its report entitled, ''School Bus Run-off-Bridge Accident, Omaha, Nebraska, October 13, 2001.'' The NTSB made the following recommendation to the FHWA in this regard:

> Include in the Manual for Uniform Traffic Control Devices a requirement that, for roadways under construction, traffic safety features (such as barrier systems) be maintained at an equivalent or better level than existed prior to construction. (H–04–03)

(5) We propose to change the terms ''TOP'' and ''PIOP'' to ''Transportation Operations (TO)'' and ''Public Information (PI)'' components, respectively. This is to remove the notion of three separate plans being required for all projects. As mentioned previously, we propose to require the TO and the PI components only for significant projects (as defined in the ''Significant Projects'' section).

(6) In response to the State DOTs' and the AASHTO's concerns regarding ''Pay Items,'' we proposed to remove the mandatory requirement for unit-pay items for the TCP for method-based specifications. The proposed language revisions now require ''a pay-item'' in the Plans Specifications and Estimates (PS&Es) for implementing the TMP, and allows flexibility for States to choose either method-based or performance-based specifications.

In the case of method-based specifications, the proposed language allows flexibility to States in choosing individual pay items, lump sum payment, or a combination of both. For performance-based specifications, we propose to provide examples of safety performance criteria (such as number of crashes within the work zone); and mobility performance criteria (such as travel time through the work zone, delay, queue length, traffic volume; incident response and clearance criteria; and work duration criteria.)

The revisions that we are proposing in this supplemental notice do not necessarily address the private sector's comments on the requirement for unit-pay items for implementing the TTC plan. However, the requirement for ''a pay item'' for implementing the entire TMP, along with the other proposed revisions, would cover the issue of providing for a safe work zone and ensure that all contractors are provided an equal opportunity to bid on all projects without compromising on safety aspects of the project. We believe State DOTs know when to use unit pay

[3] ''Roadside Design Guide,'' 3d Ed., 2002, is available for purchase from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, NW., Washington, DC 20001 or at the URL: *http://www.aashto.org/bookstore.* It is available for inspection from the FHWA Washington Headquarters and all Division Offices as listed in 49 CFR part 7.

items and when to use lump sum pay items; flexibility in the choice of pay items will help States select the most appropriate pay items to suit individual projects; and that the requirement of unit pay items for all projects and road work scenarios may not always be practicable in the real-world.

Section 630.1014, Compliance Date

- Percentage breakdown of the position of the respondents with regards to the provisions proposed in this section. About 3 percent of the respondents were supportive, 45 percent were opposed, 2 percent were neutral, and the remaining 50 percent of the respondents did not provide a specific response to this section.
- Major issues cited by the respondents. Private sector respondents did not have any specific comments to this section. The following are the major issues cited by the State DOTs and the AASHTO:

(1) The FHWA needs to clearly explain how the rule will apply to ongoing projects, and to projects that are in the later stages of project development.

(2) The FHWA should indicate clearly that the rule will apply only to projects that have not been initiated yet, and those that still have not passed through the entire project development process.

(3) A blanket time requirement is very confusing.

(4) The FHWA should provide flexibility to States to request waivers/exemptions on a case-by-case basis for those projects that are in the later stages of project development and would be significantly impacted by this rule's implementation.

(5) The FHWA needs to provide implementation guidance on model documentation for implementation of the new rule.

(6) The FHWA should consider ''phased'' implementation rather than absolute compliance.

(7) The FHWA should clarify the terminology used and provide more guidance on applicability.

- Proposed FHWA action in response to the comments, and overview of the provisions being proposed in the SNPRM. We propose to retain the three-year compliance date, but allow variances on a case-by-case basis for projects in later stages of project development, if it is determined that the delivery of those projects would be significantly impacted as a result of this rule's provisions.

Further, in the interim period between publication of this rule and the compliance date, to provide for TMPs with both TO and PI components for ongoing significant projects, State DOTs are encouraged, but not required, to apply the requirements in §§ 630.1012(b)(2) and (b)(3) to those projects that are in progress, and are determined by the State to have significant work zone impacts.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material.

The FHWA has limited the comment period for this proposal to 30-days in order to issue a final regulation on the earliest possible date. We believe that this comment period provides interested persons with an adequate opportunity for review and comment.

We have systematically and progressively given opportunity for interested parties to review and comment on this docket since early 2002. We first opened a docket on the issue of work zone safety and mobility by issuing the ANPRM on February 6, 2002, which was followed by the NPRM on May 7, 2003. Both the ANPRM and the NPRM had a comment period of 120 days each. The total duration that this docket has been open indicates that there has been ample opportunity for interested parties to conduct their analyses and submit their comments and views. Therefore, we believe that interested parties should be familiar enough with the topic, the issues addressed, and the provisions proposed in this notice, for them to be able to review and comment within the 30-day time-frame. With the growing concern of high levels of congestion on many highways and an increase in the number of work zone fatalities each of the past five years (for an overall increase of 70 percent between 1997 and 2002), further delaying the issuance of this final rule will compound these current problems associated with work zones. Accordingly, we have determined that a 30-day comment period best serves the safety and mobility interests of the American public.

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined that this proposed rule would not be a significant regulatory action within the meaning of Executive Order 12866 and would not be significant within the meaning of the U.S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this action would be minimal.

These proposed changes are not anticipated to adversely affect, in a material way, any sector of the economy. In addition, these proposed changes would not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs; nor will the proposed amendments of this regulation raise any novel legal or policy issues. Therefore, a full regulatory evaluation is not required.

Based upon the information received in response to this SNPRM, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the changes described in this document or any alternative proposal submitted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 5 U.S.C. 60l–612), the FHWA has evaluated the effects of this SNPRM on small entities and has determined that it would not have a significant economic impact on a substantial number of small entities.

This rule applies to State departments of transportation in the execution of their highway program, specifically with respect to work zone safety and mobility. The implementation of the proposed provisions in this rule would therefore not affect the economic viability or sustenance of small entities, as States are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, the RFA does not apply and the FHWA certifies that the proposed action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This SNPRM would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The actions proposed in this SNPRM would not result in the

expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the affects on State, local, and tribal governments and the private sector.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this proposed action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation or affects the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations.

The FHWA has determined that this proposed rule contains a requirement for data and information to be collected and maintained in the support of design, construction, and operational decisions that affect the safety and mobility of the traveling public related to highway and roadway work zones. In order to streamline the process, the FHWA intends to request that the OMB approve a single information collection clearance for all of the data in the proposed regulation.

The FHWA estimates that a total of 83,200 burden hours per year would be imposed on non-Federal entities to provide the required information for the proposed regulation requirements. Respondents to this information collection include State Transportation Departments from all 50 States, Puerto Rico, and the District of Columbia. The estimates here only include burdens on the respondents to provide information that is not usually and customarily collected.

The FHWA is required to submit this proposed collection of information to the OMB for review and approval, and accordingly, seeks public comments. Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) Whether the collection of information is necessary for the performance of the functions of the FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that this proposed action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. This rulemaking primarily applies to urbanized metropolitan areas and National Highway System (NHS) roadways that are under the jurisdiction of State transportation departments. The purpose of this proposed action is to mitigate the safety and mobility impacts of highway construction and maintenance projects on the transportation system, and would not impose any direct compliance requirements on Indian tribal governments and will not have any economic or other impacts on the viability of Indian tribes. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use. We have determined that this proposed action would not be a significant energy action under that order because any action contemplated would not be a significant regulatory action under Executive Order 12866 and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we believe that the implementation of the proposed provisions by State departments of transportation would reduce the amount of congested travel on our highways, thereby reducing the fuel consumption associated with congested travel. Therefore, the FHWA certifies that a Statement of Energy Effects under Executive Order 13211 is not required.

National Environmental Policy Act

The FHWA has analyzed this proposed action for the purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347 *et seq.*) and has determined that this proposed action will not have any effect on the quality of the environment. Further, we believe that the implementation of the proposed provisions by State departments of transportation would reduce the amount of congested travel on our highways. This reduction in congested travel would reduce automobile emissions thereby contributing to a cleaner environment.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this proposed rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA does not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this proposed action will not cause an environmental risk to health or safety that may disproportionately affect children.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be

used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 630

Government contracts, Grant programs—transportation, Highway safety, Highways and roads, Project agreement, Traffic regulations.

Issued on: May 10, 2004.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to revise title 23, Code of Federal Regulations, Part 630, subpart J as follows:

PART 630—PRECONSTRUCTION PROCEDURES [REVISED]

1. The authority citation continues to read as follows:

Authority: 23 U.S.C. 106, 109, 115, 315, 320, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

2. Revise subpart J of part 630 to read as follows:

Subpart J—Work Zone Safety and Mobility

Sec.
630.1002 Purpose.
630.1004 Definitions and explanation of terms.
630.1006 Work zone safety and mobility policy.
630.1008 Agency-level processes and procedures.
630.1010 Significant projects.
630.1012 Project-level procedures.
630.1014 Implementation.
630.1016 Compliance date.

§ 630.1002 Purpose.

Work zones directly impact the safety and mobility of road users and highway workers. These safety and mobility impacts are exacerbated by an aging highway infrastructure and growing congestion in many locations. Addressing these safety and mobility issues requires considerations that start early in project development and continue through project completion. Part 6 of the Manual On Uniform Traffic Control Devices (MUTCD) [1] sets forth basic principles and prescribes standards for the design, application, installation, and maintenance of traffic control devices for highway and street construction, maintenance operation, and utility work. In addition to the provisions in the MUTCD, there are other actions that could be taken to further help mitigate the safety and mobility impacts of work zones. This subpart establishes requirements and provides guidance for systematically addressing the safety and mobility impacts of work zones, and developing strategies to help manage these impacts on all Federal-aid highway projects.

§ 630.1004 Definitions and explanation of terms.

As used in this subpart:

Highway workers include, but are not limited to, personnel of the contractor, subcontractor, DOT, utilities, and law enforcement, performing work within the right-of-way of a transportation facility.

Mobility is the ability to move from place to place and is significantly dependent on the availability of transportation facilities and on system operating conditions. With specific reference to work zones, mobility pertains to moving road users smoothly through or around a work zone area with a minimum delay compared to baseline travel when no work zone is present. The commonly used performance measures for the assessment of mobility include delay, speed, travel time and queue lengths.

Safety is a representation of the level of exposure to danger for users of transportation facilities and highway workers. With specific reference to work zones, safety refers to minimizing the exposure to danger of road users in the vicinity of a work zone and road workers at the work zone interface with traffic. The commonly used measures for highway safety are the number of crashes or the consequences of crashes (fatalities and injuries) at a given location or along a section of highway during a period of time. Worker safety in work zones refers to the safety of workers at the work zone interface with traffic and the impacts of the work zone design on worker safety. The number of worker fatalities and injuries at a given location or along a section of highway, during a period of time is a commonly used measure.

Temporary Traffic Control (TTC) Plan [2] describes TTC measures to be used for facilitating road users through a work zone or an incident area. TTC plans play a vital role in providing continuity of reasonably safe and efficient road user flow and highway worker safety when a work zone, incident, or other event temporarily disrupts normal road user flow.

Work zone [3] is an area of a highway with construction, maintenance, or utility work activities. A work zone is typically marked by signs, channelizing devices, barriers, pavement markings, and/or work vehicles. It extends from the first warning sign or high-intensity rotating, flashing, oscillating, or strobe lights on a vehicle to the END ROAD WORK sign or the last TTC device.

Work zone crash [4] means a traffic crash in which the first harmful event occurs within the boundaries of a work zone or on an approach to or exit from a work zone, resulting from an activity, behavior, or control related to the movement of the traffic units through the work zone. Includes crashes occurring on approach to, exiting from or adjacent to work zones that are related to the work zone.

Work zone impacts refer to work zone-induced deviations from the normal range of transportation system safety and mobility. The extent of the work zone impacts may vary based on factors such as, road classification, area type (urban, suburban, and rural), traffic and travel characteristics, type of work being performed, time of day/night, and complexity of the project. These impacts may extend beyond the physical location of the work zone itself, and may occur on the roadway on which the work is being performed, as well as other highway corridors, other modes of transportation, and/or the regional transportation network.

§ 630.1006 Work zone safety and mobility policy.

Each State shall implement a policy for the systematic consideration and management of work zone impacts on all Federal-aid highway projects. This policy shall address work zone impacts throughout the various stages of the project development and implementation process. This policy may take the form of processes,

[1] The MUTCD is approved by the FHWA and recognized as the national standard for traffic control on all public roads. It is incorporated by reference into the Code of Federal Regulations at 23 CFR part 655. It is available on the FHWA's web site at *http://mutcd.fhwa.dot.gov* and is available for inspection and copying at the FHWA Washington, DC Headquarters and all FHWA Division Offices as prescribed at 49 CFR part 7.

[2] MUTCD, Part 6, ''Temporary Traffic Control,'' Section 6C.01, ''Temporary Traffic Control Plans.''

[3] MUTCD, Part 6, ''Temporary Traffic Control,'' Section 6C.02, ''Temporary Traffic Control Zones.''

[4] ''Model Minimum Uniform Crash Criteria Guideline'' (MMUCC), 2d Ed. (Electronic), 2003, produced by National Center for Statistics and Analysis, National Highway Traffic Safety Administration (NHTSA). Telephone 1–(800)–934–8517. Available at the URL: *http://www-nrd.nhtsa.dot.gov*. The NHTSA, the FHWA, the Federal Motor Carrier Safety Administration (FMCSA), and the Governors Highway Safety Association (GHSA) sponsored the development of the MMUCC Guideline which recommends voluntary implementation of the 111 MMUCC data elements and serves as a reporting threshold that includes all persons (injured and uninjured) in crashes statewide involving death, personal injury, or property damage of $1,000 or more. The Guideline is a tool to strengthen existing State crash data systems.

procedures, and/or guidance, and may vary based on the characteristics and expected work zone impacts of individual projects or classes of projects. The States should institute this policy using a multi-disciplinary team representing the different project development stages, and in partnership with the FHWA. The States are encouraged to implement this policy for non-Federal-aid projects as well.

§ 630.1008 Agency-level processes and procedures.

(a) This section consists of agency-level processes and procedures for States to implement and sustain their respective work zone safety and mobility policies. Agency-level processes and procedures, well defined data resources, training, and periodic evaluation enable a systematic approach for addressing and managing the safety and mobility impacts of work zones.

(b) *Work zone assessment and management procedures.* States should develop and implement systematic procedures to assess work zone impacts in project development, and to manage safety and mobility during project implementation. The scope of these procedures shall be based on the project characteristics.

(c) *Work zone data.* States shall use work zone crash and operational data to continually improve work zone safety and mobility. This data shall be used to manage work zone impacts during project development and implementation, and to improve agency procedures for on-going and future work zones. States are encouraged to establish data resources at both the agency and project levels to support these activities.

(d) *Training.* Personnel involved in the development, design, implementation, operation, inspection, and enforcement of work zone related transportation management and traffic control shall be trained. States are encouraged to keep records of the training successfully completed by these personnel, and provide periodic training updates that reflect changing industry practices and agency processes and procedures.

(e) *Process review.* In order to assess the effectiveness of work zone safety and mobility procedures, the States shall perform a process review at least every two years. This review may include the evaluation of work zone data at the agency level, and/or review of randomly selected projects throughout their jurisdictions. Appropriate personnel who represent the project development stages and the different offices within the State are encouraged to participate in this review. This should include representation from planning, right-of-way, design, traffic, construction, and maintenance offices within the State. States should include an FHWA representative as a member of the review team, and are encouraged to address the reviews in the stewardship agreements [5] between each State and the FHWA. Other non-agency stakeholders may also be included in this review, as appropriate. The results of the review are intended to lead to improvements in work zone processes and procedures, data resources, and training programs so as to enhance efforts to address safety and mobility on current and future projects.

§ 630.1010 Significant projects.

A significant project is one that, alone or in combination with other concurrent projects nearby is anticipated to cause sustained work zone impacts (as defined in § 630.1004) that are greater than what is considered tolerable based on agency policy and/or engineering judgment. In addition, all Interstate system projects that occupy a location for more than three days with either intermittent or continuous lane closures shall be considered as significant projects. The applicability of the provisions in §§ 630.1012(b)(2) and 630.1012(b)(3) is dependent upon whether a project is determined to be significant. The State shall identify upcoming projects that are expected to be significant. This identification of significant projects should be done as early as possible in the project delivery and development process, and in cooperation with the FHWA. The State's work zone policy provisions, the project's characteristics, and the magnitude and extent of the anticipated work zone impacts should be considered when determining if a project is significant or not. For an Interstate system project that is classified as significant through the application of this subpart, but in the judgment of the agency it does not cause sustained work zone impacts, the agency may request an exception to §§ 630.1012(b)(2) and 630.1012(b)(3) from the FHWA. Exceptions to these provisions may be granted by the FHWA based on the agency's ability to show that the specific Interstate system project does not have sustained work zone impacts.

§ 630.1012 Project-level procedures.

(a) This section provides guidance and establishes procedures for States to manage the work zone impacts of individual projects.

(b) *Transportation Management Plan (TMP).* A TMP consists of strategies to manage the work zone impacts of a project. Its scope, content, and degree of detail may vary based upon the State's work zone policy, and the State's understanding of the expected work zone impacts of the project. For significant projects (as defined in § 630.1010), the State shall develop a TMP that consists of a Temporary Traffic Control (TTC) plan and addresses both Transportation Operations (TO) and Public Information (PI) components. For individual projects or classes of projects that the State determines to have less than significant work zone impacts, the TMP may consist only of a TTC plan. States are encouraged to consider TO and PI issues for all projects.

(1) A TTC plan helps safely and efficiently handle traffic through a specific highway or street work zone or project. The TTC plan shall be consistent with the provisions under Part 6 of the MUTCD and with the work zone hardware recommendations in Chapter 9 of the American Association of State Highway and Transportation Officials (AASHTO) Roadside Design Guide.[6] In developing and implementing the TTC plan, pre-existing roadside safety features shall be maintained at an equivalent or better level than existed prior to project implementation. The scope of the TTC plan is determined by the project characteristics, and the traffic safety and control requirements identified by the State for that project. The TTC plan shall either be a reference to specific TTC elements in the MUTCD, approved standard TTC plans, State transportation department TTC manual, or be designed specifically for the project.

(2) The TO component of the TMP shall include the identification of strategies that will be used to mitigate impacts of the work zone on the operation and management of the transportation system within the work zone impact area. Typical TO strategies may include, but are not limited to, demand management, corridor/network management, safety management and enforcement, and work zone traffic management and traveler information.

[5] As defined in Section 1016 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Public Law 102–240; 105 Stat. 1914; Dec. 18, 1991).

[6] ''Roadside Design Guide,'' 3d Ed., 2002, is available for purchase from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, NW., Washington, DC 20001 or at the URL: *http://www.aashto.org/bookstore.* It is available for inspection from the FHWA Washington Headquarters and all Division Offices as listed in 49 CFR part 7.

The scope of the TO component should be determined by the project characteristics, and the transportation operations and safety requirements identified by the State.

(3) The PI component of the TMP shall include communications strategies that seek to inform affected road users, the general public, area residences and businesses, and appropriate public entities about the project, the expected work zone impacts, and the changing conditions on the project. The scope of the PI component should be determined by the project characteristics and the public information and outreach requirements identified by the State. Public information should be provided through methods best suited for the project, and may include but not be limited to, information on the project characteristics, expected impacts, closure details, and commuter alternatives.

(4) States should develop and implement the TMP in sustained coordination and partnership with stakeholders (*i.e.*, other transportation agencies, railroad agencies/operators, transit providers, freight movers, utility suppliers, police, fire, emergency medical services, schools, business communities, and regional transportation management centers).

(c) The Plans, Specifications, and Estimates (PS&Es) shall include either a TMP or provisions for contractors to develop a TMP at the most appropriate project phase as applicable to the State's chosen contracting methodology for the project. Contractor developed TMPs shall be approved by the State prior to implementation.

(d) The PS&Es shall include appropriate pay item provisions for implementing the TMP, either through method or performance based specifications.

(1) For method-based specifications individual pay items, lump sum payment, or a combination thereof may be used.

(2) For performance based specifications, applicable performance criteria and standards may be used (*i.e.*, safety performance criteria such as number of crashes within the work zone; mobility performance criteria such as travel time through the work zone, delay, queue length, traffic volume; incident response and clearance criteria; work duration criteria, etc.).

(e) *Responsible persons*. The State and the contractor shall each designate a qualified person at the project level who has the primary responsibility and sufficient authority for assuring that the TMP and other safety and mobility aspects of the project are effectively administered.

§ 630.1014 Implementation.

Each State shall work in partnership with the FHWA in the implementation of its policies and procedures to improve work zone safety and mobility. At a minimum, this shall involve an FHWA review of conformance of the State's policies and procedures with this subpart and reassessment of the State's implementation of its procedures at appropriate intervals. Each State is encouraged to address implementation of this subpart in its stewardship agreement with the FHWA.

§ 630.1016 Compliance Date.

States shall comply with all the provisions of this subpart no later than [date 30 days after publication of the final rule in the **Federal Register** plus 36 months]. For projects that are in the later stages of development at or about the compliance date, and if it is determined that the delivery of those projects would be significantly impacted as a result of this subpart's provisions, States may request variances for those projects from the FHWA, on a project-by-project basis.

[FR Doc. 04–10902 Filed 5–12–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 110 and 165

[CGD01–04–006]

RIN 1625–AA00, AA01, AA08

Regulated Navigation Area, Anchorage Grounds, Safety and Security Zones; Tall Ships Environmental Festival, New London, Port of New London, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a regulated navigation area, anchorage grounds, and safety and security zones in Niantic Bay, Long Island Sound, the Thames River and New London Harbor, for the Tall Ships Environmental Festival. These proposed regulations would provide for the safety of life and property on the navigable waters of the United States and for the security of participating tall ships during the Tall Ships Environmental Festival, New London, Connecticut. This action is intended to restrict vessel traffic in portions of Niantic Bay, Long Island Sound, the Thames River, and New London Harbor.

DATES: Comments and related material must reach the Coast Guard on or before June 14, 2004.

ADDRESSES: You may mail comments and related material to Planning/Waterways Management, Coast Guard Group/Marine Safety Office Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Coast Guard Group/Marine Safety Office Long Island Sound 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 Group/Marine Safety Office Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant A. Logman, Waterways Management Officer, Coast Guard Group/Marine Safety Office Long Island Sound at (203) 468–4429.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–04–006), 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 your submission 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 the proposed rule in view of them.

We chose to publish this NPRM, and because of the closeness of the event, we anticipate making the final rule effective less than 30 days from publication in the **Federal Register**.

Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for a meeting by writing to Coast Guard Group/Marine Safety Office Long Island Sound 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 Port of New London, Connecticut will host the Tall Ships Environmental Festival from July 22 to 25, 2004. This visit of Class A, B and C sailing vessels is part of an annual series of sail training races, rallies, cruises and port festivals organized by the American Sail Training Association in conjunction with host ports in the United States (U.S.) and Canada. The Tall Ships visit to New London is being sponsored by the Tunza International Children's Conference on the Environment (ICCE) that will take place in New London, Connecticut from 19–23 July 2004. The Fifth International Children's Conference on the Environment, sponsored by the United Nations Environment Program, will host approximately 600 Children from 100 Countries to discuss issues of critical importance to the environment. Tied into the conference, the Tall Ships visit to New London will have a unique environmental focus.

The Tall Ships visit to New London, which will occur from July 22–25, will include a Parade of Sail on July 22, 2004. Approximately 30 Class A, B and C vessels are expected to participate in the Parade of Sail. These proposed regulations would provide for the safety of life and property on the navigable waters of the United States by preventing the large number of participating and spectator vessels from interfering with the organized Parade of Sail. There will be vessels participating in the event from several foreign countries and the high visibility of this event warrants that both safety and security zones be established to safeguard participating vessels, their crews and the maritime public from sabotage or other subversive acts, accidents, or other hazards of a similar nature.

Under the proposed regulations, the Tall Ships and participating vessels would anchor in Niantic Bay on July 21, 2004. On July 22, 2004, the Tall Ships and participating vessels will transit from Niantic Bay via Long Island Sound and the Thames River Federal Channel to the Port of New London. Most participating vessels will then berth at the Admiral Shear State Pier; some will also berth at City Pier in New London. Other piers in New London may also be utilized for this event, including Fort Trumbull State Park. The remainder of the vessels not participating in the Tall Ships Festival or otherwise berthing in the Port of New London are expected to sail back to Long Island Sound following their participation in the parade down the east side of the Channel.

The proposed regulations would create vessel movement controls, safety and security zones for the Parade of Sail and would create temporary anchorage regulations. The regulations would be in effect at various times in Niantic Bay, Long Island Sound, and New London Harbor on July 21 and July 22, 2004. Vessel congestion due to the large number of participating and spectator vessels poses a significant threat to the safety of life and property. This temporary rulemaking is necessary to ensure the safety of life and property on the navigable waters of the United States and to safeguard participating vessels, their crews and the maritime public from sabotage or other subversive acts, accidents, or other hazards of a similar nature.

Vessel transits may also be directed through the vessel operating restrictions imposed by 33 CFR 165.153. These regulations impose operating, inspection and reporting requirements for vessels and create regulated areas surrounding vessels in commercial service, including ferries.

Regulated Navigation Area

The Coast Guard proposes to establish temporary Regulated Navigation Area ''A'' (Area A) in Niantic Bay from July 21–22, 2004. The regulated area is needed to protect the maritime public and participating vessels from hazards to navigation associated with the overnight anchoring of a large number of tall ships and their departure prior to the beginning of the Parade of Sail into New London Harbor on July 22, 2004.

Area A includes all waters of Niantic Bay located on Long Island Sound within the following boundaries: Beginning at a point 300 yards, bearing 203 deg. T from Wigwam Rock 41°18′53″N, 072°11′48″ W, then to 41°18′53″ N, 072°10′38″ W, then to 41°16′40″ N, 072°10′38″ W, then to 41°16′40″ N, 072°11′48″ W. All coordinates are North American Datum (NAD) 1983. This proposed regulated area would be effective from 6 a.m. July 21, 2004 to 2 p.m. July 22, 2004.

Vessels transiting Area A must do so at no wake speed or at speeds not to exceed 6 knots, whichever is less. Vessels transiting Area A must not maneuver within 100 yards of a tall ship or other vessel participating in the Tall Ships Environmental Festival, unless authorized by the Captain of the Port (COTP) or the COTP's on-scene representative. On-scene representatives are commissioned, warrant, and petty officers of the U.S. Coast Guard.

Anchorage Regulations

The Coast Guard, upon the consent of the Chief of Engineers, Army Corps of Engineers, Concord, MA, is proposing to establish temporary Anchorage regulations for participating Tall Ships Environmental Festival vessels and spectator craft. Under the proposed regulations, current Anchorage Ground regulations in Title 33 Code of Federal Regulations (CFR) § 110.147 would be temporarily suspended and other Anchorage Grounds would be temporarily established.

The proposed temporary anchorage regulations would designate selected current or temporarily established anchorage grounds for spectator or Tall Ships Environmental Festival participant vessel use only. They restrict all other vessels from using these anchorage grounds during various portions of the Tall Ships Environmental Festival event. The anchorage grounds are needed to provide viewing areas for spectator vessels while maintaining a clear parade route for the participating Tall Ships Environmental Festival vessels and to protect boaters and spectator vessels from the hazards associated with the Parade of Sail.

The Coast Guard proposes to temporarily suspend Anchorage C, located at 33 CFR § 110.147(a)(3); redesignating the same location as Anchorage G, making it exclusively for spectator vessels exceeding 50 feet in length, carrying passengers for the viewing of the Parade of Sail. Under the proposed regulations, Anchorage G would be established from 7:30 a.m. until 2 p.m., on July 22, 2004.

The Coast Guard would temporarily establish Anchorage J exclusively for spectator vessels exceeding 50 feet in length carrying passengers for the viewing of the Parade of Sail. Anchorage J includes all waters of the Thames River southward of New London Harbor, on the east side of the Federal Channel, within the following boundaries: Beginning at a point bearing 245°T, 480 yards from Eastern Point, 41°19′03″ N, 072°04′48″ W, then to position 41°18′42″ N, 072°04′30″ W, then to position 41°18′40″ N, 072°04′45″ W. All coordinates are North American Datum (NAD) 1983. Anchorage J would be established from 7:30 a.m. until 2 p.m. on July 22, 2004.

The Coast Guard would temporarily establish Anchorage H in Niantic Bay exclusively for the vessels participating in the Parade of Sail. Anchorage H would be established from 6 a.m. on July 21, 2004 until 2 p.m. on July 22, 2004. Anchorage H is the same area

designated as the proposed Regulated Navigation Area. Therefore, within this area, vessels other than those participating in the Tall Ships Environmental Festival would not be permitted to anchor and must transit at reduced speeds staying at least 100 yards away from any Tall Ships Environmental Festival participants.

The Coast Guard proposes to temporarily establish Anchorage I in the Thames River in the vicinity of the State Pier exclusively for vessels who have participated in the Parade of Sail which are awaiting berthing availability. Anchorage I would be established from 7:30 a.m. until 2 p.m. on July 22, 2004.

Anchorage I would be located on all waters of the Thames River in New London Harbor, in the vicinity of the State Pier within the following boundaries: Beginning at a point located on the west shoreline of the Thames River 25 yards below the Thames River Railroad Bridge, position 41°21′46″ N, 072°05′23″ W, then to position 41°21′46″ N, 072°05′16″ W then south along the western limit of the Federal Channel to position 41°20′37″ N, 072°05′87″ W, then to position 41°20′37″ N, 072°05′33″ W, then along the shoreline to position 41°21′46″ N, 072°05′23″ W. All coordinates are North American Datum (NAD) 1983.

Safety and Security Zones

The Coast Guard proposes to establish two safety and security zones for the Tall Ships event. Safety and Security Zone 1 would be established by reference to fixed coordinates. Safety and Security Zone 1 would be utilized around the Parade of Sail route and includes all waters of the Thames River in New London Harbor in the vicinity of the State Pier within the following boundaries: Beginning at a point located on the west shoreline of the Thames River 25 yards below Thames River Railroad Bridge, position 41°21′46″ N, 072°05′23″ W, then east to position 41°21′46″ N, 072°05′16″ W, then south along the western limit of the Federal Channel to position 41°20′37″ N, 072°05′87″ W, then west to position 41°20′37″ N, 072°05′33″ W, then along the shoreline to the starting position, 41°21′46″ N, 072°05′23″ W. This safety and security zone would be used as a mooring and turning area for the Parade of Sail participants as the participants conclude the parade and is effective from 7:30 a.m. until 2 p.m. on July 22, 2004. Safety and Security Zone 1 consists of the same area as Anchorage I.

Safety and Security Zone 2 covers all waters of the Thames River within the following boundaries: Beginning at the east side of the Federal Channel at the Thames River Rail Road Bridge in the Port of New London, in position 41°21′47″ N, 072°05′14″ W, then southward along the east side of the Federal Channel to the New London Harbor Channel Lighted Buoy ''2'' (LLNR 21790) in approximate position 41°17′38″ N, 072°04′40″ W, then to Bartlett Reef Lighted Bell Buoy ''4'' (LLNR 21065) in approximate position 41°15′38″ N, 072°08′22″ W, then north to Bartlett Reef Buoy ''1'' (LLNR 21758) in approximate position 41°16′28″ N, 072°07′54″ W, then to an area located, bearing 192 degrees true, approximately 325 yards from Rapid Rock Buoy ''R'' (LLNR 21770) 41°17′07″ N, 072°06′09″ W, then to position 41°18′04″ N, 072 °04′50″ W, which meets the west side of the Federal Channel, then along the west side of the Federal Channel to the Thames River Railroad Bridge in the Port of New London, in the position 41°21′46″ N, 072°05′23″ W. This area will be used for the parade route of Tall Ships and is effective from 7:30 a.m. until 2 p.m., on July 22, 2004. All coordinates are North American Datum (NAD) 1983. Safety and Security Zone 2 encompasses a permanent Anchorage in New London Harbor, Anchorage A, located at 33 CFR § 110.147(a)(1). Anchorage A is designated for barges and small vessels drawing less than 12 feet. Use of this anchorage would be contrary to the purposes of establishing this safety and security zone. Anchorage A would therefore be suspended during the effective period of Safety and Security Zone 2. The proposed safety and security zones have been tailored to fit the needs of safety while minimizing the impact on the maritime community.

No vessel may enter, remain in, or transit within Safety and Security Zones 1 or 2 unless authorized by the Coast Guard Captain of the Port, Long Island Sound or his on-scene representative as described above. Each person or vessel in a safety zone shall obey any direction or order of the COTP.

The proposed safety and security zone regulations may be enforced and punishable by the terms set forth by 33 U.S.C. 1232 and 50 U.S.C. 192 accordingly. Enforcement of violations of these regulations may include, in addition to any civil and criminal penalties authorized by 33 U.S.C. 1232 and 50 U.S.C. 192, in rem liability against the offending vessel as well as license sanctions against the offending mariner. This regulation is proposed under the authority contained in Title 33 United States Code (U.S.C.) 1223 and 1225, 50 U.S.C. 191, and the regulations promulgated thereunder.

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 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 proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation would prevent traffic from transiting a portion of Long Island Sound, Niantic Bay, and the Thames River during the event, the potential impacts will be minimized for the following reasons: the anchorage grounds, regulated area, and safety and security zones only encompass a small portion of the Thames River, New London Harbor and Niantic Bay, respectively, allowing sufficient room for vessels to operate or anchor outside of the areas; the anchorage grounds, regulated area, and safety/security zones are of limited duration; commercial traffic would be allowed to proceed in a single direction in the Thames River Navigation Channel; there will be extensive advanced notifications made to the maritime community via the Local Notice to Mariners, facsimile, marine information broadcasts, local area committee meetings, and New London area newspapers. Mariners would be able to adjust their plans accordingly based on the extensive advance information. Additionally, the regulated area, anchorage grounds, safety and security zones have been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety and protection deemed necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have 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 and 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 proposed rule

would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit through Niantic Bay, portions of Long Island Sound, and New London Harbor on 21 and 22 July 2003. Although these proposed regulations apply to a substantial portion of Niantic Bay and New London Harbor, designated areas for viewing the Parade of Sail have been established to allow for maximum use of the waterways by commercial tour boats that usually operate in the affected areas. Vessels, including commercial traffic, will be able to transit around the designated areas. Although vessel traffic will only be permitted to operate in one direction at a time on the Thames River, at no time will the Port of New London be closed to commercial traffic. Before the effective period, the Coast Guard will make notifications to the public via Local Notice to Mariners and broadcast notice to mariners. In addition, the sponsoring organization, ICCE, is planning to publish information of the event in local newspapers and other media outlets.

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.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant A. Logman, Waterways Management Officer, Group/Marine Safety Office Long Island Sound, at (203) 468–4429.

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 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 Executive Order 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 concern 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

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, is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and 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

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraphs 34 (f) and (g), of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation as long as the Coast Guard meets the conditions outlined in the ''Categorical Exclusion Determination'' document. The ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR part 110

Anchorage grounds.

33 CFR part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Parts 110 and 165 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. From 7:30 a.m. to 2 p.m. on July 22, 2004, in § 110.147 paragraphs (a)(1) and (a)(3) are temporarily suspended.

3. From 6 a.m. on July 21, 2004, until 2 p.m. on July 22, 2004, temporarily add § 110.T01–008 to read as follows:

§ 110.T01–008 Anchorage Grounds: Tall Ships Environmental Festival; Port of New London, Connecticut

(a) *Anchorage grounds.* (1)(i) *Anchorage G.* In the Thames River southward of New London Harbor, bounded by lines connecting a point bearing 100°, 450 yards from New London Harbor Light, a point bearing 270°, 575 yards from New London Ledge Light (latitude 41°18′21″ N, longitude 72°04′41″ W), and a point bearing 270°, 1450 yards from New London Ledge Light. All coordinates are North American Datum 1983.

(ii) *Enforcement period.* This paragraph will be enforced from 7:30 a.m. until 2 p.m. on July 22, 2004.

(2)(i) *Anchorage H.* All waters of Niantic Bay located on Long Island Sound bounded as follows: Beginning at a point 300 yards, bearing 203 deg. T from Wigwam Rock 41°18′53″ N, 072°11′48″ W, then to 41°18′53″ N, 072°10′38″ W, then to 41°16′40″ N, 072°10′38″ W, then to 41°16′40″ N, 072°11′48″ W. All coordinates are North American Datum 1983.

(ii) *Enforcement period.* This paragraph will be enforced from 6 a.m. on July 21, 2004, until 2 p.m. on July 22, 2004.

(3)(i) *Anchorage I.* All waters of the Thames River in New London Harbor, in the vicinity of the State Pier within the following boundaries: Beginning at a point located on the west shoreline of the Thames River 25 yards below the Thames River Railroad Bridge, position 41°21′46″ N, 072°05′23″ W, then to position 41°21′46″ N, 072°05′16″ W (NAD 1983), then south along the western limit of the Federal Channel to position 41°20′37″ N, 072°05′8.7″ W, then to position 41°20′37″ N, 072°05′33″ W, then along the shoreline to position 41°21′46″ N, 072°05′23″ W. All coordinates are North American Datum 1983.

(ii) *Enforcement period.* This paragraph will be enforced from 7:30 a.m until 2 p.m. on July 22, 2004.

(4)(i) *Anchorage J.* All waters of the Thames River southward of New London Harbor, on the east side of the Federal Channel within the following boundaries: Beginning at a point bearing 245 deg. T, 480 yards from Eastern Point 41°19′03″ N, 072°04′48″ W, then to position 41°19′04″ N, 072°04′33″ W, then to position 41°18′42″ N, 072°04′30″ W, then to position 41°18′40″ N, 072°04′45″ W. All coordinates are North American Datum 1983.

(ii) *Enforcement period.* This paragraph will be enforced from 7:30 a.m. until 2 p.m. on July 22, 2004.

(b) *Regulations.* (1) *Anchorage G.* This anchorage is designated for the exclusive use of spectator vessels exceeding 50 feet in length carrying passengers for the viewing of the Tall Ships parade.

(2) *Anchorage H.* This anchorage is designated exclusively for the use of vessels participating in the Parade of Tall Ships into New London Harbor.

(3) *Anchorage I.* This anchorage is designated for the exclusive use of vessels participating in the Parade of Tall Ships into New London Harbor.

(4) *Anchorage J.* This anchorage is designated for the exclusive use of commercial vessels greater than 50 feet in length carrying passengers for the viewing of the Tall Ships parade.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

4. 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.

5. From 7:30 a.m until 2 p.m. on July 22, 2004, temporarily add § 165.T01–006 to read as follows:

§ 165.T01–006 Safety and Security Zones: Tall Ships Environmental Festival; Port of New London, Connecticut.

(a) *Regulated area.* The following areas are established as Safety and Security Zones:

(1) *Safety and Security Zone 1.* All waters of the Thames River in New London Harbor, in the vicinity of the State Pier within the following boundaries: Beginning at a point located on the west shoreline of the Thames River 25 yards below the Thames River Railroad Bridge, position 41°21′46″ N, 072°05′23″ W, then south along the western limit of the Federal Channel to position 41°20′37″ N, 072°05′87″ W, then to position 41°20′37″ N, 072°05′33″ W, then along the shoreline to position 41°21′46″ N, 072°05′23″ W.

(2) *Safety and Security Zone 2.* All waters of the Thames River and Long Island Sound within the following boundaries: Beginning at the east side of the Federal Channel at the Thames River Rail Road Bridge in the Port of New London, in position 41°21′47″ N, 072°05′14.0″ W, then southward along the east side of the Federal Channel to the New London Harbor Channel Lighted Buoy ''2'' (LLNR 21790) in approximate position 41°17′38″ N, 072°04′40″ W, then to Bartlett Reef Lighted Bell Buoy ''4'' (LLNR 21065) in approximate position 41°15′38″ N, 072°08′22″ W, then north to Bartlett Reef Lighted Buoy ''1'' (LLNR 21758) in approximate position 41°16′28″ N, 072°07′54″ W, then to an area located, bearing 192 degrees true, approximately 325 yards from Rapid Rock Buoy ''R'' (LLNR 21770) 41°17′07″ N, 072°06′09″ W, then to position 41°18′04″ N,072°04′50″ W, which meets the west side of the Federal Channel, then along the west side of the Federal Channel to the Thames River Railroad Bridge in the Port of New London, in the position 41°21′46″ N, 072°05′23″ W. (b) *Regulations.* No vessel may transit within Safety and Security Zone 1 or 2 without the express authorization of the Coast Guard Captain of the Port, Long Island Sound, or his on-scene representative. All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by siren, radio, flashing light, or other means, the operator of the vessel shall proceed as directed.

(c) *Effective period.* This section is effective from 7:30 a.m. until 2 p.m. on July 22, 2004.

6. From 6 a.m. on July 21, 2004, until 2 p.m. on July 22, 2004, temporarily add § 165.T01–007 to read as follows:

§ 165.T01–007 Regulated Navigation Area: Tall Ships Environmental Festival, CT, Long Island Sound and the Thames River, Connecticut.

(a) *Regulated Navigation Area A.* The following area is a Regulated Navigation Area: All waters of Niantic Bay located on Long Island Sound bounded as follows: Beginning at a point 300 yards, bearing 203 deg. T from Wigwam Rock 41°18′53″ N, 072°11′48″ W, then to 41°18′53″ N, 072°10′38″ W, then to 41°16′40″ N, 072°10′38″ W, then to 41°16′40″ N, 072°11′48″ W. All coordinates are North American Datum 1983.

(b)(1) Vessels transiting Regulated Navigation Area A must do so at no

wake speed or at speeds not to exceed 6 knots, whichever is less.

(2) Vessels transiting Regulated Navigation Area A must not maneuver within 100 yards of a Tall Ship or a Tall Ships Environmental Festival participating vessel unless they are specifically authorized to do so by Coast Guard Captain of the Port, Long Island Sound, or his on-scene representative.

(c) *Effective period.* This section is effective from 6 a.m., July 21, 2004 until 2 p.m., on July 22, 2004.

Dated: May 2, 2004.

Vivien S. Crea,

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

[FR Doc. 04–10812 Filed 5–12–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–04–016]

RIN 1625 AA00

Safety Zones: Fireworks displays in the Captain of the Port Portland Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish safety zones on the waters located in their AOR during fireworks displays. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with these displays. Entry into these safety zones would be prohibited unless authorized by the Captain of the Port.

DATES: Comments and related material must reach the Coast Guard on or before June 14, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are available for inspection or copying at the U.S. Coast Guard MSO/Group Portland, 6767 N. Basin Ave, Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Ryan Wagner, c/o Captain of the Port, Portland 6767 N. Basin Avenue, Portland, Oregon 97217, (503) 240–2584.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD13–04–016], 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 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 Marine Safety Office Puget Sound 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 Coast Guard proposes to establish permanent safety zones to allow for safe fireworks displays. These events may result in a number of vessels congregating near fireworks launching barges and sites. Safety zones are needed to protect watercraft and their occupants from safety hazards associated with fireworks displays.

Discussion of Proposed Rule

This rule, for safety concerns, would control vessel movements in regulated areas surrounding fireworks launching barges and sites. Entry into these zones would be prohibited unless authorized by the Captain of the Port, Portland, or his designated representative. Coast Guard personnel would enforce these safety zones. The Captain of the Port may be assisted by other federal state and local agencies.

Regulatory Evaluation

This proposed 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 this proposed rule under that Order. This proposed rule is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures act of DOT is unnecessary. This expectation is based on the fact that the regulated areas established by the proposed regulation will encompass small portions of rivers in the Portland AOR on different dates, all in the evening when vessel traffic is low.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''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 of less than 50,000. This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a portion of the Willamette River during the enforcement periods These safety zones would not have significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only thirty minutes during two evenings when vessel traffic is low. Traffic would be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this rule would not have a significant economic impact on a substantial number of small entities.

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.

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 the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the 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 the **FOR FURTHER INFORMATION CONTACT** section.

Collection of Information

This proposed 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 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) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. 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 Executive Order 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 does not concern 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 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 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

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion is provided for temporary safety zones of less than one week in duration. This rule establishes safety zones with a duration of thirty minutes.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and RecordKeeping Requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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.

§ 165.1315 [Amended]

2. In § 165.1315, add (a)(9) to (a)(19) to read as follows:

(a) * * *

(9) City of Milwaukie Celebration Fireworks Display, Milwaukie, OR:

(i) *Location.* All water of the Willamette River enclosed by the following points: 45°26′41″ N, 122°38′46″ W following the shoreline to 45°26′17″ N 122°38′36″ W then west to 45°26′17″ N 122°38′55″ W following the shoreline to 45°26′36″ N 122°38′50″ W then back to the point of origin.

(ii) *Enforcement period.* Annually on the third Saturday of July.

(10) Gladstone Celebration Fireworks Display, Gladstone, OR:

(i) *Location.* All water of the Willamette River on Meldrum Bar south of Rivergreen Golf Course enclosed by the following points: 45°22′29″ N, 122°36′42″ W following the shoreline to 45°22′23″ N, 122°36′23″ W then west to 45°22′14″ N 122°36′26″ W following the shoreline to 45°22′24″ N 122°36′44″ W then back to the point of origin.

(ii) *Enforcement period.* Annually on July 4.

(11) Oaks Park July 4th Celebration, Portland, OR

(i) *Location.* All water of the Willamette River enclosed by the following points enclosed by the following points: 45°28′26″ N 122°39′43″ W following the shoreline to 45°28′10″ N 122°39′54″ W then west to 45°28′41″ N 122°40′06″ W following the shoreline to 45°28′31″ N 122°40′01″ W then back to the point of origin.

(ii) *Enforcement period.* Annually on July 4.

(12) Fort Vancouver 4th of July Celebration, Vancouver, WA

(i) *Location.* All water of the Columbia River enclosed by the following points: 45°31′16″ N 122°40′18″ following the shoreline to 45°36′55″ N 122°39′11″ W south to 45°35′28″ N 122°39′19″ W following the shoreline to 45°36′52″ N 122°40′32″ W then back to the point of origin.

(ii) *Enforcement period.* Annually on July 4.

(13) St. Helens 4th of July, St. Helens, OR

(i) *Location.* All water of the Columbia River extending out to a 1200′ radius from the barge centered at 45°51′57″ N 122°47′02″ W.

(ii) *Enforcement period.* Annually on July 4.

(14) East County 4th of July Fireworks, Gresham, OR

(i) *Location.* All water of the Columbia River enclosed by the

following points: 45°32′29″ N 122°47′32″ W following the shoreline to 45°33′45″ N 122°26′54″ W then south to 45°33′29″ N 122°26′37″ W following the shoreline to 45°33′29″ N 122°27′32″ W back to the point of origin.

(ii) *Enforcement period.* Annually on July 4.

(15) City of Cascade Locks 4th of July, Cascade Locks, OR

(i) *Location.* All water of the Columbia River extending out to a 2000′ radius from the launch site at 45°40′16″ N 122°53′38″ W.

(ii) *Enforcement period.* Annually on July 4.

(16) Arlington Chamber of Commerce Fireworks, Arlington, OR

(i) *Location.* All water of the Columbia River extending out to a 500′ radius from the launch site at 45°43′23″ N 122°12′08″ W.

(ii) *Enforcement period.* Annually on July 4.

(17) Western Display 4th of July Party, Vancouver, WA

(i) *Location.* All water of the Columbia River extending out to a 500′ radius from the launch site at 45°35′46″ N 122°32′22″ W.

(ii) *Enforcement period.* Annually on July 4.

(18) Ilwaco July 4th Committee Fireworks, Ilwaco, WA

(i) *Location.* All water of the Columbia River extending out to a 700′ radius from the launch site at 46°18′17″ N 124°01′55″ W.

(ii) *Enforcement period.* Annually on July 4.

(19) Florence Chamber 4th of July, Florence, OR

(i) *Location.* All water of the Siuslaw River enclosed by the following points: 43°57′58″ N 124°06′29″ W following the shoreline to 43°58′08″ N 124°05′42″ W then south to 43°57′53″ N 124°05′31″ W following the shoreline to 43°57′48″ N 124°06′29″ W back to the point of origin.

(ii) *Expected date.* Annually on July 4th.

(b) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives.

Dated: April 27, 2004.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 04–10813 Filed 5–12–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R07–OAR–2004–MO–0001; FRL–7661–3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri for the purpose of establishing updated non-regulatory language describing the St. Louis Inspection and Maintenance (I/M) program.

DATES: Comments on this proposed action must be received in writing by June 14, 2004.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R07–OAR–2004–MO–0001, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Agency Web site: http://docket.epa.gov/rmepub/.* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. *E-mail:* Alan Banwart at *banwart.alan@epa.gov.*

4. *Mail:* Alan Banwart, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

5. *Hand Delivery or Courier.* Deliver your comments to Alan Banwart, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Please see the direct final rule which is located in the rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Alan Banwart at (913) 551–7819, or by e-mail at *banwart.alan@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register.**

Dated: April 16, 2004.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 04–10875 Filed 5–12–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Part 219 and Appendix I to Chapter 2

[DFARS Case 2003–D013]

Defense Federal Acquisition Regulation Supplement; DoD Pilot Mentor-Protégé Program

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update policy pertaining to the DoD Pilot Mentor-Protégé Program. The proposed changes authorize the Director, Small and Disadvantaged Business Utilization, of each military department or defense agency to approve mentor firms and mentor-protégé agreements.

DATES: Comments on the proposed rule should be submitted to the address shown below on or before July 12, 2004, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative,

respondents may e-mail comments to: *dfars@osd.mil.* Please cite DFARS Case 2003–D013 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Thaddeus Godlewski, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2003–D013.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Mr. Thaddeus Godlewski, (703) 602–2022.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes changes to the DoD Pilot Mentor-Protégé Program to authorize the Director, Small and Disadvantaged Business Utilization (SADBU), of each military department or defense agency to approve contractors as mentor firms and to approve mentor-protégé agreements. The Director, Office of the Secretary of Defense, SADBU, will retain policy and oversight responsibility for the offices participating in the Program and will remain the principal budget authority for the Program. This rule also updates procedures for implementation of the Program to reflect current Program requirements.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the changes in the rule relate primarily to administrative aspects of the DoD Pilot Mentor-Protégé Program. The basic principles of the Program have not changed. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D013.

C. Paperwork Reduction Act

The information collection requirements of the DoD Pilot Mentor Protégé Program have been approved by the Office of Management and Budget under Control Number 0704–0332.

List of Subjects in 48 CFR Part 219

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Part 219 and Appendix I to Chapter 2 as follows:

1. The authority citation for 48 CFR Part 219 and Appendix I to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

2. Section 219.7100 is amended by revising the first sentence to read as follows:

§ 219.7100 Scope.

This subpart implements the Pilot Mentor-Protégé Program (hereafter referred to as the ''Program'') established under Section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101–510; 10 U.S.C. 2302 note). * * *

3. Section 219.7102 is amended by revising paragraphs (a) and (d) to read as follows:

§ 219.7102 General.

* * * * *

(a) Mentor firms that are prime contractors with at least one active subcontracting plan negotiated under FAR Subpart 19.7 or under the DoD Comprehensive Subcontracting Test Program.

* * * * *

(d) Incentives that DoD may provide to mentor firms, including—

(1) Reimbursement for developmental assistance costs through—

(i) A separately priced contract line item on a DoD contract; or

(ii) A separate contract, upon written determination by the cognizant Component Director, Small and Disadvantaged Business Utilization (SADBU), that unusual circumstances justify reimbursement using a separate contract; or

(2) Credit toward applicable subcontracting goals, established under a subcontracting plan negotiated under FAR Subpart 19.7, or under the DoD Comprehensive Subcontracting Test Program for developmental assistance costs that are not reimbursed.

4. Section 219.7103–1 is revised to read as follows:

219.7103–1 General.

The procedures for application, acceptance, and participation in the Program are in Appendix I, Policy and Procedures for the DoD Pilot Mentor-Protégé Program. The Director, SADBU, of each military department or defense agency has the authority to approve contractors as mentor firms, approve mentor-protégé agreements, and forward approved mentor-protégé agreements to the contracting officer when funding is available.

5. Section 219.7103–2 is amended as follows:

a. By revising paragraphs (d), (e), and (f); and

b. In paragraph (h), in the parenthetical, by removing ''I–112'' and adding in its place ''I–113''. The revised text reads as follows:

219.7103–2 Contracting officer responsibilities.

* * * * *

(d) Modify applicable contract(s) to establish a contract line item for reimbursement of developmental assistance costs if—

(1) A DoD program manager or the cognizant Component Director, SADBU, has made funds available for that purpose; and

(2) The contractor has an approved mentor-protégé agreement.

(e) Negotiate and award a separate contract for reimbursement of developmental assistance costs only if—

(1) Funds are available for that purpose;

(2) The contractor has an approved mentor-protégé agreement; and

(3) The cognizant Component Director, SADBU, has made a determination in accordance with 219.7102(d)(1)(ii).

(f) Not authorize reimbursement for costs of assistance furnished to a protégé firm in excess of $1,000,000 in a fiscal year unless a written determination from the cognizant Component Director, SADBU, is obtained.

* * * * *

219.7105 [Amended]

6. Section 219.7105 is amended by removing ''I–111'' and adding in its place ''I–112''.

219.7106 [Amended]

7. Section 219.7106 is amended in the first sentence by removing ''I–112'' and adding in its place ''I–113''.

8. Appendix I to Chapter 2 is revised to read as follows:

Appendix I—Policy and Procedures for the DOD Pilot Mentor-Protege Program

I–100 Purpose.

(a) This Appendix I to 48 CFR Chapter 2 implements the Pilot Mentor-Protégé Program (hereafter referred to as the ''Program'') established under Section 831 of Pub. L. 101–510, the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2302 note). The purpose of the Program is to—

(1) Provide incentives to major DoD contractors, performing under at least one active approved subcontracting plan negotiated with DoD or another Federal agency, to assist protégé firms in enhancing their capabilities to satisfy DoD and other contract and subcontract requirements;

(2) Increase the overall participation of protégé firms as subcontractors and suppliers under DoD contracts, other Federal agency contracts, and commercial contracts; and

(3) Foster the establishment of long-term business relationships between protégé firms and such contractors.

(b) Under the Program, eligible companies approved as mentor firms will enter into mentor-protégé agreements with eligible protégé firms to provide appropriate developmental assistance to enhance the capabilities of the protégé firms to perform as subcontractors and suppliers. DoD may provide the mentor firm with either cost reimbursement or credit against applicable subcontracting goals established under contracts with DoD or other Federal agencies.

(c) DoD will measure the overall success of the Program by the extent to which the Program results in—

(1) An increase in the dollar value of contract and subcontract awards to protégé firms (under DoD contracts, contracts awarded by other Federal agencies, and commercial contracts) from the date of their entry into the Program until 2 years after the conclusion of the agreement;

(2) An increase in the number and dollar value of subcontracts awarded to a protégé firm (or former protégé firm) by its mentor firm (or former mentor firm);

(3) An increase in the employment level of protégé firms from the date of entry into the Program until 2 years after the completion of the agreement.

(d) This policy sets forth the procedures for participation in the Program applicable to companies that are interested in receiving—

(1) Reimbursement through a separate contract line item in a DoD contract or a separate contract with DoD; or

(2) Credit toward applicable subcontracting goals for costs incurred under the Program.

I–101 Definitions

I–101.1 Historically Black College or University

An institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

I–101.2 Minority Institution of Higher Education

An institution of higher education with a student body that reflects the composition specified in section 312(b)(3), (4), and (5) of the Higher Education Act of 1965 (20 U.S.C. 1058(b)(3), (4), and (5)).

I–101.3 Eligible Entity Employing the Severely Disabled

A business entity operated on a for-profit or nonprofit basis that—

(a) Uses rehabilitative engineering to provide employment opportunities for severely disabled individuals and integrates severely disabled individuals into its workforce;

(b) Employs severely disabled individuals at a rate that averages not less than 20 percent of its total workforce;

(c) Employs each severely disabled individual in its workforce generally on the basis of 40 hours per week; and

(d) Pays not less than the minimum wage prescribed pursuant to section 6 of the Fair Labor Standards Act (29 U.S.C. 206) to those employees who are severely disabled individuals.

I–101.4 Severely Disabled Individual

An individual who has a physical or mental disability which constitutes a substantial handicap to employment and which, in accordance with criteria prescribed by the Committee for the Purchase from the Blind and Other Severely Handicapped established by the first section of the Act of June 25, 1938 (41 U.S.C. 46; popularly known as the ''Javits-Wagner-O'Day Act'') is of such a nature that the individual is otherwise prevented from engaging in normal competitive employment.

I–101.5 Small Disadvantaged Business (SDB)

A small business concern that is—

(a) An SDB concern as defined at 219.001, paragraph (1) of the definition of ''small disadvantaged business concern'';

(b) A business entity owned and controlled by an Indian tribe as defined in Section 8(a)(13) of the Small Business Act (15 U.S.C. 637(a)(13)); or

(c) A business entity owned and controlled by a Native Hawaiian Organization as defined in Section 8(a)(15) of the Small Business Act.

I.101.6 Women-Owned Small Business (WOSB)

A small business concern owned and controlled by women as defined in Section 8(d)(3)(D) of the Small Business Act (15 U.S.C. 637(d)(3)(D)).

I–102 Participant Eligibility

(a) To be eligible to participate as a mentor, an entity must be—

(1) An entity other than small business, unless a waiver to the small business exception has been obtained from the Director, Small and Disadvantaged Business Utilization (SADBU), OUSD (AT&L), that is a prime contractor to DoD with an active subcontracting plan; or

(2) A graduated 8(a) firm that provides documentation of its ability to serve as a mentor; and

(3) Approved to participate as a mentor in accordance with I–105.

(b) To be eligible to participate as a protégé, an entity must be—

(1) An SDB, a WOSB, or an eligible entity employing the severely disabled;

(2) Eligible for the award of Federal contracts; and

(3) A small business according to the Small Business Administration (SBA) size standard for the North American Industry Classification System (NAICS) code that represents the contemplated supplies or services to be provided by the protégé firm to the mentor firm if the firm is representing itself as a qualifying entity under the definition at I–101.5(a) or I–101.6.

(c) Mentor firms may rely in good faith on a written representation that the entity meets the requirements of paragraph (a) of this section, except for a protégé's status as a small disadvantaged business concern (see FAR 19.703(b)).

(d) If at any time the SBA (or DoD in the case of entities employing the severely disabled) determines that a protégé is ineligible, assistance that the mentor firm furnishes to the protégé after the date of the determination may not be considered assistance furnished under the Program.

(e) A company may not be approved for participation in the Program as a mentor firm if, at the time of requesting participation in the Program, it is currently debarred or suspended from contracting with the Federal Government pursuant to FAR Subpart 9.4.

(f) If the mentor firm is suspended or debarred while performing under an approved mentor-protégé agreement, the mentor firm—

(1) May continue to provide assistance to its protégé firms pursuant to approved mentor-protégé agreements entered into prior to the imposition of such suspension or debarment;

(2) May not be reimbursed or take credit for any costs of providing developmental assistance to its protégé firm, incurred more than 30 days after the imposition of such suspension or debarment; and

(3) Must promptly give notice of its suspension or debarment to its protégé firm and the cognizant Component Director, SADBU.

I–103 Program Duration

(a) New mentor-protégé agreements may be submitted and approved through September 30, 2005.

(b) Mentors incurring costs prior to September 30, 2008, pursuant to an approved mentor-protégé agreement may be eligible for—

(1) Credit toward the attainment of its applicable subcontracting goals for unreimbursed costs incurred in providing developmental assistance to its protégé firm(s);

(2) Reimbursement pursuant to the execution of a separately priced contract line item added to a DoD contract; or

(3) Reimbursement pursuant to entering into a separate DoD contract upon

determination by the cognizant Component Director, SADBU, that unusual circumstances justify using a separate contract.

I–104 Selection of Protégé Firms

(a) Mentor firms will be solely responsible for selecting protégé firms. Mentor firms are encouraged to identify and select concerns that are defined as emerging SDB protégé firms.

(b) The selection of protégé firms by mentor firms may not be protested, except as in paragraph (c) of this section.

(c) In the event of a protest regarding the size or disadvantaged status of an entity selected to be a protégé firm as defined in I–101.5, the mentor firm must refer the protest to the SBA to resolve in accordance with 13 CFR Part 121 (with respect to size) or 13 CFR Part 124 (with respect to disadvantaged status).

(d) For purposes of the Small Business Act, no determination of affiliation or control (either direct or indirect) may be found between a protégé firm and its mentor firm on the basis that the mentor firm has agreed to furnish (or has furnished) to its protégé firm, pursuant to a mentor-protégé agreement, any form of developmental assistance described in I–107(f).

(e) A protégé firm may have only one active DoD mentor-protégé agreement.

I–105 Mentor Approval Process

(a) An entity seeking to participate as a mentor must apply to the cognizant Component Director, SADBU, to establish its initial eligibility as a mentor. This application may accompany its initial mentor-protégé agreement.

(b) The application must provide the following information:

(1) A statement that the company is currently performing under at least one active approved subcontracting plan negotiated with DoD or another Federal agency pursuant to FAR 19.702, and that the company is currently eligible for the award of Federal contracts or a statement that the entity is a graduated 8(a) firm.

(2) A summary of the company's historical and recent activities and accomplishments under its small and disadvantaged business utilization program.

(3) The total dollar amount of DoD contracts and subcontracts that the company received during the 2 preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(4) The total dollar amount of all other Federal agency contracts and subcontracts that the company received during the 2 preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(5) The total dollar amount of subcontracts that the company awarded under DoD contracts during the 2 preceding fiscal years.

(6) The total dollar amount of subcontracts that the company awarded under all other Federal agency contracts during the 2 preceding fiscal years.

(7) The total dollar amount and percentage of subcontracts that the company awarded to all SDB and WOSB firms under DoD contracts and other Federal agency contracts during the 2 preceding fiscal years. (Show DoD subcontract awards separately.) If the company presently is required to submit a Standard Form (SF) 295, Summary Subcontract Report, the request must include copies of the final reports for the 2 preceding fiscal years.

(8) Information on the company's ability to provide developmental assistance to eligible protégés.

(c) A template of the mentor application is available at: *http://www.acq.osd.mil/sadbu/mentor_protege.*

(d) Companies that apply for participation and are not approved will be provided the reasons and an opportunity to submit additional information for reconsideration.

I–106 Development of Mentor-Protégé Agreements

(a) Prospective mentors and their protégés may choose to execute letters of intent prior to negotiation of mentor-protégé agreements.

(b) The agreements should be structured after completion of a preliminary assessment of the developmental needs of the protégé firm and mutual agreement regarding the developmental assistance to be provided to address those needs and enhance the protégé's ability to perform successfully under contracts or subcontracts.

(c) A mentor firm may not require a protégé firm to enter into a mentor-protégé agreement as a condition for award of a contract by the mentor firm, including a subcontract under a DoD contract awarded to the mentor firm.

(d) The mentor-protégé agreement may provide for the mentor firm to furnish any or all of the following types of developmental assistance:

(1) Assistance by mentor firm personnel in—

(i) General business management, including organizational management, financial management, and personnel management, marketing, business development, and overall business planning;

(ii) Engineering and technical matters such as production inventory control and quality assurance; and

(iii) Any other assistance designed to develop the capabilities of the protégé firm under the developmental program.

(2) Award of subcontracts under DoD contracts or other contracts on a noncompetitive basis.

(3) Payment of progress payments for the performance of subcontracts by a protégé firm in amounts as provided for in the subcontract; but in no event may any such progress payment exceed 100 percent of the costs incurred by the protégé firm for the performance of the subcontract. Provision of progress payments by a mentor firm to a protégé firm at a rate other than the customary rate for the firm must be implemented in accordance with FAR 32.504(c).

(4) Advance payments under such subcontracts. The mentor firm must administer advance payments in accordance with FAR Subpart 32.4.

(5) Loans.

(6) Investment(s) in the protégé firm in exchange for an ownership interest in the protégé firm, not to exceed 10 percent of the total ownership interest. Investments may include, but are not limited to, cash, stock, and contributions in kind.

(7) Assistance that the mentor firm obtains for the protégé firm from one or more of the following:

(i) Small Business Development Centers established pursuant to Section 21 of the Small Business Act (15 U.S.C. 648).

(ii) Entities providing procurement technical assistance pursuant to 10 U.S.C. Chapter 142 (Procurement Technical Assistance Centers).

(iii) Historically Black colleges and universities.

(iv) Minority institutions of higher education.

(e) Pursuant to FAR 31.109, approved mentor firms seeking either reimbursement or credit are strongly encouraged to enter into an advance agreement with the contracting officer responsible for determining final indirect cost rates under FAR 42.705. The purpose of the advance agreement is to establish the accounting treatment of the costs of the developmental assistance pursuant to the mentor-protégé agreement prior to the incurring of any costs by the mentor firm. An advance agreement is an attempt by both the Government and the mentor firm to avoid possible subsequent dispute based on questions related to reasonableness, allocability, or allowability of the costs of developmental assistance under the Program. Absent an advance agreement, mentor firms are advised to establish the accounting treatment of such costs and to address the need for any changes to their cost accounting practices that may result from the implementation of a mentor-protégé agreement, prior to incurring any costs, and irrespective of whether costs will be reimbursed or credited.

(f) Developmental assistance provided under an approved mentor-protégé agreement is distinct from, and must not duplicate, any effort that is the normal and expected product of the award and administration of the mentor firm's subcontracts. Costs associated with the latter must be accumulated and charged in accordance with the contractor's approved accounting practices; they are not considered developmental assistance costs eligible for either credit or reimbursement under the Program.

I–107 Elements of a mentor-protégé agreement.

Each mentor-protégé agreement will contain the following elements:

(a) The name, address, e-mail address, and telephone number of the mentor and protégé points of contact;

(b) The NAICS code(s) that represent the contemplated supplies or services to be provided by the protégé firm to the mentor firm and a statement that, at the time the agreement is submitted for approval, the protégé firm, if an SDB or WOSB concern, does not exceed the size standard for the appropriate NAICS code;

(c) A statement that the protégé firm is eligible to participate in accordance with I–102(b);

(d) A statement that the mentor is eligible to participate in accordance with I–102;

(e) A preliminary assessment of the developmental needs of the protégé firm;

(f) A developmental program for the protégé firm specifying the type of assistance the mentor will provide to the protégé and how that assistance will—

(1) Increase the protégé's ability to participate in DoD, Federal, and/or commercial contracts and subcontracts; and

(2) Increase small business subcontracting opportunities in industry categories where eligible protégé's or other small business firms are not dominant in the company's vendor base;

(g) Factors to assess the protégé firm's developmental progress under the Program, including specific milestones for providing each element of the identified assistance;

(h) An estimate of the dollar value and type of subcontracts that the mentor firm will award to the protégé firm, and the period of time over which the subcontracts will be awarded;

(i) A statement from the protégé firm indicating its commitment to comply with the requirements for reporting and for review of the agreement during the duration of the agreement and for 2 years thereafter;

(j) A program participation term for the agreement that does not exceed 3 years. Requests for an extension of the agreement for a period not to exceed an additional 2 years are subject to the approval of the cognizant Component Director, SADBU. The justification must detail the unusual circumstances that warrant a term in excess of 3 years;

(k) Procedures for the mentor firm to notify the protégé firm in writing at least 30 days in advance of the mentor firm's intent to voluntarily withdraw its participation in the Program. A mentor firm may voluntarily terminate its mentor-protégé agreement(s) only if it no longer wants to be a participant in the Program as a mentor firm. Otherwise, a mentor firm must terminate a mentor-protégé agreement for cause;

(l) Procedures for the mentor firm to terminate the mentor-protégé agreement for cause which provide that—

(1) The mentor firm must furnish the protégé firm a written notice of the proposed termination, stating the specific reasons for such action, at least 30 days in advance of the effective date of such proposed termination;

(2) The protégé firm must have 30 days to respond to such notice of proposed termination, and may rebut any findings believed to be erroneous and offer a remedial program;

(3) Upon prompt consideration of the protégé firm's response, the mentor firm must either withdraw the notice of proposed termination and continue the protégé firm's participation, or issue the notice of termination; and

(4) The decision of the mentor firm regarding termination for cause, conforming with the requirements of this section, will be final and is not reviewable by DoD;

(m) Procedures for a protégé firm to notify the mentor firm in writing at least 30 days in advance of the protégé firm's intent to voluntarily terminate the mentor-protégé agreement;

(n) Additional terms and conditions as may be agreed upon by both parties; and

(o) Signatures and dates for both parties to the mentor-protégé agreement.

I–108 Submission and approval of mentor-protégé agreements

(a) Upon solicitation or as determined by the cognizant DoD component, mentors will submit—

(1) A mentor application pursuant to I–105, if the mentor has not been previously approved to participate;

(2) A signed mentor-protégé agreement pursuant to I–107;

(3) A statement as to whether the mentor is seeking credit or reimbursement of costs incurred;

(4) The estimated cost of the technical assistance to be provided, broken out per year;

(5) A justification if program participation term is greater than 3 years (Term of agreements may not exceed 5 years); and

(6) For reimbursable agreements, a specific justification for developmental costs in excess of $1,000,000 per year.

(b) When seeking reimbursement of costs, cognizant DoD components may require additional information.

(c) The mentor-protégé agreement must be approved by the cognizant Component Director, SADBU, prior to incurring costs eligible for credit.

(d) The cognizant DoD component will execute a contract modification or a separate contract, if justified pursuant to I–103(b)(3), prior to the mentor's incurring costs eligible for reimbursement.

(e) Credit agreements that are not associated with an existing DoD program and/or component will be submitted for approval to Director, SADBU, Defense Contract Management Agency (DCMA), via the mentor's cognizant administrative contracting officer.

(f) A prospective mentor that has identified Program funds to be made available from a DoD program manager must provide the information in paragraph (a) of this section through the program manager to the cognizant Component Director, SADBU, with a letter signed by the program manager indicating the amount of funding that has been identified for the developmental assistance program.

I–109 Reimbursable agreements

The following program provisions apply to all reimbursable mentor-protégé agreements:

(a) Assistance provided in the form of progress payments to a protégé firm in excess of the customary progress payment rate for the firm will be reimbursed only if implemented in accordance with FAR 32.504(c).

(b) Assistance provided in the form of advance payments will be reimbursed only if the payments have been provided to a protégé firm under subcontract terms and conditions similar to those in the clause at FAR 52.232–12, Advance Payments. Reimbursement of any advance payments will be made pursuant to the inclusion of the clause at DFARS 252.232–7005, Reimbursement of Subcontractor Advance Payments—DoD Pilot Mentor-Protégé Program, in appropriate contracts. In requesting reimbursement, the mentor firm agrees that the risk of any financial loss due to the failure or inability of a protégé firm to repay any unliquidated advance payments will be the sole responsibility of the mentor firm.

(c) The primary forms of developmental assistance authorized for reimbursement under the Program are identified in I–106(d). On a case-by-case basis, Component Directors, SADBU, at their discretion, may approve additional incidental expenses for reimbursement, provided these expenses do not exceed 10 percent of the total estimated cost of the agreement.

(d) The total amount reimbursed to a mentor firm for costs of assistance furnished to a protégé firm in a fiscal year may not exceed $1,000,000 unless the cognizant Component Director, SADBU, determines in writing that unusual circumstances justify reimbursement at a higher amount. Request for authority to reimburse in excess of $1,000,000 must detail the unusual circumstances and must be endorsed and submitted by the program manager to the cognizant Component Director, SADBU.

(e) Developmental assistance costs that are incurred pursuant to an approved reimbursable mentor-protégé agreement, and have been charged to, but not reimbursed through, a separate contract, or through a separately priced contract line item added to a DoD contract, will not be otherwise reimbursed, as either a direct or indirect cost, under any other DoD contract, irrespective of whether the costs have been recognized for credit against applicable subcontracting goals.

I–110 Credit Agreements

I–110.1 Program Provisions Applicable to Credit Agreements

(a) Developmental assistance costs incurred by a mentor firm for providing assistance to a protégé firm pursuant to an approved credit mentor-protégé agreement may be credited as if the costs were incurred under a subcontract award to that protégé, for the purpose of determining the performance of the mentor firm in attaining an applicable subcontracting goal established under any contract containing a subcontracting plan pursuant to the clause at FAR 52.219–9, Small Business Subcontracting Plan, or the provisions of the DoD Comprehensive Subcontracting Plan Test Program. Unreimbursed developmental assistance costs incurred for a protégé firm that is an eligible entity employing the severely disabled may be credited toward the mentor firm's small disadvantaged business subcontracting goal, even if the protégé firm is not a small disadvantaged business concern.

(b) Costs that have been reimbursed through inclusion in indirect expense pools may also be credited as subcontract awards for determining the performance of the mentor firm in attaining an applicable subcontracting goal established under any contract containing a subcontracting plan. However, costs that have not been reimbursed because they are not reasonable,

allocable, or allowable will not be recognized for crediting purposes.

(c) Other costs that are not eligible for reimbursement pursuant to I–106(d) may be recognized for credit only if requested, identified, and incorporated in an approved mentor-protégé agreement.

(d) The amount of credit a mentor firm may receive for any such unreimbursed developmental assistance costs must be equal to—

(1) Four times the total amount of such costs attributable to assistance provided by small business development centers, historically Black colleges and universities, minority institutions, and procurement technical assistance centers.

(2) Three times the total amount of such costs attributable to assistance furnished by the mentor's employees.

(3) Two times the total amount of other such costs incurred by the mentor in carrying out the developmental assistance program.

I–110.2 Credit Adjustments

(a) Adjustments may be made to the amount of credit claimed if the Director, SADBU, OUSD(AT&L), determines that—

(1) A mentor firm's performance in the attainment of its subcontracting goals through actual subcontract awards declined from the prior fiscal year without justifiable cause; and

(2) Imposition of such a limitation on credit appears to be warranted to prevent abuse of this incentive for the mentor firm's participation in the Program.

(b) The mentor firm must be afforded the opportunity to explain the decline in small business subcontract awards before imposition of any such limitation on credit. In making the final decision to impose a limitation on credit, the Director, SADBU, OUSD(AT&L), must consider—

(1) The mentor firm's overall small business participation rates (in terms of percentages of subcontract awards and dollars awarded) as compared to the participation rates existing during the 2 fiscal years prior to the firm's admission to the Program;

(2) The mentor firm's aggregate prime contract awards during the prior 2 fiscal years and the total amount of subcontract awards under such contracts; and

(3) Such other information the mentor firm may wish to submit.

(c) The decision of the Director, SADBU, OUSD(AT&L), regarding the imposition of a limitation on credit will be final.

I–111 Agreement Terminations

(a) Mentors and/or protégés must send a copy of any termination notices to the cognizant Component Director, SADBU, that approved the agreement, and the DCMA administrative contracting officer responsible for conducting the annual review pursuant to I–113.

(b) For reimbursable agreements, mentors must also send copies of any termination to the program manager and to the contracting officer.

(c) Termination of a mentor-protégé agreement will not impair the obligations of the mentor firm to perform pursuant to its contractual obligations under Government contracts and subcontracts.

(d) Termination of all or part of the mentor-protégé agreement will not impair the obligations of the protégé firm to perform pursuant to its contractual obligations under any contract awarded to the protégé firm by the mentor firm.

(e) Mentors and protégés will follow provisions of the mentor-protégé agreement developed in compliance with I–107(k) through (m).

I–112 Reporting Requirements.

I–112.1 Reporting Requirements applicable to SF294/295 Reports.

(a) Amounts credited toward applicable subcontracting goal(s) for unreimbursed costs under the Program must be separately identified on the appropriate SF294/SF295 reports from the amounts credited toward the goal(s) resulting from the award of actual subcontracts to protégé firms. The combination of the two must equal the mentor firm's overall accomplishment toward the applicable goal(s).

(b) A mentor firm may receive credit toward the attainment of an SDB subcontracting goal for each subcontract awarded by the mentor firm to an entity that qualifies as a protégé firm pursuant to I–101.3 or I–101.5.

(c) For purposes of calculating any incentives to be paid to a mentor firm for exceeding an SDB subcontracting goal pursuant to the clause at FAR 52.219–26, Small Disadvantaged Business Participation Program—Incentive Subcontracting, incentives will be paid only if an SDB subcontracting goal has been exceeded as a result of actual subcontract awards to SDBs (*i.e.*, excluding credit).

I–112.2 Program Specific Reporting Requirements.

(a) Mentors must report on the progress made under active mentor-protégé agreements semiannually for the periods ending March 31st and September 30th throughout the Program participation term of the agreement. The September 30th report must address the entire fiscal year.

(b) Reports are due 30 days after the close of each reporting period.

(c) Each report must include the following data on performance under the mentor-protégé agreement:

(1) Dollars obligated (for reimbursable agreements).

(2) Expenditures.

(3) Dollars credited, if any, toward applicable subcontracting goals as a result of developmental assistance provided to the protégé and a copy of the SF294 and/or SF295 for each contract where developmental assistance was credited.

(4) The number and dollar value of subcontracts awarded to the protégé firm.

(5) Description of developmental assistance provided, including milestones achieved.

(6) Impact of the agreement in terms of capabilities enhanced, certifications received, and/or technology transferred.

(d) A recommended reporting format and guidance for its submission are available at: *http://www.acq.osd.mil/sadbu/mentor_protege.*

(e) The protégé must provide data, annually by October 31st, on the progress made during the prior fiscal year by the protégé in employment, revenues, and participation in DoD contracts during—

(1) Each fiscal year of the Program participation term; and

(2) Each of the 2 fiscal years following the expiration of the Program participation term.

(f) The protégé report required by paragraph (e) of this section may be provided as part of the mentor report for the period ending September 30th required by paragraph (a) of this section.

(g) Progress reports must be submitted—

(1) For credit agreements, to the cognizant Component Director, SADBU, that approved the agreement, and the mentor's cognizant DCMA administrative contracting officer; and

(2) For reimbursable agreements, to the cognizant Component Director, SADBU, the contracting officer, the DCMA administrative contracting officer, and the program manager.

I–113 Performance reviews.

(a) DCMA will conduct annual performance reviews of the progress and accomplishments realized under approved mentor-protégé agreements. These reviews must verify data provided on the semiannual reports and must provide information as to—

(1) Whether all costs reimbursed to the mentor firm under the agreement were reasonably incurred to furnish assistance to the protégé in accordance with the mentor-protégé agreement and applicable regulations and procedures; and

(2) Whether the mentor and protégé accurately reported progress made by the protégé in employment, revenues, and participation in DoD contracts during the Program participation term and for 2 fiscal years following the expiration of the Program participation term.

(b) A checklist for annual performance reviews is available at *http://www.acq.osd.mil/sadbu/mentor_protege.*

[FR Doc. 04–10883 Filed 5–12–04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 178

[Docket No. RSPA–99–5921 (HM–213A)]

RIN 2137–AD34

Hazardous Materials: Cargo Tank Rollover Damage Protection Requirements; Withdrawal of Advance Notice of Proposed Rulemaking

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advance notice of proposed rulemaking; withdrawal and termination of rulemaking.

SUMMARY: RSPA is withdrawing an advance notice of proposed rulemaking

(ANPRM) published on November 16, 1999, that requested comments on a research study conducted by the University of Michigan Transportation Research Institute (UMTRI) titled ''The Dynamics of Tank-Vehicle Rollover and the Implications for Rollover-Protection Devices.'' Since publication of the ANPRM, RSPA and the Federal Motor Carrier Safety Administration (FMCSA) have determined that additional study is necessary.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Stevens, Office of Hazardous Materials Standards, Research and Special Programs Administration, 202–366–8553 or Mr. Danny Shelton, Hazardous Materials Division, Federal Motor Carrier Safety Administration, 202–366–6121.

SUPPLEMENTARY INFORMATION: In 1991, the National Transportation Safety Board (NTSB) investigated seven accidents involving cargo tank motor vehicles (CTMVs) of various DOT specifications used for liquid hazardous materials. All of the incidents investigated resulted in rollover of the CTMV and a release of hazardous materials. As a result of the investigation, NTSB published a Hazardous Materials Special Investigation Report on February 2, 1992. In its report, NTSB concluded that in all cases the CTMV rollover protection devices failed to protect the cargo tank manholes and fittings from damage.

On February 4, 1992, NTSB released safety recommendation H–92–10, recommending, in part, that the Research and Special Programs Administration (RSPA; we) and the Federal Highway Administration (FHWA), the predecessor agency to the Federal Motor Carrier Safety Administration (FMCSA), conduct a study to model and analyze the forces and energy involved in CTMV rollover incidents. In addition, in H–92–2, NTSB recommended that RSPA assist FHWA to improve the performance of rollover protection devices by promulgating performance standards to consider those forces identified in the study as acting on the devices during a rollover accident. In response to safety recommendation H–92–10, FHWA contracted with UMTRI to conduct a study of CTMV rollover incidents.

In November 1998, UMTRI released its study, titled ''The Dynamics of Tank-Vehicle Rollover and the Implications for Rollover-Protection Devices.'' The study examined 882 *simulated* rollover incidents involving various DOT specification CTMVs and configurations (MC 306, MC 307, MC 312). The simulated rollover incidents were influenced by the accidents investigated by NTSB and included mild, moderate, and severe rollover crash events.

On November 16, 1999, RSPA published an ANPRM (64 FR 62161) that solicited comments and other supporting data from industry related to the issues of concern in the UMTRI study. The ANPRM asked a series of seventeen questions concerning issues ranging from rollover dynamics to benefit-cost estimates. In addition, the ANPRM asked whether the UMTRI study recommendations were feasible, noting a potential ten-fold increase in costs when compared to current regulatory requirements for rollover protection.

In response to the ANPRM, we received twenty-five comments, eight of which were within the scope of the rulemaking. The comments received were generally negative, and all included similar conclusions regarding cost, efficacy, and feasibility. In addition, commenters stated that there was insufficient evidence to support any major revision of the current overturn protection requirements.

In response to comments received to the ANPRM, FMCSA contracted with Battelle in CY 2001 for an independent analysis of the original UMTRI CTMV rollover study. This study is scheduled for completion in CY 2006. Because of the extended period expected for completing the study and evaluating the findings, we are terminating further rulemaking action under this docket. The termination of this rulemaking action does not preclude our addressing the NTSB recommendations under another docket.

Upon completion of the FMCSA study, RSPA and FMCSA will evaluate the findings and open a new rulemaking docket to solicit industry comments and consider proposals to revise current rollover protection requirements. Accordingly, Docket No. RSPA–99–5921 (HM–213A) is hereby withdrawn.

Issued in Washington, DC on May 5, 2004, under authority delegated in 49 CFR Part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 04–10819 Filed 5–12–04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 040407106–4106–01; I.D. 040104A]

RIN 0648-AS04

List of Fisheries for 2004

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

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On April 13, 2004, the proposed List of Fisheries (LOF) for 2004 under the Marine Mammal Protection Act (MMPA) was published in the **Federal Register**. NMFS is extending the comment period on this proposed LOF to June 14, 2004.

DATES: Comments must be received by June 14, 2004.

ADDRESSES: Send comments to Chief, Marine Mammal Conservation Division, Attn: List of Fisheries, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via email to *2004LOF.comments@noaa.gov* or the Federal eRulemaking portal: *http://www.regulations.gov* (Follow instructions for submitting comments).

Comments regarding the burden-hour estimates, or any other aspect of the collection of information requirements contained in the proposed rule, should be submitted in writing to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and to David Rostker, OMB, by e-mail at *David__Rostker@omb.eop.gov* or by fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Kristy Long, Office of Protected Resources, 301-713-1401; Kim Thounhurst, Northeast Region, 978-281-9328; Juan Levesque, Southeast Region, 727-570-5312; Cathy Campbell, Southwest Region, 562-980-4060; Brent Norberg, Northwest Region, 206-526-6733; Bridget Mansfield, Alaska Region, 907-586-7642. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION: On April 13, 2004, the proposed List of Fisheries

for 2004 under the Marine Mammal Protection Act was published in the Federal Register (69 FR 19365). NMFS must categorize each commercial fishery on the LOF into one of three categories under the MMPA based on the level of serious injury and mortality of marine mammals that occurs incidental to the fishery. NMFS must publish in the Federal Register any necessary changes to the LOF after notice and opportunity for public comment. In the proposed LOF for 2004, NMFS proposed to elevate the Hawaii Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, Oceanic Sharks Longline/Set Line fishery from Category III (remote likelihood of or no known incidental mortality and serious injury) to Category I (frequent incidental mortality and serious injury). In addition, NMFS provided that it would convene a workshop to address the scientific bases for this proposal, and it would consider the results of the workshop and public comments in its decision to classify this fishery in the final LOF for 2004. In order to allow sufficient time to organize and convene the workshop and allow for consideration of public comment based on the workshop as well as from other sources, NMFS is extending the public comment period on the proposed LOF for 2004 from May 13, 2004, to June 14, 2004.

Dated: May 10, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 04–10896 Filed 5–12–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 040430138–4138–01; I.D. 042204C]

RIN 0648–AS28

Atlantic Highly Migratory Species (HMS) Fisheries; Adjustment of the Semi-annual Quotas for Large Coastal Sharks (LCS) in the North Atlantic Region

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would adjust the seasonal split of the North Atlantic LCS regional quota from an equal percentage split of the quota to a 20 to 80 percentage split of the quota between the first and second 2004 semi-annual seasons, respectively. Landings data indicate that the North Atlantic quota would be reached or exceeded in a short period of time during the second semi-annual season under the existing quota allocations. This action could affect all fishermen with commercial shark limited access permits fishing in the North Atlantic region.

DATES: Public comments must be received by May 28, 2004.

ADDRESSES: Comments on the proposed rule may be submitted by mail to the HMS Management Division, 1315 East West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Comments on Proposed Rule on North Atlantic LCS Quota Allocation.'' Comments may also be made via facsimile (fax) to 301–713–1917. Comments on this proposed rule may also be submitted by e-mail. The address for providing e-mail comments is *0648.AS28@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier (RIN 0648–AS28 and I.D. 042204C). Comments may also be submitted electronically through the Federal e-Rulemaking portal: *http://www.regulations.gov*.

For copies of Amendment 1 to the Fisheries Management Plan for Atlantic Tunas, Swordfish, and Sharks or its implementing regulations, please write to Highly Migratory Species (HMS) Management Division (F/SF1), Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, or visit the webpage *http://www.nmfs.noaa.gov/sfa/hms*

FOR FURTHER INFORMATION CONTACT: For additional information regarding the requirements specified in this document, contact Chris Rilling, Karyl Brewster-Geisz, or Heather Stirratt, phone 301–713–2347 or fax 301–713–1917.

SUPPLEMENTARY INFORMATION: On December 24, 2003, NMFS issued a final rule (68 FR 74746) that established the 2004 annual landings quota for LCS at 1,017 metric tons (mt) dressed weight (dw). The final rule also established regional LCS quotas for the commercial shark fishery in the Gulf of Mexico (Texas to the West coast of Florida), South Atlantic (East coast of Florida to North Carolina and the Caribbean), and North Atlantic (Virginia to Maine). The quota for LCS was split between the three regions as follows: 42 percent to the Gulf of Mexico, 54 percent to the South Atlantic, and 4 percent to the North Atlantic. As was done since 1993, the quotas for each region were further split evenly between the 2004 first and second semi-annual fishing seasons. This proposed rule does not alter the annual landings quota or the overall North Atlantic regional quota, but proposes to adjust the seasonal quota split for the North Atlantic region.

Landings data from 2000–2002 indicate that the majority of LCS in the North Atlantic region are landed in the second semi-annual season. Historically, first season landings, including state landings after a Federal closure, have ranged from 6 to 38 percent, with an average of approximately 20 percent of the annual regional quota for the North Atlantic being landed during the first season. Second season landings, including state landings after a Federal closure, have ranged from 62 to 94 percent, with an average of approximately 80 percent of the annual regional quota for the North Atlantic being landed during the second season. In addition, as of April 23, 2004, there were no reported landings of LCS for the North Atlantic region during the first semi-annual season, indicating that the current 50 percent split between the two semi-annual seasons does not reflect the historic or current landings for the North Atlantic region.

As a result, NMFS proposes to adjust the seasonal quota split from an even split (50/50) to a 20/80 split resulting in 8.1 mt dw for the first semi-annual season and 32.6 mt dw for second semi-annual season, not adjusted for any over- or underharvest. This action will not affect the overall landings quota for the fishery or the region (40.7 mt dw for the North Atlantic), but will adjust the available North Atlantic LCS quota in each season to result in a longer second season that more accurately reflects historical and current landings in the region. Any over- or underharvest from both seasons will be considered before establishing the trimester season which begins in 2005.

Since neither the annual quotas, nor the overall regional quotas are proposed to be changed, NMFS does not expect this action to result in any negative economic consequences. This action will likely have a positive economic impact by allowing fishermen to harvest an amount closer to the actual historic landings for the region. Without making this adjustment, the season length would have to be shortened when the lower existing quota was reached, thus preventing fishermen from landing as many sharks as they have historically. The short season would also make effective management and reporting of

the data in a timely manner impracticable. Dealer reports of shark landings are received on a bi-weekly basis, and under the lower existing quota the season would have to be closed in a matter of days rather than weeks, thus not allowing sufficient time to review landings reports.

Regulations at 50 CFR 635.27(b) provide for adjustments of shark fishing quotas via a framework regulatory action. Adjustments to the quotas are to be filed with the Office of the **Federal Register** for publication at least 30 days prior to the start of the next fishing season.

A **Federal Register** notification announcing the opening and closing dates and quotas for all regions will be published in a separate document prior to the start of the second semi-annual commercial shark fishing season.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq*. The Assistant Administrator for Fisheries (AA) previously determined in Amendment 1 to the HMS FMP that the implementation of regional quotas was necessary to ensure effective implementation of the commercial shark fishery. The AA has initially determined that this rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

As of October 2003, there were 56 directed shark limited access permits in the North Atlantic region that would be affected by this rule, all of which are considered small entities. This proposed rule would have a positive economic impact because it would allow the fishery to stay open longer, thus providing fishermen with a better opportunity to catch the quota. The positive economic impact is not expected to be significant because the overall quota would not be changed, only the period during which the quota could be harvested. By not making this adjustment, the second semi-annual season length would be considerably shorter because the fishery would have to close when the lower existing quota was reached, the quota would not reflect historic and current landings in the fishery, and there could be a negative economic impact on fishermen due to the early closure and lower landings. Because this action would not have a significant economic impact on a substantial number of small entities, no initial regulatory flexibility analysis was prepared.

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this final rule is not significant.

NMFS notified all states, consistent with the Coastal Zone Management Act, of the regional quotas during the rulemaking for Amendment 1 of the HMS FMP. No states indicated that the regional quota requirement was inconsistent with their coastal zone management programs. Thus, NMFS has determined that adjusting the semi-annual regional quota for the North Atlantic region would be consistent to the maximum extent practicable with the enforceable policies of those Atlantic, Gulf of Mexico, and Caribbean coastal states that have approved coastal zone management programs.

The environmental impacts of the overall regional quotas were analyzed in Amendment 1 to the HMS FMP and the final rule published on December 24, 2003, (68 FR 74746). Adjusting the 2004 quota allocation for the North Atlantic region between the first and second semi-annual seasons is not expected to have impacts on endangered species or marine mammal interaction rates beyond those impacts considered in the October 29, 2003, Biological Opinion.

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

Dated: May 10, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 04–10897 Filed 5–12–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 69, No. 93

Thursday, May 13, 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

Forest Service

Sawtooth National Forest, Idaho; Upper and Lower East Fork Allotment Management Plan Analysis

AGENCY: Forest Service, USDA.

ACTION: Record of Decision—Substantial Impairment Determination being issued in compliance with appeal remand direction.

Decision and Reasons for Decision

Background

The Upper and Lower East Fork Cattle & Horse Allotments are located in the White Cloud Mountain range in Custer County, south of Clayton, ID and are administered by the Sawtooth National Recreation Area (SNRA) of the Sawtooth National Forest. The allotments are located in portions of Townships 7, 8, 9, and 10 North and Ranges 15, 16, and 17 East, Boise Meridian.

On August 22, 1972, Congress passed Public Law 92–400 establishing the SNRA. The SNRA was established to protect the area's primary values of fish and wildlife resources, and the natural, scenic, pastoral, and historical values, and recreation attributes. Under Public Law 92–400, livestock grazing may be authorized so long as it does not substantially impair the purposes for which the SNRA was established.

A Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) for the Upper and Lower East Fork Allotment Management Plans were released on September 30, 2003. As stated in the FEIS, one of the determinations to be made in the ROD was whether or not the decision to allow livestock grazing on the Upper and Lower East Fork Allotments would substantially impair SNRA values of the SNRA (see attached map).

The ROD was appealed under the regulations at 36 CFR part 215, claiming in part, that the ROD failed to provide for an adequate and legally sufficient assessment of whether the wildlife values associated with wolves and bighorn sheep on the East Fork Allotments would be substantially impaired by authorizing grazing under the conditions set forth in the EIS and ROD. Upon review of the project record, the FEIS and the ROD for the East Fork Allotments, the Appeal Reviewing Officer found that information is presented in the record regarding the effects of the decision to allow livestock grazing on wolves and bighorn sheep. However, the Appeal Reviewing Officer also found that a conclusion or determination relative to the SNRA Organic Act requirement that actions not substantially impair the purposes for which area was established was not documented in the ROD. In light of this finding, the determination concerning substantial impairment of wildlife values associated with wolves and bighorn sheep related to livestock grazing on the Upper and Lower East Fork Allotment was remanded back to the Forest. The Remand included direction to review the information in the record and make a determination in accordance with the SNRA Organic Act as to whether the authorization of livestock grazing as provided in the ROD will substantially impair wildlife values associated with wolf and bighorn sheep on the East Fork Allotments.

Decision

It is my determination that the decision to allow continued use of the Upper & Lower East Fork Allotments, as provided in the September 30, 2003 ROD with required mitigation and management requirements, is consistent with the revised Sawtooth FLRMP and Public Law 92–400 and will not cause substantial impairment of SNRA wildlife values associated with gray wolf or bighorn sheep.

Rationale for Decision

As described in Appendix I of the revised Sawtooth FLRMP, direction for evaluating substantial impairment of the key SNRA values originates in 36 CFR part 292: 36 CFR 292.17 (b)(10): ''Substantial impairment means that level of disturbance of the values of the SNRA which is incompatible with the standards of the General Management Plan.'' The General Management Plan is defined as ''the document setting forth the land allocation and resource decisions for management of the SNRA.'' The direction contained in the revised Sawtooth FLRMP represents the General Management Plan as required by Public Law 92–400. The standards for management of wildlife on the SNRA can be found in Chapter III and Appendix I of the revised Sawtooth FLRMP.

As described in the FEIS (page IV–57), the East Fork Allotments are considered wolf habitat and comprise an estimated 15% of the wolf habitat within the SNRA. While depredation of livestock by wolves has occurred on private lands within the East Fork Salmon River watershed, as described on Appendix C, page C–4, no depredation of cattle by wolves has occurred on National Forest System lands within the SNRA, including the East Fork Allotments. I do acknowledge that lethal control activities have taken place within the allotments. However, these activities have been in response to depredations on private lands and are not related to livestock use on the East Fork allotments. While predator control activities by the federal government is a reasonably foreseeable action on the allotments, I believe that the presence of cattle in these allotments contributes a low risk for triggering lethal control activities given that there is no history of cattle being taken by wolves on these allotments. As documented in the Rocky Mountain Wolf Recovery annual reports, wolf depredations within the Central Idaho Recovery Area occurs predominantly on sheep, with some depredation on calves during the spring calving season on private land. Therefore, the presence of cattle on the allotments is not likely to have an effect on presence of wolves on the SNRA. As described in Appendix C of the FEIS, as long as calving and livestock grazing continues on state and private lands in the area, the risk of mortality to wolves from predator control would exist whether or not livestock grazing continues on National Forest System lands within the East Fork Allotments or the SNRA.

The only bighorn sheep winter range on the SNRA occurs within the Lower East Fork Allotment. The Lower East Fork winter range provides an estimated 22% of the winter range for the Salmon Region Unit 36A herd (FEIS III–71).

Studies by the Idaho Department of Fish and Game (Project W–170–R–27, Progress Report for Bighorn Sheep, July 2003) indicate that bighorn sheep within the Salmon Region experienced major disease-related young and adult mortality beginning in 1990, followed by several years of low lamb production. In 1987, thirteen bighorn sheep were taken from Unit 36A to other parts of Idaho, implying a relatively stable population at that time. Current allotments boundaries have been in place since 1979 for Upper East Fork and 1985 for the Lower East Fork. Therefore, it appears that disease has been the key-limiting factor for this herd. Recent surveys, documented in the 2003 report, suggest that lamb/ewe ratios are improving region-wide in the Salmon Region. The report also documents a conclusion that land management practices over the past 25 years have generally improved bighorn sheep habitat within the Salmon Region. Under the September 30, 2003 ROD, the utilization level has been reduced from 40% to 30%. As described in the FEIS, the 30% utilization standard would further reduce potential for forage competition between livestock and bighorn sheep. No bighorn summer range would be available for livestock grazing. Any competition for forage would be further reduced by standards in the ROD. Given this information, I believe that livestock grazing, under the direction of the September 30, 2003 ROD, will not substantially impair bighorn sheep.

Implementation

Implementation Date

If no appeals are filed within the 45-day time period, implementation of the decision may occur on, but not before, five business days from the close of the appeal filing period. When appeals are filed, implementation may occur on, but not before, the 15th business day following the date of the last appeal disposition.

Administrative Review or Appeal Opportunities

This decision on the determination of substantial impairment for the Upper and Lower East Fork Allotments is subject to appeal pursuant to 36 CFR part 215. The appeal must be postmarked or received by the Appeal Deciding Officer within 45 days of the publication of this notice in the Challis Messenger. The Appeals Deciding Officer is: Regional Forester, Intermountain Region, 324 25th Street, Ogden, UT 84401 (801) 625–5605. The office business hours for those submitting hand-delivered appeals are: 8:00–4:30 Monday through Friday, excluding holidays. Appeals must meet the content requirements of 36 CFR 215.14, as published in the **Federal Register** on November 4, 1993.

Appeals, including attachments, must be filed within 45 days from the publication date of the notice in the Challis Messenger, the newspaper of record for the SNRA. The publication date in the Challis Messenger newspaper, is the exclusive means for calculating the time to file an appeal. Those wishing to appeal this decision should not rely upon dates or timeframe information provided by any other source.

The 36 part CFR 251 subpart C appeal process for the original East Fork ROD has been on hold until the 36 CFR part 215 appeal process was completed. Applicants for or holders of a special use authorization who originally filed appeals on the East Fork ROD under 36 CFR part 251 do not need to file new appeals. However, if they believe this Record of Decision adds new information that may change or alter their original appeal, they may file an amendment to their appeal. The amendment to the appeal, including the reasons for amendment, must be postmarked or received by the Appeal Reviewing Officer within 45 days of this decision. The notice of the amended appeal should be filed with: Forest Supervisor, Sawtooth National Forest, 2647 Kimberly Road East, Twin Falls, ID 83301–7976. A copy must be filed simultaneously with: Area Ranger, Sawtooth National Recreation Area, HC 64, Box 8291, Ketchum, ID 83340. Appeals must meet the content requirements of 36 CFR 251.90.

Appellants with standing under both 36 CFR part 251 and 36 CFR part 215 may only appeal under one regulation and may not appeal under both.

Contact Person

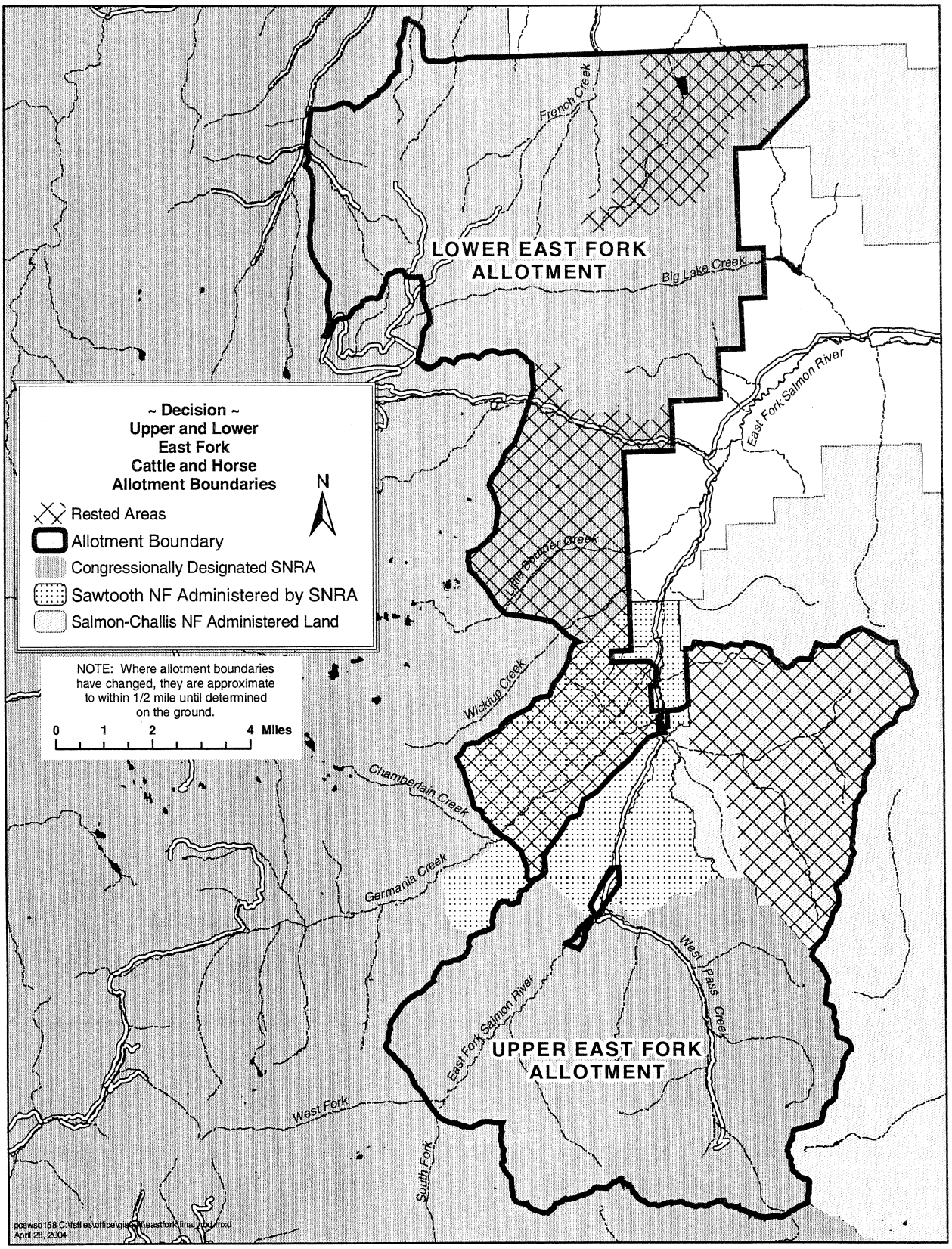
For additional information concerning this decision or the Forest Service appeal process, contact Sharon LaBrecque, Forest Planning Officer, Sawtooth National Forest; 2647 Kimberly Road East; Twin Falls, Idaho 83301–7976; (208) 737–3200.

Dated: May 3, 2004.

Sara E. Baldwin,

Area Ranger—Sawtooth National Recreation Area.

BILLING CODE 3410–11–P



[FR Doc. 04–10873 Filed 5–12–04; 8:45 am]

BILLING CODE 3410–11–C

DEPARTMENT OF COMMERCE

[I.D. 051004A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Permit Family of Forms.

Form Number(s): None.

OMB Approval Number: 0648–0202.

Type of Request: Regular submission.

Burden Hours: 27,097.

Number of Respondents: 42,334.

Average Hours Per Response: An initial vessel permit application requires an estimated 45 minutes to complete, while preprinted vessel permit renewal forms require an estimated 30 minutes per response. Initial dealer permit applications take an estimated 15 minutes to complete, while preprinted dealer permit renewal forms require an estimated 5 minutes to complete. The initial and renewal vessel operator permit applications are estimated to take an average of 1 hour to complete due to the color photograph submission requirement. Limited access vessel upgrade or replacement applications take approximately 3 hours to complete. Applications for retention of limited access permit history require an estimated 30 minutes. Limited access NE multispecies, combination, occasional scallop, red crab, and monkfish vessels must notify NOAA Fisheries via the call-in system of the start date and end date for each fishing trip. The estimated time per response is 2 minutes. It is estimated to take NE multispecies and monkfish vessels approximately 3 minutes to declare of blocks of time out of the gillnet fishery. The burden of vessel monitoring for full-time and part-time limited access scallop vessels or authorized NE multispecies, combination, and occasional scallop vessels is estimated to be 1 hour for installation of a VMS unit, 5 minutes for verification of installation of the VMS unit, and 30 seconds per poll for automated polling of vessel position. Vessels required to have a fully functional VMS unit at all times may request to turn off the VMS (power-down exemption) at approximately 30 minutes per request. Responses to requests to carry an observer are estimated to require 2 minutes per request.

Limited access vessels fishing under DAS requirements that have assisted in USCG search and rescue operations or assisted in towing a disabled vessel may apply for Good Samaritan DAS credits at a burden of 30 minutes per application.

Owners or operators of vessels seeking an LOA to participate in any of the exemption programs must request an LOA from the RA. The estimated time required to request an LOA is 5 minutes. Vessels fishing in the NAFO Regulatory Area that wish to be exempt from NE multispecies regulations while transiting the EEZ with NE multispecies on board, or landing NE multispecies in U.S. ports, must request an LOA (5 minutes) in addition to possessing a valid High Seas Fishing Compliance permit under 50 CFR part 300. An LOA (5 minutes) is also required for permitted vessels intending to transfer selected species from one vessel to another, as follows: *Loligo* and butterfish moratorium permit, or *Illex* moratorium permit, and vessels issued a mackerel or squid/butterfish incidental catch permit that intend to transfer *Loligo*, *Illex*, or butterfish; vessels issued a NE multispecies or scallop permit that intend to transfer species other than regulated species; and NE multispecies vessels intending to transfer up to 500 lb (227 kg) of combined small-mesh NE multispecies per trip for use as bait.

Owners of charter/party vessels intending to fish in the Nantucket Lightship Closure Area must request an LOA from the Regional Administrator, with an estimated time of 5 minutes per request. Vessels fishing under Charter/Party regulations in GOM closed areas must obtain a Charter/Party Exemption Certificate for GOM Closed Areas, at an estimated 2 minutes per request.

Limited access sea scallop vessels wishing to participate in either the state waters DAS exemption program or the state waters gear exemption program must notify the RA by VMS or call-in notification. Participants in the sea scallop state waters exemption programs using VMS notification must notify the RA prior to the first trip in the exemption program and prior to the first planned trip in the EEZ, at an estimated 2 minutes per response. Participants in these exemption programs using the call-in system must notify the RA at least 7 days prior to fishing under the exemption, at an estimated 2 minutes per call. If participants using the call-in system wish to withdraw from either state waters exemption program prior to the end of the 7-day designated exemption period requirement, they must also call the RA to notify of early withdrawal, at an estimated 2 minutes per call.

Surf clam and ocean quahog vessel owners or operators are required to call the NOAA Fisheries Office of Law Enforcement (OLE) nearest to the point of offloading prior to the departure of the vessel from the dock. It requires approximately 2 minutes for a vessel owner or operator to notify OLE of the vessel's departure from the dock to fish for surf clams or ocean quahogs in the EEZ.

In the American lobster fishery, the estimated time to designate lobster management areas and order trap tags is 5 minutes; a request for additional tags is estimated to take 2 minutes; and a notification of lost tags is estimated to take 3 minutes. Approximately 2,700 vessels will designate lobster management areas on the annual permit renewal application and order trap tags. Approximately 1,350 vessels will not order their total allowable trap allotment initially, and, therefore, will submit a request for additional trap tags (their remaining balance) later in the permit year; approximately 2,700 vessels will report lost tags and request replacement tags. Approximately 69 vessels will choose to participate in the lobster Area 5 waiver program and will therefore, select, cancel, and re-designate this permit category. The initial lobster Area 5 waiver program designations are estimated to take 15 minutes, requests for the cancellation and selection of an alternative permit category are estimated at 15 minutes, and the return of the suspended lobster trap permit is estimated at 2 minutes.

In the NE multispecies fishery, a request for change in permit category designation requires approximately 2 minutes, and a request for transit to another port by a vessel required to remain in the GOM cod trip limit takes 2 minutes.

In the gillnet fisheries for NE multispecies and monkfish, the burden estimate for calling out of the fishery is 3 minutes. Gillnet category designation, including initial requests for gillnet tags, requires approximately 10 minutes. Requests for additional tags require an estimated 2 minutes. Notification of lost tags and requests for replacement tag numbers also require an estimated 2 minutes. It will take approximately 1 minute to attach each gillnet tag.

Requests for state quota transfers in the bluefish and summer flounder fisheries are estimated to require 1 hour.

Needs and Uses: Participants in the marine fishing industry, including vessel owners, vessel operators, and fish dealers, who wish to participate in regulated Northeast Regional fisheries

must apply for, and obtain, permits. Persons obtaining permits may also be subject to notification, tagging, and other requirements. This request affects collections associated with the Atlantic Herring, Atlantic Mackerel, Atlantic Sea Scallop, Black Sea Bass, Bluefish, *Illex* Squid, *Loligo* Squid, Butterfish, Monkfish, Northeast (NE) Multispecies, Ocean Quahog, Scup, Spiny Dogfish, Summer Flounder, Surf Clam, Tilefish, Deep-sea Red Crab, NE Skates, and American Lobster Fishery Management Plans.

Affected Public: Individuals or households; Business or other for-profit organizations; State, Local or Tribal Government.

Frequency: On occasion. Monthly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number 202–395–7285, or *David__Rostker@omb.eop.gov*.

Dated: May 7, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–10898 Filed 5–12–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 051004G]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Fisheries Certificate of Origin.

Form Number(s): NOAA Form 370.

OMB Approval Number: 0648–0335.

Type of Request: Regular submission.

Burden Hours: 1,033.

Number of Respondents: 350.

Average Hours Per Response: Processor response, 20 minutes; Captain's statement, 5 minutes.

Needs and Uses: Information required by International Dolphin Conservation Program Act (IDCPA) amendments to the Marine Mammal Protection Act (MMPA) is needed to document the dolphin safe status of tuna import shipments and domestic deliveries of tuna by U.S.-flag purse seine fishing vessels; verify that import shipments of fish were not harvested by large-scale, high seas driftnets; verify that tuna was not harvested by an embargoed nation or one that is otherwise prohibited from exporting tuna to the United States. The forms are submitted by importers, processors, and/or purse seine vessel operators.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number 202–395–7285, or *David__Rostker@omb.eop.gov*.

Dated: May 7, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–10899 Filed 5–12–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 051004H]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Electronic Chart Systems and Electronic Chart Display and Information Systems User Survey.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Emergency submission.

Burden Hours: 667.

Number of Respondents: 1,000.

Average Hours Per Response: 40 minutes.

Needs and Uses: The purpose of this information collection is to gather data on: (1) the current state of Electronic Chart Systems (ECS)/ Electronic Chart Display and Information Systems (ECDIS) development and usage by mariners; (2) the technical problems, personal preferences, near misses, and reasons for mariners' preferences on equipment setup; and (3) the skill sets and knowledge that mariners feel are important for the safe and efficient use of ECS and ECDIS. The results of the proposed information collection would help identify human errors associated with ECS and ECDIS and aid in the development of training and educational aids.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent by May 24, 2004 to David Rostker, OMB Desk Officer, FAX number 202–395–7285, or *David__Rostker@omb.eop.gov*.

Dated: May 10, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–10986 Filed 5–11–04; 2:50 pm]

BILLING CODE 3510–JE–S

DEPARTMENT OF COMMERCE

[I.D. 051004I]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: U.S.-Canada Albacore Treaty Reporting System.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Emergency submission.

Burden Hours: 928.

Number of Respondents: 700.

Average Hour Per Response: Phone call to ensure that the vessel is on the list of vessels exchanged with Canada, 5 minutes. Notification of border crossing, 5 minutes. Logbook reporting, 5 minutes per day. Vessel marking, 5 minutes per vessel.

Needs and Uses: The owners of vessels that fish out of West Coast ports for albacore tuna will be required to report their desire to be on the list of vessels provided to Canada each year indicating vessels that are eligible to fish for albacore in waters under the fisheries jurisdiction of Canada. They also report, in advance, their intention to fish in those waters prior to crossing the border, and to report prior to returning to U.S. waters; maintain and submit to NMFS catch and effort logbooks covering fishing in Canadian waters; and to mark their fishing vessels to facilitate effective enforcement of the effort limits under the Treaty.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent by May 15, 2004 to David Rostker, OMB Desk Officer, FAX number 202–395–7285, or *David__Rostker@omb.eop.gov*.

Dated: May 10, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–10987 Filed 5–11–04; 2:50 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 040408110–4110–01]

RIN 0607–AA42

Establishment of the 2010 Census Redistricting Data Program

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of program.

SUMMARY: This notice announces and seeks comments on the establishment of the 2010 Census Redistricting Data Program. Required by law, the program provides States the opportunity to specify the small geographic areas that they wish to receive 2010 decennial census population totals for the purpose of reapportionment and redistricting.

DATES: Comments on this notice must be received by July 12, 2004. The deadline for States to notify the Bureau of the Census (Census Bureau) that they wish to participate in Phase 1, the State Legislative District Project, is August 1, 2005.

ADDRESSES: Please direct all written comments on this notice to the Director, U.S. Census Bureau, Room 2049, Federal Building 3, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Catherine C. McCully, Chief of the Census Redistricting Data Office, U.S. Census Bureau, Room 3631, Federal Building 3, Washington, DC 20233, telephone (301) 763–4039.

SUPPLEMENTARY INFORMATION: Under the provisions of Title 13, Section 141(c), of the United States Code (U.S.C.), the Secretary of Commerce (Secretary) is required to provide the ''officers or public bodies having initial responsibility for the legislative apportionment or districting of each state * * *'' with the opportunity to specify geographic areas (*e.g.*, voting districts) for which they wish to receive decennial census population counts for the purpose of reapportionment or redistricting.

By April 1 of the year following the decennial census, the Secretary is required to furnish the State officials or their designees with population counts for counties, cities, census blocks, and State-specified congressional districts, legislative districts, and voting districts that meet Census Bureau technical criteria.

In accordance with the provisions of 13 U.S.C. 141(c), the Director of the Census Bureau, on behalf of the Secretary of Commerce, announces the establishment of the 2010 Census Redistricting Data Program (Program) and commences Phase 1, the State Legislative District Project, of the Program. An invitation to the officers or public bodies having initial responsibility for legislative reapportionment and redistricting will be issued this fall through the Census Redistricting Data Office. The deadline for States to notify the Census Bureau that they wish to participate in Phase 1, the State Legislative District Project, is August 1, 2005.

As seen in the 1990 and 2000 censuses, the 2010 Census Redistricting Data Program will be partitioned into several phases. State participation in Phase 1 and 2 of the Census 2010 Redistricting Data Program under 13 U.S.C. 141 is voluntary.

Phase 1: State Legislative District Project (SLDP)

Beginning in the Fall of 2004, the Census Bureau will correspond with the legislative leadership of each state to establish a Census 2010 Redistricting Data Program liaison. The Census Bureau will also formally announce, through a subsequent **Federal Register** notice, the commencement of Phase 1. Beginning in the winter of 2005, States that choose to participate in Phase 1 will begin to receive guidelines for providing State legislative districts for their States. This phase will include a verification step and will end with tabulations based on Census 2000 data. Ongoing changes to Congressional district plans will be collected, and new tabulations will be developed, as needed. Boundaries of legislative and Congressional districts will be 2010 tabulation census block boundaries for those participating States. Participation in Phase 1 is not a prerequisite for participation in Phase 2 or 3 of the Census 2010 Redistricting Data Program.

Phase 2: Voting District/Block Boundary Suggestion Project

Beginning in the fall of 2007, States that choose to participate in Phase 2 will receive on a flow basis, geographic products (maps and/or computer files) for their use in submitting to the Census Bureau the voting districts and suggestions for the Census 2010 tabulation census block inventory. A verification phase is offered to those participating States. If States choose not to participate in Phase 2, the Census Bureau cannot ensure that the decennial census 2010 tabulation geography will support the redistricting needs of each State. In mid-2007 the Census Bureau will announce the technical and other criteria for participating in Phase 2, the

Voting District/Block Boundary Suggestion Project.

Phase 3: Delivery of the Decennial Census 2010 Redistricting Data

By April 1, 2011, the Director of the Census Bureau will, in accordance with 13 U.S.C. 141(c), furnish the Governor and State legislative leaders, both the majority and minority, with 2010 census population counts for standard census tabulation areas (*e.g.*, State, Congressional district, American Indian area, county, city, town, census tract, census block group, and census block) regardless of a State's participation in Phase 1 or 2. The Director of the Census Bureau also will provide 2010 population counts for those States participating in Phase 1 and/or 2, for State legislative districts. For those States participating in Phase 2, the Director of the Census Bureau will provide 2010 census population counts for standard census tabulation areas and voting districts no later than April 1, 2011.

Phase 4: Collection of Post-Census 2010 Redistricting Plans

Beginning in 2011, the Census Bureau will obtain from each State the newly drawn legislative and Congressional district plans and prepare the appropriate data sets based on the new districts.

Phase 5: Evaluation of Census 2010 Redistricting Data Program and Recommendations for Census 2020 Redistricting Data Program

As the final phase of the Census 2010 Redistricting Data Program, the Census Bureau will work with the States to conduct a thorough review of the program. The intent of this review, and the final report that will be produced as a result, is to provide guidance to the Secretary of Commerce and the Census Bureau Director in planning for the Census 2020 Redistricting Data Program. Please address questions concerning any aspect of the Census 2010 Redistricting Data Program to the person identified in the contact section of this notice.

Executive Order 12866

This rule has been determined to be significant under Executive Order 12866.

Dated: May 7, 2004.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 04–10844 Filed 5–12–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–831

Fresh Garlic From the People's Republic of China: Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative and New Shipper Reviews

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

SUMMARY: The Department of Commerce is extending the time limit for the final results of the administrative and new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China until June 7, 2004. This extension applies to the administrative review of two exporters, Jinan Yipin Corporation, Ltd., and Shandong Heze International Trade and Developing Company, and the new shipper reviews of two exporters, Jining Trans–High Trading Company and Zhengzhou Harmoni Spice Co., Ltd. The period of review is November 1, 2001, through October 31, 2002.

EFFECTIVE DATE: May 13, 2004.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten or Mark Ross, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1690 and (202) 482–4794, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 26, 2002, the Department of Commerce (the Department) published the *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews: Fresh Garlic from the People's Republic of China* (67 FR 78772), in which it initiated an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. On January 6, 2003, the Department published the *Notice of Initiation of New Shipper Antidumping Duty Reviews: Fresh Garlic from the People's Republic of China* (68 FR 542), in which it initiated the new shipper reviews. On March 10, 2003, we aligned the new shipper reviews with the administrative review pursuant to 19 CFR 351.214(j)(3). As such, the time limits for the new shipper reviews were aligned with those for the administrative review. On December 10, 2003, the Department published the *Notice of Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews: Fresh Garlic from the People's Republic of China* (69 FR 68868). On February 3, 2004, the Department published a notice extending the time limit for the final results of review until May 17, 2004. See *Fresh Garlic From the People's Republic of China: Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative and New Shipper Reviews* (69 FR 5132).

Statutory Time Limits

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 of an antidumping duty order within 120 days after the date upon which the preliminary determination is published. The Act provides further that the Department may extend that 120–day period to 180 days if it determines that it is not practicable to complete the review within the foregoing time period. Section 751(a)(2)(B)(iv) of the Act also provides that we may extend the deadlines in a new shipper review if we determine that the case is extraordinarily complicated.

Extension of Time Limits for Final Results

It would be extraordinarily complicated to complete the aligned administrative review and new shipper reviews of Jinan Yipin Corporation Ltd., Shandong Heze International Trade and Developing Company, Jining Trans–High Trading Company, and Zhengzhou Harmoni Spice Co., Ltd., within the currently prescribed time period. The Department is still researching and analyzing comments raised after the preliminary results pertaining to the valuation of the factors of production for these companies. Further, on April 23, 2004, we received new factual information concerning one of the respondents. While normally we would not consider accepting new factual information at such a late stage in the review, in this situation, given the nature of the allegations within the submission, we considered it appropriate to accept the information and we require additional time to conduct a thorough evaluation. See April 30, 2004, memorandum from Mark Ross, Program Manager, to Laurie Parkhill, Office Director. Because of these complications and a number of other complex factual and legal questions which are currently before the agency that relate directly to the assignment of antidumping duty margins in this case, it is not practicable to complete the final results by the

current deadline of May 17, 2004. Furthermore, in light of this new information on the record, it would be extraordinarily complicated to complete these reviews by this date. Thus, we are extending the 120–day period for completion of the final results of the administrative review and new shipper reviews to 180 days.

Therefore, in accordance with sections 751(a)(2)(B)(iv) and 751(a)(3)(A) of the Act, the Department is extending the time limit for the final results until no later than June 7, 2004.

Dated: May 7, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration, Group I.

[FR Doc. 04–10885 Filed 5–12–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–533–821)

Final Results of Countervailing Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from India

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

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On January 7, 2004, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on certain hot–rolled carbon steel flat products from India for the period April 20, 2001 through December 31, 2002 (*see Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from India*, 69 FR 907 (January 7, 2004) (*Preliminary Results*)). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Based on information received since the *Preliminary Results* and our analysis of the comments received, the Department has revised the net subsidy rate for Essar Steel, Ltd. (Essar), as discussed in the ''Issues and Decision Memorandum from Holly A. Kuga, Acting Deputy Assistant Secretary for AD/CVD Enforcement II to James J. Jochum, Assistant Secretary for Import Administration concerning the Final Results of Countervailing Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from India'' (Decision Memorandum) dated May 6, 2004. The final net subsidy rate for the reviewed company is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: May 13, 2004

FOR FURTHER INFORMATION CONTACT: Tipten Troidl, Cindy Robinson or Maura Jeffords, Office of AD/CVD Enforcement VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On January 7, 2004, the Department published in the **Federal Register** its *Preliminary Results*. We invited interested parties to comment on the results. On February 6, 2004, we received case briefs from petitioners and respondent. On February 11, 2004, we received rebuttal briefs from petitioners[1] and respondent[2]. A public hearing was held at the Department on February 25, 2004.

Pursuant to 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers Essar. This review covers the assessment period from April 20, 2001 through December 31, 2002, and eleven programs.

Scope of the Review

The merchandise subject to this order is certain hot–rolled flat–rolled carbon–quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included within the scope of this order are vacuum degassed, fully stabilized (commonly referred to as interstitial–free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro–alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: i) iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2 percent or less, by weight; and iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order:

Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, ASTM specifications A543, A387, A514, A517, A506).

•SAE/AISI grades of series 2300 and higher.

•Ball bearings steels, as defined in the HTSUS.

•Tool steels, as defined in the HTSUS.

•Silico–manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.

•ASTM specifications A710 and A736.

•USS Abrasion–resistant steels (USS AR 400, USS AR 500).

•All products (proprietary or otherwise) based on an alloy ASTM

[1] Petitioners are Bethlehem Steel Corporation, National Steel Corporation, Nucor Corporation and United States Steel Corporation.

[2] Respondent is Essar Steel, Ltd. (Essar).

specification (sample specifications: ASTM A506, A507).

•Non–rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this order is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot–rolled flat–rolled carbon–quality steel covered by this order, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the Decision Memorandum, which is hereby adopted by this notice. A list of the issues contained in the Decision Memorandum is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the Main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at http://ia.ita.doc.gov, under the heading ''**Federal Register** Notices.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

In accordance with 19 CFR 351.221(b)(5), we calculated an individual subsidy rate for the producer/exporter, Essar, subject to this review. For the period April 20, 2001, through December 31, 2001, we determine the net subsidy *ad valorem* rate for Essar is 1.69 percent, and for the period January 01, 2002 through December 31, 2002 the net subsidy *ad valorem* rate is 16.88 percent.

We will instruct the U.S. Customs and Border Protection (CBP) to assess countervailing duties as indicated above. The Department will instruct the CBP to collect cash deposits of estimated countervailing duties in accordance with the assessment rate calculated for 2002 as detailed above, of the f.o.b. invoice price on all shipments of the subject merchandise from the producer/exporter under review, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Because the URAA replaced the general rule in favor of a country–wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non–reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal–Mogul Corporation and The Torrington Company v. United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct the CBP to continue to collect cash deposits for non–reviewed companies at the most recent company–specific or country–wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non–reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. *See Notice of Amended Final Determination and Notice of Countervailing Duty Orders: Certain Hot–Rolled Carbon Steel Flat Products from India and Indonesia*, 66 FR 60198 (December 3, 2001). This rate shall apply to all non–reviewed companies until a review of a company assigned this rate is requested. In addition, for the period April 20, 2001 through December 31, 2002, the assessment rates applicable to all non–reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

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

This administrative review and notice are issued and published in accordance with section 751(a)(1) of the Act.

Dated: May 6, 2004.

Jeffrey A. May,

Acting Assistant Secretaryfor Import Administration.

Appendix I - Issues and Decision Memorandum

I.SUBSIDIES VALUATION INFORMATION

A. Creditworthiness
B. Benchmarks for Loans and Discount Rates

II. ANALYSIS OF PROGRAMS

A. *Programs Conferring Subsidies*
1. Pre–Shipment Export Financing
2. Export Promotion of Capital Goods Scheme (EPCGS)
3. Bombay Relief Undertaking Act (BRU)
4. Duty Entitlement Passbook Scheme

B. *Programs Determined to Be Not Used*

1. *Corporate Debt Restructuring (CDR)*
2. *Duty Free Remission Certificate Scheme*
3. *Sick Industrial Companies Act and Board for Industrial and Financial Reconstruction*
4. *Advance Licenses*
5. *Exemption of Export Credit from Interest Taxes*
6. *Income Tax Deductions Under Section 80 HHC*

7. *Post–Shipment Export Financing*

III. TOTAL *AD VALOREM* RATE

IV. ANALYSIS OF COMMENTS

Comment 1: Denominator for the Pre–Shipment Export Financing Program
Comment 2: Financial Contribution and Benefit under the Duty Entitlement Passbook Scheme (DEPS) Program
Comment 3: Benefit Calculation for DEPS
Comment 4: Revision of Benefits under the Export Promotion Capital Goods Scheme (EPCGS)
Comment 5: Countervailability of the Bombay Relief Undertaking Act (BRU)
Comment 6: Recalculation of the Benefit to Essar under the BRU
Comment 7:Changes to Draft Customs Instructions

[FR Doc. 04–10884 Filed 5–12–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051004C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Allocation Committee (Committee) will hold a working meeting, which is open to the public.

DATES: The Committee meeting will be held Thursday, May 27, 2004 from 8:30 a.m. until business is completed.

ADDRESSES: The Committee meeting will be held at the Embassy Suites Portland Airport Hotel, Cedar II and III Rooms, 7900 NE 82nd Ave., Portland, OR 97220; telephone: (503) 460–3000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Fishery Management Coordinator; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the Committee meeting is to develop options for allocations and other management measures for the 2005–06 Pacific Coast groundfish fishery. The Committee will discuss the types of provisions that may be necessary to prevent further overfishing, to reduce bycatch of overfished species in the various groundfish fisheries, and to reduce bycatch in nongroundfish fisheries. In addition, the Committee may evaluate current catch levels of overfished groundfish species and propose inseason adjustments. No management actions will be decided by the Committee. The Committee's role will be development of recommendations for consideration by the Pacific Fishery Management Council at its June meeting in Foster City, CA.

Although non-emergency issues not contained in the meeting agenda may come before the Committee for discussion, those issues may not be the subject of formal Committee action during this meeting. Committee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Committee's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: May 10, 2004.

Bruce C. Morehead,

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

[FR Doc. 04–10900 Filed 5–12–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050404B]

Endangered Species; Permit No. 1199

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

ACTION: Scientific research permit modification.

SUMMARY: Notice is hereby given that a request for modification of scientific research permit no. 1199 submitted by the Guam Department of Agriculture, Division of Aquatic and Wildlife Resources, Mangilao, Guam, has been granted.

ADDRESSES: The amendment 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

Protected Species Coordinator, Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Room 1110, Honolulu, HI 96814-4700; phone (808)973-2935; (808)973-2941.

FOR FURTHER INFORMATION CONTACT: Patrick Opay, (301)713-1401 or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the provisions of 50 CFR 222.306 of the regulations governing the taking, importing, and exporting of endangered and threatened fish and wildlife (50 CFR 222–226).

The modification extends the expiration date of the Permit from April 30, 2004, to April 30, 2005, for takes of green (*Chelonia mydas*) and hawksbill (*Eretmochelys imbricata*) sea turtles. The permit authorizes the permit holder to capture, handle, measure, sample, tag, and release these species. The purpose of the research is to collect baseline population structure and genetic information for these sea turtles in and around Guam. We are also updating the list of investigators.

Issuance of this amendment, as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the threatened and endangered species which are the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 7, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–10895 Filed 5–12–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 04–06]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/OPS–ADMIN, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 04–06 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 7, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

5 MAY 2004
In reply refer to:
I-04/001109

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 04-06, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Japan for defense articles and services estimated to cost $725 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Attachments

Transmittal No. 04-06

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser**: Japan

(ii) **Total Estimated Value**:

Major Defense Equipment*	$593 million
Other	$132 million
TOTAL	$725 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase**: nine SM-3 Block 1A Standard missiles with MK 21 Mod 2 canisters, Ballistic Missile Defense (BMD) upgrades to one AEGIS Weapon System, AEGIS BMD Vertical Launch System ORDALTs, containers, spare and repair parts, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) **Military Department**: Navy (LUH)

(v) **Prior Related Cases, if any**: numerous FMS cases pertaining to the AEGIS Weapon Systems and Standard missiles

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: See Annex attached

(viii) **Date Report Delivered to Congress**: 5 MAY 2004

* as defined in Section 47(6) of the Arms Export Control Act.

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

5 MAY 2004
In reply refer to:
I-04/001109

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 04-06, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Japan for defense articles and services estimated to cost $725 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Attachments

Transmittal No. 04-06

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The SM-3 Block 1A Standard missile hardware includes the Propulsion Train (MK-72 Booster, MK 104 Second Stage, and the MK 136 Third Stage Rocket Motor), and the MK 142 Solid Divert and Attitude Control Section. The Propulsion Train is classified Confidential. The Guidance Sections for the propulsion train and the Kinetic Warhead are classified Secret. Certain operating frequencies and performance characteristics are classified Secret. Confidential documentation to be provided includes: parametric documents, general performance data, firing guidance, dynamics information, and some flight analysis procedures.

2. There will be modifications to the MK 41 Vertical Launch System (VLS). A modified MK 21 Mod 2 canister will serve as both the storage and launch container for the SM-3 missile. The MK 21 Mod 2 canister in conjunction with the MK 170 Mod 0 Sill Assembly and MK 18 Mod 1 canister adapter will provide proper gas management within the launcher for the SM-3 missile MK 72 booster. The MK 21 Mod 2 canister hardware and associated mechanical and electrical interface data are Unclassified.

3. Installation of the VLS Global Positioning System Integrator (VGI) includes initialization data enhancements to the fiber optic distribution system connecting the VGI to the missile to support tactical requirements. VGI capability will be accomplished through unclassified Commercial Off-the-Shelf products. The software associated with these enhancements is Unclassified, but the VGI capability is classified Confidential.

4. Further modifications include changes to the Launch Control System, consisting of the Launch Control Computer Program (LCCP) and Launch Sequencer hardware, to control training, warfare, decryption, and digital data processing. The U.S. Navy will perform lifecycle maintenance of the computer programs.

5. The AEGIS Weapon System hardware upgrades include modifications to the current SPY-1D and Command and Decision configurations. Modifications to the SPY-1D configuration include upgrading the signal processor cards and providing Mission Planner Laptops and System Calibration Using Satellites Laptops. While the hardware is Unclassified, the computer program systems are classified Secret. Command and Decision (C&D) modifications include providing a TAC-3600 adjunct computer and circuit card assemblies to provide an additional internal network path. While the hardware is Unclassified the computer programs running on the system are classified Secret. Interoperability enhancements include additional capability of secure communications and cueing via upgrading to a Common Data Link Management System. This will upgrade the Common Shipboard Data Terminal Set and the Command and Control Processor. Satellite TADIL-J functionality also will be incorporated, and the Joint Tactical Terminal will be installed. The U.S. Navy will perform lifecycle maintenance of the AEGIS Weapon System computer programs.

6. The AEGIS documentation in general is Unclassified; however, some operational and maintenance manuals are classified Confidential and one AEGIS maintenance manual supplement is classified Secret. The manuals and technical documents are limited to that necessary for operational organizational maintenance.

7. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

8. A determination has been made that Japan can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 04–10825 Filed 5–12–04; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Office of the Secretary is amending one system of records notice in its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The changes will be effective on June 14, 2004 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Irvin at (703) 601–4722, extension 110.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific amendments to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 7, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DSMC 06

SYSTEM NAME:

Defense Systems Management College (DSMC) Mailing Lists (February 2, 1993, 58 FR 10227).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with ''DAU 06''.

SYSTEM NAME:

Delete entry and replace with ''Defense Acquisition University Mailing Lists''.

SYSTEM LOCATION:

Replace second paragraph with ''Hard copy back up files (letter and card requests) are located in DAU Press, Defense Acquisition University, Building 206, Fort Belvoir, VA 22060–5565.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Within entry, replace ''Defense Systems Management College'' and ''DSMC'' with ''DAU''.

CATEGORIES OF RECORDS IN THE SYSTEM:

Within entry, replace ''DSMC'' with ''DAU''.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness and Department of Defense Directive 5160.57, Defense Acquisition University.''

PURPOSE(S):

Delete entry and replace with ''Data is used by DAU to provide a mailing list for the distribution of Defense Acquisition, Technology, and Logistics 'Acquisition Review Quarterly', surveys, and graduate registers.''

* * * * *

STORAGE:

Delete entry and replace with ''Primary file is computer database. Hard copy back-up files are paper records in locked file cabinets.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''The information (database entries) that constitute the Defense Acquisition University mailing lists are updated on a daily basis as new subscriptions and cancellations come in and as publications are returned for insufficient or undeliverable addresses. The DAU Press collects these changes and forwards them to Actionmail Company as least twice monthly. To further ensure the subscription databases are current the DAU Press, in conjunction with Actionmail, purges each mailing list as new subscriptions and cancellations are received. Destroy or correct individual records when revised or cancelled.''

* * * * *

DAU 06

SYSTEM NAME:

Defense Acquisition University Mailing Lists.

SYSTEM LOCATION:

Primary location: Actionmail Company, 4825 Beech Place, Temple Hills, MD 20748–2030.

Hard copy back up files (letter and card requests) are located in DAU Press, Defense Acquisition University, Building 206, Fort Belvoir, VA 22060–5565.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former Defense Acquisition University (DAU) students; members of the DAU Policy Guidance Council and Board of Visitors; program managers associated with defense and other government acquisition programs; key acquisition managers throughout the U.S. government; former staff and faculty members, and other individuals who request they be included in the system. Except for program management course graduates, everyone in the system is there by request.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains name, class at DAU, job code, mailing address, rank or grade, position title and affiliation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness and DoD Directive 5160.57, Defense Acquisition University.

PURPOSE(S)

Data is used by DAU to provide a mailing list for the distribution of Defense Acquisition, Technology, and Logistics ''Acquisition Review Quarterly'', surveys, and graduate registers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Actionmail Company for the purpose of operating and maintaining the DAU Mailing List system.

The DoD ''Blanket Routine Uses'' set forth at the beginning of OSD's compilation of systems of records notices applies to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Primary file is computer database. Hard copy back-up files are paper records in locked file cabinets.

RETRIEVABILITY:

Files are retrievable by name, class, data base code, and zip code.

SAFEGUARDS:

Primary location is a controlled access area. Back-up file storage is in a building, which is locked during non-business hours and is located on a military installation.

RETENTION AND DISPOSAL:

The information (database entries) that constitute the Defense Acquisition University mailing lists are updated on a daily basis as new subscriptions and cancellations come in and as publications are returned for insufficient or undeliverable addresses. The DAU collects these changes and forwards them to Actionmail Company as least twice monthly. To further ensure the subscription databases are current the DAU Press, in conjunction with Actionmail, purges each mailing list as new subscriptions and cancellations are received. Destroy or correct individual records when revised or canceled.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DAU Press, Defense Acquisition University, Building 206, Fort Belvoir, VA 22060–5565.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, DAU Press, Defense Acquisition University, Building 206, Fort Belvoir, VA 22060–5565.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the Director, DAU Press, Defense Acquisition University, Building 206, Fort Belvoir, VA 22060–5565.

Written requests for information should contain the full name of the individual and current address.

For personal visits, the individual must provide acceptable identification, such as a military or other ID card or driver's license.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is provided by the individual, employer, staff and faculty of DAU, each DoD Component, and the Office of Personnel Management (including their automated personnel systems).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–10828 Filed 5–12–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on June 14, 2004, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 7, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S333.10 DLA–G

SYSTEM NAME:

Attorney Personal Information and Applicant Files (February 22, 1993, 58 FR 10854).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'S100.90.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 302, Delegation of Authority; 5 U.S.C. 3301, Civil Service, Generally; 10

U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; DoD Directive 1442.2, Personnel Actions Involving Civilian Attorneys; and E.O. 9397 (SSN).'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete the paragraph that starts with 'Parts of these folders'.

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in controlled areas accessible only to authorized personnel who require access to perform official duties. Access to personal information is further restricted by the use of passwords, which are changed periodically. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non-duty hours.'

* * * * *

RETENTION AND DISPOSAL:

Replace 'Applicants' with 'Applications'.

* * * * *

S100.90

SYSTEM NAME:

Attorney Personal Information and Applicant Files.

SYSTEM LOCATION:

Office of General Counsel, HQ DLA, ATTN: DG, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, and the offices of counsel of the DLA field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DLA attorneys, former DLA attorneys, and applicants for DLA legal positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Cover letters, resumes, and Forms submitted by applicants and replies thereto, and records of promotions, courses completed, position descriptions, performance appraisals, personnel actions, educational actions, educational transcripts, recommendations and personal data of DLA attorneys.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 302, Delegation of Authority; 5 U.S.C. 3301, Civil Service, Generally; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; DoD Directive 1442.2, Personnel Actions Involving Civilian Attorneys; and E.O. 9397 (SSN).

PURPOSE(S):

Applications are used for filing positions in all DLA legal offices. Attorney information folders are maintained for review incident to personnel actions including promotions, performance appraisals, reassignments, etc. and as a general performance and experience record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic form.

RETRIEVABILITY:

Filed by surname of attorney or applicant.

SAFEGUARDS:

Attorney information folders are kept in a locked file cabinet; applicants are kept in file cabinets accessible only to authorized personnel of the Office of Counsel or as determined by Counsel.

RETENTION AND DISPOSAL:

Applications are kept for one year from receipt. Attorney information folders are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Office of General Counsel, HQ DLA, ATTN: DG, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, HQ DLA, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the particular DLA field activity where the application was filed. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual must provide full name and, if known, date application was submitted.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, HQ DLA, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the particular DLA field activity where the application was filed. Officials mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual must provide full name and, if known, date application was submitted.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Applicants, employees, co-employees, outside references, supervisors, and personnel offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–10826 Filed 5–12–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Navy is amending a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 14, 2004, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations, (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 7, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01650–1

SYSTEM NAME:

Awards Information Management System and Records (May 9, 2003, 68 FR 24959).

CHANGES:

SYSTEM NAME:

Replace entry with 'Navy Military Awards System.'

SYSTEM LOCATION:

Delete entry and replace with 'Navy Department Awards System, Naval Computer Telecommunications Station, 1325 10th Street, Washington Navy Yard, DC 20374–5069; and organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.htm.'*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All recipients of Navy personal awards, to include the U.S. Coast Guard, and Navy military personnel who receive personal awards from other U.S. Armed Forces.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Approved individual personal awards for 1967 and continuing; approved unit awards for 1941 and continuing; Navy Department Awards Web Service—File includes awards approved by the Secretary of the Navy and those authorized for approval by subordinate commanders. Record includes service member's name, service number/Social Security Number, award recommended, and award approved. A second section of the file contains activities awarded Unit Awards and the dates of eligibility; microfilm copies of approved World War II—1967 personal awards; Navy Department Awards Web Service electronic data base that includes data extracted from OPNAV form 1650/3, Personal Award Recommendation, such as name, Social Security Number, type of award, approval authority, recommended award, approved award, meritorious start and end dates, service status of recipient, originator of the recommendation, designator, Unit Identification Codes, officer or enlisted, service component, rate/rating, pay grade, number of award recommended, assigned billet of individual, campaign designation, classified or unclassified designated award, date of recommendation, award approved date, approved award, chain of command data, extraordinary heroism determination, letter type, board serial number, pertinent facts, date forwarded to Secretary of the Navy, Board's recommendation, participating command field, Board meeting data, receipt date by Board of Decorations and Medals, name of unit, name of ship, command points of contact that includes telephone numbers and e-mail addresses, etc.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 5013, Secretary of the Navy; Secretary of the Navy Instruction 1650.1G, Navy and Marine Corps Awards Manual; and E.O. 9397 (SSN).'

PURPOSE(S):

Delete entry and replace with 'To maintain record of military personal awards and unit awards and to electronically process award recommendations.'

* * * * *

STORAGE:

Delete entry and replace with 'Electronic, paper, and microfilm records.'

RETRIEVABILITY:

Delete entry and replace with 'Name, Social Security Number, and individual unit name.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Navy Department Awards Web Service; OPNAV Form 1650/3, Personal Award Recommendation Form; general orders; military personnel file; medical file; deck logs; command histories; and award letter 1650.'

* * * * *

N01650–1

SYSTEM NAME:

Navy Military Awards System.

SYSTEM LOCATION:

Navy Department Awards System, Naval Computer Telecommunications Station, 1325 10th Street, Washington Navy Yard, DC 20374–5069; and organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.htm.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All recipients of Navy personal awards, to include the U.S. Coast Guard, and Navy military personnel who receive personal awards from other U.S. Armed Forces.

CATEGORIES OF RECORDS IN THE SYSTEM:

Approved individual personal awards for 1967 and continuing; approved unit awards for 1941 and continuing; Navy Department Awards Web Service—File includes awards approved by the Secretary of the Navy and those authorized for approval by subordinate commanders. Record includes service member's name, service number/Social Security Number, award recommended, and award approved. A second section of the file contains activities awarded Unit Awards and the dates of eligibility; microfilm copies of approved World War II—1967 personal awards; Navy Department Awards Web Service electronic data base that includes data extracted from OPNAV Form 1650/3, Personal Award Recommendation, such as name, Social Security Number, type of award, approval authority, recommended award, approved award, meritorious start and end dates, service status of recipient, originator of the recommendation, designator, Unit Identification Codes, officer or enlisted, service component, rate/rating, pay grade, number of award recommended, assigned billet of individual, campaign designation, classified or unclassified designated award, date of recommendation, award approved date, approved award, chain of command data, extraordinary heroism determination, letter type, board serial number, pertinent facts, date forwarded to Secretary of the Navy, Board's

recommendation, participating command field, Board meeting data, receipt date by Board of Decorations and Medals, name of unit, name of ship, command points of contact that includes telephone numbers and e-mail addresses, *etc.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; Secretary of the Navy Instruction 1650.1G, Navy and Marine Corps Awards Manual; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain records of military personal awards and unit awards and to electronically process award recommendations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Electronic, paper, and microfilm records.

RETRIEVABILITY:

Name, Social Security Number, and individual unit name.

SAFEGUARDS:

Automated database requires authorized access; password protected; some user sites only have read capability; designated user capability regarding add/delete/change functions. Paper and microfiche records are under the control of authorized personnel during working hours and the office space in which records are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Permanent. A duplicate copy of the active file is provided to the National Archives and Records Administration. History files for the years 1967 to 1989 have been transferred to NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Operations (DNS–37), 2000 Navy Pentagon, Washington, DC 20350–2000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should contact their local Personnel Support Activity of Personnel Support Detachment for a search of their Navy military personnel record or write to the Chief of Naval Operations (DNS–37) 2000 Navy Pentagon, Washington, DC 20350–2000.

Request should include full name, Social Security Number, time period of award, and request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should contact their local Personnel Support Activity or Personnel Support Detachment for a search of their Navy military personnel record or write to the Chief of Naval Operations (DNS–37) 2000 Navy Pentagon, Washington, DC 20350–2000.

Request should include full name, Social Security Number, time period of award, and request must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Navy Department Awards Web Service; OPNAV Form 1650/3, Personal Award Recommendation Form; general orders; military personnel file; medical file; deck logs; command histories; and award letter 1650.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–10827 Filed 5–17–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC04–555–000, FERC–555]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

May 4, 2004.

AGENCY: Federal Energy Regulatory Commission, DoE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by July 6, 2004.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC04–555–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov.* Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission 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 *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–555 ''Records Retention Requirements'' (OMB No. 1902–00098) is used by the Commission to implement the statutory provisions of Sections 301, 304 and 309 of the Federal Power Act (FPA) (16 U.S.C. 825, 825c and 825h), Sections 8, 10 and 16 of the Natural Gas Act (NGA) (15 U.S.C. 717–

717w), and Section 20 of the Interstate Commerce Act (ICA, 49 U.S.C. 20).

The regulations for preservation of records establish retention periods, necessary guidelines and requirements to sustain retention of applicable records for the regulated public utilities, natural gas and oil pipeline companies subject to FERC's jurisdiction. These records will be used by the regulated companies as the basis for their required rate filings and reports for the Commission. In addition, the records will be used by the Commission's audit staff during compliance reviews, by enforcement staff during investigations and for special analyses as deemed necessary by the Commission. The records retained by jurisdictional companies as directed by the Commission are the result of a mandatory requirement.

On January 8, 1999 the Commission issued AI99–2–000, an Accounting Issuance providing guidance on records storage media. Specifically, FERC gave each jurisdictional company the flexibility to select its own storage media. The storage media selected must have a life expectancy equal to the applicable record period unless the quality of the data transferred from one media to another with no loss of data would exceed the record period.

On January 27, 2000, FERC issued a final rule amending its records retention regulations for public utilities and licensees, natural gas and oil pipeline companies. These changes included revising the general instructions, shortening various records retention periods. The final rule's objective was to reduce or eliminate burdensome and unnecessary regulatory requirements. FERC anticipated a reduction of 679,800 hours. OMB questioned FERC's estimates of the anticipated reduction and so the existing estimates 1,236,000 for 515 respondents remained on OMB's inventory. (Using these existing figures, the total hours per respondent for recordkeeping purposes equals 2,400 hours.)

It has been over three years since Order No. 617 took effect on January 1, 2001 and there has been sufficient time for jurisdictional companies to implement the final rule's provisions. Therefore, in responding to this notice, FERC is interested in knowing if the jurisdictional companies have obtained substantial reductions in the recordkeeping burden for maintaining their records under the revised retention periods. In addition, the Commission is interested in learning if and what savings were achieved by jurisdictional companies by freeing up storage space formerly used for retaining records. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Parts 125, 225 and 356.

Action: The Commission is requesting a three-year approval of these recordkeeping requirements, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent * (2)	Average burden hours per response (3)	Total annual burden hours (1)x(2)x(3)
515	1	[1] 2,402	[2] 1,236,896

[1] Rounded off.
[2] includes documentation recordkeeping requirements of Order No. 634.

Estimated cost burden to respondents: 1,236,896 hours/2,080 hours per year × $107,185 per year = $63,738,797. The cost per respondent is equal to $123,765.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including:

Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements;

(4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond.

Magalie R. Salas,
Secretary.

[FR Doc. E4–1108 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–314–000]

Algonquin Gas Transmission Company; Notice of Application

May 6, 2004.

Take notice that on April 30, 2004, Algonquin Gas Transmission Company (Algonquin), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP04–314–000 an application for a Certificate of Public Convenience and Necessity pursuant to section 7 of the Natural Gas Act, and the regulations of the Federal Energy

Regulatory Commission. Algonquin requests authorization to increase the maximum allowable operating pressure of its I–8 System located in Braintree, Massachusetts. The application is on file with the Commission and open to public inspection. The filing may also be viewed on the Web 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, call (202) 502–3676 or TTY, (202) 502–8659.

Algonquin states that its proposal is related to pipeline inspection work necessary for compliance with recent Department of Transportation pipeline safety regulations. Algonquin's I–8 System consists of about 2 miles of 16-inch diameter pipeline located in Braintree that begins at the East Braintree meter and regulation station, and extends north through residential streets to its end at the interconnection with Algonquin's I–9 System at the Potter Street meter and regulation station. Algonquin also states that the current maximum allowable operating pressure (MAOP) of the I–8 System is 750 pounds per square inch gauge (PSIG), while the 24-inch pipelines it connects to immediately upstream and downstream have an MAOP of 1,000 PSIG. Algonquin proposes, subject to the result of the hydrostatic testing, that it be allowed to increase the MAOP of the I–8 System from 750 PSIG to 958 PSIG.

Algonquin states that this will further compliance with the pipeline safety requirements and also enhances the flexibility and reliability of existing services on Algonquin's system. Algonquin also states that the increase in MAOP results in an additional 140,000 dekatherms per day of available firm transportation capacity to the greater Boston and northern New England natural gas markets. Algonquin also seeks a pre-determination of rolled-in rate treatment for this project. Algonquin requests that the Commission issue a final certificate no later than July 8, 2004, in order to meet the natural gas requirements in the Northeast for the 2004–2005 winter period.

The name, address, and telephone number of the person to whom any further questions, correspondence and communications concerning this Application should be addressed is: Steven E. Tillman, General Manager, Regulatory Affairs, Algonquin Gas Transmission Company, P.O. Box 1642, Houston, Texas 77251–1642; Phone: (713) 627–5113; Fax: (713) 627–5947.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. 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.

Comment Date: May 26, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1098 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–112]

ANR Pipeline Company; Notice of Negotiated Rate Filing

May 6, 2004.

Take notice that on April 30, 2004, ANR Pipeline Company (ANR), tendered for filing and approval amendments to Rate Schedule ETS service agreement number 107892 and Rate Schedule FTS–1 service agreement number 109223 between ANR and a subsidiary of We Energies, Wisconsin Electric Power Company (WEPCO). The amendments effectuate a change to Section 3, Contract Quantities, removing the optional Transporter's Use language that ANR offers to Shippers that are impacted by the biannual fuel changes.

ANR requests that the Commission accept and approve the subject negotiated rate agreement amendments to be effective May 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1084 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–289–000]

ANR Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

May 5, 2004.

Take notice that on April 30, 2004, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Thirty-Seventh Revised Sheet No. 17, to be effective June 1, 2004.

ANR states that the tariff sheet reflects a change in ANR's currently effective cashout surcharge from a negative surcharge of ($0.0004) per Dth to a zero surcharge, effective June 1, 2004.

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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1114 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–113]

ANR Pipeline Company; Notice of Negotiated Rate Filing

May 7, 2004.

Take notice that on May 3, 2004, ANR Pipeline Company (ANR) tendered for filing and approval a negotiated rate letter agreement between ANR and Eagle Energy Partners, L.L.P. ANR requests that the Commission accept and approve the negotiated rate to be effective May 1, 2004.

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. E4–1155 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–269–000]

Black Marlin Pipeline Company; Notice of Cash-Out Report

May 4, 2004.

Take notice that on April 28, 2004, Black Marlin Pipeline Company (''Black Marlin'') submitted to the Federal Energy Regulatory Commission (''Commission'') its annual cash-out report for the calendar year ended December 31, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 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'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1106 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. RP04–217–000]

Calpine Energy Services, L.P., Complainant, v. Gas Transmission Northwest Corporation, Respondent; Notice of Complaint

May 4, 2004.

Take notice that on April 29, 2004, Calpine Energy Services, L.P. (CES) filed a Complaint against Gas Transmission Northwest Corporation (GTN) requesting that the Commission find that (1) Calpine's collateral obligation associated with GTN's 2002 Capacity Rationalization and Expansion Program (Expansion Project) does not exceed three months' reservation charges, and (2) GTN can not retroactively apply provisions approved for the first time in Docket No. RP03–70 to Calpine's Expansion Project capacity.

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 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. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: May 20, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1104 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–282–000]

Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2004.

Take notice that on April 30, 2004, Canyon Creek Compression Company (Canyon) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Eleventh Revised Sheet No. 6 and Second Revised Sheet No. 6A, to be effective June 1, 2004.

Canyon states that the purpose of this filing is to make a periodic adjustment in Canyon's rates under its cost-of-service tracking mechanism. This filing represents the third tracking filing under Section 37 of the General Terms and Conditions of Canyon's Tariff.

Canyon states that copies of the filing are being mailed to its customers and state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1128 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–500–003]

Chandeleur Pipe Line Company; Notice of Negotiated Rates

May 6, 2004.

Take notice that on April 30, 2004, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 73, to become effective on May 1, 2004.

Chandeleur states that the proposed change would update Chandeleur's tariff to reflect its current conditions regarding contracts containing Negotiated Rates.

Chandeleur further states that the principal reason for the tariff change is that effective April 2004, Chandeleur no longer had in effect any Negotiated Rate Agreements.

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. E4–1086 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–290–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 2004.

Take notice that on May 3, 2004, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective June 3, 2004:

Eleventh Revised Sheet No. 230A
Eighth Revised Sheet No. 230B
Second Revised Sheet No. 230C

CIG states that the tendered tariff sheets are filed to correct the reporting period used in the calculation of Lost, Unaccounted For and Other Fuel Gas and changes reflecting current practices.

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. E4–1092 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG04–1–000 and EG04–2–000 (Not Consolidated)]

Colorado Wind Ventures, LLC, PPM Colorado Wind Ventures, Inc.; Notice of Partial Refund of Filing Fee

May 7, 2004.

On April 5, 2004, Colorado Wind Ventures, LLC (Colorado Wind) and PPM Colorado Wind Ventures, Inc. (PPM) (together, Petitioners) filed a request for a partial refund of filing fee in the above-referenced proceedings.

Petitioners explain that they submitted requests for a refund in the amount of $990.00 for filing fees paid when they applied for exempt wholesale generator status. Petitioners state that the requests were made on the grounds that neither Colorado Wind nor PPM are public utilities.

In the instant April 5, 2004 request, Petitioners state that, upon discussion with the Commission's staff, Petitioners are withdrawing the requests for refund of the full $990.00. However, because the filing fee for EWG applications was changed from $990.00 to $870.00 just prior to both Colorado Wind and PPM filing their respective EWG applications, a request for a refund of the $120.00 difference for each filing is justified.

For good cause shown, the request is granted and the refund will be processed accordingly. The refund will be made payable to ''Colorado Wind Ventures, LLC and PPM Colorado Wind Ventures, Inc.'' and will be forwarded to Sean E. O'Day, Stoel Rives LLP, 900 SW., Fifth Avenue, Suite 2600, Portland, Oregon 97204.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1159 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–088]

Columbia Gulf Transmission Company; Notice of Compliance Filing

May 7, 2004.

Take notice that on May 4, 2004, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing a third amendment to service agreement between Columbia Gulf and Stone Energy Company.

Columbia Gulf states that it is making this filing to comply with the Commission's April 20, 2004 Order in RP96–389–083 (107 FERC ¶ 61,075, April 20, 2004 Order). In the April 20, 2004 Order, the Commission accepted revised tariff sheets and the non-conforming agreement between Stone Energy and Columbia Gulf (Stone Agreement) subject to conditions. Columbia Gulf states that the Commission directed Columbia Gulf to either remove the unilateral aspect of Stone Energy's right to adjust its MDQ from the Stone Agreement or, alternately, modify its Tariff and pro forma service agreement to provide the unilateral right to reduce contract demand to all similarly situated shippers. Columbia Gulf asserts that in compliance with the Commission's April 20, 2004 Order, Columbia Gulf has amended the Stone Agreement.

Columbia Gulf states that copies have been mailed to all firm customers, interruptible customers, and affected 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. E4–1154 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR04–11–000]

DeSoto Pipeline Company, Inc.; Notice of Petition for Rate Approval

May 5, 2004.

Take notice that on April 30, 2004, DeSoto Pipleline Company, Inc. (DeSoto) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve the proposed rates as fair and equitable for firm and interruptible transmission services performed under section 311 of the Natural Gas Policy Act of 1978 (NGPA). DeSoto proposes an effective date of May 1, 2004. DeSoto states that it is an intrastate pipeline company providing services through its facilities located in Texas.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the FERRIS link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistant, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

Intervention and Protest Date: May 20, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1116 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–275–000]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2004.

Take notice that on April 30, 2004, Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Third Revised Sheet No. 4, proposed to become effective June 1, 2004.

Destin states that the purpose of this filing is to revise its system map in accordance with the provisions of § 154.106 of the Commission Regulations.

Destin states that copies of this filing are being served on all affected shippers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1121 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–272–000]

Discovery Gas Transmission LLC; Notice of Cash-Out Report

May 5, 2004.

Take notice that on April 29, 2004, Discovery Gas Transmission LLC submitted to the Federal Energy Regulatory Commission its annual cash-out report for the calendar year ended December 31, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Intervention and Protest Due Date: May 12, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1118 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–277–000]

Distrigas of Massachusetts LLC; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2004.

Take notice that on April 30, 2004, Distrigas of Massachusetts LLC (DOMAC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Seventeenth Revised Sheet No. 94, to become effective as of June 1, 2004.

DOMAC states that the purpose of this filing is to record semiannual changes in DOMAC's index of customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1123 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–055]

Dominion Transmission, Inc.; Notice of Negotiated Rate Filing

May 6, 2004.

Take notice that on April 29, 2004, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet to correctly reflect the terms of an existing negotiated transaction with Rochester Gas and Electric Corporation (RG&E):

Fifth Revised Sheet No. 1402

DTI states that the tariff sheet relates to a specific negotiated rate transaction between DTI and RG&E. DTI requests an effective date of April 1, 2004 for its proposed tariff sheet.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1094 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–13–013]

East Tennessee Natural Gas Company; Notice of Negotiated Rates

May 6, 2004.

Take notice that on April 27, 2004, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fifth Revised Sheet No. 177, included in Appendix A thereto, and certain service agreements and letter agreements proposed to be effective on May 1, 2004.

East Tennessee states that the purpose of this filing is to implement two negotiated rate agreements and one discounted rate agreement with Carolina Power & Light Company (CPL). Accordingly, East Tennessee filed in Appendix B of the filing the service agreements, and in Appendix C of the filing, the negotiated rate letter agreements and discounted rate letter agreement corresponding to the service agreements with CPL.

East Tennessee states that copies of the filing have been mailed to all affected customers and interested state commissions

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 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. E4–1095 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1137 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1142 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–058]

Gas Transmission Northwest Corporation; Notice of Negotiated Rate

May 7, 2004.

Take notice that on April 30, 2004, Gas Transmission Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1–A., Eighth Revised Sheet No. 15, with an effective date of May 1, 2004.

GTN states that this sheet is being filed to reflect the continuation of a negotiated rate agreement pursuant to evergreen provisions contained in the agreement.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–058]

Gas Transmission Northwest Corporation; Notice of Negotiated Rate

May 7, 2004.

Take notice that on April 30, 2004, Gas Transmission Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1–A., Eighth Revised Sheet No. 15, with an effective date of May 1, 2004.

GTN states that this sheet is being filed to reflect the continuation of a negotiated rate agreement pursuant to evergreen provisions contained in the agreement.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–292–000]

Gas Transmission Northwest Corporation; Notice of Proposed Change In Ferc Gas Tariff

May 7, 2004.

Take notice that on May 4, 2004 Gas Transmission Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1–A., First Revised Sheet No. 211, First Revised Sheet No. 212, and Second Revised Sheet No. 213, with an effective date of June 3, 2004.

GTN states that it is submitting these revised tariff sheets to clarify the right of first refusal provisions of its tariff.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to 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. E4–1150 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–188–002]

Great Lakes Gas Transmission Limited Partnership; Notice of Compliance Filing

May 6, 2004.

Take notice that on April 30, 2004, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to be effective April 1, 2004:

First Revised Sheet No. 19
Substitute Tenth Revised Sheet No. 40
Substitute Original Sheet No. 50R
Substitute Original Sheet No. 50S
Substitute Original Sheet No. 50T

Great Lakes states that these tariff sheets are being filed to comply with the Commission's March 31, 2004, Order Accepting Tariff Sheets Subject to Condition, wherein the Commission accepted Great Lakes' tariff sheets as proposed in its February 27, 2004, tariff filing in Docket No. RP04–188–000, as generally complying with the Commission's recent decisions and evolving policy pertaining to creditworthiness issues in the industry, subject to certain modifications. Great Lakes explains that the Order directed it to file revised tariff sheets within thirty (30) days of the March 31 Order consistent with the Commission directives and modifications set forth in that Order.

Great Lakes is seeking clarification or rehearing of certain requirements of the March 31 Order in a separate filing submitted on the same day as the instant filing. This compliance tariff filing includes tariff sheets that incorporate the required modifications, with the exception of the modifications that are the subject of Great Lakes' request for clarification or rehearing.

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. E4–1088 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–220–015]

Great Lakes Gas Transmission Limited Partnership; Notice of Negotiated Rates

May 6, 2004.

Docket No.	Date filed	Presenter or requester
1. CP04–36–000 CP04–41–000	4–26–04	Brian Pearson.
2. CP04–36–000 CP04–41–000	4–26–04	Lisa Doremus
3. CP04–58–000	5–03–04	Susan Schaffel, *et al.*[1]

[1] This communication is one among numerous form letters sent to the Commission by the Greenpeace, USA organization. Only representative samples of these prohibited non-decisional documents are posted in this docket on the Commission's eLibrary system (*http://www.ferc.gov*).

Great Lakes states that the FT Service Agreement is filed to implement a negotiated rate contract, as required by both Great Lakes' negotiated rate tariff provisions and the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulations of Negotiated Transportation Services of Natural Gas Pipelines, issued January 31, 1996, in Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1097 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–271–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

May 5, 2004.

Take notice that on April 29, 2004 Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective January 1, 2004:

Ninth Revised Sheet No. 3
Seventh Revised Sheet No. 3A
Eighth Revised Sheet No. 3B
Seventh Revised Sheet No. 3C

Great Lakes states that the tariff sheets listed above are being filed to revise the system and zone maps included in Great Lakes' tariff pursuant to 154.106(c) of the Commission's regulations. The revisions reflect the addition of the Duluth Meter Station and the Lammers Interconnect to the western zone of Great Lakes' system; the closing of the Petoskey Area Office in the central zone; and administrative revisions to the map legend.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,
Acting Secretary.
[FR Doc. E4–1117 Filed 5–12–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–025]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rates

May 7, 2004.

Take notice that on April 28, 2004, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 8W, reflecting an effective date of March 1, 2004.

Gulfstream states that this filing is being made to implement a negotiated rate transaction under Rate Schedule ITS pursuant to Section 31 of the General Terms and Conditions of Gulfstream's FERC Gas Tariff.

Gulfstream states that Original Sheet No. 8W identifies and describes the negotiated rate transaction, including the exact legal name of the relevant shipper, the negotiated rates, the rate schedule, the contract terms, and the contract quantity.

Gulfstream states that Original Sheet No. 8W includes footnotes where necessary to provide further details on the transactions listed thereon.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed 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. E4–1145 Filed 5–12–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–026]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rate

May 7, 2004.

Take notice that on May 3, 2004, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 8X, reflecting an effective date of July 1, 2004.

Gulfstream states that the purpose of this filing is to implement a negotiated rate transaction with Florida Power Corporation under Rate Schedule FTS that was previously approved by the Commission in its June 9, 2003 order in the above-captioned docket.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at

FERCOnlineSupport@ferc.gov or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1146 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–027]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rates

May 7, 2004.

Take notice that on May 3, 2004, Gulfstream Natural Gas System, L.L.C. (Gulfstream) filed a supplement to the negotiated rate filing in Docket No. RP02–361–024. In the supplemental filing, Gulfstream tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sub Original Sheet No. 8V, reflecting an effective date of May 1, 2004. In addition, Gulfstream withdrew Original Sheet No. 8V.

Gulfstream states that this supplemental filing is being made in connection with a negotiated rate transaction, under Rate Schedule PALS, pursuant to Section 31 of the General Terms and Conditions of Gulfstream's FERC Gas Tariff.

Gulfstream also states that Sub Original Sheet No. 8V supersedes and replaces Original Sheet No. 8V. Sub Original Sheet No. 8V identifies and describes the negotiated rate transaction, including the exact legal name of the relevant shipper, the negotiated rate, the rate schedule, the contract terms, and the contract quantity.

Gulfstream further states that Sub Original Sheet No. 8V includes footnotes where necessary to provide further details on the transaction listed thereon.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 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. E4–1147 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–288–000]

High Island Offshore System, L.L.C.; Notice of Tariff Filing

May 5, 2004.

Take notice that on April 30, 2004, High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective June 1, 2004.

HIOS states that the purpose of its filing is to make minor ministerial modifications to the tariff sheets approved by the Commission to implement an NGL Bank on HIOS.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1134 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–136–003]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

May 7, 2004.

Take notice that on May 5, 2004, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Original Sheet No. 4C, to be effective on July 1, 2004.

Iroquois states that the revised tariff sheet is submitted in compliance with the Paragraph 13 and Ordering Paragraph (A) of the Commission's April 20, 2004 order in the above captioned proceeding.

Iroquois further states that the revised tariff sheet provides that Eastchester Shippers, shall pay applicable rate adjustments on Sheet No. 4A, but will not pay any such assessment more than once for a single transaction.

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. E4–1148 Filed 5–12–04 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–274–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2004.

Take notice that on April 30, 2004, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, proposed to be effective June 1, 2004, or January 1, 2005, as indicated.

Kern River states that the purpose of this filing is to effectuate changes in the jurisdictional base tariff rates applicable to Kern River's jurisdictional services and to implement certain tariff revisions related to the rate changes.

Kern River states that a copy of this filing has been served upon Kern River's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1120 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–223–000 and CP04–293–000]

KeySpan LNG, L.P.; Notice of Application

May 7, 2004.

Take notice that on April 30, 2004, KeySpan LNG, L.P. (KeySpan LNG) filed in Docket Nos. CP04–223–000 and CP04–293–000 an application pursuant to sections 3 and 7(b) of the Natural Gas Act (NGA) seeking authorization to site, construct and operate liquefied natural gas (LNG) terminal facilities as well as to abandon certain existing facilities in the City of Providence, Rhode Island. KeySpan LNG currently owns and operates an existing LNG Terminal in Providence and proposes to upgrade that facility by converting it to an LNG Terminal capable of receiving marine deliveries and augmenting the facility's existing vaporization system. KeySpan LNG states that services LLC (BG) has committed to contract for the full capacity of the LNG Terminal. KeySpan LNG states that the proposed LNG terminal will connect to Algonquin Gas Transmission Company (Algonquin), an existing interstate pipeline and that Algonquin will file a separate application pursuant to section 7(c) to construct and operate the connecting facilities.

These applications are on file with the Commission and open to public inspection. 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'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. Any initial questions regarding these applications should be directed to William T. Orr, President, KeySpan LNG, L.P., 121 Terminal Road, Providence, Rhode Island 02905, Phone: (401) 785–4590.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Those providing environmental comments will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. The environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters

will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: May 21, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1139 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–39–002]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Compliance Filing

May 7, 2004.

Take notice that on April 30, 2004, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A, the following tariff sheets, with an effective date of June 1, 2004:

Twelfth Revised Sheet No. 4G
Fourth Revised Sheet No. 4J
Original Sheet No. 4K

KMIGT states that it is filing the above-referenced tariff sheets in compliance with the Commission's ''Order Issuing Certificate'' dated September 11, 2003 in Docket No. CP03–39–000.

KMIGT states that a copy of this filing has been served upon all parties on the official service list for this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

Protest Date: May 21, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1138 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–691–000]

Midwest Independent Transmission System Operator, Inc.; Notice of Designation of Certain Commission Personnel as Non-Decisional

May 6, 2004.

On March 31, 2004, the Midwest Independent Transmission System Operator (Midwest ISO) filed a revised Open Access Transmission and Energy Markets Tariff in the above-docketed proceeding. For purposes of the above-captioned docket (and all subdockets in that docket), the following Commission employees are non-decisional authorities and non-decisional employees:

Wilbur Earley, Director—Regional Market Coordination, of the Commission's Office of Markets, Tariffs and Rates

William Meroney, Senior Advisor, of the Commission's Office of Market Oversight and Investigations

See 18 CFR 385.102(a) (2003) (definition of decisional authority); 18 CFR 385.2201 (2003) (definition of decisional employee).

Magalie R. Salas,

Secretary.

[FR Doc. E4–1157 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–283–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

May 5, 2004.

Take notice that on April 30, 2004, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Sixty Third Revised Sheet No. 9, to become effective May 1, 2004.

National states that Article II, Sections 1 and 2 of the settlement provide that National will recalculate the maximum Interruptible Gathering (''IG'') rate semi-annually and monthly. Further, Section 2 of Article II provides that the IG rate will be the recalculated monthly rate, commencing on the first day of the following month, if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of $0.64 per dth. In addition, Article III, Section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1129 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1149 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1093 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–179–002]

National Fuel Gas Supply Corporation; Notice of Amendment to Compliance Filing

May 7, 2004.

Take notice that on April 29, 2004, National Fuel Gas Supply Corporation (National Fuel) tendered for filing an amendment to its compliance filing filed April 9, 2004, in Docket No. RP04–179–000.

National Fuel states that the instant filing is made to amend Service Agreement Nos. F10702 and F10703 between National Fuel and Fortuna Energy, Inc (Fortuna). This amendment changes the commencement date of these two service agreements from April 15, 2004 to May 1, 2004, at the request of the shipper. No changes have been made to Fourth Revised Sheet No. 478 or Service Agreement Nos. F10704 and F10705, as filed on April 9, 2004.

National Fuel states that copies of this filing were served upon its 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

DEPARTMENT OF JUSTICE

Federal Energy Regulatory Commission

[Docket No. RP04–291–000]

Natural Gas Pipeline Company of America; Notice of Proposed Change in FERC Gas Tariff

May 6, 2004.

Take notice that on May 3, 2004, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, a Seventh Revised Sheet No. 414, to be effective July 1, 2004.

Natural states that the purpose of this filing is to update its list of non-conforming agreements to include a new Firm Transportation Rate Discount Agreement with Green Valley Chemical Corporation under Natural's Rate Schedule FTS.

Natural states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 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

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–100]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

May 6, 2004.

Take notice that on April 30, 2004, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain revised tariff sheets, to be effective May 1, 2004.

Natural states that the purpose of this filing is to reflect an amendment to an existing negotiated rate agreement between Natural and The Peoples Gas Light and Coke Company under Natural's Rate Schedule FTS pursuant to section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 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. E4–1096 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–204–001]

Northern Border Pipeline Company; Notice of Compliance Filing

May 6, 2004.

Take notice that on April 29, 2004, Northern Border Pipeline Company (Northern) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective the earlier of September 1, 2004, or on a date the Commission specifies in any future order in this proceeding:

Fourth Revised Sheet No. 98
Original Sheet No. 188A
Substitute First Revised Sheet No. 186
First Revised Sheet No. 192
Substitute First Revised Sheet No. 187
Seventh Revised Sheet No. 212
Original Sheet No. 187A
Sixth Revised Sheet No. 214A
First Revised Sheet No. 188
Substitute Third Revised Sheet No. 467

Northern Border states that this filing is made to comply with the Commission's order issued on March 30, 2004, in Docket No. RP04–204–000.

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. E4–1089 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–280–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2004.

Take notice that on April 30, 2004, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets to be effective June 1, 2004:

First Revised 66 Revised Sheet No. 50
First Revised 67 Revised Sheet No. 51
First Revised 31 Revised Sheet No. 52
First Revised 65 Revised Sheet No. 53
First Revised 15 Revised Sheet No. 56
First Revised 22 Revised Sheet No. 59
First Revised Sixth Revised Sheet No. 59A
First Revised 25 Revised Sheet No. 60
First Revised Sixth Revised Sheet No. 60A

Northern states that the filing is being made to adjust its rates effective June 1, 2004 to reflect the rate impact of the return and tax components associated with the System Levelized Account (SLA) balance as of March 31, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1126 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–281–000]

Northern Natural Gas Company; Notice of Tariff Filing

May 5, 2004.

Take notice that on April 30, 2004, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets, with an effective date of June 1, 2004:

First Revised Sheet 400A
Second Revised Sheet No. 403A
Second Revised Sheet No. 453

Northern states that it is filing the above-referenced tariff sheets to provide for streamlined activation of TFX and LFT service agreements and the associated SMS service with a term of one month or less. Northern states that the new provisions allow the contract to be activated without waiting to receive a signed shipper agreement.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online

Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1127 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–284–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2004.

Take notice that on April 30, 2004, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets to be effective June 1, 2004:

Second Revised 66 Revised Sheet No. 50
Second Revised 67 Revised Sheet No. 51
Second Revised 31 Revised Sheet No. 52
Second Revised 65 Revised Sheet No. 53
Eighteenth Revised Sheet No. 54
Fifth Revised Sheet No. 54A
Original Sheet No. 54B
Second Revised 15 Revised Sheet No. 56
Second Revised 25 Revised Sheet No. 60
Second Revised Sixth Revised Sheet No. 60A
Sixteenth Revised Sheet No. 61
Sixteenth Revised Sheet No. 62
Sixteenth Revised Sheet No. 63
Sixteenth Revised Sheet No. 64

Northern states that the revised tariff sheets are being filed in accordance with section 53 of Northern's Tariff. Northern states that this filing establishes the fuel and unaccounted for percentages to be in effect June 1, 2004.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1130 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–374–006]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff and Filing of Negotiated Rate Service Agreements

May 4, 2004.

Take notice that on April 27, 2004, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance two Rate Schedule TF–1 negotiated rate service agreements. Northwest also tendered the following tariff sheets as part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective May 28, 2004.

Sixth Revised Sheet No. 376 and Sixth Revised Sheet No. 377

Northwest states that the purpose of this filing is to submit two Rate Schedule TF–1 service agreements containing negotiated rates for Commission acceptance, and to add these agreements to the list of negotiated rate service agreements in Northwest's tariff.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 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. 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. E4–1100 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–293–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff and Filing of Non-Conforming Service Agreements

May 7, 2004.

Take notice that on May 4, 2004, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective June 4, 2004, and two Rate Schedule TF–1 non-conforming service agreements:

Third Revised Sheet No. 371
Second Revised Sheet No. 373

Northwest states that the purpose of this filing is to (1) submit two Rate Schedule TF–1 service agreements containing contract-specific operational flow order provisions that do not conform to the Rate Schedule TF–1 form of service agreement contained in Northwest's tariff, (2) add these agreements to the list of non-conforming service agreements in Northwest's tariff, and (3) remove three service agreements due to termination from the list of nonconforming service agreements in Northwest's tariff.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. 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. E4–1151 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ04–4–000]

Orlando Utilities Commission; Notice of Filing

May 4, 2004.

Take notice, that on April 27, 2004, the Orlando Utilities Commission (OUC) filed revisions to its non-jurisdictional open access transmission tariff to incorporate non-jurisdictional Large Generator Interconnection Procedures, a Large Generator Interconnection Agreement, and OUC's Interconnection Guide to comply with Order Nos. 2003 and 2003–A, *Standardization of Generator Interconnection Agreements and Procedures.* OUC has requested an effective date of April 26, 2004.

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 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. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: May 27, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1101 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effective Date of Withdrawal of Applications

May 5, 2004.

Pacific Gas and Electric Company, et al. (Projects Nos. 77–116, 96–031, 137–031, 175–018, 178–015, 233–081, 223–082, 606–020, 619–095, 803–055, 1061–056, 1121–058, 1333–037, 1354–005, 1354–029, 1403–042, 1962–039, 1988–030, 2105–087, 2106–039, 2107–010, 2107–012, 2130–030, 2155–022, 2310–120, 2467–016, 2661–012, 2661–016, 2687–014, 2687–022, 2735–071)

Pacific Gas and Electric Company ETrans LLC (Project Nos. 2118–006, 2281–005, 2479–003, 2678–001, 2781–004, 2784–001, 4851–004, 5536–001, 5828–003, 7009–004, and 10821–002)

On November 30, 2001, Pacific Gas and Electric Company (PG&E), and 27 limited liability companies (collectively, applicants) filed applications for approval of transfers of PG&E's 26 hydropower licenses and 11 transmission-line only licenses for the above-numbered projects to the limited liability companies. The applications included related requests for substitution of applicant and waiver of application amendment regulations in five pending PG&E relicensing proceedings and for a variety of conveyances of rights in project property for power generation, transmission, and distribution functions. Applicants filed the applications in connection with PG&E's Plan of Reorganization in the Bankruptcy Court for the Northern District of California.

The Commission published notice of the applications and over 50 parties filed motions to intervene, several in opposition, including the State of California, which had also contested the PG&E Reorganization Plan in the Bankruptcy Court. On June 24, 2003, applicants filed a ''Motion to Hold Proceedings in Abeyance'' to provide time for implementing a proposed Settlement Agreement in the bankruptcy case. Pursuant to the Settlement Agreement, PG&E filed a new reorganization plan with the Bankruptcy Court, which the court confirmed in December 2003.

On April 13, 2004, under the requirements of the Settlement Agreement, the applicants filed a notice of withdrawal of their applications.[1] No motions in opposition to the notice of withdrawal have been filed and the Commission took no action to disallow the withdrawal. Accordingly, pursuant to Rule 216 of the Commission's Rules of Practice and Procedure, 18 CFR 385.216 (2003), the withdrawal of the applications became effective April 28, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1113 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

[1] PG&E and the City of Santa Clara, California, are co-licensees for Project No. 619. Under a settlement agreement filed June 28, 2002, the City agreed to be considered a co-applicant for the license transfer in Project No. 619–095, subject to certain conditions. On April 28, 2004, PG&E and the City filed a stipulation in which the City stated that it does not oppose the notice of withdrawal.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–286–000]

Panhandle Eastern Pipe Line Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2004.

Take notice that on April 30, 2004, Panhandle Eastern Pipe Line Company, LLC (Panhandle) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 3B, to be effective June 1, 2004.

Panhandle states that the purpose of this filing is to revise the tariff map to reflect changes in the pipeline facilities and the points at which service is provided. Panhandle is filing this general location map as a Non-Internet Public document pursuant to instructions in Order No. 630.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1132 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–69–007]

Petal Gas Storage, L.L.C.; Notice of Compliance Filing

May 7, 2004.

Take notice that on April 29, 2004, Petal Gas Storage, L.L.C. (Petal), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 4A, with an effective date of July 1, 2002.

Petal states that the revised tariff sheet is being filed in order to comply with the Commission's March 30, 2004, Order on Rehearing.

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 on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: May 21, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1156 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–270–000]

Pine Needle LNG Company, LLC; Notice of Tariff Filing

May 6, 2004.

Take notice that on April 28, 2004, Pine Needle LNG Company, LLC (Pine Needle) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Title Page (First Revised Sheet No. 0), Second Revised Sheet No. 1, and Second Revised Sheet No. 40 which tariff sheets are proposed to be effective May 28, 2004.

Pine Needle states that the purpose of the instant filing is to make various ministerial changes to the Title Page, to the Table of Contents, and to the Index to Provisions of the General Terms and Conditions.

Pine Needle states that copies of the filing are being mailed to its affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 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. E4–1091 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–285–000]

Sea Robin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2004.

Take notice that on April 30, 2004, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 6, to be effective June 1, 2004.

Sea Robin states that the purpose of this filing, made in accordance with the provisions of Section 154.106 of the Commission's Regulations, is to revise the tariff map to reflect changes in the pipeline facilities and the points at which service is provided. Sea Robin is filing this general location map as a Non-Internet Public document pursuant to instructions in Order No. 630.

Sea Robin states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1131 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–276–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2004.

Take notice that on April 30, 2004, Southern Star Central Gas Pipeline, Inc. (SSC) tendered for filing as part of its FERC Gas Tariff, Original First Revised Volume No. 1 and Original Volume No. 2, the tariff sheets listed in Appendix A to the filing, with an effective date of June 1, 2004.

SSC states that the revisions reflected in the tariff sheets identified in Appendix A effectuate changes in the rates and terms applicable to SSC's jurisdictional services. SSC states that the proposed new rates would produce an increase in annual revenue of approximately $49.4 million above the revenue collected during the base period.

SSC further states that the general rate increase submitted herein is designed to permit SSC to recover various substantial cost increases, primarily related to new construction projects and investment in facilities, experienced by the Company, as well as to reflect changes in the mix of the services being rendered by the Company, since its last general rate filing in Docket No. RP95–136.

SSC states that it has served copies of this filing upon all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1122 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–136]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

May 7, 2004.

Take notice that on April 30, 2004, Tennessee Gas Pipeline Company (Tennessee) tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Bay State Gas Company. Tennessee requests that the Commission grant such approval effective June 1, 2004.

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. E4–1152 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–137]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

May 7, 2004.

Take notice that on April 30, 2004, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Northern Utilities Inc. Tennessee requests that the Commission grant such approval effective June 1, 2004.

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. E4–1153 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–279–000]

Texas Gas Transmission, LLC; Notice of Tariff Filing

May 5, 2004.

Take notice that on April 30, 2004, Texas Gas Transmission, LLC (Texas Gas), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 51, and First Revised Sheet No. 56, to be effective May 1, 2004.

Texas Gas states that the purpose of this filing is to submit to the Commission a copy of a fully executed non-conforming Short-Term Firm Transportation Agreement between Texas Gas and AK Steel Corporation, dated April 27, 2004; to add this agreement to the list of non-conforming service agreements in Texas Gas' tariff; to remove from that list those non-conforming service agreements that have terminated; and to remove reference to a terminated negotiated rate agreement from Texas Gas' tariff.

Texas Gas states that copies of the tariff sheets are being mailed to all parties on the official service list in this docket, to Texas Gas' official service list, to Texas Gas' jurisdictional customers, and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1125 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–162–011]

Trailblazer Pipeline Company; Notice of Refund Report

May 6, 2004.

Take notice that on April 23, 2004, Trailblazer Pipeline Company (Trailblazer) tendered for filing the Refund Report it issued to Shippers on March 26, 2004. The Refund Report sets out, on a summary and a detailed basis, the refund calculation for Trailblazer's Shippers for the period January 1, 2004, through February 29, 2004.

Trailblazer states that copies of the filing are being mailed to its 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 on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: May 13, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1087 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–268–000]

Transcontinental Gas Pipe Line Corporation; Notice Of Filing

May 4, 2004.

Take notice that on April 27, 2004, Transcontinental Gas Pipe Line Corporation (''Transco'') tendered for filing with the Federal Energy Regulatory Commission the Title Page (First Revised Sheet No. 0), Nineteenth Revised Sheet No. 1, and Ninth Revised Sheet No. 2 to its FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective date of the tariff sheets is May 27, 2004.

Transco states that the purpose of the instant filing is to make various ministerial changes to the Title Page and to the Table of Contents of Transco's tariff.

Transco states that copies of the filing are being mailed to its affected customers and interested state commissions. Transco also notes that copies of this filing are available for public inspection, during regular business hours in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests must be filed as provided in 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 proceeding. 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'' 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. E4–1105 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–287–000]

Trunkline Gas Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2004.

Take notice that on April 30, 2004, Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 6, to be effective June 1, 2004.

Trunkline states that the purpose of this filing is to revise the tariff map to reflect changes in the pipeline facilities and the points at which service is provided. Trunkline is filing this general location map as a NonInternet Public document pursuant to instructions in Order No. 630.

Trunkline states copies of this filing are being served on all affected customers and applicable state regulatory agencies.

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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1133 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–278–000]

Williston Basin Interstate Pipeline Company; Notice of Propsed Changes in FERC Gas Tariff

May 5, 2004.

Take notice that on April 30, 2004, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective April 30, 2004:

Fourteenth Revised Sheet No. 5
Twelfth Revised Sheet No. 9

Williston Basin states that the revised tariff sheets are being filed to update its system maps through December 31, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1124 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–273–000]

Wyoming Interstate Company, Ltd; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2004.

Take notice that on April 29, 2004, Wyoming Interstate Company, LTD (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheets, to be effective June 1, 2004:

Eighth Revised Sheet No. 35
Seventh Revised Sheet No. 63

WIC states that the tariff sheets permit WIC to hold capacity with upstream and downstream entities in compliance with Commission's off-system capacity policies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1119 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–56–001, *et al.*]

New York Independent System Operator, Inc., et al.; Electric Rate and Corporate Filings

May 4, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. New York Independent System Operator, Inc.

[Docket No. EL04–56–001]

Take notice that on April 26, 2004, the New York Independent System Operator, Inc. (NYISO), pursuant to the Commission's order issued March 26, 2004 in Docket No. EL04–56–000, filed proposed revisions to its Open Access Transmission Tariff (OATT) to amend the Wholesale TSC Calculation Information in the OATT for New York State Electric & Gas Corporation to reflect a Commission-approved Stipulation and Agreement in Docket No. EL04–56–000.

The NYISO states that it has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's OATT or Services Tariff, the New York State Public Services Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: May 17, 2004.

2. Southern California Edison Company

[Docket No. ER03–549–004]

Take notice that on April 26, 2004, Southern California Edison Company (SCE) tendered for filing a refund report in compliance with the Order Approving Uncontested Settlement issued by the Commission issued March 26, 2004, in Docket No. ER03–549–003 (106 FERC ¶ 61,308).

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and the Southern California Water Company.

Comment Date: May 17, 2004.

3. PJM Interconnection, L.L.C.

[Docket No. ER03–1086–003]

Take notice that on April 23, 2004, PJM Interconnection, L.L.C. (PJM) submitted for filing a response to the questions posed by the Commission's Office of Markets, Tariffs, and Rates in a letter issued on April 8, 2004 in Docket No. ER03–1086–001.

Comment Date: May 14, 2004.

4. ISO New England Inc.

[Docket No. ER04–121–002]

Take notice that on April 26, 2004, ISO New England Inc. submitted its compliance filing in response to the Commission's order issued March 25, 2004, Order in Docket No. ER04–121–000.

ISO–NE states that copies of the filing have been served on all parties to this proceeding, NEPOOL Participants, all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, and the utility regulatory agencies of the six New England States.

Comment Date: May 17, 2004.

5. Bangor Hydro-Electric Company; Central Maine Power Company; Fitchburg Gas and Electric Light Company; Maine Electric Power Company; New England Power Company; Northeast Utilities Service Company, on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, Holyoke Power and Electric Company, and Holyoke Water Power Company NSTAR Electric and Gas Corporation, on behalf of Boston Edison Company, Cambridge Electric Light Company, and Commonwealth Electric Company; The United Illuminating Company; Unitil Energy Systems, Inc.; Vermont Electric Power Company

[Docket No. ER04–432–001]

Take notice, that on April 26, 2004, in compliance with Order No. 2003–A, *Standardization of Generator Interconnection Agreements and Procedures,* FERC Stats. & Regs. Preambles ¶ 31,160 (2004), the New England Transmission Owners, listed in the caption above, jointly submitted revisions to their Open Access Transmission Tariffs for Local Network Service incorporating, with proposed regional variations, Order No. 2003–A's *pro forma* Standardized Large Generator Interconnection Procedures and Standardized Large Generator Interconnection Agreement.

Comment Date: May 17, 2004.

6. New England Power Pool

[Docket No. ER04–433–001]

Take notice, that on April 26, 2004, the New England Power Pool (NEPOOL) Participants Committee submitted for filing amendments to the NEPOOL Open Access Transmission Tariff designed to modify NEPOOL's standardized generator interconnection procedures and standardized generator interconnection agreement contained in Schedule 22 to the NEPOOL Tariff to comply with Order No. 2003–A, *Standardization of Generator Interconnection Agreements and Procedures.*

The NEPOOL Participants Committee states that copies of the materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment Date: May 17, 2004.

7. Idaho Power Company

[Docket No. ER04–437–001]

Take notice, that on April 27, 2004, in compliance with Order No. 2003–A, *Standardization of Generator Interconnection Agreements and Procedures,* Idaho Power Company tendered for filing Attachment J to its revised Open Access Transmission Tariff, FERC Electric Tariff First Revised Volume No. 1.

Idaho Power Company states that this filing has been served on the parties to the official Service List for Docket No. ER04–437–000 and the Idaho Public Utilities Commission.

Comment Date: May 18, 2004.

8. California Independent System Operator Corporation

[Docket No. ER04–445–002]

Take notice that on April 26, 2004, California Independent System Operator Corporation (ISO) pursuant to section 205 of the Federal Power Act and section 35.13 of the Commission Regulations, submitted for filing its revised Standard Large Generator Interconnection Procedures in compliance with Order No. 2003–A.

Comment Date: May 17, 2004.

9. California Independent System Operator Corporation; Pacific Gas and Electric Company; San Diego Gas and Electric Company; and Southern California Edison Company

[Docket Nos. ER04–445–003, ER04–435–003, ER04–441–002, ER04–443–002]

Take notice that on April 26, 2004, California Independent System Operator Corporation, Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison Company (collectively the Filing Parties) pursuant to section 205 of the Federal Power Act and § 35.13 of the Commission Regulations, jointly submitted for filing a revised Standard Large Generator Interconnection Agreement in compliance with Order No. 2003–A. The Filing Parties state that the Standard Large Generator Interconnection Agreement is intended to function as a stand alone *pro forma* agreement and is not intended to be incorporated into the tariffs of any of the Filing Parties.

Comment Date: May 17, 2004.

10. New York Independent System Operator, Inc.

[Docket No. ER04–449–002]

Take notice, that on April 26, 2004, the New York Independent System Operator, Inc. (NYISO) and the New York Transmission Owners jointly submitted for filing revised standard interconnection procedures and a standard interconnection agreement to comply with Order No. 2003–A, *Standardization of Generator Interconnection Agreements and Procedures.*

The NYISO states that it has served a copy of this filing on all parties in ER04–449–000 and upon all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: May 17, 2004.

11. Southern Company Services, Inc.

[Docket No. ER04–459–001]

Take notice, that on April 28, 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 submitted a compliance filing pursuant to the Commission's March 29, 2004, order in *Southern Company Services, Inc.,* 106 FERC ¶ 61,311 (2004) and Order No. 2003–A, *Standardization of Generator Interconnection Agreements and Procedures,* 106 FERC ¶ 61,220 (2004). SCS states that the compliance filing also includes SCS's proposed study procedures for Network Resource Interconnection Service.

Comment Date: May 19, 2004.

12. CalPeak Power—El Cajon, LLC

[Docket No. ER04–517–002]

Take notice, that on April 28, 2004, CalPeak Power LLC, on behalf of CalPeak Power—El Cajon, LLC (El Cajon), submitted a compliance filing pursuant to the Commission's order issued April 15, 2004 in Docket Nos. ER04–517–000 and 001 regarding a Must-Run Service Agreement between El Cajon and the California Independent System Operator Corporation.

Comment Date: May 19, 2004.

13. Illinois Power Company

[Docket No. ER04–552–001]

Take notice, that on April 28, 2004, Illinois Power Company (Illinois Power) tendered for filing Second Revised Sheet No. 10 and First Revised Sheet No. 180 through First Revised Sheet No. 346 to Illinois Power's FERC Electric Tariff Third Revised Volume No. 8, to include the *pro forma* Large Generator Interconnection Procedures and the Large Generator Interconnection Agreement in its Open Access Transmission Tariff as required by Order No. 2003–A, *Standardization of Generator Interconnection Agreements and Procedures.* Illinois Power has requested an effective date of April 26, 2004.

Comment Date: May 19, 2004.

14. Southern Company Services, Inc.

[Docket No. ER04–565–001]

Take notice that on April 27, 2004, Southern Electric Generating Company (SEGCo), Alabama Power Company (Alabama), and Georgia Power Company (Georgia) (collectively, Southern Companies), in response to the Commission's deficiency letter issued April 13, 2004, filed an amendment to their February 17, 2004, filing regarding an amendment to the power contract between SEGCO, Alabama and Georgia.

Comment Date: May 18, 2004.

15. Midwest Independent Transmission System Operator, Inc. and Ameren Services Company

[Docket No. ER04–571–002]

Take notice that on April 26, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), pursuant to the Commission's order issued March 25, 2004, in Docket No. ER04–571–000, submitted for filing an Agreement for the Provision of Transmission Service to Bundled Retail Load between the Midwest ISO and Ameren Services Company, as agent for Union Electric Company, d/b/a AmerenUE (the Service Agreement).

The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee

participants, as well as all state commissions within the region. In addition, Midwest states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO also states that it will provide hard copies to any interested parties upon request.

Comment Date: May 17, 2004.

16. MidAmerican Energy Company

[Docket No. ER04–583–001]

Take notice that on April 27, 2004, MidAmerican Energy Company (MidAmerican), submitted a compliance filing pursuant to the Commission's letter order issued March 30, 2004, regarding an Emergency Electric Interconnection and Operating Agreement between MidAmerican and East River Electric Power Cooperative, incorporating the First Amendment to the Agreement dated January 26, 2004.

MidAmerican states that a copy of the filing has been served on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment Date: May 18, 2004.

17. Southern Company Services, Inc.

[Docket No. ER04–591–001]

Take notice that on April 27, 2004, Southern Company Services, Inc. (SCS) by and on behalf of Alabama Power Company, Georgia Power Company, Mississippi Power Company, Gulf Power Company and Savannah Electric and Power Company (collectively, Southern Companies), pursuant to the Commission's deficiency letter issued April 13, 2004, filed an amendment to their February 27, 2004, filing regarding a series of bilateral amendments to certain unit power sales agreements with Florida Power and Light Company, Florida Power Corporation and Jacksonville Electric Authority.

Comment Date: May 18, 2004.

18. Mystic I, LLC

[Docket No. ER04–657–001]

Take notice, that on April 28, 2004, Mystic I, LLC (Mystic I) filed revisions to its market-based rate wholesale power sales tariff to conform the tariff to the Commission's requirements and to fix some minor formatting errors. Mystic I has requested an effective date of January 22, 2004.

Comment Date: May 19, 2004.

19. Fore River Development, LLC

[Docket No. ER04–659–001]

Take notice, that on April 28, 2004, Fore River Development, LLC filed revisions to its market-based rate wholesale power sales tariff to conform the tariff to the Commission's requirements and to fix some minor formatting errors.

Comment Date: May 19, 2004.

20. Mystic Development, LLC

[Docket No. ER04–660–001]

Take notice, that on April 28, 2004, Mystic Development, LLC (Mystic Development) filed revisions to its market-based rate wholesale power sales tariff to conform the tariff to the Commission's requirements and to fix some minor formatting errors. Mystic Development has requested an effective date of January 22, 2004.

Comment Date: May 19, 2004.

21. Aleph One, Inc.

[Docket No. ER04–686–001]

Take notice that on April 26, 2004, Aleph One, Inc. (Aleph One) submitted an amendment to its March 30, 2004 application for the Commission to accept for filing Aleph One's Rate Schedule FERC No. 1 (Rate Schedule No. 1). Aleph One requests that the Commission grant Aleph One the blanket authority to make market-based sales of energy and capacity under its Rate Schedule No. 1 and grant Aleph One such waivers and authorizations as have been granted by the Commission to other entities authorized to transact at market-based rates.

Comment Date: May 17, 2004.

22. Westar Energy, Inc.

[Docket No. ER04–759–000]

Take notice that on April 26, 2004, Westar Energy, Inc. (Westar) submitted for filing an amendment to the Electric Interconnection Agreement between Westar Energy, Inc. and the Kansas City Power & Light Company (KCPL) to establish three additional 12 kV delivery points in the Lenexa, Kansas area. Westar requests an effective date of April 30, 2004.

Westar states that a copy of this filing was served upon the Kansas Corporation Commission and KCPL.

Comment Date: May 17, 2004.

23. Cold Springs Creek, LLC

[Docket No. ER04–762–000]

Take notice that on April 26, 2004, Cold Springs Creek, LLC (Cold Springs) submitted for filing a Notice of Cancellation of its Market-Based Rate Authority, Rate Schedule FERC No. 1. Cold Springs has requested an effective date of April 21, 2004.

Comment Date: May 17, 2004.

24. Entergy Services, Inc.

[Docket No. ER04–763–000]

Take notice that on April 26, 2004, Entergy Services, Inc., (Entergy) on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., filed proposed modifications to the Commission's Standard Large Generator Interconnection Procedures that are justified by existing and established regional reliability standards applicable to Entergy's service territory pursuant to the Commission's Order No. 2003–A, *Standardization of Generator Interconnection Agreements and Procedures.*

Comment Date: May 17, 2004.

25. South Carolina Electric & Gas Company

[Docket No. ER04–764–000]

Take notice that on April 26, 2004, South Carolina Electric & Gas Company (SCE&G) filed with the Commission revisions to its Open Access Transmission Tariff in order to incorporate modifications to the *pro forma* Large Generator Interconnection Procedures pursuant to Order No. 2003–A, *Standardization of Generator Interconnection Agreements and Procedures.*

Comment Date: May 17, 2004.

26. University Park Energy, LLC

[Docket No. ER04–765–000]

Take notice that on April 26, 2004, University Park Energy, LLC (University Park) tendered for filing, under section 205 of the Federal Power Act, its proposed FERC Electric Tariff, Original Volume No. 3, for reactive supply and voltage control from generation sources service provided to the transmission facilities that will be controlled by the PJM Interconnection, L.L.C. (PJM) upon the transfer of operational control of Commonwealth Edison Company's (ComEd) transmission system to PJM. University Park respectfully requests that the Commission accept the proposed Tariff for filing to become effective on the date when operational control of the ComEd transmission system is transferred to PJM.

University Park states that it has mailed a copy of this filing to PJM.

Comment Date: May 17, 2004.

27. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–766–000]

Take notice that on April 27, 2004, pursuant to section 205 of the Federal Power Act and § 35.15 of the Commission's regulations, the Midwest

Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing an executed First Revised Interconnection and Operating Agreement among Valley Queen Cheese Factory, Inc., the Midwest ISO and Otter Tail Power Company. Midwest ISO requests an effective date of April 26, 2004.

Comment Date: May 18, 2004.

28. PacifiCorp

[Docket No. ER04–767–000]

Take notice that on April 27, 2004, PacifiCorp tendered for filing revisions to PacifiCorp's Open Access Transmission Tariff in compliance with Order No. 2003–A, *Standardization of Generator Interconnection Agreements and Procedures.* PacifiCorp requests an effective date of January 20, 2004.

PacifiCorp states that copies of this filing were supplied to the Public Utility Commission of Oregon, the Washington Utilities and Transportation Company and PacifiCorp's Network customers.

Comment Date: May 18, 2004.

29. El Paso Electric Company

[Docket No. ER04–768–000]

Take notice that on April 27, 2004, El Paso Electric Company (EPE) tendered for filing a Notice of Cancellation of EPE's Electric Rate Schedule No. 57 between EPE and Texas-New Mexico Power Company. EPE requests an effective date of December 31, 2002.

Comment Date: May 18, 2004.

30. PJM Interconnection, L.L.C.

[Docket No. ER04–769–000]

Take notice that on April 27, 2004, PJM Interconnection, L.L.C. (PJM) submitted for filing notice of NUI Energy Broker's (NUIEB) withdrawal from membership in PJM, a notice of cancellation of NUIEB's non-firm point-to-point service agreement, and a revised Schedule 12 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. deleting NUIEB from the list of PJM members. PJM requests an effective date of May 18, 2004.

PJM states that copies of the filing were served on all PJM members, including NUIEB, and each state electric utility regulatory commission in the PJM region.

Comment Date: May 18, 2004.

31. The United Illuminating Company

[Docket No. ER04–770–000]

Take notice that on April 27, 2004, pursuant to section 205 of the Federal Power Act and Part 35 of the Commission's regulations, The United Illuminating Company (United Illuminating) tendered for filing an Agreement for Supplemental Installed Capacity—Southwest Connecticut (LRP Resources) Between ISO New England Inc., as agent for the Marked Participants in the New England Control Area and United Illuminating. United Illuminating requests an effective date of May 31, 2004.

Comment Date: May 18, 2004.

32. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–787–002]

Take notice that on April 26, 2004, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and section 35.13 of the Commission's regulations, 18 CFR 35.13 (2003), submitted for filing a fully executed second revised Interconnection and Operating Agreement among Flying Cloud Power Partners, LLC, the Midwest ISO and Interstate Power and Light Company, a wholly owned subsidiary of Alliant Energy. Midwest ISO has requested a March 31, 2003, effective date.

Midwest ISO states that a copy of this filing was served on all parties.

Comment Date: May 17, 2004.

33. Orlando Utilities Commission

[Docket No. NJ04–4–000]

Take notice, that on April 27, 2004, the Orlando Utilities Commission (OUC) filed revisions to its non-jurisdictional open access transmission tariff to incorporate non-jurisdictional Large Generator Interconnection Procedures, a Large Generator Interconnection Agreement, and OUC's Interconnection Guide to comply with Order Nos. 2003 and 2003–A, *Standardization of Generator Interconnection Agreements and Procedures.* OUC has requested an effective date of April 26, 2004.

Comment Date: May 27, 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. E4–1099 Filed 5–12–04; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–94–001, et al.]

Pacific Gas and Electric Company, et al.; Electric Rate and Corporate Filings

May 5, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Pacific Gas and Electric Company

[Docket Nos. ER03–94–001 and ER03–299–001]

Take notice that on April 29, 2004, Pacific Gas and Electric Company (PG&E) tendered for filing a refund report, in compliance with the Commission's Letter Order issued January 28, 2004 in Docket Nos. ER03–94–001 and ER03–299–001, 106 FERC ¶ 61,052.

PG&E states that copies of PG&E's filing have been served upon each person designated on the official service list in these proceedings.

Comment Date: May 20, 2004.

2. PJM Interconnection, L.L.C.

[Docket No. ER03–404–004]

Take notice that on April 29, 2004, PJM Interconnection, L.L.C. (PJM), in compliance with the Commission's order issued March 30, 2004 in Docket Nos. ER03–404–000. 001 and 003, *PJM Interconnection, L.L.C.*, 106 FERC ¶ 61,324 (2004), submitted for filing revisions to the PJM Open Access Transmission Tariff relating to the standard terms and conditions for independent transmission companies to

operate within PJM. PJM requests an effective date of March 20, 2003.

PJM states that copies of this filing were served on all persons on the Commission's service list for this proceeding, all PJM members, and each state electric utility regulatory commission in the PJM region.

Comment Date: May 20, 2004.

3. Devon Power LLC, Middletown, Power LLC, Montville Power LLC, Norwalk Power LLC and NRG Power Marketing Inc.

[Docket Nos. ER04–464–004, ER04–23–000, and ER03–563–035(consolidated)]

Take notice that on April 29, 2004, Devon Power LLC, (Devon), Middletown Power LLC, (Middletown) and Montville Power LLC, (Montville) (collectively, Applicants) and NRG Power Marketing Inc., acting as agent for Applicants, tendered for filing First Revised Schedules 1 to the Reliability Must Run Agreements entered into between each Applicant and ISO New England Inc. (ISO–NE).

Applicants state that they have provided copies of the filing to ISO–NE and served each person designated on the official service list compiled by the Secretary in this proceeding.

Comment Date: May 20, 2004.

4. MidAmerican Energy Company

[Docket No. ER04–497–002]

Take notice that on April 29, 2004, MidAmerican Energy Company (MidAmerican), filed in compliance with the Commission's order issued March 30, 2004, in Docket No. ER04–497–002, ''Attachment A, Summary Matrix of MidAmerican Regional Differences on the LGIP and LGIA with April 19, 2004 Updates'' and ''Attachment B, Open Access Transmission Tariff'', in compliance with Order Nos. 2003 and No. 2003–A, including appropriate showings as required by the Commission for the remaining regional differences.

Comment Date: May 20, 2004.

5. Public Service Company of New Mexico

[Docket No. ER04–534–001]

Take notice that on April 23, 2004, Public Service Company of New Mexico filed a refund report in compliance with the Commission's Letter Order issued April 6, 2004 in Docket No. ER04–534–000.

Comment Date: May 17, 2004.

6. Minnesota Power Superior Water, Light & Power Company Rainy River Energy Corporation

[Docket No. ER04–649–001]

Take notice that on April 29, 2004, Minnesota Power, on behalf of Rainy River Energy Corporation, submitted a revised market-based rate tariff.

Comment Date: May 20, 2004.

7. Southern California Edison Company

[Docket No. ER04–771–000]

Take notice, that on April 29, 2004, Southern California Edison Company (SCE) tendered for filing the Service Agreement for Wholesale Distribution Service between SCE and Phoenix Wind Power LLC (PWP) (Revised Service Agreement). SCE requests that the Revised Service Agreement become effective on April 30, 2004.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and PWP.

Comment Date: May 20, 2004.

8. Virginia Electric and Power Company

[Docket No. ER04–772–000]

Take notice that on April 29, 2004, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing Amended Service Agreement for Network Integration Transmission Service (Retail) and Network Operating Agreement, Amended Service Agreement for Firm Point-To-Point Transmission Service, and Amended Service Agreement for Non-Firm Point-To-Point Transmission between Dominion Virginia Power and Pepco Energy Services, Inc. Dominion Virginia Power requests a waiver of the Commission's regulations to permit an effective date of March 30, 2004.

Comment Date: May 20, 2004.

9. Westar Energy, Inc.

[Docket No. ER04–773–000]

Take notice that on April 29, 2004, Westar Energy, Inc. (Westar) submitted for filing a Notice of Cancellation of Rate Schedule FERC No. 251, an Electric Supply Agreement between Westar and the City of Troy, Kansas.

Westar states that copies of this filing were served on the City of Troy, Kansas and the Kansas Corporation Commission.

Comment Date: May 20, 2004.

10. PJM Interconnection, L.L.C.

[Docket No. ER04–774–000]

Take notice that on April 29, 2004, PJM Interconnection, L.L.C. (PJM) submitted amendments to Schedule 2 of the PJM Open Access Transmission Tariff to incorporate new and amended revenue requirements for Reactive Supply and Voltage Control from General Sources Service for Allegheny Energy Supply Company, LLC (AE Supply), Monongahela Power Company (Mon Power), Conectiv Bethlehem, LLC (CBLLC), and Midwest Generation, LLC (MWGen).

PJM states that copies of this filing have been served on all PJM members, including AE Supply, Mon Power, CBLLC, and MWGen, and each state electric utility regulatory commission in the PJM region.

Comment Date: May 20, 2004.

11. PJM Interconnection, L.L.C.

[Docket No. ER04–775–000]

Take notice that on April 29, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interconnection service agreement (ISA) among PJM, Easton Utilities Commission, and Delmarva Power & Light Company d/b/a Conectiv Power Delivery. PJM requests a waiver of the Commission's 60-day notice requirement to permit a March 30, 2004 effective date for the ISA.

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: May 20, 2004.

12. PJM Interconnection, L.L.C.

[Docket No. ER04–776–000]

Take notice that on April 29, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing revisions to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. establishing procedures pursuant to which PJM and the PJM Market Monitoring Unit shall provide confidential information to state commissions. PJM requests an effective date of June 29, 2004 for the amendments.

PJM state that copies of this filing have been served on all PJM members, and each state electric utility regulatory commission in the PJM region.

Comment Date: May 20, 2004.

13. Avista Corporation

[Docket No. ER04–778–000]

Take notice that on April 29, 2004, Avista Corporation filed a Notice of Termination of Avista Corporation Rate Schedule FERC No. 12, a Long-Term Service Agreement with Sovereign Power, Inc. to be effective June 30, 2004.

AVA states that it has served a copy upon Sovereign Power, Inc.

Comment Date: May 20, 2004.

14. Midwest Independent Transmission System

[Docket No. ER04–779–000; Operator, Inc.]

Take notice that on April 29, 2004, the Midwest Independent Transmission System Operator, Inc., (Midwest ISO), certain of the Midwest ISO Transmission Owners, including certain of the Midwest Stand Alone Transmission Companies, GridAmerica LLC, and the GridAmerica Companies, jointly submitted for filing revisions to the Midwest ISO Agreement to implement the distribution to the GridAmerica Companies of revenues from the Regional Through and Out Rate collected under Schedule 14 of the Midwest ISO Open Access Transmission Tariff.

Comment Date: May 20, 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. E4–1109 Filed 5–12–04; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–782–000–341–002, et al.]

Vermont Electric Cooperative, Inc., et al.; Electric Rate and Corporate Filings

May 6, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Vermont Electric Cooperative, Inc.

[Docket No. ER04– 341–002]

Take notice that on April 30, 2004, Vermont Electric Cooperative, Inc. (VEC) submitted a compliance filing pursuant to the Commission's order issued February 12, 2004 in Docket No. ER04–341–001, 106 FERC ¶ 61,131, (2004). VEC has requested an effective date of April 1, 2004.

Comment Date: May 21, 2004.

2. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–782–000]

Take notice that on April 30, 2004, Midwest Independent Transmission System Operator, Inc. (Midwest ISO), pursuant to section 205 of the Federal Power Act and section 35.12 of the Commission's regulations, 18 CFR 35.12 (2003), submitted for filing an Interconnection and Operating Agreement among Blue Sky Wind Farm LLC, the Midwest ISO and American Transmission Company LLC. Midwest ISO has requested an effective date of April 20, 2004.

Midwest ISO states that a copy of this filing was served on all parties.

Comment Date: May 21, 2004.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–783–000]

Take notice that on April 30, 2004, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and section 35.12 of the Commission's regulations, 18 CFR 35.12 (2003), submitted for filing an Interconnection and Operating Agreement among Green Field Wind Farm LLC, the Midwest ISO and American Transmission Company LLC. Midwest ISO has requested an effective date of April 20, 2004.

Midwest ISO states that a copy of this filing was served on all parties.

Comment Date: May 21, 2004.

4. Tampa Electric Company

[Docket No. ER04–784–000]

Take notice that on April 30, 2004, Tampa Electric Company (Tampa Electric) tendered for filing revised rate schedule sheets containing updated rates for emergency interchange service and scheduled/short-term firm interchange service under its interchange contracts with each of 17 other utilities. Tampa Electric also tendered for filing revised sheets for inclusion in its open access transmission tariff (OATT) that contain an updated system average transmission loss percentage. Tampa Electric requests that the revised rate schedule and tariff sheets be made effective on May 1, 2004, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served upon each of the parties to the affected interchange contracts and each customer under its OATT, as well as the Florida and Georgia Public Service Commissions.

Comment Date: May 21, 2004.

5. Commonwealth Edison Company

[Docket No. ER04–790–000]

Take notice that on April 30, 2004, Commonwealth Edison Company (ComEd) tendered for filing an executed Standard Large Generator Interconnection Agreement between ComEd and Power Partners Midwest, LLC, for Power Partners' Kinnikinnik Wind Farm generating facility. ComEd has requested an effective date of May 1, 2004.

Comment Date: May 21, 2004.

6. Tampa Electric Company

[Docket No. ER04–792–000]

Take notice that on April 30, 2004, Tampa Electric Company (Tampa Electric) tendered for filing open access transmission tariff sheets containing the Large Generator Interconnection Procedures and the Large Generator Interconnection Agreement that the Commission adopted in Order Nos. 2003 and 2003–A, *Standardization of Generator Interconnection Agreements and Procedures.* Tampa Electric proposes that the tariff sheets be made effective on April 30, 2004.

Tampa Electric states that copies of the filing have been served on the customers under Tampa Electric's open access transmission tariff and the Florida Public Service Commission.

Comment Date: May 21, 2004.

7. Fairless Energy, LLC

[Docket No. ER04–797–000]

Take notice that on April 30, 2004, Fairless Energy, LLC (Fairless) tendered

for filing a revenue requirement and rate schedule pursuant to which Fairless will provide Reactive Supply and Voltage Control from Generation Sources Service pursuant to Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff. The rate schedule is Fairless Energy, LLC, Rate Schedule FERC No. 2. The Company requests an effective date of the later of July 1, 2004 or the day after the first block of facilities goes into commercial operation. Fairless also tendered for filing a First Revised Rate Schedule FERC No. 2 which adds charges for a second block of facilities and asks for an effective date of the day after the second block of facilities goes into commercial operation.

Fairless states that a copy of the filing was served on PJM, PECO Energy Company and the relevant state utility commissions.

Comment Date: May 21, 2004.

8. Wabash Valley Power Association, Inc.

[Docket No. ER04–802–000]

Take notice that on April 30, 2004, Wabash Valley Power Association, Inc. (Wabash Valley) tendered for filing its initial rate filing. Wabash Valley states that it will become a FERC-jurisdictional public utility on July 1, 2004, by virtue of its repurchase of its outstanding U.S. Department of Agriculture Rural Utilities Service debt. Therefore, in compliance with Section 205 of the Federal Power Act (16 U.S.C. (824d), Wabash Valley is filing with the Commission all of its rates, terms and conditions of service.

Wabash Valley state that copies of this filing were served upon Wabash Valley's Members, Duke Vermillion, LLC, PSI Energy, Inc., Cinergy Corp., Indiana Municipal Power Agency, Northern Indiana Public Service Company, Steel Dynamics, Inc. and the public utility commissions in Illinois, Indiana, Michigan and Ohio.

Comment Date: May 21, 2004.

9. PJM Interconnection, L.L.C.

[Docket No. ER04–807–000]

Take notice that on April 30, 2004, PJM Interconnection, L.L.C. (PJM) submitted for filing certain conforming changes to the PJM Open Access Transmission Tariff and PJM Operating Agreement related to the integration of Commonwealth Edison Company (including Commonwealth Edison Company of Indiana, Inc.) (ComEd) into PJM on May 1, 2004, as established by the Commission's April 27, 2004 order in Docket Nos. ER04–521–002, *et al.*, 107 FERC ¶ 61,087. PJM has requested an effective date for these changes of May 1, 2004.

PJM states that copies of this filing have been served on all PJM members and utility regulatory commissions in the PJM Region and on all persons listed on the official service lists compiled by the Secretary for these proceedings.

Comment Date: May 21, 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. E4–1110 Filed 05–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–51–000]

ANR Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Eastleg Expansion Project

May 5, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed to be constructed and abandoned by ANR Pipeline Company (ANR) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of:

- Constructing 4.7 miles of 30-inch-diameter pipeline to replace 4.7 miles of 14-inch-diameter pipeline, to be abandoned by removal, in Washington County, Wisconsin, including one new pig launcher and two new pig receivers (Mainline Replacement);
- Constructing 3.5 miles of 8-inch-diameter pipeline looping in Brown County, Wisconsin, including one new pig launcher and receiver and two tie-in facilities (Denmark Lateral Loop); and
- Modifying its existing Mountain Compressor Station in Oconto County, Wisconsin, including re-wheeling of a compressor unit and addition of a gas cooler and new piping and appurtenant facilities.

The purpose of the proposed project is to expand the capacity of ANR's natural gas pipeline facilities for transporting an additional 143,400 million British thermal units per day of natural gas along its 30-inch-diameter pipeline in Wisconsin.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Branch 2, PJ11.2.

• Reference Docket No. CP04–051–000; and

• Mail your comments so that they will be received in Washington, DC on or before June 7, 2004.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Sign-up.''

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659 or at *FERCONLINESUPPORT@FERC.GOV.* The eLibrary link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you too keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov*, click on ''eSubscription'' and then click on ''Sign-up.''

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1135 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2213–011]

Public Utility District No. 1 of Cowlitz County; Notice of Application and Applicant Prepared Environmental Assessment Tendered for Filing With the Commission, Establishing Procedural Schedule for Relicensing and Deadline for Submission of Final Amendments

May 7, 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.:* 2213–011.

c. *Date Filed:* April 23, 2004.

d. *Applicant:* Public Utility District No. 1 of Cowlitz County (Cowlitz PUD).

e. *Name of Project:* Swift No. 2 Hydroelectric Project.

f. *Location:* On the North Fork Lewis River, in Cowlitz and Skamania Counties, Washington. The project occupies 3.79 acres of federal land administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Diana McDonald, Public Utility District No. 1 of Cowlitz County P.O. Box 3007, 961 12th Avenue Longview, Washington 98632; Telephone (360) 577–5785; e-mail *dmcdonald@cowlitzpud.org.*

i. *FERC Contact:* Jon Cofrancesco at (202) 502–8951; or e-mail at *jon.cofrancesco@ferc.gov*

j. *Deadline for filing comments on the application:* 60 days from the filing date shown in paragraph (c), or June 22, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments 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 (*http://www.ferc.gov*) under the ''e-Filing'' link. After logging into the e-Filing system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the filing process. The Commission strongly encourages electronic filing.

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.

k. *Cooperating Agencies:* We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item j above. Agencies granted cooperating status will be precluded from being an intervenor in this proceeding consistent with the Commission's regulations.

l. With this notice, we are initiating consultation with the Washington State Historic Preservation Officer (SHPO), as required by 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. *Status:* This application has not been accepted for filing. We are not soliciting motions to intervene, protests, or final terms and conditions at this time.

n. *The Project Description:* The existing project consists of: (1) A 3.2-mile-long power canal consisting of both concrete and earth embankment sections and having a surface area of 53 acres; (2) a 1,100 foot-long concrete lined forebay; (3) an 82-foot-long check structure,: (4) a 537 foot-long side channel spillway/wasteway, (5) a 90 foot-high intake structure with two vertical gates: (6) two 250-foot-long steel lined penstocks, (7) a powerhouse, containing two 35-megawatt (MW) generating units, having a total installed capacity of 70 MW; (8) a 0.9-mile-long 230 kilovolt transmission line; and (9) appurtenant facilities.

Historically, Cowlitz PUD has operated the Swift No. 2 Project as a

peaking facility in a coordinated manner with the upstream Swift No. 1 Hydroelectric Project. In 2002, a portion of the project canal failed resulting in damage to the powerhouse, tailrace, and switchyard and the project has not operated since that time. Reconstruction of the damaged project facilities is scheduled to be completed in late 2005. Cowlitz PUD proposes to operate the project in the same manner as it did historically and to implement various environmental measures at the project.

o. *Locations of the Application:* 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 website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field (P–2213), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Issue acceptance or deficiency letter.	July 2004.
Request additional information (if necessary).	July 2004.
Notice soliciting final terms and conditions.	July 2004.
Notice of Draft NEPA Document.	October 2004.
Notice of Final NEPA Document.	February 2005.
Ready for Commission Decision on the Application.	October 2005.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice soliciting final terms and conditions.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1141 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 516–388]

South Carolina Gas & Electric Company; Notice of Availability of Draft Environmental Assessment

May 7, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 51 FR 47897, the Office of Energy Projects has reviewed South Carolina Gas & Electric Company's application requesting authorization to permit Westshore Ltd. use of Saluda Project lands and waters. The permit would authorize the installation of a floating dock capable of berthing 40 boats at the existing Spinners Marina. The Marina is located on Lake Murray, Leesville, and Saluda County, South Carolina. A Draft Environmental Assessment (DEA) has been prepared for the proposal.

The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that approving the request would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the DEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number P–516 to access the document. For assistance, contact FERC Online Support at *FERCOlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/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.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. P–516–388 to all comments. 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.

For further information, contact Jean Potvin at (202) 502–8928.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1143 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2086–035, California]

Southern California Edison; Notice of Availability of Environmental Assessment

May 4, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Vermilion Valley Hydroelectric Project and has prepared an Environmental Assessment (EA) for the project. The project is located on Mono and Warm Creeks, near Shaver Lake, within the county of Fresno, California. The project occupies federal lands within the Sierra National Forest, covering a total of 2,202 acres.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also 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 866–208–3676, or for TTY, 202–502–8659.

Any comments should be filed within 45 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix ''Vermilion Valley Hydroelectric Project No. 2086'' to all comments. Comments may be filed electronically via 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 under the ''e-Filing'' link. For further information, contact Jim Fargo at 202–502–6095 or by e-mail at *jamesfargo@ferc.gov*.

After reviewing the comments, the Commission will decide whether to revise this EA and will notify the parities accordingly.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1102 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–60–000]

Tennessee Gas Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Tewksbury-Andover Lateral Project and Request for Comments on Environmental Issues

May 7, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Tewksbury-Andover Lateral Project involving construction and operation of facilities by Tennessee Gas Pipeline Company (Tennessee) in Middlesex and Essex Counties, Massachusetts.[1] These facilities would consist of about 5.3 miles of 8-inch-diameter pipeline, pig launcher and receiver facilities, and a meter station. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

Summary of the Proposed Project

Tennessee wants to transport up to 25,000 decatherms per day for Bay State Gas Company and Wyeth Pharmaceuticals, Inc. (Wyeth) in Essex County, Massachusetts. Tennessee seeks authority to construct and operate:

- 5.31 miles of 8-inch-diameter pipeline (Tewksbury-Andover Lateral) in Middlesex and Essex Counties, Massachusetts;
- A pig launcher facility in Middlesex County, Massachusetts, at milepost (MP) 270B–102+1.53 of Tennessee's Concord Lateral, that is the point of interconnection with the proposed Tewksbury-Andover Lateral; and
- A pig receiver facility and meter station at MP 5.31 of the proposed Tewksbury-Andover Lateral, at the Wyeth facility in Essex County, Massachusetts.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 30.2 acres of land. Following construction, about 12.5 acres would be maintained as new permanent right-of-way and aboveground facility sites. The remaining 24.4 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we[3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Endangered and threatened species;
- Public safety.

We will also evaluate potential alternatives to the proposed project or portions of the project, and make recommendations, if appropriate, on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA might be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 4.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas,

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[1] Tennessee originally filed its application as a Prior Notice Application under Sections 157.208(b)(2) and 157.211(a)(2) of the Commission's regulations. Four landowners filed protests to Tennessee's filing on March 8, 22, and 26, 2004, on economic grounds. In addition, the staff filed a protest citing unresolved rate issues. None of the protests were resolved within the 30-day protest resolution period. Therefore, Tennessee's filing has converted to a Natural Gas Act, Section 7(c) application.

[2] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

• Label one copy of the comments for the attention of Gas Branch 3.

• Reference Docket No. CP04–60–000.

• Mail your comments so that they will be received in Washington, DC, on or before June 11, 2004.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''Documents & Filing, e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We might mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project may be obtained through the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *Ferconlinesupport@Ferc.Gov.* The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1140 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

May 5, 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.:* 2150–033.

c. *Date Filed:* April 30, 2004.

d. *Applicant:* Puget Sound Energy.

e. *Name of Project:* Baker River Project.

f. *Location:* On the Baker River, near the Town of Concrete, in Whatcom and Skagit Counties, Washington. The project occupies about 5,207 acres of lands within the Mt. Baker-Snoqualmie National Forest managed by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Connie Freeland, Puget Sound Energy, P.O. Box 97034 PSE–09S Bellevue, WA 98009–9734; (425) 462–3556 or *connie.freeland@pse.com.*

i. *FERC Contact:* Steve Hocking, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; (202) 502–8753 or *steve.hocking@ferc.gov.*

j. *Cooperating Agencies:* We are asking Federal, State, local and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of an environmental document pursuant to the National Environmental Policy Act. Agencies who would like to request cooperating agency status should follow the instructions for filing comments described in item k below.

k. *Deadline for filing comments and requests for cooperating status:* June 30, 2004.

All documents (original and eight copies) must be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please put the project name ''Baker River Project'' and project number ''P–2150–033'' on the first page of all documents.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of

that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov* under the ''e-Filing'' link.

l. This application is not ready for environmental analysis at this time.

m. The Baker River Project has two developments. The Upper Baker development consists of the following existing facilities: (1) A 312-foot-high by 1,200-foot-long concrete gravity dam impounding Baker Lake with a surface area of about 4,980 acres at a normal full pool elevation of 727.77 feet mean sea level (msl); (2) a 122-foot-long, 59-foot wide concrete and steel powerhouse at the base of the dam containing two turbine-generator units, Unit No. 1 with an authorized capacity of 52,400 kilowatts (kW) and Unit No. 2 with an authorized capacity of 38,300 kW; (3) a 115-foot-high by 1,200-foot-long earth and rock-fill dam, known as West Pass dike, located in a depression about 1,500 feet north of Upper Baker dam; (4) a 22-foot-high by 3,000-foot-long earth-filled dike, known as Pumping Pond dike, which impounds Depression Lake with a surface area of 44 acres at a normal full pool elevation of 699 feet msl; (5) a water recovery pumping station adjacent to Pumping Pond dike; (6) fish passage facilities and fish spawning facilities; and (7) appurtenant facilities.

The Lower Baker development consists of the following existing facilities: (1) A 285-foot-high by 550-foot-long concrete thick arch dam impounding Lake Shannon with a surface area of about 2,278 acres at a normal full pool elevation of 442.35 feet msl; (2) a concrete intake equipped with trashracks and gatehouse located at the dam's left abutment; (3) a 1,410-foot-long concrete and steel-lined pressure tunnel; (4) a concrete surge tank near the downstream end of the pressure tunnel; (5) a 90-foot-long, 66-foot-wide concrete and steel powerhouse containing one turbine-generator unit, Unit No. 3 with an authorized capacity of 79,330 kW; (6) a 750-foot-long, 115-kilovolt transmission line; (7) fish passage facilities including a 150-foot-long by 12-foot-high barrier dam; and (8) appurtenant facilities.

n. A copy of the license application is available for review in the Commission's Public Reference Room or may be viewed on the Commission's Web site *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 *www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Procedural schedule:* This application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Acceptance or Deficiency Letter	July 2004.
Notice (1) Accepting Application and Requesting Motions to Intervene and (2) Requesting Final Terms and Conditions.	July 2004.
Notice of Draft Environmental Assessment (EA)	October 2004.
Notice of Final EA	February 2005.
Ready for Commission Decision on License Application	October 2005.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice soliciting comments and final terms and conditions.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1115 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP04–251–000 and RP04–248–000 (not consolidated)]

El Paso Natural Gas Company; Notice of Technical Conference

May 6, 2004.

Take notice that a technical conference will be held on Monday, May 24, 2004, at 9:30 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A room has also been reserved for Tuesday, May 25, 2004, if there is a need to continue the conference.

The conference will be held to discuss El Paso Natural Gas Company's filing in Docket No. RP04–251–000 to comply with Order No. 637 and the related filing in Docket No. RP04–248–000 regarding imbalance management services.

All interested parties and Staff are permitted to attend.

For further information, contact Robert Petrocelli, (202) 502–8447, or Ingrid Olson, (202) 502–8406.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1090 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2183–035]

Grand River Dam Authority; Notice of ADR Teleconference Call

May 6, 2004.

Pursuant to Rule 601 of the Commission's Rules of Practice and Procedure, 18 CFR 385.601 (2001), the Dispute Resolution Service will convene a teleconference call on Monday, June 7, 2004, to discuss how the Alternative Dispute Resolution processes and procedures may assist in resolving disputes related to fish entrainment matters in the above-docketed proceeding. A representative from the Federal Energy Regulatory Commission, Office of Energy Projects will participate on this call. This teleconference call will utilize an 800 call-in phone number, beginning at 2 p.m. central time and 3 p.m. eastern time and will last approximately one hour. This call is

in addition to a series of two prior teleconference calls (May 3, 2004 and May 5, 2004) which took place on the same subject but were inadvertently noticed under docket number P–1494–215.

Steven A. Shapiro and Jerrilynne Purdy, acting for the Dispute Resolution Service, will convene the teleconference call. They will be available to communicate in private prior to the teleconference call. If a party has any questions regarding the teleconference call and would be interested in participating in the call, please contact Mr. Shapiro at 202/502–8894 or Ms. Purdy at 202/502–8671 or e-mail *Steven.Shapiro@ferc.gov* or *Jerrilynne.Purdy@ferc.gov.* Parties may also communicate with Richard Miles, the Director of the Dispute Resolution Service, at 1–877–FERC–ADR (337–2237) or 202–502–8702 or by e-mail at *Richard.Miles@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1085 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–688–000, ER04–689–000, ER04–690–000, and ER04–693–000]

Pacific Gas and Electric Company; Notice of Telephone Conference Call

May 7, 2004.

The Federal Energy Regulatory Commission (FERC) staff will hold a telephone conference call in the above-referenced dockets on Thursday, May 13, 2004 at 12 Noon (9 a.m. Pacific Time).

The purpose of the telephone conference call is to establish a time and place for the initial technical conference to address the issues raised in these dockets, to establish a procedural schedule for additional technical conferences, and to prepare an agenda of the issues the parties want to discuss during the technical conferences.

Interested parties are invited to call telephone number 1–888–606–9535. Parties will need to provide the leader's name, Julia Lake, and the passcode, Lake, in order to access the call.

Parties are encouraged to submit any additional questions or issues they wish to have addressed during the telephone conference call. Questions about the telephone conference call should be directed to: Julia A. Lake, Office of the General Counsel—Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–8370, *julia.lake@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E4–1158 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–91–000]

Questar Pipeline Company; Notice of Cancellation of Technical Conference

May 4, 2004.

Take notice that the technical conference scheduled for Thursday, May 6, 2004, at 10 a.m. (EST) is hereby cancelled.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1107 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–10–001]

Standards of Conduct for Transmission Providers; Notice of Agenda for Technical Conference

May 7, 2004.

This notice provides additional information concerning the May 10, 2004 technical conference to discuss the Standards of Conduct for Transmission Providers governing the relationships between transmission providers and their energy affiliates. (*See* April 19, 2004, Notice of Technical Conference.) The conference will begin at 10 a.m. (CST) at the Doubletree Hotel—Allen Center, 400 Dallas Street, Houston, Texas. The meeting will conclude at approximately 4 p.m. All interested persons are invited to attend. There is no registration fee.

This agenda has been organized to reflect the interests of those who have submitted questions. As a result of feedback regarding the organization of this conference, the afternoon sessions will continue in one group rather than break out into smaller groups as suggested in the previous Notice. Also, in response to several inquiries, attire for the conference will be business casual.

Standing microphones will be available to enable those in the audience to participate in the discussion, as issues arise. Capitol Connection offers the opportunity to listen to the conference from remote locations. It is available for a fee, live over the Internet, by phone or via satellite. Persons interested in receiving the audiocast, or who need information on making arrangements should contact David Reininger or Julia Morelli at Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on ''FERC.''

Questions about the conference should be directed to: Demetra Anas, Office of Market Oversight and Investigations, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–8178.

May 10, 2004.

Magalie R. Salas,

Secretary, Standards of Conduct Affiliate Conference—Agenda

The times listed herein are approximate. The discussion of particular topics may take more or less time.

10 a.m. Introductions and Summary of Order No. 2004
- Commissioner Nora Brownell
- William Hederman, Director, Office of Market Oversight & Investigations
- Brief Summary of Order No. 2004 requirements

10:30 a.m. Chief Compliance Officer—Duties and Experiences
- Jerry Langdon, Reliant—Chief Compliance Officer
- Keith LeBauve, Cleco Power—Director, Regulatory Compliance
- Sherry Nelson, The Williams Companies—Chief Compliance Officer

11:30 a.m. Training Requirements
- Deme Anas, Enforcement, OMOI

12:30 p.m. Lunch Break

1:30 p.m. Commissioner Suedeen Kelly
- Compliance Practices
- Robert Pease, Deputy Director for Enforcement and Investigations, OMOI
- Bob Anderson, Executive Director, Chief Compliance Risk Officers

2:30 p.m. Discussions
- Information Disclosure
- Independent Functioning
- Posting Requirements
- Discretionary Waiver of Tariff Provisions

3:30 p.m. Wrap-Up

[FR Doc. E4–1144 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket PL04–8–000]

U.S.-Canada Power System Outage Task Force; Workshop on Electric Reliability Standards; Notice of Workshop

May 4, 2004.

Take notice that the U.S.-Canada Power System Outage Task Force and the Federal Energy Regulatory Commission will co-host a technical workshop on Friday, May 14, 2004 to discuss the improvement of North American electric reliability standards and other recommendations included by the U.S.-Canada Power System Outage Task Force in its April 2004 Report (available at: *http://www.ferc.gov/cust-protect/moi/blackout.asp*).

The workshop will be held at the Commission's Washington, DC headquarters, 888 First St., NE., 20426. The workshop is scheduled to begin at 9 a.m. (EST) in the Commission Meeting Room, Room 2–C.

Representatives from the United States Department of Energy, Natural Resources Canada, Ontario Ministry of Energy, North American Electric Reliability Council, and related industry representatives will participate with FERC Commissioners in addressing the immediate and long-term measures that may be taken to ensure a reliable electric system, a critical element to the economic and national security of both the United States and Canada.

Selected panelists will be invited to participate in this workshop; requests to make presentations will not be entertained. All interested persons may attend.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone or via satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on ''FERC.''

For more information about the conference, please contact Sarah McKinley at 202–502–8004 (*sarah.mckinley@ferc.gov*).

Magalie R. Salas,

Secretary.

Attachment 1—U.S.-Canada Power System Outage Task Force Workshop on Electric Reliability Standards

Agenda

(1) Opening comments by the Governmental conveners (15 minutes)
- Natural Resources Canada and Ontario Ministry of Energy
- U.S. Department of Energy and Federal Energy Regulatory Commission

(2) Status of current industry standards and policies (45 minutes)
- Content of existing standards, policies and guidelines (NERC)
- Timing of evolution into clear, ANSI-process-adopted standards

Invited speakers and brief opportunity for audience comments

(3) Based on the findings and recommendations of the blackout investigation, discussion of any necessary changes in the reliability standards (60 minutes)
- Existing topics in current standards/policies/guidelines (NERC)
- Discussion of areas that require standards not currently covered in the NERC standards (NERC, FERC)
- Discussion of priorities to complete or clarify the most reliability-critical issues and standards first

Invited speakers and brief opportunity for audience comments

(4) Timing and process for standards revision and development (60 minutes)
- Next steps, process and schedule (NERC)
- Any modifications needed to next steps, process and schedule given reliability needs?
- Appropriate role for the governments and agencies

Invited speakers from NERC and brief opportunity for audience comments

(5) Reliability readiness audits and other issues not covered above (30 minutes)

(6) Closing comments and commitments (20 minutes)

[FR Doc. E4–1103 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket PL04–8–000]

U.S.-Canada Power System Outage Task Force Workshop on Electric Reliability Standards; Notice of Workshop

May 4, 2004.

Take notice that the U.S.-Canada Power System Outage Task Force and the Federal Energy Regulatory Commission will co-host a technical workshop on Friday May 14, 2004, to discuss the improvement of North American electric reliability standards and other recommendations included by the U.S.-Canada Power System Outage Task Force in its April 2004 Report (available at: *http://www.ferc.gov/cust-protect/moi/blackout.asp*).

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Representatives from the United States Department of Energy, Natural Resources Canada, Ontario Ministry of Energy, North American Electric Reliability Council, and related industry representatives will participate with FERC Commissioners in addressing the immediate and long-term measures that may be taken to ensure a reliable electric system, a critical element to the economic and national security of both the United States and Canada.

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Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone or via satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on ''FERC.''

For more information about the conference, please contact Sarah

McKinley at 202–502–8004 (*sarah.mckinley@ferc.gov*).

Magalie R. Salas,
Secretary.

Attachment 1

U.S.-Canada Power System Outage Task Force Workshop on Electric Reliability Standards

Agenda

(1) Opening comments by the Governmental conveners (15 minutes).
- Natural Resources Canada and Ontario Ministry of Energy.
- U.S. Department of Energy and Federal Energy Regulatory Commission.

(2) Status of current industry standards and policies (45 minutes).
- Content of existing standards, policies and guidelines (NERC).
- Timing of evolution into clear, ANSI-process-adopted standards

Invited speakers and brief opportunity for audience comments.

(3) Based on the findings and recommendations of the blackout investigation, discussion of any necessary changes in the reliability standards (60 minutes).
- Existing topics in current standards/policies/guidelines (NERC).
- Discussion of areas that require standards not currently covered in the NERC standards (NERC, FERC).
- Discussion of priorities to complete or clarify the most reliability-critical issues and standards first.

Invited speakers and brief opportunity for audience comments.

(4) Timing and process for standards revision and development (60 minutes).
- Next steps, process and schedule (NERC).
- Any modifications needed to next steps, process and schedule given reliability needs?
- Appropriate role for the governments and agencies.

Invited speakers from NERC and brief opportunity for audience comments.

(5) Reliability readiness audits and other issues not covered above (30 minutes).

(6) Closing comments and commitments (20 minutes).

[FR Doc. E4–1112 Filed 5–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

May 5, 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 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.

Prohibited:

Docket No.	Date filed	Presenter or requester
1. CP04–36–000, CP04–41–000	4–26–04	Brian Pearson.
2. CP04–36–000, CP04–41–000	4–26–04	Lisa Doremus.
3. CP04–58–000	5–03–04	Susan Schaffel, *et al.* [1]

[1] This communication is one among numerous form letters sent to the Commission by the Greenpeace, USA organization. Only representative samples of these prohibited non-decisional documents are posted in this docket on the Commission's eLibrary system (*http://www.ferc.gov*).

Exempt:

Docket No.	Date filed	Presenter or requester
1. CP03–75–000	4–29–04	Barbara Holley Reid.
2. Project No. 11659–000	4–22–04	Jeff Boyce.
3. Project No. 11659–000	4–22–04	Daniel Raley.
4. Project No. 2082–000	4–29–04	Barry and Julie Clock.
5. Project No. 2082–000	5–4–04	Dennis Griffin, PhD.
6. Project No. 2082–000	5–4–04	Kirk E. Ranzetta.

Magalie R. Salas,
Secretary.
[FR Doc. E4–1111 Filed 5–12–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

May 5, 2004.

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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.

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Prohibited:

Docket No.	Date filed	Presenter or requester
1. CP04–36–000; CP04–41–000	4–26–04	Brian Pearson.
2. CP04–36–000; CP04–41–000	4–26–04	Lisa Doremus.
3. CP04–58–000	5–03–04	Susan Schaffel, *et al.*[1]

[1] This communication is one among numerous form letters sent to the Commission by the Greenpeace, USA organization. Only representative samples of these prohibited non-decisional documents are posted in this docket on the Commission's eLibrary system (*http://www.ferc.gov.*).

Exempt:

Docket number	Date filed	Presenter or requester
1. CP03–75–000	4–29–04	Barbara Holley Reid.
2. Project No. 11659–000	4–22–04	Jeff Boyce.
3. Project No. 11659–000	4–22–04	Daniel Raley.
4. Project No. 2082–000	4–29–04	Barry and Julie Clock.
5. Project No. 2082–000	5–4–04	Dennis Griffin, PhD.
6. Project No. 2082–000	5–4–04	Kirk E. Ranzetta.

Magalie R. Salas,
Secretary.
[FR Doc. E4–1136 Filed 5–12–04; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0022; FRL–7660–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Proposed Information Collection Request for the Evaluation of PrintSTEP, EPA ICR Number 1941.03, OMB Control Number 2020–0023

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 12, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–

2004–0027, to 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 Ave, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Maureen Lydon, Office of Compliance, Mail code: 2221–A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–4046; fax number: 202–564–0027; e-mail address: *lydon.maureen@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OECA–2004–0027, 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) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. 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.*

Affected entities: The affected entities are the 56 printing facilities which are participating in the PrintSTEP pilot program in New Hampshire and St. Louis, Missouri.

Title: Proposed Information Collection Request (ICR) for the Evaluation of PrintSTEP.

Abstract: Information will be collected for the evaluation of the PrintSTEP pilot program in New Hampshire and St. Louis, Missouri. PrintSTEP stands for ''Printers Simplified Total Environmental Partnership'' and is the first simplified program for managing the various environmental regulatory requirements of printers. PrintSTEP's two-year pilot has four features: Operational flexibility, incentives for and assistance with pollution prevention activities, regulatory simplification and public participation. The evaluation will determine the extent to which the goals of the pilot program are met. These goals are: Enhanced environmental protection; increased use of pollution prevention practices; simplified regulatory process for printers; improved efficiency of administration of state agencies; enhanced public involvement; participants realize benefits and are motivated to participate in PrintSTEP; and cost effectiveness for all stakeholders. The evaluation encompasses a baseline survey, mid-point review, and end-of-pilot survey. The baseline survey and mid-point review will have been completed by the time the current ICR expires. So, the proposed ICR is necessary for the end-of-pilot survey of the 56 printers voluntarily participating in the pilot. The lessons learned from the pilot will be shared with states interested in establishing PrintSTEP-like programs and may be translated into a guide for developing, implementing and evaluating pilot programs.

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.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: It is estimated that the end-of-pilot telephone survey of each of the participating 56 printers will be approximately 12 minutes in duration (or .2 hours per response). The time to complete the written survey will be approximately 2.75 hours per participating printer. The total resulting burden would be 165 hours. With regard to costs, it is estimated that the time to be spent responding to the evaluation survey would be worth, on average, approximately $28.59 per hour per participating printer. Taking into account the total burden of 165 hours, this results in an estimated total cost of $4,723. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: May 6, 2004.

Lisa Lund,

Acting Director, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 04–10893 Filed 5–12–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7660–8]

Request for Nominations to the National Advisory Council for Environmental Policy and Technology (NACEPT)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency invites nominations to fill vacancies on its National Advisory Council for Environmental Policy and Technology (NACEPT). The Agency seeks qualified senior-level decision makers from diverse sectors throughout the United States to be considered for appointments. EPA encourages interested applicants to send their resumes and qualifications as soon as possible.

ADDRESSES: Submit nominations to: Ms. Sonia Altieri, Designated Federal Officer, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency (1601E), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Sonia Altieri, Designated Federal Officer for NACEPT, U.S. Environmental Protection Agency (1601E), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 233–0061, e-mail: *altieri.sonia@epa.gov*

SUPPLEMENTARY INFORMATION: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, PL 92463. The U.S. Environmental Protection Agency established NACEPT in 1988 to provide independent advice to the EPA Administrator on a broad range of environmental policy, technology and management issues. NACEPT consists of a representative cross-section of EPA's partners, stakeholders, and constituents who provide timely advice and recommendations on environmental issues, and serve as a sounding board for new strategies that EPA is developing.

We anticipate the Council addressing issues related to environmental technology, environmental foresight, and collaborative approaches to environmental problems. NACEPT will provide advice in a timely manner and operate as a proactive and strategic body that will alert EPA to potential environmental challenges and issues that could impact the Agency's ability to protect public health and the environment, and options to address them.

Members are appointed by the Administrator of EPA for two year terms with the possibility of reappointment. The Council usually meets 3–4 times annually and the average workload for the members is approximately 10 to 15 hours per month. Members serve on the Council in a voluntary capacity; however, EPA does provide reimbursement for travel expenses associated with official government business.

Maintaining a balance and diversity of expertise, knowledge, and judgement is an important consideration in the selection of members. Potential candidates should possess the following qualifications:

Occupy a senior position within their organization

Broad experience outside of their current position

Experience dealing with public policy issues

Membership in broad-based networks

Extensive experience in the environmental field

Recognized expert in the subject matter to be addressed by NACEPT

EPA is seeking nominees for representation from all sectors, in particular federal, state, local and tribal agencies, academia, industry, environmental justice, and non-governmental organizations. Nominations for membership must include a resume and short biography describing the educational and professional qualifications of the nominee and the nominee's current business address and daytime telephone number.

Dated: May 6, 2004.

Sonia Altieri,

Designated Federal Officer.

[FR Doc. 04–10878 Filed 5–12–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7660–7]

Good Neighbor Environmental Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The next meeting of the Good Neighbor Environmental Board, a Federal advisory committee that reports to the President and Congress on environmental and infrastructure projects along the U.S. border with Mexico, will take place in McAllen, Texas on June 9 and 10, 2004. It is open to the public.

DATES: On June 9, the meeting will begin at 8:30 a.m. (registration at 8 a.m.) and end at 5:30 p.m. On June 10, the Board will hold a routine business meeting from 8 a.m. until 12 noon. (registration at 7:30 a.m.).

ADDRESSES: The meeting site is the Mesquite Room of the Holiday Inn Civic Center, 200 West Expressway 83, McAllen, Texas 78501. The phone number is 956–686–2471.

FOR FURTHER INFORMATION CONTACT: Elaine M. Koerner, Designated Federal Officer for the Good Neighbor Environmental Board. U.S. Environmental Protection Agency Region 9 Office, 75 Hawthorne St., San Francisco, California 94105. Tel: Region 9 office: (415) 972–3437; D.C. office (202) 233–0069. E-mail: *koerner.elaine@epa.gov.*

SUPPLEMENTARY INFORMATION: Agenda: On the first day of the two-day meeting, which begins at 8:30 a.m. (registration at 9 a.m.), the Board has invited a number of water resources experts to speak on water management challenges and opportunities in the border region. The first day of the meeting will also include a public comment session and an update from Board members on recent projects being carried out by their respective organizations. It will conclude at 5:30 p.m. The second day of the meeting, June 10, begins at 8 a.m., with registration at 7:30 a.m. It will take the form of a routine business meeting, including the status of disseminating the latest report as well as discussion about the next report. The meeting will end at noon.

Public Attendance: The public is welcome to attend all portions of the meeting. Members of the public who plan to file written statements and/or make brief (suggested 5-minute limit) oral statements at the public comment session are encouraged to contact the Designated Federal Officer for the Board prior to the meeting.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the Designated Federal Officer at least five business days prior to the meeting so that appropriate arrangements can be made.

Background: The Good Neighbor Environmental Board meets three times each calendar year at different locations along the U.S.-Mexico border and in Washington, DC. It was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order

delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. The U.S. Environmental Protection Agency gives notice of this meeting of the Good Neighbor Environmental Board pursuant to the Federal Advisory Committee Act (Pub. L. 92–463).

Dated: May 6, 2004.

Oscar Carrillo,

Associate Designated Federal Officer.

[FR Doc. 04–10890 Filed 5–12–04; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0150; FRL–7359–8]

Pesticide Program Dialogue Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs will hold a public meeting of the Pesticide Program Dialogue Committee on May 25 and 26, 2004. An agenda is being developed and will be posted by May 18, 2004, on EPA's website at *www.epa.gov/pesticides/*. PPDC meetings provide a public forum for discussion and feedback to the Agency regarding evolving public policy and program implementation issues associated with evaluating and reducing risks from use of pesticides. The agenda for this meeting will include the following topics: A report from the PPDC Registration Review Work Group, Endangered Species, Environmental Marketing Claims and Fees Legislation. Program updates will be included on Human testing, Alternative non-animal testing, Mosquito labeling, the Reregistration roadmap to 2006–2008 and the Public Participation Process.

DATES: The meeting will be held on Tuesday, May 25, 2004, from 9 a.m. to 5 p.m., and Wednesday, May 26, 2004, from 9 a.m. to noon.

ADDRESSES: The meeting will be held at the National Rural Electric Cooperative Association (NRECA) Conference Center, 4301 Wilson Boulevard, Arlington, Virginia (703) 907–5500. The NRECA Conference Center is located approximately three blocks from the Ballston Metro Station and about a fifteen minute taxi ride from Ronald Reagan National Airport.

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach, Office of Pesticide Programs (7501C), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308–4775; fax number: (703) 308–4776; e-mail address: *fehrenbach.margie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general; however, persons may be interested who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA), (Public Law 104–170) of 1996. Potentially affected entities may include but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer and farmworker groups; pesticide users and growers; pest consultants; State, local and tribal governments; academia; public health organizations; food processors; and the public. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0150. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

The Office of Pesticide Programs is entrusted with responsibilities for helping to ensure the safety of the American food supply, providing protection and education of those who apply or are exposed to pesticides occupationally or through use of products from unreasonable risk, and providing general protection of the environment and special ecosystems from potential risks posed by pesticides.

PPDC was established under the Federal Advisory Committee Act (FACA), Public Law 92–463, in 1995 and has been renewed every 2–years since that time. The current Charter was approved in November 2003 for another 2–year term and a copy of the PPDC Charter has been filed with appropriate Committees of Congress and the Library of Congress. New members to the PPDC have been appointed for this term. The PPDC Charter and list of new members can be found at EPA's website at: *www.epa.gov/pesticides/ppdc.*

The PPDC provides advice and recommendations to the Office of Pesticide Programs on a broad range of pesticide regulatory, policy and program implementation issues associated with evaluating and reducing risks from use of pesticides. The following sectors are represented on the PPDC: Pesticide industry and trade associations; environmental/public interest groups;

farm worker organizations; pesticide user, grower and commodity groups; federal and state; local; tribal governments; academia; public health organizations; and the general public.

List of Subjects

Environmental protection, Agriculture, Agricultural workers, Chemicals, Foods, Pesticides, Pests, Registration, Tolerance Reassessment, Fees, Public Health.

Dated: May 5, 2004.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 04–10876 Filed 5–12–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7660–4]

Notice of Administrative Order on Consent for Past Response Costs Relating to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, As Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative cost recovery settlement concerning the Tyler Refrigeration Pit Superfund Site located in Smyrna, Kent County, Delaware (Proposed Settlement). The Proposed Settlement with the Clark Equipment Company, Inc. (Settling Party) has been approved by the Attorney General, or his designee, of the United States Department of Justice pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h). The Proposed Settlement was signed by the Regional Administrator of the United States Environmental Protection Agency (EPA), Region III, on April 15, 2004, pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), and is subject to review by the public pursuant to this notice.

The Proposed Settlement resolves EPA's claim for past response costs under section 107 of CERCLA, 42 U.S.C. 9607, against the Settling Party, and requires the Settling Party to make a payment of $49,429.00 towards EPA's past response costs. This payment represents reimbursement of the remainder of costs EPA incurred in overseeing the Settling Party's performance of a Remedial Investigation at the Site as well as a partial reimbursement of other unreimbursed past costs incurred by EPA in connection with the Site as set forth in the EPA Financial Management System as of November 4, 2003.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the Proposed Settlement. EPA will consider all comments received and may withdraw or withhold consent to the Proposed Settlement if such comments disclose facts or considerations which indicate the Proposed Settlement is inappropriate, improper, or inadequate. EPA's response to any written comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.

DATES: Comments must be provided on or before June 14, 2004.

ADDRESSES: The Proposed Settlement is available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Proposed Settlement may be obtained from Ms. Suzanne Canning, Legal Program Coordinator (3RC00), U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103; telephone number (215) 814–2476. Comments should reference the ''Tyler Refrigeration Pit Superfund Site'' and ''EPA Docket No. CERCLA–03–2004–0179CR'' and should be forwarded to Ms. Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Yvette Hamilton-Taylor (3RC43), Senior Assistant Regional Counsel, (215) 814–2636, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029.

Dated: April 30, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 04–10892 Filed 5–12–04; 8:45 am]

BILLING CODE 6560–50–P

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Administration; Meeting of the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction

AGENCY: Office of Administration, Executive Office of the President.

ACTION: Notice of meeting.

SUMMARY: The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (''Commission'') will meet in closed session on Wednesday, May 26, 2004 and Thursday, May 27, 2004 in its offices in Arlington, Virginia.

Executive Order 13328 established the Commission for the purpose of assessing whether the Intelligence Community is sufficiently authorized, organized, equipped, trained, and resourced to identify and warn in a timely manner of, and to support the United States Government's efforts to respond to, the development of Weapons of Mass Destruction, related means of delivery, and other related threats of the 21st Century. This meeting will consist of briefings and discussions involving classified matters of national security, including classified briefings from representatives of agencies within the Intelligence Community; Commission discussions based upon the content of classified intelligence documents the Commission has received from agencies within the Intelligence Community; and presentations concerning the United States' intelligence capabilities that are based upon classified information. While the Commission does not concede that it is subject to the requirements of the Federal Advisory Committee Act (FACA), 5 United States Code Appendix 2, it has been determined that the May 26–27 meeting would fall within the scope of exceptions (c)(1) and (c)(9)(B) of the Sunshine Act, 5 United States Code, Sections 552b(c)(1) & (c)(9)(B), and thus could be closed to the public if FACA did apply to the Commission.

DATES: Wednesday, May 26, 2004 (10 a.m. to 5 p.m.) and Thursday, May 27, 2004 (9 a.m. to 2 p.m.).

ADDRESSES: Members of the public who wish to submit a written statement to the Commission are invited to do so by facsimile at (202) 456–7921. Comments also may be sent to the Commission by e-mail at *comments@wmd.gov.*

FOR FURTHER INFORMATION CONTACT: Brett C. Gerry, Associate General Counsel, Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, by facsimile, or by telephone at (703) 414–1200.

Victor E. Bernson, Jr.,

Executive Office of the President, Office of Administration, General Counsel.

[FR Doc. 04–10909 Filed 5–11–04; 2:26 pm]

BILLING CODE 3115–W4–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 04–1259]

Annual Adjustment of Revenue Thresholds

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces that the 2003 revenue threshold between Class A carriers and Class B carriers is increased to $123 million. The 2003 revenue threshold between larger Class A carriers and mid-sized carriers is increased to $7.240 billion.

FOR FURTHER INFORMATION CONTACT: Debbie Weber, Pricing Policy Division, Wireline Competition Bureau at (202) 418–0812.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's public notice released May 4, 2004. This notice announces the inflation-adjusted 2003 revenue thresholds used for classifying carrier categories for various accounting and reporting purposes: (1) Distinguishing Class A carriers from Class B carriers; and (2) distinguishing larger Class A carriers from mid-sized carriers. The revenue threshold between Class A carriers and Class B carriers is increased to $123 million. The revenue threshold between larger Class A carriers and mid-sized carriers is increased to $7.240 billion. The revenue thresholds for 2003 were determined as follows:

	Mid-sized Threshold	Larger Class A Threshold
(1) GDP–CPI Base	85.59	102.18
(2) 2003 GDP–CPI	105.69	105.69
(3) Inflation Factor (line 2 ÷ 1)	1.2348	1.0343
(4) Original Revenue Threshold	[1] $100	[2] $7
(5) 2003 Revenue Threshold (line 3 * 4)	[1] $123	[2] $7.240

[1] Million.
[2] Billion.

Federal Communications Commission.

Tamara L. Preiss,

Chief, Pricing Policy Division.

[FR Doc. 04–10836 Filed 5–12–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2004–N–09]

Submission for OMB Review; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) has submitted the information collection entitled ''Monthly Survey of Rates and Terms on Conventional, 1-Family, Nonfarm Loans,'' commonly known as the Monthly Interest Rate Survey or MIRS to the Office of Management and Budget (OMB) for review and approval of a three-year extension of the OMB control number, which is due to expire on June 30, 2004.

DATES: Interested persons may submit comments on or before June 14, 2004.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Board, Washington, DC 20503.

FOR FURTHER INFORMATION OR COPIES OF THE COLLECTION CONTACT: David Roderer, Financial Analyst, Risk Monitoring Division, Office of Supervision, by e-mail at *rodererd@fhfb.gov,* by telephone at 202/408–2540, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of Information Collection

The Finance Board's predecessor, the former Federal Home Loan Bank Board (FHLBB), first provided data concerning a survey of mortgage interest rates in 1963. No statutory or regulatory provision explicitly required the FHLBB to conduct the MIRS although references to the MIRS did appear in several federal and state statutes. Responsibility for conducting the MIRS was transferred to the Finance Board upon dissolution of the FHLBB in 1989. *See* Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, tit. IV, sec. 402(e)(3)–(4), 103 Stat. 183, *codified at* 12 U.S.C. 1437 note, and tit. VII, sec. 731(f)(1), (f)(2)(B), 103 Stat. 433 (Aug. 9, 1989). In 1993, the Finance Board promulgated a final rule describing the method by which it conducts the MIRS. *See* 58 FR 19195 (Apr. 13, 1993), *codified at* 12 CFR 906.3. Since its inception, the MIRS has provided the only consistent source of information on mortgage interest rates and terms and house prices for areas smaller than the entire country.

Statutory references to the MIRS include the following:

- Pursuant to their respective organic statutes, Fannie Mae and Freddie Mac use the MIRS results as the basis for the annual adjustments to the maximum dollar limits for their purchase of conventional mortgages. *See* 12 U.S.C. 1454(a)(2) and 1717(b)(2). The Fannie Mae and Freddie Mac limits were first tied to the MIRS by the Housing and Community Development Act of 1980. *See* Pub. L. 96–399, tit. III, sec. 313(a)–(b), 94 Stat. 1644–1645 (Oct. 8, 1980). At that time, the nearly identical statutes required Fannie Mae and Freddie Mac to base the dollar limit adjustments on ''the national average one-family house price in the monthly survey of all major lenders conducted by the [FHLBB].'' *See* 12 U.S.C. 1454(a)(2) and 1717(b)(2) (1989). When Congress abolished the FHLBB in 1989, it replaced the reference to the FHLBB in the Fannie Mae and Freddie Mac statutes with a reference to the Finance Board. *See* FIRREA, tit. VII, sec. 731(f)(1), (f)(2)(B), 103 Stat. 433.
- Also in 1989, Congress required the Chairperson of the Finance Board to take necessary actions to ensure that indices used to calculate the interest rate on adjustable rate mortgages (ARMs) remain available. *See* FIRREA, tit. IV, sec. 402(e)(3)–(4), 103 Stat. 183, *codified at* 12 U.S.C. 1437 note. At least one ARM index, known as the National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders, is derived from the MIRS data. The statute permits the Finance Board to substitute a substantially similar ARM index after notice and comment only if the new ARM index is based upon data substantially similar to that of the original ARM index and substitution of the new ARM index will result in an

interest rate substantially similar to the rate in effect at the time the new ARM index replaces the existing ARM index. *See* 12 U.S.C. 1437 note.

• Congress indirectly connected the high cost area limits for mortgages insured by the Federal Housing Administration (FHA) of the Department of Housing and Urban Development to the MIRS in 1994 when it statutorily linked these FHA insurance limits to the purchase price limitations for Fannie Mae. *See* Pub. L. 103–327, 108 Stat. 2314 (Sept. 28, 1994), *codified at* 12 U.S.C. 1709(b)(2)(A)(ii).

• The Internal Revenue Service uses the MIRS data in establishing ''safe-harbor'' limitations for mortgages purchased with the proceeds of mortgage revenue bond issues. *See* 26 CFR 6a.103A–2(f)(5).

• Statutes in several states and U.S. territories, including California, Michigan, Minnesota, New Jersey, Wisconsin and the Virgin Islands, refer to, or rely upon, the MIRS. *See, e.g.*, Cal. Civ. Code 1916.7 and 1916.8 (mortgage rates); Iowa Code 534.205 (1995) (real estate loan practices); Mich. Comp. Laws 445.1621(d) (mortgage index rates); Minn. Stat. 92.06 (payments for state land sales); N.J. Rev. Stat. 31:1–1 (interest rates); Wis. Stat. 138.056 (variable loan rates); V.I. Code Ann. tit. 11, sec. 951 (legal rate of interest).

The Finance Board uses the information collection to produce the MIRS and for general statistical purposes and program evaluation. Economic policy makers use the MIRS data to determine trends in the mortgage markets, including interest rates, down payments, terms to maturity, terms on ARMs and initial fees and charges on mortgage loans. Other federal banking agencies use the MIRS results for research purposes. Information concerning the MIRS is regularly published on the Finance Board's Web site (*http://www.fhfb.gov/mirs*) and in press releases, in the popular trade press, and in publications of other federal agencies.

The likely respondents include a sample of savings associations, mortgage companies, commercial banks and savings banks. The information collection requires each respondent to complete FHFB Form 10–91 or a submission using the MIRS software on a monthly basis.

The OMB number for the information collection is 3069–0001. The OMB clearance for the information collection expires on June 30, 2004.

B. Burden Estimate

The Finance Board estimates the total annual number of respondents at 359, with 12 responses per respondent. The estimate for the average hours per response is 30 minutes. The estimate for the total annual hour burden is 2,154 hours (359 respondents × 12 responses × 0.5 hours).

C. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), the Finance Board published a request for public comments regarding this information collection in the **Federal Register** on February 18, 2004. *See* 69 FR 7638 (February 18, 2004). The 60-day comment period closed on April 19, 2004. The Finance Board received one comment, which supported the collection. The comment is available on the Finance Board Web site at *http://www.fhfb.gov/pressroom/pressroom_regs.htm.*

The Finance Board requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: May 6, 2004.

By the Federal Housing Finance Board.

Donald Demitros,

Chief Information Officer.

[FR Doc. 04–10807 Filed 5–12–04; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011672–004.

Title: CSAV Group Cooperative Working Agreement.

Parties: Compania Sud Americana de Vapores S.A., Companhia Libra de Navegacao, Norasia Container Lines Limited, Montemar Maritime S.A., and CSAV Sud Americana de Vapores S.A.

Synopsis: The proposed modification would add authority for the parties to discuss and reach non-binding agreement on rates, charges, practices, and conditions of service and to enter into joint service contracts in the trade between U.S. ports and ports in the Caribbean and on the East Coast of South America. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: May 7, 2004.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 04–10820 Filed 5–12–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/Address	Date Reissued
008657N	AACCO, 841 Pioneer Avenue,Wilmington, CA 90744.	March 31, 2004.
003716F	C J International, Inc., 403 Maclean Avenue,Louisville, KY 40209–1725.	April 7, 2004.
007785N	Trinforwarding International, Inc. dba U.S. Atlantic Freight Lines, 9720 N.W. 114th Way, Miami, FL 33178..	May 1, 2003.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 04–10822 Filed 5–12–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 016227N.
Name: Aim Caribbean Express, Inc.
Address: 2780 Lloyd Road, Jacksonville, FL 32254.
Date Revoked: April 14, 2004.
Reason: Failed to maintain a valid bond.

License Number: 016107N.
Name: Alisped U.S.A. Inc.
Address: 156–15 146th Avenue, Jamaica, NY 11434.
Date Revoked: April 28, 2004.
Reason: Failed to maintain a valid bond.

License Number: 003854N and 003854F.
Name: Bennett International Transport, Inc.
Address: 1001 Industrial Parkway, P.O. Box 569, McDonough, GA 30253.
Date Revoked: April 16, 2004 and April 28, 2004.
Reason: Failed to maintain valid bonds.

License Number: 003568F.
Name: CTSI Logistics, Inc.
Address: 600 Sylvan Avenue, 24th Floor, Englewood Cliffs, NJ 07632.
Date: April 22, 2004.
Reason: Failed to maintain a valid bond.

License Number: 003831F.
Name: Express International Forwarders, Inc.
Address: 4554 SW 132nd Court, Miami, FL 33175.
Date Revoked: April 16, 2004.
Reason: Failed to maintain a valid bond.

License Number: 003017F.
Name: F.C. Forwarding, Inc.
Address: 6708 NW 82nd Avenue, Miami, FL 33166.
Date Revoked: April 22, 2004.
Reason: Failed to maintain a valid bond.

License Number: 004130F.
Name: GSG Investment Inc. dba Worldwide Logistics Company dba WWL dba Trade Passage.
Address: 2411 Santa Fe Avenue, Redondo Beach, CA 90278.
Date Revoked: April 16, 2004.
Reason: Failed to maintain a valid bond.

License Number: 3819F.
Name: Marino Transportation Services, Inc.
Address: 1940 Harrison Street, Fort Lauderdale, FL 33442.
Date Revoked: April 11, 2004.
Reason: Failed to maintain a valid bond.

License Number: 017664N.
Name: Mark M. Marcus dba North American Container Group.
Address: 6600 N. Lincoln Avenue, Suite 3066, Lincolnwood, IL 60712.
Date Revoked: April 21, 2004.
Reason: Failed to maintain a valid bond.

License Number: 017897N.
Name: Mary Ozo Atupulazi dba WestPoint International Shipping.
Address: 509 Summerbreeze Drive, Newark, DE 19702.
Date Revoked: April 22, 2004.
Reason: Surrendered license voluntarily.

License Number: 011029N.
Name: Pagoda Container Line Corp.
Address: 10722 S. La Cienega Blvd., Inglewood, CA 90304.
Date Revoked: April 16, 2004.
Reason: Failed to maintain a valid bond.

License Number: 003286N.
Name: Rialto International, Inc. dba Rialto Ocean Express.
Address: 4636 East Marginal Way South, Suite 201, Seattle, WA 98134.
Date Revoked: April 14, 2004.
Reason: Failed to maintain a valid bond.

License Number: 017751N.
Name: 7 Seas Shipping, Inc. dba EJ Freight Forwarding, Inc.
Address: 9060 Telstar Avenue, Suite 220, El Monte, CA 91731.
Date Revoked: April 17, 2004.
Reason: Failed to maintain a valid bond.

License Number: 003718F.
Name: Sunship International, Inc.
Address: 6815 W 95th Street, NE., Oak Lawn, IL 60453.
Date Revoked: April 23, 2004.
Reason: Failed to maintain a valid bond.

License Number: 008218N.
Name: TKM Overseas Transport, Inc.
Address: 46 Sellers Street, Kearny, NJ 07032.
Date Revoked: April 13, 2004.
Reason: Failed to maintain a valid bond.

License Number: 013149N.
Name: Trans-World Shipping APS.
Address: 515–A North McDonough Street, Decatur, GA 30030.
Date Revoked: April 15, 2004.
Reason: Surrendered license voluntarily.

License Number: 000167N.
Name: Westfeldt Brothers Forwarders, Inc. dba. Global Direct Lines.
Address: 200 Crofton Road, Kenner, LA 70062.
Date Revoked: April 19, 2004.
Reason: Failed to maintain a valid bond.

License Number: 003874F.
Name: World Project Services International, Inc.
Address: 650 East Sam Houston Parkway, Suite 231, Houston, TX 77060.
Date Revoked: April 28, 2004.
Reason: Failed to maintain a valid bond.

License Number: 014691N.
Name: Yun Hong Enterprises (USA), Inc.
Address: 1366 San Mateo Avenue, Suite 201, So. San Francisco, CA 94080.
Date Revoked: April 16, 2004.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 04–10821 Filed 5–12–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Glotrans International, Inc., 11222 S. La Cienega Blvd., #606, Inglewood, CA 90304, Officer: Kyung Taek Park, President (Qualifying Individual).

Innerpoint, Corp., 550 E. Carson Plaza Drive, Suite 107, Carson, CA 90746, Officers: Jesse Noh, President (Qualifying Individual), Sung Ho Lee, Director.

ATEC Systems, Ltd., 650 S. North Lake Blvd., Suite 400, Altamante Springs, FL 32701, Officers: Michael L. Clements, Managing Director (Qualifying Individual), S. Thomas Clements, President.

Polamer Inc., 3094 N. Milwaukee Avenue, Chicago, IL 60618, Officer Walter K. Kotaba, President (Qualifying Individual).

Island Shipping & Delivery, 426 Marcus Garvey Blvd., Brooklyn, NY 11216, Bryan Skelly, Sole Proprietor.

The Ultimate Freight Management New York Inc., dba Major Consolidation Service Co., 538 Burnside Avenue, Inwood, NY 11096, Officer: Mandy Lee, Managing Director, (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Avion Company, Inc. dba Novia Company, 18726 South Western Avenue, Suite 403, Gardena, CA 90248, Officers: Noi Burger, Exec. Vice President (Qualifying Individual), Massimo Giordano, President.

CTC Distributing, Ltd., 615 Blaze Blvd., Edinburg, TX 78539, Officers: Lorelei J. Smith, Customs & Regulatory Compliance (Qualifying Individual), Bruce Goldman, President.

Star Airfreight Co., Ltd., 149–35 177th Street, 21F, Jamaica, NY 11434, Officers: Anthony Chan, President (Qualifying Individual), Eddie Yau, Jr., Vice President.

Star Airfreight Co., Ltd., 8901 S. La Cienega Blvd., Suite 108, Inglewood, CA 90301, Officers: Anthony Chan, President (Qualifying Individual), Eddie Yau, Jr., Vice President.

Vivek Shipping Company, LLC, 106 Country Mill Lane, Stockbridge, GA 30281, Officers: Charles August Erkus, Secretary-Operations Manager (Qualifying Individual), Rakesh R. Patel, President.

Dated: May 7, 2004.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 04–10823 Filed 5–12–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 7, 2004.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First Banks, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Continental Mortgage Corporation, Aurora, Illinois, and thereby indirectly acquire voting shares of Continental Community Bank and Trust Company, Aurora, Illinois.

Board of Governors of the Federal Reserve System, May 7, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–10852 Filed 5–12–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to review contract proposals and provide recommendations to the Director, AHRQ, with respect to the technical merit of proposals submitted in response to a Request for Proposals (RFP) regarding ''Data Management and Computer Programing Support''. The RFP was published in the Federal Business Opportunities on March 15, 2004.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision and procurement rules that protect the free exchange of candid views and facilitate Department and Committee operations.

Name of TRC: The Agency for Healthcare Research and Quality—''Data Management and Computer Programing Support''.

Date: June 3, 2004 (Closed to the public).

Place: Agency for Healthcare Research & Quality, 540 Gaither Road, CFACT Conference Rm, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact William Yu, Center for Financing, Access, and Cost Trends, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850, 301–427–1482.

Dated: May 6, 2004.

Carolyn M. Clancy,

Director.

[FR Doc. 04–10858 Filed 5–12–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Community Preparation for Tuberculosis (TB) Vaccine Trials

Announcement Type: New.

Funding Opportunity Number: 04086.

Catalog of Federal Domestic Assistance Number: 93.947.

Key Dates:

Application Deadline: June 28, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301 and 317E (b) of the Public

Health Service Act, [42 U.S.C. Sections 241 and 247(b)(6)], as amended.

Purpose: The purpose of the program is for CDC to test new Tuberculosis (TB) vaccines that have implemented a large-scale community-based TB vaccine field trial. CDC plans to award cooperative agreements to ensure that the agency has the opportunity to provide technical assistance and guidance to this important partnership, especially with regard to the design and conduct of epidemiologic studies leading to field trials of new TB vaccines. This program addresses the ''Healthy People 2010'' focus areas of HIV testing in TB patients (aged 25 to 44 years); TB—new cases (per 100,000 population); and curative therapy for TB.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for HIV, STD and TB Prevention (NCHSTP): Eliminate TB in the United States.

Project and Research Objectives: Prepare communities for large (over 5,000 subjects) community-based clinical trials for the evaluation of new vaccine candidates for TB in multiple, diverse, global locations.

Activities

To assist in the categorization of the activities as human subjects research (HSR) and not HSR, activities will be divided into two phases, which do not necessarily have chronological significance.

Awardee activities for this program are as follows:

Phase I

- Develop clinical trials training programs and materials, including Good Clinical Practice procedures for the full range of staff needed in a large, community-based TB vaccine trial. This will also include specialized training for establishing local human subjects review capacity according to international standards.
- Develop laboratory capacity for advanced TB diagnosis and immunologic assays required for TB vaccine trials.
- Develop the logistics and systems needed to conduct a randomized, controlled TB vaccine trial that will meet regulatory standards.
- Develop capacity or referral systems to treat and cure patients with TB.

Phase II

- Conduct epidemiologic studies to characterize the TB prevalence and incidence in the proposed study area.
- Conduct observational cohort studies that will mimic the conduct of a vaccine trial.
- Develop and refine information on TB prevalence and incidence in neonatal and adolescent cohorts in the proposed vaccine trials site.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

Phase I

- Collaborate in providing epidemiologic and technical assistance in developing infrastructure by assisting training, hiring personnel, provision of laboratory equipment, and protocol development for the observational cohort studies.
- Collaborate to provide epidemiologic and technical assistance in the development of clinical trials training programs that include good clinical practice (GCP) guidelines and ethical standards in HSR.
- Assist in the development of a research protocol for Human Subjects Research review by all cooperating institutions participating in the research project.
- Facilitate collaboration among international partners such as, but not limited to, World Health Organization (WHO), International Union Against Tuberculosis and Lung Disease, the Royal Netherlands Tuberculosis Association (KNCV), Ministries of Health (MOH), and other relevant governmental and nongovernmental organizations doing TB control and public health activities.

Phase II

- Collaborate to provide epidemiologic and other technical assistance (*e.g.* consultation in operations research methodology, assistance with training and capacity building) in conducting the epidemiologic and cohort studies.
- Assist in developing and refining information on TB prevalence and incidence in neonatal and adolescent cohorts in the vaccine trials sites.

According to U.S. Federal regulations Title 45 CFR Part 46, project activities fall into three basic categories: Not HSR, HSR requiring Institutional Review Board (IRB) review, and HSR exempt from IRB review. Participation by any Federal employee in project activities as specified by the above CDC activities requires either a determination that a component activity of the project is not HSR, or if HSR then approval from either a full CDC IRB or appropriate CDC Official for IRB exemption from full review. Approvals are required prior to fund disbursement for that particular component of the project. IRB approved components of the project must be reviewed annually for continuation until project completion (which often extends beyond subject enrollment). Any change to planned project activities as specified in application for various HSR approvals may necessitate a redetermination of not HSR status (in consultation with CDC HSR contacts), whereas IRB approved HSR components of the project require approved IRB amendments.

II. Award Information

Type of Award: Cooperative Agreement CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: FY 2004.

Approximate Total Funding: $750,000 to $1,000,000 .

Approximate Number of Awards: One.

Approximate Average Award: $750,000 to $1,000,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs.)

Floor of Award Range: None, award is dependent upon availability of funds.

Ceiling of Award Range: $1,000,000.

Anticipated Award Date: August 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by all foundations uniquely qualified to test new TB vaccines, as demonstrated by the implementation and conduct of a large-scale community-based TB vaccine field trial.

Eligibility is limited in response to Congressional appropriation language. Funds are available to both International and domestic applicants. The limitation of the announcement was restricted by Congressional directive appropriation language. While the Congressional intent is not clearly described, it is CDC's understanding that this is in response to success by foundations in this type of vaccine research, especially

in high-burden, endemically impacted countries. It is necessary to find a foundation with a proven history of experience because vaccine development for human use is an extremely difficult process and must be handled with precision.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Individuals Eligible To Become Principal Investigators

Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.* If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, Telephone (301) 435–0714, E-mail: *GrantsInfo@nih.gov.*

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Date and Time

Application Deadline Date: June 28, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows: None.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and five copies of your application by mail or express delivery service to: Technical Information Management-PA# 04086, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals

stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group (which will include non-Federal experts) will address and consider each of the following criteria in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Are the investigators appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Are diverse, geographic locations and populations being considered?

Additional Review Criteria

In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

Protection of Human Subjects From Research Risks

Does the application adequately address the requirements of 45 CFR Part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Inclusion of Women and Minorities in Research

Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget

The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO), and for responsiveness by NCHSTP. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the PA will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section convened by NCHSTP in accordance with the review criteria listed above. As part of the initial merit review, all applications may:

- Undergo a process in which only those applications deemed to have the highest scientific merit, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second level review by the CDC/NCHSTP/DTBE Senior Staff.

Award Criteria: Criteria that will be used to make award decisions include:

- Scientific merit (as determined by peer review)
- Availability of funds
- Programmatic priorities

V.3. Anticipated Announcement and Award Dates

Award Date: August 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Parts 74 and 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–4 HIV/AIDS Confidentiality Provisions
- AR–5 HIV Program Review Panel Requirements
- AR–6 Patient Care
- AR–7 Executive Order 12372
- AR–8 Public Health System Reporting Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements
- AR–16 Security Clearance Requirement
- AR–22 Research Integrity
- AR–25 Release and Sharing of Data

Additional information on these requirements can be found on the CDC

Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two copies of the following reports:

1. Interim progress report, (PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC Web site) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be sent to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For scientific/research issues, contact: Elsa Villarino, Extramural Project Officer, CDC, National Center for HIV, STD and TB Prevention, Division of Tuberculosis Elimination, 1600 Clifton Road, Mail stop E10, Telephone: 404–639–5340, E-mail: *evillarino@cdc.gov.*

For questions about peer review, contact: Andrew Vernon, Scientific Review Administrator, CDC, National Center for HIV, STD and TB Prevention, Office of the Director, Associate Director for Science Office, Telephone: 404–639–8000, E-mail: *avernon@cdc.gov.*

For financial, grants management, or budget assistance, contact: Jesse Robertson, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2747, E-mail: *jtr4@cdc.gov.*

Dated: May 7, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–10856 Filed 5–12–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Accessing and Improving Medical Examiner/Coroner Data

Announcement Type: New.

Funding Opportunity Number: 04123.

Catalog of Federal Domestic Assistance Number: 93.136.

Key Dates:

Application Deadline: June 17, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under section 301 (a) [42 U.S.C. 241(a)] of the Public Health Service Act and section 391 (a) [42 U.S.C. 280b (a)] of the Public Service Health Act, as amended.

Purpose: The purpose of the program is to collaborate with a national organization that represents medical examiners (ME) and/or coroners to develop strategies for improving data collection from ME/coroners. This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC):

1. Increase the capacity of injury prevention and control programs to address the prevention of injuries and violence.

Activities

Awardee activities for this program are as follows:

a. Provide expert advice in regard to working with state ME to access ME data.

b. Serve as a liaison with medical examiners in the National Violent Death Reporting System (NVDRS) funded states. This could include gaining feedback from ME/Coroners regarding the impact of NVDRS on operational activities and costs.

c. Develop a set of recommendations for gaining input from coroners regarding violent death reporting data. The recommendations would address a process for getting coroners more involved in the organization.

d. Send one medical examiner to the NVDRS implementation training to provide consultation on working with medical examiner offices.

e. Explore the possibility of an additional ME/Coroner set of variables that can be added to the electronic death certificate.

f. Provide at least one educational update per year regarding NVDRS in the potential grantees' organizational newsletter.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

a. Provide technical assistance for planning and conducting program activities.

b. Provide educational materials for use with the organization's membership as needed.

c. Provide technical assistance regarding the development of strategies to increase involvement of coroners and medical examiners.

d. Identify and facilitate training opportunities for ME representative for improvement of data collection accuracy.

e. Facilitate discussion with the National Center for Health Statistics (NCHS) for inclusion of additional ME variables into the electronic death certificate for enhanced data collection through NVDRS.

f. Attend relevant organizational functions to provide NVDRS updates.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $55,000.

Approximate Number of Awards: One.

Approximate Average Award: $55,000.

Floor of Award Range: None.

Ceiling of Award Range: $55,000.

Your application will not be eligible for review if you request a funding amount greater than the upper threshold. You will be notified that you did not meet the submission requirements.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Two years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as

documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations such as:

- Public nonprofit organizations
- Private nonprofit organizations

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other Eligibility Requirements

If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet the submission requirements. Eligible applicants should be a national professional organization of physician medical examiners, medical death investigators and death investigation system administrators who perform the official duties of the medicolegal investigation of deaths of public interest in the United States. Applicant should provide a brief description of organizational membership.

Data from medical examiners/coroners is one of the major data sources that is vital for the development and implementation of the National Violent Death Reporting System (NVDRS).

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Application: You must include a project narrative with your application forms. Your narrative must be submitted in the following format:

- Maximum number of pages: 20

If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.

- Font size: 12 point unreduced
- Double spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

The narrative should consist of, at a minimum, Background, Goal and Objectives, Methods, Evaluation, Management and Collaboration.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Curriculum Vitaes, Resumes, Organizational Charts, Letters of Support, etc.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirement.''

IV.3. Submission Dates and Times

Application Deadline Date: June 17, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This program announcement is the definitive guide on submission and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO-TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- None

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement must be less than 12 months of age.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Submit the original and two hard copies of your application by mail, or express delivery service to: Technical Information Management-PA# 04123, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate

the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Methods (30 points)

a. Is a plan for educating organizational members regarding the NVDRS included?

b. Does the applicant describe methods for developing standards for representing concepts and data elements among its members?

2. Goal(s) and Objectives (20 points)

Are objectives that are measurable, specific, time phased and achievable provided?

3. Background and Need (15 points)

Does the applicant describe its role regarding access to ME/coroners and the need for a NVDRS?

4. Collaboration (15 points)

a. Does the applicant document a process for developing a working relationship between medical examiners and coroners?

5. Management (10 points)

a. Does the applicant provide details regarding staff responsible for activities related to the objectives?

b. Does the applicant provide an organizational chart of the organization?

6. Evaluation (10 points)

Is a plan for evaluating and reporting results of proposed activities included?

7. Budget (not scored)

8. Performance Measures (not scored)

Are measures of effectiveness included and do they address those areas identified under the ''Purpose'' section above?

V.2. Review and Selection Process

An objective review panel will evaluate your application according to the criteria listed above.

V.3. Anticipated Announcement and Award Dates

September 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applications will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 or 92

For more information on the Code of Federal Regulations, *see* the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–8 Public Health System Reporting Requirements
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status
- AR–20 Conference Support
- AR–21 Small, Minority, and Women-Owned Business

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

This report must be mailed to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Leroy Frazier, Jr., Project Officer, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Hwy, NE., MS K60, Atlanta, GA 30341, Telephone: 770–488–1507, E-mail: *Lfrazier1@cdc.gov.*

For budget assistance, contact: Nancy Pillar, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341,Telephone: 770–488–2721, E-mail: *nfp6@cdc.gov.*

Dated: May 7, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–10857 Filed 5–12–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1999N–1852]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Draft Guidance for Industry: Reports on the Status of Postmarketing Studies—Implementation of Section 130 of the Food and Drug Administration Modernization Act of 1997

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance for Industry; Reports on the Status of Postmarketing Studies—Implementation of Section 130 of the Food and Drug Administration Modernization Act of 1997'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 4, 2001 (66 FR 17912), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0528. The approval expires on March 31, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: April 23, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–10833 Filed 5–12–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting and Nonvoting Consumer Representative Members on Public Advisory Committees and Panels

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting and nonvoting consumer representatives to serve on its advisory committees and panels in the Center for Biologics Evaluation and Research (CBER), Center for Drug Evaluation and Research (CDER), and Center for Devices and Radiological Health (CDRH). Nominations will be accepted for current vacancies and for those that will or may occur through December 31, 2004.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Scheduled vacancies occur on various dates throughout the year. As a result, no cutoff date is established for the receipt of nominations.

ADDRESSES: All nominations should be sent to the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

FOR FURTHER INFORMATION CONTACT: Michael Ortwerth, Advisory Committee Oversight and Management Staff (HF–4), FDA Office of the Commissioner, 5600 Fishers Lane, Rockville, MD 20857, e-mail: Michael.Ortwerth@fda.gov.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting and nonvoting consumer representatives of the following advisory committees and panels for vacancies:

CBER

1. Blood Products Advisory Committee

CDRH

1. Neurological Devices Panel of the Medical Devices Advisory Committee

CDER

1. Anti-Infective Drugs Advisory Committee
2. Arthritis Advisory Committee
3. Peripheral and Central Nervous System Drugs Advisory Committee
4. Pulmonary-Allergy Drugs Advisory Committee

I. Criteria for Members

Persons nominated for membership on the committees as a consumer representative must meet the following criteria: (1) Demonstrate ties to consumer and community-based organizations, (2) be able to analyze technical data, (3) understand research design, (4) discuss benefits and risks, and (5) evaluate the safety and efficacy of products under review. The consumer representative must be able to represent the consumer perspective on issues and actions before the advisory committee; serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

II. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include use of organizations representing the public interest and consumer advocacy groups. The organizations have the responsibility of recommending candidates of the agency's selection.

III. Nomination Procedures

All nominations must include a cover letter, a curriculum vitae or resume (which should include nominee's office address, telephone number, and e-mail address), and a list of consumer or community-based organizations for which the candidate can demonstrate active participation.

Any interested person or organization may nominate one or more qualified persons for membership on one or more of the advisory committees to represent consumer interests. Self-nominations are also accepted. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should specify the committee(s) of interest. The term of office is up to 4 years, depending on the appointment date.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: May 5, 2004.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 04–10831 Filed 5–12–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Renewals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of certain FDA advisory committees by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the charters of the committees listed in the following table for an additional 2 years beyond charter expiration date. The new charters will be in effect until the dates of expiration listed in the following table. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Public Law 92–463 (5 U.S.C. app. 2)).

DATES: Authority for these committees will expire on the dates indicated in the following table unless the Commissioner formally determines that renewal is in the public interest.

Name of committee	Date of expiration
National Mammography Quality Assurance Advisory Committee	July 6, 2005
Nonprescription Drugs Advisory Committee	August 27, 2005
Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants	December 2, 2005
Food Advisory Committee	December 18, 2005
Vaccines and Related Biological Products Advisory Committee	December 31, 2005
Advisory Committee for Pharmaceutical Science	January 22, 2006
Gastrointestinal Drugs Advisory Committee	March 3, 2006
Advisory Committee for Reproductive Health Drugs	March 23, 2006
Arthritis Advisory Committee	April 5, 2006
Veterinary Medicine Advisory Committee	April 24, 2006

FOR FURTHER INFORMATION CONTACT: Linda A. Sherman, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

Dated: May 5, 2004.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 04–10832 Filed 5–12–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 9, 2004, from 8 a.m. to 5 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Thomas H. Perez, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or by e-mail: *perezt@cder.fda.gov*. Please call the FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512530, for up-to-date information on this meeting.

Agenda: The subcommittee will meet between 8 a.m. and 1:30 p.m., and the agency will report to the committee on adverse event reporting as mandated in section 17 of the Best Pharmaceuticals for Children Act. The products to be discussed during this portion of the meeting include HYCAMTIN (topotecan), TEMODAR (temozolomide), EFFEXOR (venlafaxine), MONOPRIL (fosinopril), ALLEGRA (fexofenadine), DURAGESIC (fentanyl), CILOXAN (ciprofloxacin), and VIGAMOX (moxifloxacin). Following this, from approximately 1:30 p.m. to 3:30 p.m., the agency will provide an update on neonatal withdrawal syndrome and congenital eye malformations reported in infants whose mothers used selective serotonin reuptake inhibitors (SSRIs) during pregnancy. From approximately 3:30 p.m. to 4 p.m., the agency will provide an overview of the Pediatric Research Equity Act, which was signed into law on December 3, 2003. From 4 p.m. to 4:30 p.m., there will be an overview of the Institute of Medicine report entitled ''Ethical Conduct in Pediatric Clinical Trials.'' Finally, from 4:30 p.m. to 4:45 p.m., the agency will provide an update on the subpart D, institutional review board referral process.

The background material for this meeting will be posted on the Internet when available or 1 working day before the meeting at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by June 1, 2004. Oral presentations from the public will be scheduled between approximately 11:15 a.m. and 11:45 a.m., for issues related to the section 17 adverse event reports. Also, oral presentations from the public will be scheduled between approximately 3 p.m. and 3:30 p.m., for issues related to neonatal withdrawal syndrome and congenital eye malformations seen in infants. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by June 1, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Thomas Perez at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 5, 2004.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 04–10830 Filed 5–12–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C.

Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Telephone Survey of Public Opinion Regarding Various Issues Related to Organ and Tissue Donation—New

The Division of Transplantation (DoT), Special Programs Bureau (SPB), Health Resources and Services Administration (HRSA), is planning to conduct a telephone survey of public knowledge, perceptions, opinion, and behaviors related to organ donation. Two key missions of the DoT are (1) to provide oversight for the Organ Procurement and Transplantation Network and policy development related to organ donation and transplantation, and (2) to implement efforts to increase public knowledge, attitudes, and behaviors related to organ and tissue donation. Effective education campaigns need to be based on knowledge of the public's attitudes and perceptions about, and perceived impediments to, organ donation.

The purpose of this study is to obtain current information on attitudes and perceptions of organ donation and transplantation of the general public and various population subgroups. The survey will measure issues such as level of public knowledge about donation, public intent to donate, impediments to public intent to donate, living donation, presumed consent, and financial incentives for donation. In addition to being useful to the DoT, results of this survey also will be of considerable assistance to the transplant community and to the Secretary's Advisory Committee on Organ Transplantation (ACOT) as it fulfills its charge to advise the Secretary of Health and Human Services on the numerous and often controversial issues related to donation and transplantation. In its first meeting, the ACOT suggested such a survey to gather information to inform both public education efforts and policy decisions on the issue of organ donation.

The burden estimate of for this activity is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Telephone Survey	2,500	1	2,500	.2	500

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Desk Officer, Health Resources and Services Administration, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 6, 2004.

Steven A. Pelovitz,

Acting Deputy Associate Administrator for Management and Program Support.

[FR Doc. 04–10834 Filed 5–12–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

List of Foreign Entities Violating Textile Transshipment and Country of Origin Rules

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document notifies the public of foreign entities which have been issued a penalty claim under section 592 of the Tariff Act of 1930, for certain violations of the customs laws. This list is authorized to be published by section 333 of the Uruguay Round Agreements Act.

DATES: This document notifies the public of the semiannual list for the 6-month period starting March 31, 2004, and ending September 30, 2004.

FOR FURTHER INFORMATION: For information regarding any of the operational aspects, contact Gregory Olsavsky, Fines, Penalties and Forfeitures Branch, Office of Field Operations, (202) 927–3119. For information regarding any of the legal aspects, contact Willem A. Daman, Office of Chief Counsel, (202) 927–6900.

SUPPLEMENTARY INFORMATION:

Background

Section 333 of the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465, 108 Stat. 4809) (signed December 8, 1994), entitled Textile Transshipments, amended part V of title IV of the Tariff Act of 1930 by creating a section 592A (19 U.S.C. 1592a), which authorizes the Secretary of the Treasury to publish in the **Federal Register,** on a semiannual basis, a list of the names of any producers, manufacturers, suppliers, sellers, exporters, or other persons located outside the Customs territory of the United States, when these entities and/or persons have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws, provided that certain conditions are satisfied.

The violations of the customs laws referred to above are the following: (1) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products; (2) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that are subsequently used by the importer of record, with respect to the entry into the Customs territory of the United States of textile or apparel products; (3) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labeled as to country of origin or source; and (4) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

If a penalty claim has been issued with respect to any of the above violations, and no petition in response to the claim has been filed, the name of the party to whom the penalty claim was issued will appear on the list. If a petition or supplemental petition for relief from the penalty claim is submitted under 19 U.S.C. 1618, in accord with the time periods established by §§ 171.2 and 171.61, Customs and Border Protection (CBP) Regulations (19 CFR 171.2, 171.61) and the petition is subsequently denied or the penalty is mitigated, and no further petition, if allowed, is received within 60 days of the denial or allowance of mitigation, then the administrative action shall be

deemed to be final and administrative remedies will be deemed to be exhausted. Consequently, the name of the party to whom the penalty claim was issued will appear on the list. However, provision is made for an appeal to the Secretary of the Treasury (now delegated to the Secretary of Homeland Security) by the person named on the list, for the removal of its name from the list. If the Secretary finds that such person or entity has not committed any of the enumerated violations for a period of not less than 3 years after the date on which the person or entity's name was published, the name will be removed from the list as of the next publication of the list.

Reasonable Care Required

Section 592A also requires any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labeling that are accurate as to their origin. Reliance solely upon information regarding the imported product from a person named on the list is clearly not the exercise of reasonable care. Thus, the textile and apparel importers who have some commercial relationship with one or more of the listed parties must exercise a degree of reasonable care in ensuring that the documentation covering the imported merchandise, as well as its packaging and labeling, is accurate as to the country of origin of the merchandise. This degree of reasonable care must involve reliance on more than information supplied by the named party.

In meeting the reasonable care standard when importing textile or apparel products and when dealing with a party named on the list published pursuant to section 592A of the Tariff Act of 1930, an importer should consider the following questions in attempting to ensure that the documentation, packaging, and labeling are accurate as to the country of origin of the imported merchandise. The list of questions is not exhaustive but is illustrative.

(1) Has the importer had a prior relationship with the named party?

(2) Has the importer had any detentions and/or seizures of textile or apparel products that were directly or indirectly produced, supplied, or transported by the named party?

(3) Has the importer visited the company's premises and ascertained that the company has the capacity to produce the merchandise?

(4) Where a claim of an origin conferring process is made in accordance with 19 CFR 102.21, has the importer ascertained that the named party actually performed the required process?

(5) Is the named party operating from the same country as is represented by that party on the documentation, packaging or labeling?

(6) Have quotas for the imported merchandise closed or are they nearing closing from the main producer countries for this commodity?

(7) What is the history of this country regarding this commodity?

(8) Have you asked questions of your supplier regarding the origin of the product?

(9) Where the importation is accompanied by a visa, permit, or license, has the importer verified with the supplier or manufacturer that the visa, permit, and/or license is both valid and accurate as to its origin? Has the importer scrutinized the visa, permit or license as to any irregularities that would call its authenticity into question?

The law authorizes a semiannual publication of the names of the foreign entities and/or persons. On October 8, 2003, CBP published a notice in the **Federal Register** (68 FR 58123) which identified two (2) entities which fell within the purview of section 592A of the Tariff Act of 1930.

592A List

For the period ending March 30, 2004, CBP has identified no foreign entities that fall within the purview of section 592A of the Tariff Act of 1930. The two (2) entities named on the list published on October 8, 2003, have not committed any of the enumerated violations for a period of not less than three (3) years after the initial publication of their names. Accordingly, these two (2) entities are removed and, as no new entities are named, CBP is not listing any foreign entities on the 592A list for the period starting March 31, 2004, and ending September 30, 2004.

Dated: May 6, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–10855 Filed 5–12–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–34]

Notice of Submission of Proposed Information Collection to OMB; Monitoring Residual Receipts Accounts

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is requesting OMB approval to collect information from multifamily projects with HUD-insured and HUD-held mortgages. The Department must collect information on residual receipts accounts in order to ensure the appropriate management of funds.

DATES: *Comments Due Date:* June 14, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502-Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. This Notice is soliciting comments from members of the public and affecting 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: Monitoring Residual Receipts Accounts.

OMB Approval Number: 2502–Pending.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Pursuant to the Regulatory Agreement for Multifamily Housing insured mortgages, under Sections 207, 220, 221(d)(4), 231, 232, and 236, owners are required to adhere to certain guidelines regarding Surplus Cash and to establish a Residual Receipt Account. These receipts are completed and submitted to HUD by owners of insured multifamily projects. The information collected is used by HUD, owners, and non-profit entities for the disbursement of funds.

Respondents: Business or other for-profit, and Not-for-profit institutions.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	20,000	20,000		2		40,000

Total Estimated Burden Hours: 40,000.

Status: Request for approval of an existing information collection in use without an OMB control number.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 6, 2004.

Wayne Eddins,

Departmental PRA Compliance Officer, Office of the Chief Information Officer.

[FR Doc. 04–10808 Filed 5–12–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–930–6333 PH COMP, HAG 4–0161]

Notice of Availability of Record of Decision for the Resource Management Plan (RMP) Amendment/ Supplemental Environmental Impact Statement (SEIS) for Management of Port-Orford-Cedar in Southwest Oregon

AGENCY: Bureau of Land Management (BLM).

ACTION: Notice of Availability (NOA) of Record of Decision (ROD).

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies, the BLM announces the availability of the ROD/RMP Amendment for Management of Port-Orford-Cedar in Southwest Oregon, affecting the Coos Bay, Medford, and Roseburg Districts. The Oregon State Director will sign the ROD/RMP Amendment, which becomes effective immediately.

FOR FURTHER INFORMATION CONTACT: Ken Denton, SEIS Team Leader, P.O. Box 2965, Portland, Oregon 97208, telephone (503) 326–2368, e-mail *Ken_Denton@or.blm.gov,* or visit the SEIS Web site at *http://www.or.blm.gov/planning/Port-Orford-Cedar_SEIS/.*

SUPPLEMENTARY INFORMATION: Port-Orford-cedar is killed by an exotic root disease (*Phytophthora lateralis*) that is linked, at least in part, to transport of spore-infested mud by humans and animals. Water-borne spores then readily spread the disease down slope and down stream.

The Management of Port-Orford-Cedar in Southwest Oregon ROD/RMP Amendment was developed with public participation through a year-long planning process. This ROD/RMP Amendment, together with a similar one signed by the Forest Service in March, 2004, addresses management on approximately 270,000 acres of Port-Orford-cedar stands in the planning area. The ROD/RMP Amendment will help maintain Port-Orford-cedar as an ecologically and economically significant species on BLM lands. It includes a series of generally required actions, actions that can be applied to specific projects when there is a management risk to Port-Orford-cedar, and an emphasis on keeping the disease out of uninfested watersheds.

The Port-Orford-cedar RMP Amendment is essentially the same as Alternative 2 in the Proposed RMP Amendment/Final SEIS published on January 23, 2004 (see Notice of Availability, **Federal Register**, p. 3340). The BLM received five protests to the Proposed Amendment/Final SEIS. As a result of the protests, minor modifications were made in preparing the ROD/RMP Amendment. These modifications adopted a mitigation measure described in the SEIS, adopted NOAA-Fisheries consultation recommendations for monitoring and examining stream temperatures, corrected errors that were noted during review of the Proposed Amendment/Final SEIS, and provide further clarification for the decision. No inconsistencies with state or local plans, policies, or programs were identified during the Governor's Consistency Review of the Proposed Amendment/Final SEIS.

Judy Ellen Nelson,

Acting Associate State Director, Oregon and Washington, Bureau of Land Management.

[FR Doc. 04–10916 Filed 5–11–04; 11:31 am]

BILLING CODE 4310–33–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under a 28 CFR 50.7, notice is hereby given that on April 22, 2004, a proposed Consent Decree in *United States of America, State of California, and South Coast Air Quality Management District* v. *Keysor-Century Corporation,* Civil Action Number 04–2823–CAS (RCx), was lodged with the United States District Court for the Central District of California.

The consent decree resolves claims against one defendant, Keysor-Century Corporation (''Keysor''), brought by the United States on behalf of the Environmental Protection Agency (''EPA''), by the State of California on behalf of the Department of Toxic Substances Control and the California Regional Water Quality Control Board, Los Angeles Region, and by the South Coast Air Quality Management District under four statutes: Clean Air Act (''CAA''), 42 U.S.C. 7401–7671q; Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6901–6992k; Emergency Planning and Community

Right-to-Know Act (''EPCRA''), 42 U.S.C. 1101–11050; and Clean Water Act (''CWA''), 33 U.S.C. 1251–1387, and their implementing regulations. The complaint alleges numerous violations of federal and state environmental laws that occurred at Defendant's polyvinyl chloride (''PVC'') manufacturing and resin compounding plant, which was formerly located at 26000 Springbrook Avenue, Saugus, Los Angeles County, California (the ''Facility'').

Under the proposed Consent Decree, all civil claims in the Complaint are resolved for the following payments to be made by Keysor in Keysor's Chapter 11 bankruptcy liquidation proceeding: a $307,000 administrative expense payment; the allowance of $735,420 classified as a subordinated allowed general unsecured claim; and the allowance of $168,855 classified as an allowed general unsecured claim. In addition, Keysor is subjected to injunctive relief, including: cessation of discharges of pollutants from the Facility; certification that the vinyl chloride plant was shut down and will not be re-opened; general certification that the defendant is currently in compliance with all provisions of CAA, RCRA, EPCRA, and CWA; and an agreement that emission reductions resulting from the shutdown of the Facility shall not be banked or otherwise used as emission reduction credits to offset new emissions from other facilities in the District.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States of America, State of California, and South Coast Air Quality Management District* v. *Keysor-Century Corporation,* DOJ Ref. #90–5–2–1–07856/1.

The Consent Decree may be examined at the Office of the United States Attorney, 300 North Los Angeles Street, Los Angeles, California 90012, and the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood, *tonia.fleetwood@usdoj.gov,* Fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $15.50 (25 cents per page reproduction cost) payable to the U.S. Treasury, to obtain a copy of the Consent Decree.

Ellen Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–10840 Filed 5–12–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Between the United States of America v. Koch Industries, Inc., Koch Pipeline Company, L.P., and Flint Hill Resources, L.P. Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 28 CFR 50.7, notice is hereby given that on April 29, 2004, a proposed Consent Decree (''Consent Decree'') in the case of *United States of America* v. *Koch Industries, Inc.,* Koch Pipeline Company, L.P., and Flint Hill Resources, L.P., Civil Action No. 6:04–cv–01134–MLB–KMH, was lodged with the United States District Court for the District of Kansas.

The Consent Decree resolves the United States' claims against Koch Industries, Inc., Koch Pipeline Company, L.P., and Flint Hill Resources, L.P., under section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'') 42 U.S.C. 9607(a), for recovery of response costs incurred in connection with the 57th and North Broadway Superfund Site (''Site''), near Wichita, Kansas. The Consent Decree requires Koch Industries to pay $250,000 plus 5% of EPA's response costs that exceed $5,097,435. In exchange, the Consent Decree grants Koch Industries, Inc., Koch Pipeline Company, L.P., and Flint Hill Resources, L.P. contribution protection and covenants not to sue under CERCLA Sections 106 and 107, 42 U.S.C. 9606 & 9607.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Koch Industries, Inc.,* Koch Pipeline Company, L.P. and Flint Hill Resources, L.P., D.J. Reference No. 90–11–3–1737.

The Consent Decree may be examined during the public comment period on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $725 (25 cents per page reproduction cost) payable to the United States Treasury for payment.

Robert Maher,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–10843 Filed 5–12–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on April 16, 2004, an electronic version of a proposed consent decree was lodged in *United States* v. *Madison County, Florida, et al.,* No. 4:02 CV 215 SPM/WW (N.D. Fla.).

In the civil action, the United States alleges claims on behalf of the Administrator of the Environmental Protection Agency (''EPA'') against Madison County, Florida (the ''County'') and the City of Madison, Florida (the ''City'') under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, for response costs in connection with the Madison County Sanitary Landfill Superfund Site, in Madison County, Florida (the ''Site'').

The proposed consent decree requires the County and the City to reimburse all of EPA's outstanding past costs of $797.19 and to pay future oversight costs in connection with oversight of a remedial action being performed by the County and the City under a unilateral administrative order issued by EPA.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree.

Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Madison County, Florida, et al.,* No. 4:02 CV 215 SPM/WW (N.D. Fla.), DOJ # 90–11–3–1053/1.

The Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Florida 111 N. Adams Street, 4th Floor, Tallahassee, FL 32301. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood, *tonia.fleetwood@usdoj.gov*, Fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–10838 Filed 5–12–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR § 50.7, notice is hereby given that on April 27, 2004, a proposed Consent Decree in *United States and State of Louisiana* v. *City of Monroe,* Civil Action No. 04–0944 was lodged with the United States District Court for the Western District of Louisiana.

In this action the United States, and its co-plaintiff the State of Louisiana, sought injunctive relief and a civil penalty to address sanitary sewer overflows and other violations of the Clean Water Act and the City of Monroe's National Pollutant Discharge Elimination System (''NPDES'') permit. Under the Consent Decree, the City will (i) carry out specific projects listed in the Consent Decree to upgrade the City's wastewater treatment plant and sewage collection system, (ii) identify and make other necessary upgrades to City's sewer collection system, (iii) prepare and implement a sewage collection system preventive maintenance plan, and (iv) prepare and implement a sewage treatment plant preventive maintenance plan. The City will also pay a civil penalty of $235,000 ($164,500 to the United States and $70,500 to the State) and, as a supplemental environmental project, spend at least $500,000 maintaining for five years a public waste disposal facility at a boat dock at Forsythe Point in Monroe, Louisiana.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *City of Monroe,* D.J. Ref. No. 90–5–1–1–06820.

The Consent Decree may be exmained during the public comment period on the following Department of Justice Web site: *http://www.usdoi.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $16.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas A. Mariani Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Divison.

[FR Doc. 04–10841 Filed 5–12–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on April 28, 2004, a proposed consent decree in *United States* v. *Precision National Plating Services, Inc.*, Civil Action No. 3:04 CV 936 was lodged with the United States District Court for the Middle District of Pennsylvania.

In this action the United States sought cost recovery for costs incurred in connection with the Precision National Plating Services Superfund Site (the ''Site''), located near Clarks Summit, Lackawanna County, Pennsylvania. Under the terms of the consent decree, the proposed settling defendant would pay $800,000 to EPA to cover past response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Precision National Plating Services, Inc.*, Civil Action No. 3:04 CV 936, D.J. Ref. 90–11–3–07298.

The consent decree may be examined at the Office of the United States Attorney, Suite 311, 235 N. Washington Avenue, Scranton, Pennsylvania 18503, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. A copy of the consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the consent decree, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–10839 Filed 5–12–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on April 28, 2004, a proposed Consent Decree in *United States* v. *Manufacturing Company,* Civil Action No. 4:04CV495–JCH was lodged with the United States District Court for the Eastern District of Missouri.

The complaint alleges that True violated the Clean Air Act in the (1) construction and operation of various modifications at its refrigeration manufacturing plant without obtaining a construction/operation permit as required by the federally approved Missouri New Source Review (''NSR'') Rules, codified at Rule 10 CSR 10–6.060

of the Missouri State Implementation Program (''SIP''); (2) operation of its facility without applying for or obtaining an operating permit as required by the federally approved Missouri Title V provisions, Rule 10 CSR 10–6.065; and (3) violation of federally approved Missouri Rule 10 CSR 10–5.300(3)(A)(2) which requires training of all persons involved in solvent metal cleaning or degrading at all installations that emit volatile organic compounds (VOCs) from solvent metal cleaning or degreasing operations. It also alleges violations of the Resource, Conservation and Recovery Act, 42 U.S.C. 6925, and Clean Water Act, 42 U.S.C. 1321.

The Consent Decree settles these claims in exchange for payment of a civil penalty of $1,500,000 and True's performance of injunctive relief and three Supplemental Environmental Projects. True will remove the equipment for which it did not get the required permits and replace all of its solvent-based ink presses with presses that use ultraviolet light to cure ink, install three silk-screen cleaning machines that are enclosed systems with s solvent recovery system, and install a water filtration system.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *U.S.* v. *True Manufacturing Company Consent Decree, D.J. Ref. 90–5–2–1–07357.*

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Missouri, 111 10th Street, St. Louis, MO 63102 and at U.S. EPA Region VII, U.S. EPA, Region VII, 901 N. 5th Street, Kansas City, KS 66101, (913) 551–7471. During the public comment period, the Consent Decree may also be examined on the following Department of Justice website, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Maher,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–10842 Filed 5–12–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,186]

Don Shapiro Industries, Inc., Doing Business as Action West, Baxter International Corp., El Paso, TX; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 12, 2002, applicable to workers of Don Shapiro Industries, Inc., doing business as Action West, located in El Paso, Texas. The notice was published in the **Federal Register** on January 9, 2003 (68 FR 1201).

At the request of petitioners, the Department reviewed the certification for workers of Action West in El Paso, Texas. New information obtained from the company, shows that on November 7, 2003, Baxter International Corporation acquired the employees and certain assets of the subject firm at the El Paso, Texas location. Some workers have been subsequently separated from employment with Baxter International Corporation.

It is the Department's intent to cover all workers of the firm impacted by increased imports. Accordingly, the Department is amending the certification to expand coverage to workers of the successor firm, Baxter International Corporation.

The amended notice applicable to TA–W–50,186 is hereby issued as follows:

All workers of Don Shapiro Industries, Inc., doing business as Action West, currently known as Baxter Industries Corporation, El Paso, Texas, who became totally or partially separated from employment on or after December 27, 2002, through December 12, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 27th day of April, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–10865 Filed 5–12–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,581]

Baxter International Corporation Formerly Action West/Don Shapiro Industries El Paso, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 15, 2004, in response to a petition filed on behalf of workers of Action West, Don Shapiro, Baxter Corporation, El Paso, Texas.

The investigation revealed that the workers are former employees of Don Shapiro Industries, doing business as Action West, El Paso, Texas. Since Baxter International is a successor firm, the existing certification, TA–W–50,186, is amended this date to include the workers of Baxter International Corporation. Consequently, this investigation is terminated.

Signed at Washington, DC, this 27th day of April 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–10867 Filed 5–12–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,209]

Computer Sciences Corp., Financial Services Group (''FSG''), East Hartford, CT; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of November 24, 2003, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on October 24, 2003, and published in the **Federal Register** on November 28, 2003 (68 FR 66878).

The Department reviewed the request for reconsideration and has determined that the Department will conduct further investigation to establish whether petitioning workers produced an article within the meaning of section 222 of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 5th day of January, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–10864 Filed 5–12–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,143]

Elizabeth Weaving, Inc., Elite Textile Limited, Blacksburg, SC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on March 2, 2004, applicable to workers of Elizabeth Weaving, Inc., Grover, North Carolina. The notice was published in the **Federal Register** on April 6, 2004 (69 FR 18110). The certification was amended on March 2, 2004, to correct the city and state location of the subject firm. The notice was published in the **Federal Register** on April 16, 2004 (69 FR 20643).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of upholstery fabric.

New information shows that workers separated from employment at the subject firm from June 30, 2003, until March 12, 2004, had their wages reported under a separate unemployment insurance (UI) tax account for Elite Textile Limited.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Elizabeth Weaving, Inc., Blacksburg, South Carolina, who were adversely affected by increased imports.

The amended notice applicable to TA–W–54,143 is hereby issued as follows:

All workers of Elizabeth Weaving, Inc., Elite Textile, Limited, Blacksburg, South Carolina, who became totally or partially separated from employment on or after January 21, 2003, through March 2, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 30th day of April, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–10860 Filed 5–12–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,993]

Newell Rubbermaid, Inc., Wooster, OH; Notice of Affirmative Determination Regarding Application for Reconsideration

By application of April 2, 2004, the United Steelworkers of America, Local 302L, requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Department's determination was signed on March 4, 2004, and the Notice was published in the **Federal Register** on April 6, 2004 (69 FR 18109).

The Department reviewed the request for reconsideration and has determined that further investigation is appropriate given that the customer survey may be erroneous.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 3rd day of May, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–10861 Filed 5–12–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,702]

Snap-On Tools Manufacturing Company, Kenosha, WI; Notice of Negative Determination Regarding Application for Reconsideration

By application of March 5, 2004, International Association of Machinists, District Lodge 34 requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was published in the **Federal Register** on March 12, 2004 (69 FR 11888).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Snap-On Tools Manufacturing Company, Kenosha, Wisconsin engaged in the production of hand tools, was denied because criteria I.C and II.B and the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, were not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The survey revealed an insignificant level of imports during the relevant period. The subject firm imported a negligible amount of hand tools during the relevant period.

The petitioner alleges that the company is currently in the process of purchasing a facility in China for the purpose of shifting some of the production from the subject facility.

A company official was contacted in regard to these allegations. The official stated that there never was a shift of hand tools production from Snap-On Tools Manufacturing Company, Kenosha, Wisconsin abroad and no plans exist to move any production from the subject facility to China.

The petitioner further alleges that Snap-on, Inc. is considering to

discontinue the E-Line Plier line and replacing it with foreign made products, manufactured in Sweden or Germany and mentions Blue Point product, which was affected by the foreign trade.

The official stated that E-Line Pliers were never manufactured at the subject facility and that this line existed at another Snap-on Tools, Inc. facility in Mt. Carmel, Illinois. The official further stated that the company does import power tools which are branded as Blue Point, however, they are not like or directly competitive with products manufactured at Snap-On Tools Manufacturing Company, Kenosha, Wisconsin. The company has been outsourcing manufacturing of the adjustable wrenches and pliers from overseas vendors for many years, however, this sourcing, including Blue Point tools represents less than 2 percent of the overall production of Snap-on, Inc. and did not increase during the relevant time period.

Finally, the petitioner alleges that the subject firm lost a considerable amount of business to its competitor, a company which is ''more price-competitive due to the use of overseas trade.''

A review of competitors is not relevant to an investigation concerning import impact on workers applying for trade adjustment assistance. As noted above, ''contributed importantly'' test is generally demonstrated through a survey of customers of the workers' firm to examine the direct import impact on a specific firm. No imports or very insignificant amount of imports of hand tools were evidenced during the survey of subject firm's customers during the original investigation.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 30th day of April 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–10863 Filed 5–12–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,834]

Snap-On Tools, Inc., Mt. Carmel Plant, Mt. Carmel, IL; Notice of Negative Determination Regarding Application for Reconsideration

By application of March 5, 2004, International Association of Machinists, District Lodge 111 requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was published in the **Federal Register** on March 12, 2004 (69 FR 11888).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Snap-on Tools, Inc., Mt. Carmel Plant, Mt. Carmel, Illinois engaged in the production of hand tools, was denied because criteria I.C and II.B and the ''contributed importantly'' group eligibility requirement of section 222 of the Trade Act of 1974, as amended, were not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The survey revealed an insignificant level of imports. The subject firm imported a negligible amount of hand tools during the relevant period.

The petitioner alleges that the company is currently in the process of purchasing a facility in China for the purpose of shifting some of the production from the subject facility.

A company official was contacted in regard to these allegations. The official stated that there never was a shift of hand tool production from the Mt. Carmel, Illinois, facility abroad and no plans exist to move any production from the subject facility to China.

The petitioner further alleges that Snap-on Tools, Inc. is considering to discontinue the E-Line Plier line and replacing it with foreign made products, manufactured in Sweden or Germany and mentions Blue Point product, which was affected by the foreign trade.

The official confirmed that there are plans to produce E-line pliers at a subsidiary located in Sweden. However, no shift of production to Sweden has occurred yet. The official further stated that the company does import power tools which are branded as Blue Point, however, they are not like or directly competitive with products manufactured at Mt. Carmel Plant. The company has been outsourcing manufacturing of the adjustable wrenches and pliers from overseas vendors for many years, however, this sourcing, including Blue Point tools represents less than 2 percent of the overall volume of the Mt. Carmel Plant and did not increase during the relevant time period.

Finally, the petitioner alleges that the subject firm lost a considerable amount of business to its competitor, a company which is ''more price-competitive due to the use of overseas trade.''

A review of competitors is not relevant to an investigation concerning import impact on workers applying for trade adjustment assistance. As noted above, ''contributed importantly'' test is generally demonstrated through a survey of customers of the workers' firm to examine the direct impact on a specific firm. Only an insignificant amount of imports of hand tools were evidenced during the survey of subject firm's customers during the original investigation.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 30th day April, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–10862 Filed 5–12–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,113]

The Wackenhut Corp., San Manuel, AZ; Notice of Revised Determination

In the matter of *Former Employees of Wackenhut Corporation* v. *U.S. Secretary of Labor,* No. 02–00758, the Department is issuing a revised determination to certify workers of the subject firm eligible to apply for trade adjustment assistance (TAA).

Workers of The Wackenhut Corporation, San Manuel, Arizona, were working on-site at a copper cathode production facility operated by BHP Copper, Inc. in San Manuel, Arizona. The Wackenhut Corporation workers were denied eligibility to apply for TAA because they provided security services for an unaffiliated firm. All workers of BHP Copper, Inc., San Manuel, Arizona, were certified eligible to apply for TAA.

The Department determined that The Wackenhut Corporation was contracted by BHP Copper, Inc. to provide security services at BHP in San Manuel, Arizona and other BHP locations. During the contract period the leased or contract workers providing a service (Wackenhut) remained under the control by the firm producing the article (BHP Copper, Inc.). In accordance with a reinterpretation of the Trade Act term workers of a firm and the joint employer relationship that existed between Wackenhut and BHP Copper, Inc., the Department has determined that because all workers of BHP Copper, Inc. in San Manuel, Arizona were certified eligible to apply for TAA, the leased or contract employees of The Wackenhut Corporation working at that location are also adversely affected by increased imports of copper cathodes and the closure of the BHP facility.

Conclusion

After careful review on reconsideration, I determine that increases of imports of articles like or directly competitive with copper cathodes produced by BHP Copper Inc., San Manuel, Arizona, contributed importantly to the total or partial separation of workers and to the decline in sales or production at that firm or subdivision.

In accordance with the provisions of the Act, I make the following certification:

Workers employed by The Wackenhut Corporation, working at BHP Copper Inc., San Manuel, Arizona, who became totally or partially separated from employment on or after September 4, 2001, through two years from the date of this determination, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.''

Signed in Washington, DC, this 4th day of May, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–10866 Filed 5–12–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for Temporary Employment of Nonimmigrant Workers in the United States (H–2B Workers); Fiscal Year 2005

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The United States Citizenship and Immigration Services (CIS) has received a sufficient number of H–2B petitions to reach the FY 2004 cap of 66,000. The Employment and Training Administration (ETA) is publishing this notice so the public will understand application procedures for the processing of H–2B applications for FY 2005 (date of need October 1, 2004 or later). These procedures are intended to minimize confusion and burden to employers who use the H–2B program. Any employer who desires to employ an H–2B worker with a start date of need on or after October 1, 2004, must file a new ETA 750, Part A, *Application for Alien Employment,* with a new test of the labor market, with the U.S. Department of Labor (DOL) on or after June 1, 2004. This procedure applies to those employers who have not been able to use a currently approved labor certification due to the H–2B program cap being reached for FY 2004. This action is necessary as the availability of U.S. workers fluctuates over short periods of time and an adequate test of the labor market must be made prior to the approval of a labor certification. Current DOL policy requires employers to file their H–2B application no more than 120 days before the worker is needed thus ensuring the labor market test is reasonably current. For example, employers who filed applications with DOL after March 10, 2004, and were not approved by CIS due to the program cap being reached, will need to file new applications with the DOL no earlier than June 1, 2004, if the employer has a date of need no earlier than October 1, 2004. These applications will be handled according to current ETA policy and must include a current test of the U.S. labor market.

DATES: This notice is effective May 13, 2004.

FOR FURTHER INFORMATION CONTACT: William Carlson, Chief, Division of Foreign Labor Certification, U.S. Department of Labor, Room C–4312, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–693–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The procedures described in this notice relate only to H–2B applications filed with DOL on or after June 1, 2004, for nonimmigrant workers subject to the numerical limitation (cap) for FY 2005 and who will be engaged in temporary work to commence on or after October 1, 2004.

In accordance with ETA's policy, employers may file an H–2B application at least 60 days, but not more than 120 days before the worker is needed. Therefore, employers may begin filing no earlier than June 1, 2004, for a date of need beginning October 1, 2004.

Signed at Washington, DC, this 7th day of May, 2004.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 04–10859 Filed 5–12–04; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection used in issuing a building pass to National Archives and Records Administration (NARA) volunteers and employees of NARA contractors so that they can enter NARA facilities to perform their duties. NARA uses the information to ensure that only authorized persons have access. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before July 12, 2004 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to (301) 837–3213; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number (301) 837–1694, or fax number (301) 837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (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 the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Request for and Record of Pass.

OMB number: 3095–0026.

Agency form number: NA Form 6006.

Type of review: Regular.

Affected public: Individuals or households, business or other for-profit organizations and institutions, and Federal government.

Estimated number of respondents: 1,300.

Estimated time per response: 3 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 65 hours.

Abstract: The collection of information is necessary as a security measure to protect employees, information, and property in NARA facilities and to facilitate the issuance of passes. Use of the form is authorized by 44 U.S.C. 2104. Respondents who are contractors are given a building pass which expires at the end of each fiscal year; those who are volunteers are given a pass valid for 2 years. At the NARA College Park facility, individuals receive an access card with the pass that is electronically coded to permit access to secure zones ranging from a general nominal level to stricter access levels for classified records zones. The access card system is part of the security management system which meets the accreditation standards of the Government intelligence agencies for storage of classified information, and serves to comply with E.O. 12958.

Dated: May 6, 2004.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 04–10894 Filed 5–12–04; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301]

Nuclear Management Company, LLC, Point Beach Nuclear Plant, Units 1 and 2; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

Nuclear Management Company, LLC (NMC) has submitted an application for renewal of Facility Operating Licenses DPR–24 and DPR–27 for an additional 20 years of operation at the Point Beach Nuclear Plant, Units 1 and 2 (PBNP). PBNP is located on the western shore of Lake Michigan in Two Rivers, Wisconsin, approximately 30 miles southeast of Green Bay, Wisconsin. The operating licenses for PBNP, Units 1 and 2, expire on October 5, 2010, and March 8, 2013, respectively. The application for renewal was received on February 26, 2004, pursuant to title 10 of the Code of Federal Regulations part 54 (10 CFR part 54). A notice of receipt and availability of the application, which included the environmental report (ER), was published in the **Federal Register** on March 8, 2004 (69 FR 10765). A notice of acceptance for docketing of the application for renewal of the facility operating licenses was published in the **Federal Register** on April 13, 2004, (69 FR 19559). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) in support of the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process, as defined in title 10 of the Code of Federal Regulations, section 51.29 (10 CFR 51.29). In addition, as outlined in title 36 of the Code of the Federal Regulations, section 800.8, ''Coordination with the National Environmental Policy Act,'' the NRC plans to coordinate compliance with section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA).

In accordance with title 10 of the Code of the Federal Regulations, section 51.53(c) (10 CFR 51.53(c)) and title 10 of the Code of the Federal Regulations, section 54.23 (10 CFR 54.23), NMC submitted the ER as part of the application. The ER was prepared pursuant to title 10 of the Code of the Federal Regulations, part 51 (10 CFR part 51) and is available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.aov/reading-rm/adams.html*, which provides access through the NRC's Electronic Reading Room link. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to pdr@nrc.gov. The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/point-beach.html.* In addition, the Lester Public Library, located at 1001 Adams Street, Two Rivers, Wisconsin, 54241 has made the ER available for public inspection.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's ''Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants,'' (NUREG–1437) in support of the review of the application for renewal of the PBNP operating licenses for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. The NRC is required by title 10 of the Code of the Federal Regulations, section 51.95 (10 CFR 51.95) to prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with the National Environmental Policy Act of 1969 (NEPA) and the NRC's regulations found

in title 10 of the Code of the Federal Regulations part 51 (10 CFR part 51).

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other ElSs that are being or will be prepared that are related to, but are not part of the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, and include any contractor assistance to be used.

The NRC invites the following entities to participate in scoping:

a. The applicant, Nuclear Management Company, LLC.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who has petitioned or intends to petition for leave to intervene.

In accordance with title 10 of the Code of the Federal Regulations section 51.26 (10 CFR 51.26), the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public meetings for the PBNP license renewal supplement to the GEIS. The scoping meetings will be held at Fox Hills, 250 West Church Street in Mishicot, Wisconsin, on Tuesday, June 15, 2004. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour before the start of each session at Fox Hills. No formal comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting Mr. William Dam by telephone at 1–800–368–5642, extension 4014, or by e-mail to the NRC at *PointBeachEIS@nrc.gov* no later than June 11, 2004. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. Mr. Dam will need to be contacted no later than June 7, 2004, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the PBNP license renewal review to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to the NRC, Room T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked by July 14, 2004. Electronic comments may be sent by e-mail to the NRC at *PointBeachEIS@nrc.gov* and should be sent no later than July 14, 2004, to be considered in the scoping process. Comments will be available electronically and accessible through ADAMS at *http://www.nrc.gov/reading-rm/adams.html.*

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of opportunity for a hearing regarding the renewal application was the subject of the aforementioned **Federal Register** notice (69 FR 19559). Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection in ADAMS at *http://www.nrc.gov/readina-rm/adams.html.* The staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of separate notices and separate public meetings. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Mr. Dam at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 7th day of May, 2004.

For the Nuclear Regulatory Commission.

Samson S. Lee,

Acting Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 04–10854 Filed 5–12–04; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

January 2004 Pay Adjustments

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The President adjusted the rates of basic pay and locality payments for certain categories of Federal employees effective in January 2004. This notice documents those pay adjustments for the public record.

FOR FURTHER INFORMATION CONTACT: Carey Johnson, Center for Pay and Performance Policy, Division for Strategic Human Resources Policy, Office of Personnel Management; (202) 606–2858; FAX (202) 606–0824; or e-mail to *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On December 30, 2003, the President signed Executive Order 13322 (69 FR 231, January 2, 2004), which implemented a 2.0 percent overall average increase above the 2003 rates. Executive Order 13322 provided an across-the-board increase of 1.5 percent in the rates of basic pay for the statutory pay systems and an overall average increase in the General Schedule (GS) locality rates equal to approximately 0.5 percent of the GS payroll. On March 3, 2004, the President signed Executive Order 13332 (69 FR 10889, March 8, 2004), which amended Executive order 13322 to provide a retroactive pay increase averaging 4.1 percent above the 2003 rates (in lieu of the 2.0 percent overall average increase originally implemented). The President made these adjustments consistent with the Consolidated Appropriations Act, 2004 (Public Law 108–199, January 23, 2004).

Schedule 1 of Executive Order 13332 provides the rates for the 2004 General Schedule and reflects a 2.7 percent across-the-board increase. Executive Order 13332 also includes the percentage amounts of the 2004 locality payments. (See Section 5 and Schedule 9 of Executive Order 13332.)

The publication of this notice satisfies the requirement in section 5(b) of Executive order 13332 that the Office of Personnel Management (OPM) publish appropriate notice of the 2004 locality payments in the **Federal Register**.

GS employees receive locality payments under 5 U.S.C. 5304. Locality payments apply in the 48 contiguous States and the District of Columbia. In 2004, locality payments ranging from 10.90 percent to 24.21 percent apply to GS employees in 32 locality pay areas. These 2004 locality pay percentages, which replaced the locality pay percentages that were applicable in 2003, became effective on the first day of the first applicable pay period beginning on or after January 1, 2004. An employee's locality-adjusted annual rate of pay is computed by increasing his or her scheduled annual rate of basic pay (as defined in 5 U.S.C. 5302(8) and 5 CFR 531.602) by the applicable locality pay percentage. (See 5 CFR 531.604 and 531.605.)

Executive Order 13332 establishes the new Executive Schedule, which incorporates the 2.2 percent increase (rounded to the nearest $100) required under 5 U.S.C. 5318. By law, Executive Schedule officials are not authorized to receive locality pay.

Section 1125 of the National Defense Authorization Act for Fiscal year 2004 (Public Law 108–136, November 24, 2003) established a new performance-based pay system for the Senior Executive Service (SES). The new law replaces the former six-level SES pay system with a single open-range pay system with only the minimum and maximum rates of pay set by law. The minimum rate of basic pay may not be less than the minimum rate payable under 5 U.S.C. 5376 for senior-level positions ($104,927 in 2004), and the maximum rate of basic pay may not exceed the rate for level III of the Executive Schedule ($145,600 in 2004). The maximum rate of the SES rate range will increase to level II of the Executive Schedule ($158,100 in 2004) in those agencies that are certified under 5 U.S.C. 5307(d) as having executive performance appraisal systems that make meaningful distinctions based on relative performance. Additional information on the SES pay system is available on the Internet at *http://www.opm.gov/oca/compmemo/2004/2004–03.asp.*

The Executive order adjusted the rates of basic pay for administrative law judges (ALJs) by 2.2 percent (rounded to the nearest $100). The maximum rate of basic pay for ALJs is set by law at the rate for level IV of the Executive Schedule, which is now $136,900. (See 5 U.S.C. 5372.)

The rates of basic pay for Board of Contract Appeals (BCA) members are calculated as a percentage of the rate for level IV of the Executive Schedule. (See 5 U.S.C. 5372a.) Therefore, BCA rates of basic pay were increased by approximately 2.2 percent. Also, the maximum rate of basic pay for senior-level (SL) and scientific or professional (ST) positions was increased by approximately 2.2 percent (to $136,900) because it is tied to the rate for level IV of the Executive Schedule. The minimum rate of basic pay for SL/ST positions is equal to 120 percent of the minimum rate of basic pay for GS–15 and thus was increased by 2.7 percent (to $104,927). (See 5 U.S.C. 5376.)

On December 17, 2003, the President's Pay Agent extended the 2004 locality-based comparability payments to certain categories of non-GS employees. The Governmentwide categories include employees in SL/ST positions, ALJs, and BCA members. The maximum locality rate of pay for these employees is the rate for level III of the Executive Schedule ($145,600 in 2004).

OPM published ''Salary Tables for 2004,'' (OPM Doc. 124–48–6) in May 2004. This publication provides complete salary tables incorporating the 2004 pay adjustments, information on general pay administration matters, locality pay area definitions, Internal Revenue Service withholding tables, and other related information. The rates of pay shown in this publication are the official rates of pay for affected employees and are hereby incorporated as part of this notice. You may purchase copies of ''Salary Tables for 2004'' from the Government Printing Office (GPO) by calling (202) 512–1800 (outside the DC area: 1–866–512–1800) or FAX (202) 512–2250. You may order copies directly from GPO on the Internet at *http://bookstore.gpo.gov.* In addition, you can find pay tables on OPM's Internet Web site at *http://www.opm.gov/oca/payrates/index.asp.*

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–10868 Filed 5–12–04; 8:45 am]

BILLING CODE 6325–39–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request

Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549–0004.

Extension:

Rule 604; SEC File No. 270–221; OMB Control No. 3235–0232
Rule 605; SEC File No. 270–221; OMB Control No. 3235–0232
Form 1–E; SEC File No. 270–221; OMB Control No. 3235–0232

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collections of information discussed below.

- Rule 604—Filing of Notification on Form 1–E

Rule 604 of Regulation E [17 CFR 230.604] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (''Securities Act'') requires a small business investment company (''SBIC'') or a business development company (''BDC'') claiming an exemption from registering its securities under the Securities Act to file a notification with the Commission on Form 1–E.

- Rule 605—Filing and Use of the Offering Circular

Rule 605 of Regulation E [17 CFR 230.605] under the Securities Act requires an SBIC or BDC claiming an exemption from registering its securities under the Securities Act to file an offering circular with the Commission that must also be provided to persons to whom an offer is made.

Form 1–E—Notification Under Regulation E

Form 1–E is the form that an SBIC or BDC uses to notify the Commission that it is claiming an exemption under Regulation E from registering its securities under the Securities Act. Form 1-E requires an issuer to provide the names and addresses of the issuer, its affiliates, directors, officers, and counsel; a description of events which would make the exemption unavailable; the jurisdiction in which the issuer intends to offer its securities; information about unregistered securities issued or sold by the issuer within one year before filing the notification on Form 1–E; information as to whether the issuer is presently offering or contemplating offering any other securities; and exhibits, including copies of the offering circular and any underwriting contracts.

The Commission uses the information provided in the notification on Form 1–E and the offering circular to determine whether an offering qualifies for the exemption under Regulation E. It is estimated that approximately ten issuers file a total of approximately fifteen notifications on Form 1–E with the Commission annually, together with offering circulars. The Commission estimates that the total burden hours for preparing these notifications would be 1,500 hours in the aggregate. Estimates of the burden hours are made solely for the purposes of the PRA, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

SBICs or BDCs wishing to claim an exemption under Regulation E from registering securities under the Securities Act are required to file a notification on Form 1–E and offering circular. The information provided on Form 1–E and in the offering circular will not be kept confidential. 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.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or email to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 5, 2004.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–10845 Filed 5–12–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49659; File No. SR–CBOE–2004–15]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Automatic Executions for Underlying Specialists

May 6, 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 March 2, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'' 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 CBOE. On April 28, 2004, the CBOE filed 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 CBOE proposes to amend CBOE Rule 6.13 relating to access to the automatic execution feature of its Hybrid System. The text of the proposed rule change appears below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

Rule 6.13: CBOE Hybrid System's Automatic Execution Feature

(a) No change.

(b) Automatic Execution.

(i) Eligibility: Orders eligible for automatic execution through the CBOE Hybrid System may be automatically executed in accordance with the provisions of this Rule. This section governs automatic executions and split-price automatic executions. The automatic execution and allocation of orders or quotes submitted by market participants shall be governed by Rules 6.45A(c) and (d).

(A)–(B) No change.

(C) Access:

(i) Non-broker-dealer public customers and broker-dealers that are not market makers or Specialists on an *options* exchange who are exempt from the provisions of Regulation T of the Federal Reserve Board pursuant to section 7(c)(2) of the Securities Exchange Act of 1934 are eligible for automatic execution. The eligible order size for these classifications must be the same.

(ii) *(A) Options Exchange Market Makers:* The appropriate FPC may also determine, on a class-by-class basis, to allow orders for the accounts of market makers or specialists on an *options* exchange *(collectively ''options market makers'')* who are exempt from the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steve Youhn, Counsel, CBOE, to Deborah Flynn, Assistant Director, Division of Market Regulation (''Division'') Commission, dated April 27, 2004 (''Amendment No. 1''). Amendment No. 1 clarifies the access to the Exchange's automated execution system for stock exchange specialists' orders in options classes overlying stocks in which they are not specialists.

provisions of Regulation T of the Federal Reserve Board pursuant to section 7(c)(2) of the Securities Exchange Act of 1934 to be eligible for automatic execution. The appropriate FPC may establish the maximum order size eligibility for such *options* market maker [or specialist] orders at a level lower than the maximum order size eligibility available to non-broker-dealer public customers and non-market maker or non-specialist broker-dealers. Pronouncements pursuant to this provision regarding [BD] *options market maker* access shall be made by the appropriate FPC and announced via Regulatory Circular.

(B) Stock Exchange Specialists: The appropriate FPC may determine, on a class-by-class basis, to allow orders for the account of a stock exchange specialist, with respect to a security in which it acts as a specialist, to be eligible for automatic execution in the overlying option class. The appropriate FPC may establish the maximum order size eligibility for such specialist orders at a level lower than the maximum order size eligibility available to options exchange market makers. Stock exchange specialists, with respect to orders in securities in which they do not act as specialist, will be treated as broker-dealers that are not market makers or specialists on an options exchange and will be eligible to submit orders for automatic execution in accordance with subparagraph (i) above.

(ii)–(iv) No change.

(c)–(e) 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 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In May 2003, the Commission approved the CBOE's Hybrid System (''Hybrid'').[4] Hybrid merges the electronic and open outcry trading models, offering market participants the ability to stream electronically their own firm disseminated market quotes representing their trading interest. CBOE Rule 6.13 governs Hybrid's automatic execution (''auto-ex'') feature. Currently, CBOE Rule 6.13(b)(i)(C)(ii) allows the appropriate floor procedure committee (''FPC'') to determine whether to provide all market makers and specialists, whether on an options or stock exchange, with auto-ex access to CBOE's markets. The purpose of this filing is to amend this section to allow the FPC to provide different levels of auto-ex access to: (i) Options exchange market makers and specialists (collectively, ''options market makers''); and (ii) stock exchange specialists.

Under the proposal, the appropriate FPC will have the ability to allow options exchange market makers to have auto-ex access while stock exchange specialists do not have auto-ex access. Alternatively, the appropriate FPC may determine to set the auto-ex eligible order size level higher for options market makers than the corresponding order size level for stock exchange specialists. The proposal only applies to stock exchange specialists with respect to their options transactions in classes overlying stocks in which they are specialists. Further, the Exchange states that proposed CBOE Rule 6.13(b)(i)(C)(ii)(A) and (B) will enable the appropriate FPC to make the access determinations on a class-by-class basis. As such, proposed subparagraph (A) of CBOE Rule 6.13(b)(i)(C)(ii) clarifies that the appropriate FPC may determine, on a class-by-class basis, to allow options market makers to receive automatic execution. Further, proposed subparagraph (B) of CBOE Rule 6.13(b)(i)(C)(ii) allows the FPC to determine access treatment, on a class-by-class basis, with respect to stock exchange specialists' orders in their specialty stocks.[5]

With respect to the access treatment of specialists' orders in their non-specialty stocks, the Exchange clarifies, in proposed CBOE Rule 6.13 (b)(i)(C)(ii)(B), that these orders will be treated in the same manner as orders of broker-dealers that are not market makers or specialists on an options exchange and thus will be eligible for automatic execution in accordance with CBOE Rule 6.13(b)(i)(C)(i).[6]

The proposed amendment does not affect a responsible broker-dealer's firm quote obligations to broker-dealer orders (which includes options market makers and stock specialists), which will remain at one contract. Similarly, the proposal does not affect the auto-ex access currently available to public customer and non-market-maker/specialist broker-dealer orders, which is governed by CBOE Rule 6.13(b)(i)(C)(i).[7]

2. Statutory Basis

The Exchange believes it is reasonable and consistent with Section 6(b)(5) of the Act[8] to distinguish between options market makers and stock exchange specialists for several reasons. First, underlying stock specialists have a distinct timing advantage with respect to stock price movements. This advantage could allow them to submit large options orders to hedge their risk before the same information publicly is available to CBOE market makers. This does not create a level playing field. Second, options market makers often need to sell stock short to hedge their positions. The existence of the ''uptick rule'' on a stock exchange can make hedging by options market makers extremely difficult, thereby subjecting them to even greater risk. This is exacerbated when a stock market specialist has already hedged its position through options transactions on CBOE. Third, some stock exchanges limit access to their automatic execution systems. For example, NYSE Direct+ currently allows automatic executions for up to 1099 shares. Providing the stock market specialist with electronic access to our full disseminated size while our market makers may only be able to access 1099 shares electronically gives the stock specialist a distinct advantage in terms of hedging risk.

For these reasons, the Exchange believes the proposed rule change, as amended, is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the

[4] *See* Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) (''Hybrid Release''). In December 2003, CBOE submitted a rule filing for immediate effectiveness, which permits the trading of index options and options on ETFs on the Hybrid System. *See* Securities Exchange Act Release No. 48953 (December 18, 2003), 68 FR 75004 (December 29, 2003).

[5] *See* Amendment No. 1, *supra* note 3. The Commission notes that, pursuant to CBOE Rule 6.13(b)(i)(C)(i), stock exchange specialists' orders in their non-specialty stocks will be eligible for automatic execution to the same extent as orders from public customers and broker-dealers that are not market makers on an options exchange.

[6] *Id.*

[7] At the request of the Exchange staff, the citation of CBOE Rule 6.13(b)(i)(B)(i) was amended to refer to CBOE Rule 6.13(b)(i)(C)(i). Telephone conversation between Steve Youhn, Counsel, CBOE, and Hong-Anh Tran, Special Counsel, Division, Commission on April 28, 2004.

[8] 15 U.S.C. 78f(b)(5).

requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change, as amended, is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change, as amended, will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received written comments on 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, as amended, 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. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment for (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–15 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–15. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–15 and should be submitted on or before June 3, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–10846 Filed 5–12–04; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49658; File No. SR–CHX–2004–13]

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. To Set Fees for Member Firms' Use of Enhanced Electronic Communications Retention System

May 6, 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 April 1, 2004, the Chicago Stock Exchange, Inc. (''CHX'' 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. On April 29, 2004, the Exchange filed an amendment to the proposed rule change.[3] The CHX has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under section 19(b)(3)(A)(ii) of the Act,[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, 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'') to charge member firms the costs associated with each firm's use of the Exchange's enhanced e-mail and instant messaging retention system. The text of the proposed rule change is available at the Commission and the CHX.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Ellen Neely, Senior Vice President and General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 28, 2004 (''Amendment No. 1''). Amendment No. 1 replaces and supersedes the original proposed rule change in its entirety. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on April 29, 2004, the date the CHX filed Amendment No. 1. *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is implementing an enhanced e-mail and instant messaging retention system that will be used to retain messages of its on-floor members who use e-mail and instant messaging functionalities provided or supported by the Exchange. This retention system is designed to help the Exchange's members better meet their record retention obligations and can be used by the Exchange to conduct reviews of member e-mail and instant messaging correspondence.

The proposed rule change would charge member firms the costs associated with each firm's use of the retention system.[5] Specifically, the proposal would bill firms a monthly fee of $25 per mailbox and would impose additional charges if the members request off-line optical disks so that they can have a copy of the electronic correspondence captured by the Exchange.[6] These additional fees would be $200 for each 5.2GB optical disk and $300 for each 9.1GB optical disk.

These fee changes take effect immediately and will be billed to firms when the enhanced e-mail retention system is activated for their on-floor members.

2. Statutory Basis

The Exchange believes the proposal is consistent with Section 6(b) of the Act,[7] in general and Section 6(b)(4) of the Act,[8] 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 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.

[5] The Exchange currently does not charge its members for any e-mail or instant messaging services.

[6] The system is designed to give member firm compliance staff on-line access to retained messages; this optical disk fee will only apply if a firm requests an off-line copy of the messages.

[7] 15 U.S.C. 78f(b)

[8] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act,[9] and Rule 19b–4(f)(2) [10] 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 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 rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX–2004–13 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CHX–2004–13. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2004–13 and should be submitted on or before June 3, 2004.

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–10847 Filed 5–12–04; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR.200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4715]

Culturally Significant Objects Imported for Exhibition Determinations: ''Constantin Brancusi: The Essence of Things''

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 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], 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, ''Constantin Brancusi: The Essence of Things,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Guggenheim Museum, New York, New York, from on or about June 10, 2004, to on or about September 19, 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 or a list of exhibit objects, contact Paul W. Manning,

Attorney-Adviser, Office of the Legal Adviser, (202) 619-5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: May 5, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–10886 Filed 5–12–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4718]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Iraqi Administrator and Teacher Training Project

SUMMARY: The Teacher Exchange Branch in the Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs (ECA), announces an open competition for the development of a training program for Iraqi teachers and administrators. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to support the development of a two-part training project to enhance the skills of Iraqi secondary school teachers of English and of secondary school administrators. Bureau funding up to $400,000 is currently available to support one grant for this two-part training project.

The recipient organization will be responsible for planning, implementing, and evaluating programs for two different groups: (1) A three-week program for secondary school administrators from Iraq (such as, principals and/or vice principals) followed by (2) a six-week English language training program, for secondary school teachers of English from Iraq. Grantee should plan and allocate funding for follow-on activities, such as linkages between U.S. secondary schools and Iraqi schools, the provision of instructional materials, *etc.,* for the administrators and teachers. If funding should become available, the Bureau might later amend the grant to allow the grantee to facilitate an in-country follow-up ''train-the-trainers'' workshop at which program alumni would present what they have learned on the program to professional colleagues in Iraq.

Although the Bureau expects the secondary school teachers of English on this project to have sufficient English language skills to participate in the program without language interpretation, it is likely that the secondary school administrators will require it. Therefore, the grantee organization should plan and budget for Arabic language interpreters during the program for administrators.

The Public Affairs Section of the U.S. Embassy in Iraq will recruit and select teachers and administrators for the project. The recipient organization should expect to work closely with ECA and the Embassy as the programs are planned and implemented in order to adapt them to changing conditions as necessary.

Program Information

Overview

The proposal should include four emphases: first, to conduct a program focusing on secondary school administration; second, to produce a highly focused training program that introduces teachers to best practices in EFL at the secondary level; third, to provide both groups of participants with ''train-the-trainer'' skills that will enable them to conduct workshops on program topics in Iraq in the future; and fourth, to provide both groups of participants with opportunities to interact with Americans, thereby allowing them to gain an awareness and understanding of U.S. culture and society.

The Bureau seeks detailed proposals from U.S. colleges, universities and non-profit organizations that have expertise in the field of secondary school curriculum development and management, as well as teaching English as a Foreign Language (EFL). Proposals should demonstrate sensitivity to the local educational situation in Iraq as well as the issues confronting English language education there. The grantee will design and implement two U.S. based training programs. In the first program, secondary school administrators will discuss with U.S. counterparts and project administrators the training needs of Iraqi teachers for the development of the second program. The Iraqi administrators will observe and shadow administrators in U.S. secondary schools as well as observe EFL and other classrooms. The administrators will also consult with the U.S. project administrators responsible for planning and implementing the teacher-training program, to discuss how to design a program that will target the needs of Iraqi secondary school EFL teachers. The teachers program will follow the administrator program and will include specialized training in U.S. methodologies for teaching EFL. Applicants are strongly encouraged to include university-based training in the teacher program. Please read the Project Objectives, Goals, and Implementation (POGI) for additional details of both programs.

Proposals should demonstrate experience training teachers and administrators and conducting other programs in Iraq or the Middle East/North Africa region. Proposals should outline and budget for practical and feasible follow-on activities that build on the achievements of the training programs while promoting the continued exchange of ideas between the participants and counterparts at the U.S. grantee organization and in U.S. secondary schools.

Guidelines

Project Planning and Implementation

Grant Inception and Duration

The planning of the administrator program and the teacher program should begin as soon as the grant is awarded. The grantee should consult closely with ECA to assess local conditions in Iraq and to determine a feasible implementation strategy. Secondary school administrators and teachers will probably not be given leave during the academic school year. Since the administrator program is shorter in length, it might be scheduled for a school break for the 2004–05 academic year. The teacher program may be more feasible if it is scheduled during the summer of 2005 when school will not be in session.

Planning

In coordination with the Iraqi Ministry of Education, participants will be recruited and selected in Iraq by the Public Affairs Section (PAS) of the U.S. Embassy. Following the U.S. training activities, embassy officials will work with Iraqi educational officials as appropriate to facilitate follow-on training activities. Grantee should outline a plan for follow-on activities and a budget of at least $20,000 to cover these costs.

After the participants have been selected, they will travel from Iraq to Amman, Jordan for U.S. visa issuance and to receive a pre-departure orientation workshop by the PAS of the U.S. Embassy in Amman. Both orientations will be organized in Amman, Jordan, unless conditions allow for such activities to be organized in Iraq, in which case the pre-departure orientations will be held by the PAS of the U.S. Embassy in Iraq. The grantee will work closely with the PAS in

planning the orientations and should budget for one staff person to travel to the orientations in Amman, if requested.

At the orientations, the PAS will provide information about the respective programs and goals, as well as the expectations and responsibilities of participants. In addition, relevant issues regarding the U.S. education system, culture and society will be addressed. The grantee will develop orientation packets for each participant that cover these subjects. These packets will be sent to the PAS in advance of the scheduled pre-departure orientations.

Overland travel from Iraq to Amman, Jordan might be the only means of transportation available to the participants. At least 4–5 days should be allotted for participants to travel to Amman from Iraq and await U.S. visa issuance before flying from Amman to the U.S.

U.S. Based Training

Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further information.

Participants are unlikely to have visited the United States previously. Therefore, the programs should provide orientations for both administrators and teachers to the host institution and its community and an introduction to U.S. society and our system of education shortly after arrival to the U.S. campus. The orientations will also offer a framework for integrating the training and its objectives into participants' previous training, and to promote strategies for them to share their knowledge with professional counterparts. Both programs should also include cultural activities that facilitate interaction among the participants, American students, faculty, and administrators and the local community to promote mutual understanding between the people of the United States and the people of Iraq.

Administrators

Participants will spend approximately three weeks in the U.S. in the program organized by the U.S. grantee. The program should meet the needs of the Iraqi participants through activities designed by U.S. education specialists with relevant expertise in secondary school administration, curriculum development and training. The program should have two components: (1) An approximately two-and-a-half-week program focusing on secondary school administration and (2) an approximately three-day visit to Washington, DC. The first component should include an overview of U.S. education, shadowing administrators in U.S. schools, classroom observation, including innovative EFL instruction, introduction to information technology as used in classrooms and administrative offices, and home stays with American families. Administrators should receive a broad view of U.S. teaching methodologies, including student-centered learning, in a broad range of subjects. Topics addressed during the program should include, but not be limited to: school strategic planning, teacher performance evaluations, conflict resolution, EFL instruction and computer literacy skills.

In the second component, the grantee will organize and accompany participants on a three-day visit to Washington, DC. The Washington visit should complement and reinforce the two-and-a-half-week administrators' program, and include a meeting at the Bureau of Educational and Cultural Affairs and other meetings as recommended by the Teacher Exchange Branch.

Administration and management of the academic program and the visit to Washington, DC, will be the responsibility of the U.S. grantee organization. The U.S. grantee is responsible for arrangements for domestic and international travel, lodging, food, and allowances for participants throughout the training portion of the project and in Washington.

Teachers

Participants will spend six weeks in the U.S. at the EFL training program organized by the U.S. grantee. The project should meet the needs of the Iraqi participants through activities designed by U.S. education specialists with appropriate expertise in EFL instruction, curriculum development and management and ''train-the-trainer'' skills.

The program should have two components: (1) An approximately five-week intensive academic program and (2) an approximately three-to-five day cultural and educational program in Washington, DC. The first component should introduce innovative EFL teaching methodologies and approaches and encourage participants to consider their implementation in Iraq, as well as classroom observation of other instruction in other core subject areas. Significant time should also be allotted for the inclusion of related professional activities outside the classroom which will introduce participants to U.S. education, such as visits to schools, consultations with U.S. teachers, in-school mentoring, and attendance at professional meetings. At a minimum, a one-week experiential component should be included in the five-week academic program in which participants observe best practices in EFL instruction and training in a U.S. school. Among the topics to be addressed during the program are: computer literacy skills for EFL instruction, critical thinking, communication, conflict resolution, analytical and evaluation skills, and student development and motivation.

The final component of the project is the three-to-five day site visit to Washington, DC. The site visit should complement and reinforce the five-week academic program. Visits will include a meeting at the Bureau of Educational and Cultural Affairs and other meetings as advised by the Teacher Exchange Branch. Administration and management of the academic program and the week in Washington, DC, will be the responsibility of the U.S. grantee organization. The U.S. grantee is responsible for arrangements for domestic and international travel, lodging, food, and allowances for participants throughout the training portion of the project and in Washington.

Budget Guidelines

Applicants must submit a comprehensive budget for the entire project. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may submit separate sub-budgets for each program component, phase, location, or activity to provide clarification. The Bureau anticipates awarding one grant not to exceed $400,000 to support program and administrative costs required to implement all portions of both programs. Bureau guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost-sharing and funding in support of its programs.

Allowable costs for the program include the following:

(1) Instructional costs, including salaries and benefits of grantee organization, honoraria for outside speakers, educational materials;

(2) Travel, lodging, meals, and incidentals for participants;

(3) Expenses associated with cultural activities planned for the two groups of participants (for example, tickets, transportation);

(4) Administrative costs;

(5) Interpreter fees for administrator program;

(6) Follow-on activities to take place in Iraq.

Proposals should maximize cost sharing through private sector support as well as institutional direct funding contributions. Please refer to the POGI for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the Iraqi Administrator and Teacher Training Project ECA/A/S/X–04–05.

FOR FURTHER INFORMATION CONTACT: The Teacher Exchange Branch, Office of Global Educational Programs, ECA/A/S/X, Room 349, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 619–6589, fax: (202) 401–1433 or e-mail: *MorrisonTA@state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Tracy Morrison on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

New OMB Requirement

An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf.* Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

Shipment and Deadline for Proposals

Important Note: The deadline for this competition is June 24, 2004. In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Applicants must follow all instructions in the Solicitation Package. The original and (8) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/X–04–05, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. If feasible, the Bureau will provide these files electronically to the Public Affairs offices in the region for review.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The Grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be

reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including experience in training teachers and administrators and conducting programming in Iraq and/or the Middle East, and including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

6. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: May 6, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 04–10889 Filed 5–12–04; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4717]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: South Asian Teacher Training Project

SUMMARY: The Teacher Exchange Branch, Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for the South Asian Teacher Training Project. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to develop a two-phased training program to enhance the skills of Indian and Pakistani secondary school administrators and secondary school teachers of English as a Foreign Language (EFL). Bureau funding of $500,000 is currently available to support one grant.

Program Information

Overview: The Bureau seeks detailed proposals from U.S. institutions of higher education and/or non-profit organizations in cooperation with a U.S. institution of higher education, that have expertise in the field of teaching English as a Foreign Language (EFL). The organization should also show an ability to develop and organize training and materials, which address broad issues of tolerance and conflict resolution. Proposals should demonstrate an understanding of the issues confronting English language education in India and Pakistan and demonstrate experience in training teachers and administrators and conducting programming in these countries. They should also show a familiarity with the overarching geo-political situation in the region. Demonstrated familiarity with the challenges of educational cooperation and team building between citizens of these two countries is desired. The grantee will conduct the following two-phased project: (1) The design and implementation of a U.S. based EFL training program; and (2) teacher training workshops in both India and Pakistan conducted by the teachers who attended the U.S. training program.

Project Elements

The proposal should reflect four overall elements: First, to produce a highly focused training program of about six weeks in duration that updates teachers in best practices in EFL at the secondary level; second, to provide the participants with ''train-the-trainer'' skills that will enable them to conduct workshops on program topics in their home countries in the future; third, to develop team building skills, mutual understanding, tolerance and trust between the participants; and fourth, to provide participants with opportunities to interact with Americans, thereby allowing them to gain awareness and understanding of U.S. culture and society.

Guidelines—Project Planning and Implementation

Grant Inception and Duration

The teacher-training program should be planned for breaks in the South Asian school year. Most likely this will be in summer 2005. The grantee should work closely with the Bureau to assess local conditions and determine the most feasible timeline for the various phases of the program.

Planning

In coordination with the Public Affairs Sections (PAS) of the U.S. Embassies in Islamabad and New Delhi, participants will be recruited and selected by the United States Educational Foundations (USEFs) in each country. Special efforts will be made to recruit teacher or teacher-trainers working in non-elite institutions with students from priority communities identified by the Embassies. Following U.S. training activities, PAS and USEFs will work with the local educational officials as appropriate to facilitate follow-on training activities.

The grantee institution will be responsible for conducting an initial planning visit to Pakistan, if feasible, and to India, to consult with representatives from the USEFs, U.S. Embassies, Ministries of Education, and local educators. Based on this trip, the grantee will assess the educational and teacher training needs in both countries as a basis for project development.

After the participants have been selected, but prior to their departure to the U.S., the USEFs in India and Pakistan will conduct pre-departure orientations for their country participants.

The orientations will provide information about the respective program, goals, and expectations of participants, as well as address issues about participants' stay in the U.S. The grantee will work closely with both USEFs to organize the orientations and will develop orientation packets for each participant that cover the aforementioned material. These packets will be sent to the USEFs in advance of the scheduled pre-departure orientations.

U.S.-Based Training

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Participants will spend approximately six weeks in the U.S. in the EFL training program organized by the U.S. grantee. The training should meet the needs of the Indian and Pakistani participants through activities designed by U.S. education specialists with appropriate expertise in American EFL instruction, curriculum development, and training. During the project, training and materials should include, whenever possible, modeling of teaching tolerance, in which participants are trained in teaching tolerance, effective cross cultural communication, and mutual respect.

The program should have two components: a five-week intensive academic program and a one-week cultural and educational program in Washington, DC. The five-week academic program should address innovative EFL teaching methodologies and approaches and their implementation in their respective countries. Significant time should also be allotted for the inclusion of related professional activities outside the classroom which will introduce participants to U.S. education specialists, such as visits to schools, consultations with U.S. teachers, in-school mentoring, and attendance at professional meetings. Also, training should integrate experiences and materials that help participants to develop an understanding of the culture and political system of the United States as well as an appreciation of American diversity. At a minimum, a one-week experiential component should be included in the five-week academic program in which participants observe best practices in EFL instruction and training in a U.S. school. Among the topics to be addressed during the program are: computer literacy skills for EFL instruction, critical thinking, communication, conflict resolution, analytical and evaluation skills, and student development and motivation. In consultation with the Teacher Exchange Branch, the grantee should also plan and implement a three-to-five day site visit to Washington, DC. This visit will allow participants to meet representatives from the U.S. Department of State, as well as other government and private sector agencies, and visit other cultural and educational sites. This visit should be an integral part of the program, complementing and reinforcing the academic material of the training.

Follow-on Workshops

Proposals should outline practical and feasible in-country workshops, which build on the achievements of the U.S.-based training while promoting the continued exchanges of ideas among the participants and the U.S. grantee organization. The grantee will facilitate these in-country workshops at which participants will present what they have learned during the project to other professional colleagues. One workshop will take place in each country, each with a mixed group of teachers and administrators who attended the U.S. based-training, from both India and Pakistan.

Budget Guidelines

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may submit separate sub-budgets for each program component, phase, location, or activity to provide clarification. The Bureau anticipates awarding one grant, not to exceed $500,000, to support program and administrative costs required to implement the South Asian Teacher Training Project. Bureau guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding from private sources in support of its programs.

Allowable costs for the program include the following:

(1) Instructional costs, including salaries and benefits of grantee organization, honoraria for outside speakers, educational materials;

(2) Travel, lodging, meals, and incidentals for participants;

(3) Expenses associated with cultural activities planned for the participants (for example, tickets, transportation);

(4) Follow-on workshops in India and Pakistan; and

(5) Administrative costs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the South Asian Teacher Training Project ECA/A/S/X–04–06.

FOR FURTHER INFORMATION CONTACT: The Teacher Exchange Branch, Office of Global Educational Programs, ECA/A/S/X, Room 349, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547. Telephone: 202–619–6589, fax: 202–401–1433, or e-mail: *MorrisonTA@state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms,

specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Tracy Morrison on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

New OMB Requirement: AN OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf.* Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

Shipment and Deadline for Proposals: **Important Note:** The deadline for this competition is June 24, 2004. In light of heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Applicants must follow all instructions in the Solicitation Package. The original and 8 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/X/04–06, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the Public Affairs Sections at the U.S. embassies for its review.

Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence To All Regulations Governing the J Visa: The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The Grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process: The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the U.S. Educational Foundations and Public Diplomacy sections overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards resides with the Bureau's Grants Officer.

Review Criteria: Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should

be cited in both program administration (selection of participants, program venue, and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials, and follow-up activities).

4. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including experience in training teachers and administrators and conducting programming in Pakistan and India; programming experience in cross-cultural communication, mutual understanding, tolerance and conflict resolution; and including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus a description of a methodology linking outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

6. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: May 6, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 04–10888 Filed 5–12–04; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4716]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Turkish Student Teacher Internship Project

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the Turkish Student Teacher Internship Project. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to administer an eight-week teacher training program for graduate students of education from Turkey. The focus of the program is to familiarize participants with U.S. student-centered teaching methods and the use of technology in the classroom. The exchange experience should also give Turkish participants an in-depth experience in American life and culture and contribute to mutual understanding between Turkey and the United States. The program should include both a theoretical component, provided through professional development seminars in an academic setting, and a practical component, provided through practice teaching experience under the guidance of experienced mentor teachers. Interested organizations should indicate strong contacts with local school districts in order to provide the practical student-teaching component, as well as a demonstrated ability to conduct a substantive academic program. Host schools for teacher-training internships may be public, private, magnet or charter schools, and should exemplify best practices. The successful proposal will demonstrate the organization's experience in international educational exchange and internship programs, and an understanding of Turkish history, culture, religion and education.

Program Information: Overview: Participants will be twenty-six graduate students from Turkey enrolled in MA in Teacher Education or MA in Teaching English as a Foreign Language programs, innovative degree programs which train high school level teachers of all subjects in student-centered teaching methods. Participants will be drawn from Bilkent University or similar institutions in Turkey. Students will have completed one year of MA-level academic work before beginning the program in the U.S. The twenty-six English-speaking student teachers will be selected by the Commission for Educational Exchange between the U.S.A. and Turkey (Fulbright Commission) in coordination with the U.S. Embassy in Turkey. The group will demonstrate diversity in geography (drawn from various regions of Turkey), gender, and socio-economic level. Following their program, the students will return to their home institutions for approximately seven more months of academic study before starting careers as high school teachers in Turkey.

In the long-term, this program is expected to assist Turkish educators as they prepare students to live in an increasingly interdependent world, and to provide these teachers with an in-depth exchange experience in the United States. It is intended that this experience will provide also a basis for continuing contact with the U.S. with a view to promoting mutual understanding between our countries and cultures.

Guidelines: The eight-week program should provide participants with thorough exposure to student-centered teaching approaches and the use of technology in American schools and a substantive cultural/educational exchange experience in the United States. After the participants have been selected, but prior to their departure for the U.S., the grantee institution will conduct a planning visit to Turkey to consult with representatives from the Fulbright Commission, U.S. Embassy, local educators, and representatives of the sending institutions. During this visit and in coordination with the above representatives, the grantee institution will also conduct a three-day pre-departure orientation workshop for the participants.

The orientation should provide information about the program, the program's goals, and expectations of participants. It should also offer a

framework for integrating the training and its objectives into participants' previous training, and promote strategies for them to share their knowledge with professional counterparts and their own students. At the orientation, organizers should seek input from the participants about the needs of local teachers, review comparative teaching practices, and address issues about participants' stay in the U.S.

Upon their arrival in the United States, the participants should receive follow-up orientation that includes a basic introduction to American life and customs, and how these differ from practices in their home country. They should also receive academic training on teaching methodology and procedures. Teachers should then be placed in small groups at local schools, paired with experienced U.S. teachers whose academic specialization matches their own. Internship activities should include: observing a variety of teaching methods (inquiry, active classroom, group projects, etc.) as well as computer-based lessons; working individually with a mentor teacher on curriculum development; and team teaching. While the greatest emphasis is placed on immersing student teachers actively in the American classroom environment, the participants should also participate in development seminars on related topics in a university academic setting. The internship and seminars will also help participants to create a curriculum development project or portfolio to use upon their return to Turkey.

Components of U.S. program:

- Cross-cultural orientation (2–4 days): Introduction to U.S. government as it relates to education, U.S. education system, American culture through site visits and a cross-cultural adjustment seminar;
- Site visits in school districts (2–3 days): To all levels and types of schools, including economically and ethnically diverse schools;
- Internships in high schools (6 weeks): Each student teacher will work with a U.S. mentor teacher individually or with one other student teacher; activities include classroom observation, team teaching, and cultural presentations;
- Exposure to local school governance: through such activities as attendance at faculty, board of education, and PTA meetings;
- Professional development seminars planned and conducted in an academic setting to complement school-based training: topics may include classroom management, conflict resolution, diversity, and curriculum development. Seminars may be spread throughout the six weeks or take the form of a mid-program conference/debriefing;
- Final debriefing (1–2 days): Student teachers will share what they have observed and learned, perhaps through presentations they make to each other within the group;
- Curriculum development project: By the end of the eight-week program, the student teachers should complete a project incorporating a new teaching method or technology that they will put into practice when they begin teaching. Students should be able to use this project to brief fellow students at seminars held at their home universities, and so share the knowledge they have gained during their exchange experience with a wider group of MA candidates in Turkey.
- Cultural experiences: The project should provide opportunities for participants to interact with the local community through home stays and non-school-based groups, take part in activities reflecting the diversity of American society, to speak to Americans about Turkish history and culture.
- Final debriefing in Washington, DC: This portion of the program will allow Bureau staff to discuss the program in detail with the participants and get input on how to improve such programs in the future. A cultural program will also be part of the Washington visit.

Grantee's responsibilities:

- Plan and implement the exchange program in all aspects, including both the academic and practical component.
- Locate school districts to host groups for internships through informal competition (schools must submit a brief proposal outlining their interest, understanding of goals, examples of best practices, and commitment to mentoring). School districts should be within the driving distance from the administering organization, and should expose participants to more than one educational system or approach. Schools should designate an experienced mentor teacher to oversee the day-to-day activities of the participants;
- Conduct orientations in Turkey (pre-departure) and U.S., professional development seminars and debriefing;
- Monitor and evaluate the program;
- Administer all participant logistics: International transportation, ground transportation to local schools and training sites, participant per diem and housing, U.S. government forms—visas, tax, social security, etc.
- Arrange for home stays for at least some portion of the exchange visit, perhaps through local schools or other participating organizations; if home stays are not available for the entire period, arrange other cost-efficient housing; home stay hosts, as well as schools, should be sensitive to accommodating participants' religious observance;
- Administer all financial aspects of the program and comply with reporting requirements;
- Arrange a visit to Washington, DC, at the end of the group's U.S. program, to include meetings with Bureau representatives, a cultural program, and a school site visit if possible;
- Plan follow-on activities with host schools and participants in conjunction with participants' academic program.

The Commission for Educational Exchange between the U.S.A. and Turkey will assist in obtaining international airline tickets; the grantee will pay the airline office in Ankara for the air tickets, in coordination with the Fulbright Commission there. The purchase of tickets must be in compliance with the Fly America Act. The grantee will prepare visa documents and enroll the student teachers in a health insurance policy. The Fulbright Commission and the sending universities will assist in the pre-departure orientation and will conduct a post-program evaluation. The grantee will coordinate with the Fulbright Commission on all non-U.S. based aspects of program administration. The proposal should address mechanisms for communication and coordination.

The grantee will coordinate with the Teacher Exchange Branch in the Bureau of Educational and Cultural Affairs regarding all U.S.-based activities, reporting and evaluation. It will be important for the grantee to help create a network for participants to communicate and support each other in using the new methodologies after they have completed their academic program in Turkey and become teachers. A strong proposal will address follow-on activities in conjunction with the Fulbright Commission and the sending university or universities (without Bureau funding) to increase future impact and participant support.

The grant will begin on or about September 1, 2004, and the grantee should complete all exchange activities by December 2005. The internship program will take place in March-April 2005 or October-November 2005. Please refer to additional program specific guidelines in the Project Objectives, Goals, and Implementation (POGI) document.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines: The Bureau anticipates awarding one grant, in an amount up to $200,000 to support program and administrative costs. Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Cost-sharing is encouraged.

Allowable costs for the program include the following:

1. International Travel
2. U.S. Ground Transportation
3. Host Schools (administrative costs)
4. Professional Development Seminars/ Conference and Debriefing (instruction, materials, logistics)
5. Participant lodging and per diem
6. Cultural Activities
7. Book Allowance/Shipping
8. Grantee Administrative Costs

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/A/S/X–04–04.*

FOR FURTHER INFORMATION CONTACT: The Teacher Exchange Branch of the Office of Global Educational Programs, ECA/A/S/X, Room 349, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone: 202–619–4569, fax: 202–401–1433, e-mail: *kubanmm@state.gov,* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Michael Kuban on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

New OMB Requirement: An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf.* Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

Shipment and Deadline for Proposals: **Important Note:** The deadline for this competition is Friday, June 18, 2004. In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Applicants must follow all instructions in the Solicitation Package. The original and seven copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: *ECA/A/S/X–04–04,* Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the Public Affairs Section at the U.S. embassy for its review.

Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Pub. L. 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence To All Regulations Governing the J Visa: The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-

arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The Grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process: The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards resides with the Bureau's Grants Officer.

Review Criteria: Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning and ability to achieve program objectives:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Impact/Follow-on activities:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

5. *Institutional Record and Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

7. *Cost-effectiveness/cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: May 6, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 04–10887 Filed 5–12–04; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending April 30, 2004

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2004–17628.

Date Filed: April 26, 2004.

Parties: Members of the International Air Transport Association.

Subject: MV/PSC/007 dated 18 March, 2004, Mail Vote Number S 078, Necessary Amendments to PSC Standards to Reflect Changes to EC Antitrust Enforcement Procedures r1 to r30, Intended effective date: 1 May 2004.

Docket Number: OST–2004–17630.

Date Filed: April 26, 2004.

Parties: Members of the International Air Transport Association.

Subject: MV/PSC/008 dated 22 March 2004, Mail Vote Number S 079, Recommended Practice 1724—General Conditions of Carriage, Changes to Better Reflect the Montreal Convention 1999 (r1), Intended effective date: 1 June 2004.

Docket Number: OST–2004–17669.

Date Filed: April 29, 2004.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 369—Resolution 010p, TC31 North and Central Pacific, Special Passenger Amending Resolution from Korea (Rep. of) to USA r1, Intended effective date: 15 May 2004.

Docket Number: OST–2004–17670.

Date Filed: April 29, 2004.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 372 Resolution 010t, TC31 North and Central Pacific, Special Passenger Amending Resolution from Philippines to Canada, USA r-1, Intended effective date: 15 May 2004.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–10811 Filed 5–12–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Drug Testing Procedures

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Informational Notice: HHS Drug Testing Proposals.

SUMMARY: The Department of Transportation (DOT) is issuing this notice to call to the attention of employers, employees, testing service agents, and other interested persons in its transportation industry drug testing program a notice proposing important new Department of Health and Human Services (HHS) drug testing procedures. Because of the close relationship between HHS and DOT drug testing procedures, participants in the DOT transportation industry drug testing program should be aware of important issues that HHS is considering, which may later affect the DOT testing program.

Comment Closing Date: HHS is considering comments on its proposal through July 12, 2004.

ADDRESSES: Comments on the HHS proposal should be sent directly to HHS. The following are HHS'' instructions to commenters on how and where to submit comments:

You may submit comments, identified by Docket Number 04–7984, by any of the following methods:

- *E-mail: wvogl@samhsa.gov.* Include docket number and/or RIN number in the subject line of the message.
- *Fax:* (301) 443–3031.
- *Mail:* 5600 Fishers Lane, Rockwall II, Suite 815, Rockville, Maryland 20857.
- *Hand Delivery/Courier:* 5515 Security Lane, Suite 815, Rockville, Maryland 20852.
- *Information Collection Requirements:* Submit comments to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street, NW., Washington, DC 20502, Attn: Desk Officer for SAMHSA. Because of delays in receipt of mail, comments may also be sent to (202) 95–6974 (fax).
- *Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments will be available for public review at 5515 Security Lane, Suite 815, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: The HHS informational contact on this rulemaking is Walter F. Vogl, Ph.D., Drug Testing Section, Division of Workplace Programs, CSAP, 5600 Fishers Lane, Rockwall II, Suite 815, Rockville, Maryland 20857, (301) 443–6014 (voice), (301) 443–3031 (fax), *wvogl@samhsa.gov* (e-mail). The DOT contacts on drug testing procedure issues are Jim Swart, Acting Director, Office of Drug and Alcohol Policy Compliance, 400 7th Street, SW., Washington DC 20590, phone (202) 366–3784; e-mail *jim.swart@ost.dot.gov;* and Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, same address, phone (202) 366–9310; e-mail *bob.ashby@ost.dot.gov.*

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) has issued an important notice proposing to revise its Mandatory Guidelines for Federal Workplace Drug Testing programs [69 FR 19673; April 13, 2004]. Interested persons may access the HHS document on the Internet at the following URL: *http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2004/pdf/04–7984.pdf.* In their summary of the document HHS states, ''The Department of Health and Human Services is proposing to establish scientific and technical guidelines for the testing of hair, sweat, and oral fluid specimens in addition to urine specimens; scientific and technical guidelines for using on-site tests to test urine and oral fluid at the collection site; requirements for the certification of instrumented initial test facilities; and added standards for collectors, on-site testers, and medical review officers.''

This HHS proposal does not propose to amend the drug testing requirements and procedures that apply to the Department of Transportation drug testing program for DOT-regulated industries (49 CFR Part 40). Nevertheless, we believe that employers, employees, and testing service providers involved in the DOT testing program should be aware of the HHS notice. We recommend that DOT program participants review the HHS proposals and, if they have views or concerns to express, comment on the notice *to HHS.* The reason for this suggestion is that there is a close relationship between the HHS Mandatory Guidelines and the DOT testing procedures in 49 CFR Part 40.

Part 40, first issued in 1988, incorporated the substance of original HHS Guidelines, adapting the HHS provisions to the transportation workplace. In 1991, Congress enacted the Omnibus Transportation Employee Testing Act. This statute recognized the existing close relationship between the HHS guidelines and Part 40. The statute requires DOT to ''incorporate'' the HHS guidelines and amendments to them into DOT testing procedures, while leaving DOT sufficient authority to tailor its own program. Because of this statutorily recognized relationship between these guidelines and Part 40, any HHS final rule resulting from its current proposal, while not directly regulating transportation industry employers, will necessarily have to be considered by the Department of Transportation in the context of potential future revisions to Part 40.

We urge interested persons to read the HHS document carefully and to provide any comments directly to the HHS Docket.

Issued this 5th day of May, 2004, at Washington DC.

Jim L. Swart,

Acting Director, Office of Drug and Alcohol Policy and Compliance.

[FR Doc. 04–10810 Filed 5–12–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: The FAA assigned the Aviation Rulemaking Advisory Committee a new task to develop guidance that will support industry compliance with the Aging Airplane Safety Rule requirements that relate to supplemental structural inspections. This new tasking will also address certain aspects of recommendations made during a previous ARAC tasking related to widespread fatigue damage. This notice is to inform the public of this ARAC activity.

FOR FURTHER INFORMATION CONTACT: Mike Kaszycki, Federal Aviation Administration, Transport Standards Staff, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, *mike.kaszycki@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA established the Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator on the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitments to harmonize Title 14 of the Code of Federal Regulations (14 CFR) with its partners in Europe and Canada.

Airplane Applicability of Tasking

This new tasking shall apply to transport category airplanes with a type-certificated passenger seating capacity of 30 or greater, or a maximum payload capacity of 7,500 pounds or greater, operated under part 121 or under part 129 (U.S. registered airplanes).

Statement of Tasking

There are four major tasks to be completed under this tasking:

Task 1.—Repairs to Baseline Primary Structure and Repairs to Alterations and Modifications

Draft an Advisory Circular (AC) that contains guidance to support the following two paths of compliance with §§ 121.370a and 129.16 of the Aging Airplane Safety Interim Final Rule (AASIFR):

1. *Damage-tolerance-based inspection program developed by part 121 and 129 certificate holders:* Develop guidelines and procedures that will enable part 121 and 129 certificate holders to develop a damage-tolerance-based inspection program that addresses repairs made to aircraft structure that is susceptible to fatigue cracking that could contribute to a catastrophic failure.

2. *Model specific damage-tolerance-based inspection program:* Develop Guidance that can be used by Type Certificate (TC) holders, Supplemental Type Certificate (STC) holders, and Structural Task Groups to support the development of a model specific damage-tolerance-based inspection program. The model specific damage-tolerance-based inspection program will address repairs made to aircraft structure that is susceptible to fatigue cracking that could contribute to a catastrophic failure. The developed model specific inspection program will support part 121 and 129 certificate holders' compliance with the AASIFR.

A written report will also be submitted that includes an action plan for the implementation of the recommendations of task 1 that will be addressed in task 4 below. The report is to be submitted to the Aviation Rulemaking Advisory Committee (ARAC), Transport Airplane and Engine Issues Group, for approval. The ARAC, Transport Airplane and Engine Issues Group, will determine as appropriate the means by which the action plan will be implemented. The proposed actions and implementation process approved by the ARAC, Transport Airplane and Engine Issues Group, will be subject to FAA concurrence.

In the process of drafting the AC, the ARAC should assess the effectiveness of AC 91–56B to provide guidance to TC and STC holders for developing damage-tolerance-based inspections and procedures for repairs made to aircraft structure that is susceptible to fatigue cracking that could contribute to a catastrophic failure. The ARAC should do the following:

- Assess the effectiveness of AC 91–56B to support Industry compliance with the AASIFR with respect to repairs.
- Document any improvements to the AC that would provide better direction with respect to the guidance for TC and STC holders in their development of damage-tolerance-based inspections and procedures for repairs.

The ARAC is requested to validate that the guidance material in the new AC will result in programs that provide a high degree of autonomy for part 121 and 129 certificate holders while supporting compliance with the AASIFR. In order to determine a rational approach for addressing repairs to aircraft structure that is susceptible to fatigue cracking that could contribute to a catastrophic failure, and are not currently covered by a mandated program, the AC should provide guidance to the part 121 and 129 certificate holders and to the type certificate holder to address the seven issues listed below.

1. The significance of the airplane certification amendment level in providing direction for the development of damage tolerance inspections and methods for repairs.

2. The degree to which Supplemental Structural Inspection Documents/Programs (SSID/P) or equivalent documents/programs provide direction to repair the structure using damage-tolerance-rated repairs. The assessment should apply to SSID/Ps or equivalent documents/programs developed for 14 CFR part 25 pre-amendment 25–45 transport airplane models having a maximum gross takeoff weight of 75,000 lbs or greater. The following should be identified:

- Areas of aircraft structure that is susceptible to fatigue cracking that could contribute to a catastrophic failure, which are not covered by SSID/Ps or equivalent documents/programs
- Significant assumptions applied in developing SSID/Ps or equivalent documents/programs
- Any significant issues in the implementation of the requirements of SSID/Ps or equivalent documents/programs
- Data from SSID/Ps or equivalent documents/programs that would be useful in supporting this new tasking

3. The degree to which an applicable airplane model's Airworthiness Limitations Section (ALS) provides direction to repair the structure using damage-tolerance-rated repairs. This assessment should apply to damage-tolerance-based inspection programs/data developed for 14 CFR part 25 amendment 25–45 or later transport airplane models having a maximum gross takeoff weight of 75,000 lbs or greater. The following should be identified:

- Areas of aircraft structure that is susceptible to fatigue cracking that could contribute to a catastrophic failure, which are not covered by a damage-tolerance-based inspection program/data
- Any significant issues in the implementation of the requirements of the damage-tolerance-based inspection programs/data
- Data from the damage-tolerance-based inspection programs that would be useful in supporting this new tasking

4. The degree to which existing Repair Assessment Guideline documents developed for §§ 121.370 and 129.32 provide damage-tolerance-based inspections for repairs made to aircraft structure that is susceptible to fatigue

cracking that could contribute to a catastrophic failure. The assessment should identify the following:

• Areas of the aircraft structure that is susceptible to fatigue cracking that could contribute to a catastrophic failure, which are not covered by these documents

• Data from these documents that would be useful in supporting this new tasking

5. Identify the issues/difficulties industry has encountered with establishing damage-tolerance-based inspections and procedures for repairs as required by various FAA approaches in issuing SSIP airworthiness directives (*e.g.*, 727/737 AD 98–11–03 R1, AD 98–11–04 R1 verses other SSIP AD approaches like the 747). The assessment should identify the following:

• Comparison of approaches with pros and cons for each approach

• Data from these documents that would be useful in supporting this new tasking

6. Assess the extent to which Structural Repair Manuals (SRM) provide damage-tolerance-based inspections for repairs made to aircraft structure that is susceptible to fatigue cracking that could contribute to a catastrophic failure.

7. Assess the need to include damage-tolerance-based inspections and procedures in TC and STC Holder issued Service Bulletins (SB) that provide repair instructions for aircraft structure that is susceptible to fatigue cracking that could contribute to a catastrophic failure.

Task 2.—Alterations and Modifications to Baseline Primary Structure, Including STCs and Amended Type Certificates (ATCs)

Prepare a written report assessing how an operator would include damage-tolerance-based inspections and procedures for alterations and modifications made to aircraft structure that is susceptible to fatigue cracking that could contribute to a catastrophic failure. This assessment would include, but is not limited to, alterations and modifications performed under an STC, ATC, FAA field approval (*e.g.*, FAA form 337) and/or FAA approved TC holder design data. The report should include a recommendation on the best means to develop damage-tolerance-based inspections and procedures for these alterations and modifications and the applicability of AC 91–56B. The ARAC should assess the effectiveness of AC 91–56B to provide guidance to STC holders for developing damage-tolerance-based inspections and procedures for alterations and modifications. The ARAC should do the following:

• Assess the effectiveness of AC 91–56B to support Industry compliance with the AASIFR with respect to alterations and modifications.

• Document any improvements to the AC that would provide better direction with respect to the guidance for STC holders in their development of damage-tolerance-based inspections and procedures for alterations and modifications.

The written report will include a proposed action plan to address and/or accomplish these recommendations, including actions that should be addressed in task 4 below. The report should also provide a recommendation on the means of compliance provided by the AC developed in Task 1 in regards to repairs installed on STC or ATC approved alterations and modifications. The report is to be submitted to the ARAC, Transport Airplane and Engine Issues Group, for approval. The ARAC, Transport Airplane and Engine Issues group, will determine as appropriate the means by which the action plan will be implemented. The proposed actions and implementation process approved by the ARAC, Transport Airplane and Engine Issues Group, will be subject to FAA concurrence (FAA concurrence is necessary to ensure actions will support industry compliance with the AASIFR).

Task 3.—Widespread Fatigue Damage (WFD) of Repairs, Alterations, and Modifications

Provide a written report providing recommendations on how best to enable part 121 and 129 certificate holders of airplanes with a maximum gross take-off weight of greater than 75,000 pounds to assess the WFD characteristics of structural repairs, alterations, and modifications as recommended in a previous ARAC tasking. The written report will include a proposed action plan to address and/or accomplish these recommendations including actions that should be addressed in task 4 below. The report is to be submitted to the ARAC, Transport Airplane and Engine Issues Group, for approval. The ARAC, Transport Airplane and Engine Issues Group, will determine as appropriate the means by which the action plan will be implemented. The proposed actions and implementation process approved by the ARAC, Transport Airplane and Engine Issues Group, will be subject to FAA concurrence.

Task 4.—Model Specific Programs

Oversee the Structural Task Group (STG) activities that will be coordinated for each applicable airplane model by the respective type certificate holders' and part 121 and 129 certificate holders. These STG activities will involve the development of model specific approaches for compliance with §§ 121.370a and 129.16 under the guidance material supplied in Task 1.

As part of this tasking, the AAWG will identify those airplane models that do not have an STG, and will assess the need to form one (based on industry benefit). For those airplane models that will need to form an STG, the AAWG will initiate the coordination required to form the STG with the respective type certificate holder and/or part 121 and 129 certificate holders.

In addition, the AAWG will support the implementation of the action plan to address recommendations made in tasks 2 and 3 as determined necessary by the ARAC, Transport Airplane and Engine Issues Group, and concurred with by the FAA.

Schedule

The tasking will be performed in two phases. In Phase 1, the ARAC will provide to the FAA the results of Tasks 1 through 3. Phase 1 should be accomplished by December 16, 2005.

In Phase 2, the Structures Task Groups, under the direction of the ARAC, should produce the model specific guidance material, Task 4, using the guidelines and procedures of the AC produced in Phase 1. The ARAC will be responsible for coordinating and overseeing the STG's application of the AC. Phase 2 documents should be completed by December 18, 2009.

ARAC Acceptance of Task

ARAC accepted the task and assigned the task to the Airworthiness Assurance Working Group, Transport Airplane and Engine Issues. The Structural Task Groups (STG) composed of type certificate and part 121 and 129 certificate holders familiar with the specific model aircraft will support the working group. The working group will serve as staff to ARAC and assist in the analysis of the assigned task. ARAC must review and approve the working group's recommendations. If ARAC accepts the working group's recommendations, it will forward them to the FAA.

Working Group Activity

The Airworthiness Assurance Working Group must comply with the procedures adopted by ARAC. As part

of the procedures, the working group must:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan for consideration at the next meeting of the ARAC on transport airplane and engine issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations prior to proceeding with the work stated in item 3 below.

3. Draft the appropriate documents and required analyses and/or any other related materials or documents.

4. Provide a status report at each meeting of the ARAC held to consider transport airplane and engine issues.

Participation in the Working Group

The Airworthiness Assurance Working Group will be composed of technical experts having an interest in the assigned task. A working group member need not be a representative or a member of the full committee.

If you have expertise in the subject matter and wish to become a member of the working group you should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing your interest in the task, and stating the expertise you would bring to the working group. We must receive your request to participate no later than May 28, 2004. The assistant chair, the assistant executive director, and the working group chair will review your request and will advise you whether your request is approved.

If you are chosen for membership on the working group, you must represent your aviation community segment and actively participate in the working group (*e.g.*, attend all meetings, provide written comments when requested to do so, *etc.*). You must also devote the resources necessary to support the working group in meeting any assigned deadlines. You must keep your management chain and those you may represent advised of working group activities and decisions to ensure that the proposed technical solutions don't conflict with your sponsoring organization's position when the subject being negotiated is presented to ARAC for approval.

Once the working group has begun deliberations, members will be added or substituted only with the approval of the assistant chair, the assistant executive director, and the working group chair.

The Secretary of Transportation determined that the formation and use of the ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of the ARAC will be open to the public. Meetings of the Airworthiness Assurance Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. The FAA will make no public announcement of working group meetings.

Issued in Washington, DC, on May 4, 2004.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 04–10816 Filed 5–12–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Transition to Docket Management System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of policy change.

SUMMARY: This notice announces a transition that will make docket files for future airworthiness directives (AD) available on the Internet. The docket files will be available in the DOT's Docket Management System (DMS).

FOR FURTHER INFORMATION CONTACT: Linda S. Walker, Program Manager, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Delegations and Airworthiness Programs Branch, AIR–140, Room, 813, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9592; fax (202) 267–5340; e-mail: *linda.s.walker@faa.gov.*

Background

In mid-May, the FAA will make change that will make docket files for future AD actions easier for you to access. With the exception of some AD actions already in process, we will be placing the docket files for many of our AD actions into the DMS on the Internet at *http://dms.dot.gov/.* You can continue to view AD docket files for previously issued ADs in the office of the issuing Directorate or in the Office of the Assistant Chief Counsel for the issuing Directorate.

The DMS is an electronic, image-based database in which DOT stores the docketed material for DOT rulemaking activities for you to view. This online database contains more than 1.2 million pages of regulatory and adjudicatory information for easy research and retrieval. Anyone with Internet access can submit comments on rulemaking activities electronically to the DMS and view comments already submitted.

The AD docket files contain justification documents that support an AD action. Once we begin placing AD dockets on the DMS, all material routinely part of the AD docket file will be available electronically with the exception of any materials that for any reason cannot be scanned. Materials that cannot be scanned will be maintained in the office of the issuing Directorate or in the Office of the Assistant Chief Counsel for the issuing Directorate.

This policy will apply to future docket files. You can continue to view the docket files of, and submit comments on, previous AD actions that are not maintained in the DMS, at the addresses indicated in the AD actions. We will not transfer existing paper dockets to the DMS. If you do not have Internet access, each AD action published in the **Federal Register** will contain the physical address of the DMS for viewing any AD docket information, and for submitting any comments on that action.

We will continue to publish AD actions in the **Federal Register**.

Issued in Washington, DC, on May 5, 2004.

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 04–10817 Filed 5–12–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Providence, RI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project in the city of Providence, Rhode Island.

FOR FURTHER INFORMATION CONTACT: Lucy Garliauskas, Division Administrator, Federal Highway Administration, 380 Westminster Mall, Room 547, Providence, Rhode Island 02903, Telephone: (401) 528–4541, OR Kazem Farhoumand, P.E., Deputy Chief Engineer, Rhode Island Department of Transportation, 2 Capitol Hill, Room 236, Providence, Rhode Island 02903,

Telephone: (401) 222–2023, Extension 4020.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Rhode Island Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to improve the US Route 6 / State Route 10 interchange in Providence, Rhode Island. The proposed project would involve the rehabilitation, reconstruction or replacement of U.S. Route 6 and State Route 10 for a distance of approximately one mile each.

The EIS will investigate the environmental and socioeconomic impacts of various routing options to improve the interchange considered necessary to address the deterioration of the existing structures and substandard geometry. Preliminary studies undertaken to date have identified the following options to be considered for further evaluations. The options under review include (1) taking no action; (2) rehabilitating the existing bridges; (3) replacing all components of the existing bridges on current location; (4) reconstructing the interchange on new location, construction of new bridges, and completing all movements of the interchange.

A scoping meeting to discuss the potential environmental impacts will be held at 10 a.m. on Wednesday, June 16, 2004, at Rhode Island Department of Administration, One Capitol Hill, Providence, Rhode Island 02903 in Conference Room A on the second floor. Written comments received within 30 days of the scoping meeting will be incorporated into the record.

In addition to the scoping meeting, public participation will continue throughout the EIS process. Public workshops will be held in Providence, and potentially in other affected communities, to discuss the proposed Environmental Impact Statement including all project options and issues. Written Comments will be incorporated into this NEPA scoping process.

In addition, a formal public hearing will be held to receive comments regarding the proposed Environmental Impact Statement. Public notice will be given of the time and place of the public hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

Comments and suggestions regarding this proposed action and the EIS are requested from all interested parties and should be directed to the Rhode Island Department of Transportation, 2 Capitol Hill, Room 231–D, Providence, Rhode Island 02903.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 7, 2004.

Lucy Garliauskas,

Division Administrator, Federal Highway Administration, Providence, Rhode Island.

[FR Doc. 04–10879 Filed 5–12–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Request for Grant Proposals for Prototype Development and Testing of Transit Operations Decision Support Systems (TODSS) Core Functional Requirements

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: FTA is issuing a request for grant proposals (RFP) for Prototype Development and Testing of Transit Operations Decision Support Systems (TODSS) Core Functional Requirements.

DATES: Request for grant proposals may be viewed at the Intelligent Transportation Systems (ITS) Transit Forums collaboration Web site (*http://www.mitretek.org/ITSTransitforums*) in the ''Transit Operations Decision Support Systems (TODSS): Prototype Development and Testing Forum.'' Proposals will be accepted immediately, as of the date of this notice. Proposals are due by 4 p.m., e.s.t. on Friday, July 31, 2004.

ADDRESSES: Proposals shall be addressed to Mr. Brian Cronin, Advanced Public Transportation Systems (APTS) Division, Room 9402, TRI–11, Federal Transit Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and shall reference ''TODSS Core Functional Requirement Prototype Development and Testing.''

FOR FURTHER INFORMATION CONTACT: Technical questions or concerns may be directed to Mr. Brian Cronin or Mr. Venkat Pindiprolu via phone at 202–366–4955 or via e-mail at *todss@fta.dot.gov*. Legal questions or concerns may be directed to Mr. James LaRusch via phone at 202–366–1936 or via e-mail at *James.LaRusch@fta.dot.gov*. Office hours are 8:30 a.m. to 5 p.m. e.s.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Transit Operations Decision Support Systems (TODSS) are systems designed to support dispatchers and others in real-time operations management in response to incidents, special events, and other changing conditions in order to improve operating speeds, reduce passenger wait times, and restore service when disruptions occur. In May 2003, FTA and ITS Joint Program Office (JPO) completed the ''Transit Operations Decision Support Systems (TODSS): Core Functional Requirements for Identification of Service Disruptions and Provision of Service Restoration Options 1.0''. Please visit the FTA ITS Transit TODSS collaboration website to view this document (*http://www.mitretek.org/ITSTransitforums*). However, no installed system in the country now incorporates all of the TODSS core functional requirements for either service disruption identification or provisions of service restoration options. It was pointed out during the core requirements development that, without further proof-of-concept and prototype development and testing, it is unlikely that vendors will develop systems around them or a transit agency will incorporate the ''core'' functional requirements into a new system procurement. Consequently, this project provides support for implementing and testing the viability of the core requirements. The grantee is required to provide a 20-percent match. This grant solicitation is for joint participation (transit operating agency/vendor/others) proposals from transit operating agencies to implement and test the TODSS Core Functional Requirements.

The project provides support for development of the detailed functional requirements and system specific architecture and validity and verification testing of the core requirements. It is expected that the process will also be documented, and an evaluation of the core requirements with recommended changes and lessons learned be developed as a deliverable. The effort also includes presentations to, and feedback from, the TODSS working group and U.S. DOT staff (FTA and ITS JPO) at key milestones during the life of the project. FTA may select up to two prototype development sites for this effort.

Issued: May 7, 2004.

Jennifer L. Dorn,

Administrator.

[FR Doc. 04–10818 Filed 5–12–04; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34500]

Motive Rail, Inc. d/b/a Missouri North Central Railroad—Lease Exemption—the City of Chillicothe, MO

Motive Rail, Inc. d/b/a Missouri North Central Railroad (MNCR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from the City of Chillicothe, MO, and operate 37.3 miles of rail line located between milepost 188.7 at Brunswick, MO, and milepost 226.0 at Chillicothe. MNCR certifies that its projected revenues as a result of this transaction will not result in MNCR becoming a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

MNCR indicates that it expected to consummate the transaction on or shortly after April 30, 2004.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34500, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Suite 225, 1455 F St., NW., Washington, DC 20005.

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: May 6, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–10774 Filed 5–12–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Liquidation—Statewide Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: Liquidation of an insurance company formerly certified by this Department as an acceptable surety/reinsurer on Federal bonds.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Statewide Insurance Company, an Illinois company, formerly held a Certificate of Authority as an acceptable surety on Federal bonds and was last listed as such at 66 FR 35056, July 2, 2001. The Company's authority was terminated by the Department of the Treasury effective April 11, 2002. Notice of the termination was published in the **Federal Register** of April 23, 2002, on page 19806.

On January 6, 2004, upon a petition by the Director of Insurance of the State of Illinois, the Circuit Court of Illinois issued an Order of Liquidation with respect to Statewide Insurance Company. J. Anthony Clark, Director of Insurance of the State of Illinois, and his successors in office, were appointed as the Liquidator. All persons having claims against Statewide Insurance Company must file their claims by January 6, 2005, or be barred from sharing in the distribution of assets.

All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. Federal Agencies should assert claim priority status under 31 U.S.C. 3713, and send a copy of their claim, in writing, to: Department of Justice, Civil Division, Commercial Litigation Branch, P.O. Box 875, Ben Franklin Station, Washington, DC 20044–0875, Attn: Ms. Jennifer Blackwell, Legal Assistant.

The above office will consolidate and file any and all claims against Statewide Insurance Company, on behalf of the United States Government. Any questions concerning filing of claims may be directed to Ms. Blackwell at (202) 307–1114.

The Circular may be viewed and downloaded through the Internet (*http://www.fms.treas.gov/c570*). A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, (202) 512–1800. When ordering the Circular from GPO, use the following stock number 769–004–04643–2.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville MD 20782.

Dated: May 3, 2004.

Vivian Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 04–10835 Filed 5–12–04; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW (Focus Groups of Department of Veterans Beneficiaries)]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Planning and Evaluation, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Policy, Planning and Preparedness, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection of information, and allow 60 days for public comment in response to the notice. This notice solicits comments on information that will be collected by focus groups conducted nationwide concerning the usage of VA benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 12, 2004.

ADDRESSES: Submit written comments on the collection of information to David Walton, Project Manager, Office of Assistant Secretary for Planning, Policy and Preparedness (008B1), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420 or e-mail *david.walton@mail.va.gov.* Please refer to ''OMB Control No. 2900–NEW (Focus Groups of Department of Veterans Beneficiaries)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: David Walton at (202) 273–5061 or FAX (202) 273–5991.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is

being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, the Office of Planning Policy, and Preparedness invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of VA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Focus Groups of Department of Veterans Beneficiaries.

OMB Control Number: None assigned.

Type of Review: New collection.

Abstract: The proposed focus groups are intended to collect data as part of the Department's Environmental Scan to assess the effectiveness and efficiency of VA programs that assist veterans and their families. The Environmental Scan is used to support the Department's overall strategic planning process.

Affected Public: Individuals or households.

Estimated Average Burden Per Respondent: 60 minutes.

Estimated Time Per Respondent and Annual Burden: 560 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 280.

Dated: May 6, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–10809 Filed 5–12–04; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
May 13, 2004

Part II

Securities and Exchange Commission

17 CFR Part 210, et al.
Asset-Backed Securities; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 229, 230, 232, 239, 240, 242, 245 and 249

[Release Nos. 33–8419; 34–49644; File No. S7–21–04]

RIN 3235–AF74

Asset-Backed Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing new and amended rules and forms to address comprehensively the registration, disclosure and reporting requirements for asset-backed securities under the Securities Act of 1933 and the Securities Exchange Act of 1934. Principally, we are proposing to: Update and clarify the Securities Act registration requirements for asset-backed securities offerings, including expanding the types of asset-backed securities that may conduct delayed primary offerings on Form S–3; consolidate and codify existing interpretive positions that allow modified Exchange Act reporting that is more tailored and relevant to asset-backed securities; provide tailored disclosure guidance and requirements for Securities Act and Exchange Act filings involving asset-backed securities; and streamline and codify existing interpretive positions that permit the use of written communications in a registered offering of asset-backed securities in addition to the statutory registration statement prospectus.

DATES: Comments should be received on or before July 12, 2004.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–21–04 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number S7–21–04. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Minton, Special Counsel, or Jennifer G. Williams, Attorney-Advisor, Office of Rulemaking, Division of Corporation Finance, at (202) 942–2910, or Eric J. Schuppenhauer, Professional Accounting Fellow, Office of Chief Accountant, at (202) 942–4400, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing to amend Rules 1–02, 2–01, 2–02 and 2–07 [1] of Regulation S–X [2] under the Securities Act of 1933 (the ''Securities Act'') [3]; to amend Items 10, 308, 401 and 406 [4] of Regulation S–B [5] under the Securities Act; to amend Items 10, 202, 308, 401, 406, 501, 503, 512 and 601 [6] of Regulation S–K [7] under the Securities Act, to add a new subpart of Regulation S–K, the 1100 series (''Regulation AB''); [8] to amend Rules 411, 424 and 434 [9] under the Securities Act; to add Rules 139a, 167, 190, 191 and 426 [10] under the Securities Act; to amend Rule 311 [11] of Regulation S–T; [12] to amend Forms S–1, S–2, S–3, S–11, F–1, F–2 and F–3 [13] under the Securities Act; to amend Rules 10A–3, 12b–2, 12b–15, 13a–10, 13a–11, 13a–13, 13a–14, 13a–15, 13a–16, 15c2–8, 15d–10, 15d–11, 15d–13, 15d–14, 15d–15 and 15d–16 [14] under the Securities Exchange Act of 1934 (the ''Exchange Act''); [15] to add Rules 3a12–12, 3b–19, 13a–17, 13a–18, 15d–17, 15d–18, 15d–22 and 15d–23 [16] under the Exchange Act; to amend Rule 100 [17] of Regulation M [18] under the Exchange Act; to amend Rule 101 [19] of Regulation BTR [20] under the Sarbanes-Oxley Act of 2002 (the ''Sarbanes-Oxley Act''); [21] to amend Forms 20–F, 40–F, 8–K and 10–K [22] under the Exchange Act; and to add Form 10–D [23] under the Exchange Act.

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[1] 17 CFR 210.1–02; 17 CFR 210.2–01; 17 CFR 210.2–02; and 17 CFR 210.2–07.

[2] 17 CFR 210.1–01 *et seq.*

[3] 15 U.S.C. 77a *et seq.*

[4] 17 CFR 228.10; 17 CFR 228.308; 17 CFR 228.401; and 17 CFR 228.406.

[5] 17 CFR 228.10 *et seq.*

[6] 17 CFR 229.10; 17 CFR 229.202; 17 CFR 229.308; 17 CFR 229.401; 17 CFR 229.406; 17 CFR 229.501; 17 CFR 229.503; 17 CFR 229.512; and 17 CFR 229.601.

[7] 17 CFR 229.10 *et seq.*

[8] 17 CFR 229.1100 through 1121.

[9] 17 CFR 230.411; 17 CFR 230.424; and 17 CFR 230.434.

[10] 17 CFR 230.139a; 17 CFR 230.167; 17 CFR 230.190; 17 CFR 230.191; and 17 CFR 230.426.

[11] 17 CFR 232.311.

[12] 17 CFR 232.10 *et seq.*

[13] 17 CFR 239.11; 17 CFR 239.12; 17 CFR 239.13; 17 CFR 239.18; 17 CFR 239.31; 17 CFR 239.32; and 17 CFR 239.33.

[14] 17 CFR 240.10A–3; 17 CFR 240.12b–2; 17 CFR 240.12b–15; 17 CFR 240.13a–10; 17 CFR 240.13a–11; 17 CFR 240.13a–13; 17 CFR 240.13a–14; 17 CFR 240.13a–15; 17 CFR 240.13a–16; 17 CFR 240.15c2–8; 17 CFR 240.15d–10; 17 CFR 240.15d–11; 17 CFR 240.15d–13; 17 CFR 240.15d–14; 17 CFR 240.15d–15; and 17 CFR 240.15d–16.

[15] 15 U.S.C. 78a *et seq.*

[16] 17 CFR 240.3a12–12; 17 CFR 240.3b–19; 17 CFR 240.13a–17; 17 CFR 240.13a–18; 17 CFR 240.15d–17; 17 CFR 240.15d–18; 17 CFR 240.15d–22; and 17 CFR 240.15d–23.

[17] 17 CFR 242.100.

[18] 17 CFR 242.100 through 105.

[19] 17 CFR 245.101.

[20] 17 CFR 245.101 through 104.

[21] 15 U.S.C. 7201 *et seq.*

[22] 17 CFR 249.220f; 17 CFR 249.240f; 17 CFR 249.308; and 17 CFR 249.310.

[23] 17 CFR 249.312.

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I. Overview

A. What Are Asset-Backed Securities?

Asset-backed securities, or ABS, are securities that are backed by a discrete pool of self-liquidating financial assets. Asset-backed securitization is a financing technique in which financial assets, in many cases themselves less liquid, are pooled and converted into instruments that may be offered and sold more freely in the capital markets.[24] In a basic securitization structure, an entity, often a financial institution and commonly known as a ''sponsor,'' originates or otherwise acquires a pool of financial assets, such as mortgage loans, directly or through an affiliate. It then sells the financial assets to a specially created investment vehicle that issues securities backed by those financial assets, which are ''asset-backed securities.'' Payment on the asset-backed securities depends primarily on the cash flows generated by the assets in the underlying pool and other rights designed to assure timely payment, such as guarantees or other features generally known as credit enhancements. The structure of asset-backed securities is intended, among other things, to insulate ABS investors from the corporate credit risk of the sponsor that originated or acquired the financial assets.

The ABS market is fairly young and has rapidly become an important part of the U.S. capital markets. One source estimates that U.S. public ABS issuance grew from $46.8 billion in 1990 to $416 billion in 2003.[25] Another source estimates 2003 new issuance closer to $800 billion.[26] While residential mortgages were the first financial assets to be securitized, non-mortgage related securitizations have grown to include many other types of financial assets, such as credit card receivables, auto loans and student loans. The Commission has not previously addressed on a comprehensive basis the regulatory treatment of asset-backed securities under the Securities Act or the Exchange Act.

Asset-backed securities and ABS issuers differ from corporate securities and operating companies. In offering these securities, there is generally no business or management to describe. Instead, information about the transaction structure and the quality of the asset pool and servicing is often what is most important to investors. Many of the Commission's existing disclosure and reporting requirements, which are designed primarily for corporate issuers, do not elicit the information that is relevant for most asset-backed securities transactions. Over time, Commission staff, through no-action letters and the filing review process, has developed a framework to address the different nature of asset-backed securities while being cognizant of developments in market practice.

We now propose to address comprehensively the treatment of asset-backed securities under the Securities Act and the Exchange Act. With a few exceptions, our proposals consolidate and codify current staff positions and industry practice. Our proposals relate to four primary regulatory areas: Securities Act registration; disclosure; communications during the offering process; and ongoing reporting under the Exchange Act.

B. Securities Act Registration

We propose a definition of asset-backed security that would demarcate the securities and offerings to which the new proposed rules would apply. The proposed definition would consolidate several staff positions regarding the definition of asset-backed security, including those regarding delinquent and non-performing pool assets. The proposed definition also would allow more lease-backed transactions to be included in the definition of asset-backed security and permit the use of master trusts and revolving periods by more asset classes. These changes are designed to remove regulatory uncertainty and reduce regulatory obstacles and costs of securitization.

In 1992, the Commission amended Form S–3 to allow registration of offerings of investment grade asset-backed securities on a delayed, or

[24] ''Securitization'' is a commonly used term to describe this financing technique, although other terms, such as ''asset-backed financing,'' also are used.

[25] *See* Bank One Capital Markets, Inc., 2004 Structured Debt Yearbook.

[26] *See* Asset Securitization Report (pub. by Thomson Media Inc). See also Asset-Backed Alert (pub. by Harrison Scott Publications).

''shelf,'' basis.[27] We propose that all registered offerings of asset-backed securities be registered either on Form S–1 or Form S–3, and we propose to specify in those forms which disclosure items would be required. We propose to expand the types of investment grade asset-backed securities that qualify for shelf registration. Consistent with existing staff positions, we do not propose to add a reporting history requirement for Form S–3 eligibility. However, we do propose to codify that previously established reporting obligations regarding other asset-backed securities transactions by the sponsor or the depositor must have been satisfied to maintain Form S–3 eligibility for new transactions. Consistent with a staff no-action letter, we also propose to exclude offerings of asset-backed securities eligible for Form S–3 registration from the requirements of Exchange Act Rule 15c2–8(b) to deliver a preliminary prospectus prior to delivery of a confirmation of sale.

We propose to clarify that the depositor—often the sponsor or an affiliated intermediary that receives the pool assets and transfers them to the issuing entity—would be the statutory ''issuer'' for purposes of signing the registration statement for the asset-backed securities transaction. We also propose to alleviate impediments to the shelf registration of offerings of asset-backed securities by foreign issuers or backed by foreign financial assets. Finally, we propose to codify, consolidate and streamline staff positions regarding when and how the offering of underlying debt securities must be concurrently registered with an offering of the asset-backed securities backed by those underlying securities.

C. Disclosure

Currently, there are no disclosure items specifically tailored to asset-backed securities. We propose a new principles-based set of disclosure items, ''Regulation AB,'' that would form the basis for disclosure in both Securities Act registration statements and Exchange Act reports. While we request comment on this point, we do not believe it would be practical or effective to draft detailed disclosure guides for each asset type that may be securitized. Instead, we have attempted to identify the disclosure concept required and provide several illustrative examples, while understanding that the application of the particular concept must be tailored to the information material to the particular transaction and asset type involved.

For the most part, our proposed disclosure items are based on the market-driven disclosures that appear today. With a proposed codification of a universal set of disclosure items, however, we do seek a reevaluation by transaction participants of the manner and content of presented disclosure, including the elimination of unnecessary boilerplate and a de-emphasis on unnecessary legal recitations of terms. We also understand that existing disclosure standards may not adequately capture certain categories of information that may be material to an asset-backed securities transaction, such as the background, experience, performance and roles of various transaction parties, including the sponsor, the servicing entity that administers or services the financial assets and the trustee. Our proposed disclosure items relating to these entities are designed to elicit more useful information in these areas. We also propose to require, for the first time, that certain statistical information on a ''static pool'' basis be provided if material to the transaction to aid in an investor's analysis of current and prior pool performance. Consistent with current practice, we do not propose to require audited financial statements regarding the issuing entity for the asset-backed securities in Securities Act or Exchange Act filings, although we do request comment on this point.

Finally, we propose to consolidate and codify current staff positions on when financial or other descriptive information would be required regarding certain third parties, such as obligors of financial assets that reach pool concentration levels or significant providers of credit enhancement or other support for the asset-backed securities. We also propose to streamline and codify current staff positions on when financial information regarding such third parties may be incorporated by reference or referred to in an asset-backed securities filing in lieu of actually including the information in the filing.

D. Communications During the Offering Process

In the mid 1990s, Commission staff issued a series of no-action letters permitting the use of various written materials in addition to the statutory registration statement prospectus in an offering of asset-backed securities.[28] These materials provide data about the potential payouts of the financial assets and the asset-backed securities using various prepayment and other assumptions as well as disclose information about the structure of the offering or about the underlying asset pool. We propose to codify and simplify current staff positions on when these materials can be used and when they must be publicly filed with the Commission. We also propose to clarify several interpretive issues regarding the use of these materials given market developments over the decade since the letters were issued. In this regard and given advances made to EDGAR (our electronic data gathering, analysis and retrieval system), we also propose to eliminate the current exemption from electronic filing for these materials.

Shortly after the no-action letters referred to above were issued, Commission staff also issued a no-action letter regarding the publication of research reports by brokers or dealers proximate to an offering of asset-backed securities registered or to be registered on Form S–3.[29] The Commission had previously adopted several rules that provided safe harbors under which the publication of research reports would not be deemed a violation of the communications restrictions of Section 5 of the Securities Act.[30] However, several of the conditions in those rules were not relevant or practical for asset-backed securities. We propose to codify the modified conditions in the staff no-action letter to provide a similar safe harbor for research reports as they relate to registered offerings of asset-backed securities on Form S–3.

E. Ongoing Reporting Under the Exchange Act

As with registration, the ongoing periodic and current reporting requirements applicable to operating companies do not elicit information that would be the most relevant for asset-backed securities. First through a series of exemptive orders, and then primarily through the issuance of no-action letters and other interpretations, Commission staff has allowed modified Exchange Act reporting by ABS issuers. In lieu of quarterly reports on Form 10–Q,[31] ABS issuers generally file under cover of

[27] See Release No. 33–6964 (Oct. 22, 1992) [57 FR 48970] (the ''1992 Release'').

[28] See *Greenwood Trust Co., Discover Master Card Trust I* (Apr. 5, 1996); *Public Securities Ass'n* (Mar. 9, 1995); *Public Securities Ass'n* (Feb. 17, 1995); *Public Securities Ass'n* (May 27, 1994); and *Kidder Peabody Acceptance Corporation I* (May 20, 1994). The ''statutory registration statement prospectus'' refers to the full prospectus required by Section 10(a) of the Securities Act (15 U.S.C. 77j(a)).

[29] See *Public Securities Ass'n* (Feb. 7, 1997).

[30] 15 U.S.C. 77e. See Securities Act Rules 137, 138 and 139 (17 CFR 230.137; 17 CFR 230.138; and 17 CFR 230.139).

[31] 17 CFR 249.308a.

Form 8–K the distribution reports required to be prepared under the transaction agreements that detail the payments and performance of the financial assets in the asset pool and payments on the securities backed by that pool. Current reporting on Form 8–K for certain extraordinary events also is required regarding asset-backed securities, but historically only for a narrow subset of events. A modified annual report on Form 10–K is required with two items being most important: A servicer's statement of compliance with its servicing obligations; and a report by an independent public accountant regarding compliance with particular servicing criteria. Financial statements of the issuing entity are not required. An asset-backed issuer is required to include a certification under Section 302 of the Sarbanes-Oxley Act [32] with its Form 10–K, and, as provided by the Commission's rules governing certification, the staff has previously provided a special form of certification for ABS issuers to use.[33] ABS issuers are exempt from the rules implementing Section 404 of the Sarbanes-Oxley Act [34] regarding reporting on internal control over financial reporting.[35]

We propose to codify the basic modified reporting system for asset-backed securities. To distinguish periodic reporting regarding distributions from disclosure of important events that appropriately call for current reporting, we propose one new form type, Form 10–D, to act as the report for the periodic distribution information currently provided under cover of Form 8–K. We also propose to specify which of the Commission's recently adopted Form 8–K events would be applicable to asset-backed securities, and we propose a few additional events specific to asset-backed securities. Consistent with the modified reporting no-action letters, we propose to exclude ABS from quarterly reporting on Form 10–Q and exempt ABS from reporting under Section 16 of the Exchange Act.[36] We also propose to clarify how transition reports are to be filed regarding a change in fiscal year.

We propose to specify the disclosure requirements applicable for annual reports on Form 10–K regarding asset-backed securities, which also will be drawn from Regulation AB, and to codify the form of certification to be used under Section 302 of the Sarbanes-Oxley Act. We propose to retain the long-standing requirements for a servicer compliance statement and a report by an independent public accountant as to compliance with particular servicing criteria. Regarding servicing criteria, there are very few existing criteria for evaluating compliance, the most widely used of which currently is the Uniform Single Attestation Program, or USAP, promulgated by the Mortgage Bankers Association of America. However, the USAP's ''minimum servicing standards'' are designed to be applicable only to servicing of mortgages and do not necessarily represent the full spectrum of servicing activities that may be material to an asset-backed securities transaction. We propose disclosure-based servicing criteria that would form the basis for an assessment and assertion as to material compliance with such criteria (or disclosure as to non-compliance). We also continue the practice of accountant involvement in assessing compliance with servicing criteria by proposing a requirement that a registered public accounting firm attest to the assertion of compliance. Both the report containing the assertion of compliance and the accountant's attestation report would be required to be filed with the report on Form 10–K.

As with the Securities Act, we propose to codify that the depositor is the ''issuer'' for purposes of Exchange Act reporting regarding asset-backed securities. We also propose to specify who may sign the various Exchange Act reports. Under the proposals, either the depositor or the servicer may sign the reports on Form 10–K, Form 10–D and Form 8–K, and the same party that signs the annual report on Form 10–K also would be the party that would be required to sign the Sarbanes-Oxley Act Section 302 certification and make the proposed assertion of compliance with servicing criteria. We also propose to clarify how filings regarding asset-backed securities are to be filed on EDGAR and the operation of the reporting obligation for asset-backed securities under Section 15(d) of the Exchange Act,[37] including proposals to codify several interpretive positions as to when the obligation starts and when it may be suspended.

F. Other Miscellaneous Proposals

Finally, our proposals include several miscellaneous and technical amendments to our rules and forms to accommodate the new proposals and update references regarding asset-backed securities. We also request comment on any additional areas that should be addressed regarding the registration, reporting and disclosure requirements for asset-backed securities under the Securities Act or the Exchange Act.

II. Background and Development of ABS and Regulatory Treatment

The ABS market rapidly has developed into an important part of the U.S. capital markets.[38] The modern securitization market originated in the 1970's with the securitization of residential mortgages.[39] Since the mid-1980's, the techniques pioneered in the mortgage-backed securities, or MBS, market have been used to securitize other asset types. Most asset types that have been securitized have homogenous characteristics, including similar terms, structures and credit characteristics, with proven histories of performance, which in turn facilitate modeling of future payments and thus analysis of yield and credit risks.

While the ABS market is still fairly young, it has rapidly become very large. By way of example, one source estimates that annual issuance of U.S. public non-GSE ABS grew from $46.8 billion in 1990 to $416 billion in 2003.[40]

[32] 15 U.S.C. 7241.

[33] See Exchange Act Rules 13a–14 and 15d–14; Release No. 33–8124 (Aug. 28, 2003) [67 FR 57276]; and Division of Corporation Finance, ''Revised Statement: Compliance by Asset-Backed Issuers with Exchange Act Rules 13a–14 and 15d–14'' (Feb. 21, 2003). *See also Merrill Lynch Depositor, Inc.* (Mar. 28, 2003) and *Mitsubishi Motors Credit of America, Inc.* (Mar. 27, 2003).

[34] 15 U.S.C. 7262.

[35] See Exchange Act Rules 13a–15 and 15d–15.

[36] 15 U.S.C. 78p.

[37] 37 15 U.S.C. 78o(d).

[38] See, *e.g.*, Gary Silverman *et al.*, ''A $2.5 Trillion Market You Hardly Know,'' Business Week, Oct. 26, 1998 (''Securitization is one of the most important and abiding innovations to emerge in the financial markets since the 1930s'' (quoting Leon T. Kendall)).

[39] The modern ABS market can be traced to 1970 when the Government National Mortgage Association (Ginnie Mae), a wholly owned Federal government corporation, first guaranteed a pool of mortgage loans. The Federal Home Loan Mortgage Corporation (Freddie Mac) in 1971 issued its first mortgage-backed participation certificates. For a number of years, mortgage-backed securities were almost exclusively a product of government-sponsored entities (GSE's), such as Freddie Mac and the Federal National Mortgage Association (Fannie Mae), and Ginnie Mae. MBS issued by these GSE's and Ginnie Mae have been and continue to be exempt from registration under the Securities Act and most provisions of the Federal securities laws. For example, Ginnie Mae guarantees are exempt securities under Section 3(a)(2) of the Securities Act (15 U.S.C. 77c(a)(2)) and Section 3(a)(12) of the Exchange Act (15 U.S.C. 78c(a)(12)). The chartering legislation for Fannie Mae and Freddie Mac contain exemptions with respect to those entities. See 12 U.S.C. 1723c and 12 U.S.C. 1455g. Only non-GSE ABS, or so called ''private label'' ABS, would be required to comply with these proposals. For more information regarding the GSE's and Ginnie Mae, see Task Force on Mortgage-Backed Securities Disclosure, ''Staff Report: Enhancing Disclosure in the Mortgage-Backed Securities Markets'' (Jan. 2003) (hereinafter, the ''2003 MBS Disclosure Report''). This report is available on our website at *www.sec.gov*.

[40] 40 See note 25 above. Amounts cited include MBS as well as ABS for other asset-classes. As

Continued

Another source estimates 2003 new issuance at $800 billion.[41] The four primary asset classes currently securitized are residential mortgages, automobile receivables, credit card receivables and student loans, which represented approximately 52%, 19%, 16% and 9% of 2003 new issuance, respectively.[42]

There are several distinguishing features between asset-backed securities and other fixed-income securities. For example, ABS investors are generally interested in the characteristics and quality of the underlying assets, the standards for their servicing, the timing and receipt of cash flows from those assets and the structure for distribution of those cash flows. As a general matter, there is essentially no business or management (and therefore no management's discussion and analysis of financial performance and condition) of the issuing entity, which is designed to be a solely passive entity. GAAP financial information about the issuing entity generally does not provide useful information to investors. Information regarding characteristics and quality of the assets is important for investors in assessing how a pool will perform. Information relating to the quality of servicing of the underlying assets also is relevant to assessing how the asset pool is expected to perform and the reliability of the allocation and distribution functions. Another focus is the legal and structural nature of the issuing entity and the transfer of the assets to the issuing entity to assess legal and credit separation from third parties. ABS investors also analyze the impact and quality of any credit enhancements and other support designed to provide additional protection against losses and ensure timely payments.

A sponsor typically initiates a securitization transaction by selling or pledging to a specially created issuing entity a group of financial assets that the sponsor either has originated itself or has purchased in the secondary market.[43] Sponsors of asset-backed securities often include banks, mortgage companies, finance companies, investment banks and other entities that originate or acquire and package financial assets for resale as ABS. In some instances, the transfer of assets is a two-step process: the financial assets are transferred by the sponsor first to an intermediate entity, often a limited purpose entity created by the sponsor for a securitization program and commonly called a depositor, and then the depositor will transfer the assets to the issuing entity for the particular asset-backed transaction.[44]

The issuing entity, most often a trust with an independent trustee, then issues asset-backed securities to investors that are either backed by or represent interests in the assets transferred to it. The proceeds of the sale of the asset-backed securities are used to pay for the assets that were transferred to the trust. Because the issuing entity is designed to be a passive entity, a ''servicer,'' which may often be an affiliate of the sponsor, is often necessary to collect payments from obligors of the pool assets, carry out the other important functions involved in administering the assets and to calculate and pay the amounts net of fees due to the investors that hold the asset-backed securities to the trustee, which actually makes the payments to investors.

The predominant purchasers of asset-backed securities today are institutional investors, including financial institutions, pension funds, insurance companies and money managers.[45] Generally, ABS are not marketed to retail investors. However, securitizations of one fairly unique asset type—transactions that pool and securitize outstanding debt securities of other issuers—often are marketed to retail investors and are listed on a national securities exchange.[46]

While some ABS transactions consist of simple pass-through certificates representing a pro rata share of the cash flows from the underlying asset pool, ABS transactions often involve multiple classes of securities, or tranches, with complex formulas for the calculation and distribution of the cash flows. In addition to creating internal credit enhancement or support for more senior classes, these structures allow the cash flows from the asset pool, and hence varying degrees of risk from pool performance, to be packaged into securities designed to address a given risk and return profile.

Transaction agreements specify the structure of an ABS transaction. A common form for these agreements is a ''pooling and servicing agreement,'' or PSA, often among the sponsor, the trustee and the servicer. A pooling and servicing agreement often governs the transfer of the assets from the sponsor to the issuing entity and sets forth the rights and responsibilities of participants. Typically the agreement also will detail how cash flows generated by the asset pool will be divided, typically referred to as the ''flow of funds'' or ''waterfall.'' The flow of funds specifies the allocation and order of cash flows, including interest, principal and other payments on the various classes of securities, as well as any fees and expenses, such as servicing fees, trustee fees or amounts to maintain credit enhancement or other support. Cash flows also may be directed into various accounts, such as reserve accounts to provide support against potential future shortfalls. The agreement also specifies the type and content of reports that will be provided to investors regarding ongoing performance of the transaction.

In addition to any internally provided credit enhancement or support, the sponsor or other third parties may provide external credit enhancements or other support for the asset-backed securities.[47] For example, third party insurance may be obtained to reimburse losses on the pool assets or the asset-backed securities themselves. In addition, the issuing parties may arrange with a counterparty for an interest rate swap or similar swap transaction to avoid a cash-flow mismatch, such as where a floating-rate interest is to be paid on ABS backed by financial assets that pay a fixed rate of interest.

Credit rating agencies play a large role in most ABS transactions. As with a traditional corporate debt security, a rating on an asset-backed security is designed only to reflect credit risk. The rating generally does not address other market risks that may result from changes in interest rates or from prepayments on the underlying asset pool.

To date, there have been few Commission initiatives directly related to ABS. In connection with the passage of the Secondary Mortgage Market Enhancement Act of 1984 (SMMEA),[48] the Commission permitted shelf

residential mortgages simply represent another asset type that may be securitized, unless otherwise specified, we use the term ABS to include MBS.

[41] See note 26 above.

[42] See note 25 above.

[43] While ''sponsor'' is a commonly used term for the entity that initiates the asset-backed securities transaction, the terms ''seller'' or ''originator'' also are often used in the market. However, as noted in the text, in some instances the sponsor is not the originator of the financial assets but has purchased them in the secondary market. Hence, we use the term ''sponsor.''

[44] Where there is not a two-step transfer, the terms ''sponsor'' and ''depositor'' are commonly used interchangeably in the market.

[45] See 2003 MBS Disclosure Report.

[46] A ''national securities exchange'' is an exchange registered as such under Section 6 of the Exchange Act (15 U.S.C. 78f).

[47] A guarantee of a security would be a separate ''security'' under Section 2(a)(1) of the Securities Act (15 U.S.C. 77b(a)(1)).

[48] Pub. L. 98–440, 98 Stat. 1689. See also Section II.C.1. of the 2003 MBS Disclosure Report.

registration to SMMEA eligible securities.[49] In 1992, the Commission extended shelf registration to non-mortgage investment grade ABS.[50] That same year, the Commission also adopted a rule under the Investment Company Act of 1940[51] to exclude ABS transactions under specific conditions from the definition of an investment company.[52] More recently, the Commission tailored rules for asset-backed securities in its implementing rulemakings under the Sarbanes-Oxley Act, including exempting asset-backed securities from the reporting and attestation requirements relating to internal control over financial reporting established by Section 404 of the Sarbanes-Oxley Act.[53] The Commission followed this approach in contemplation of current staff practice and this rulemaking initiative where applicable objectives underlying the Sarbanes-Oxley Act, including requirements suitable to ABS transactions, could be evaluated.

The staff has to date addressed the lack of a defined set of regulatory requirements for asset-backed securities through the filing review process and, where necessary, through staff no-action letters or interpretive statements. For example, through the filing review process, an informal disclosure scheme for ABS registration statements has developed taking into account evolving industry practices. The 2003 MBS Disclosure Report also provided valuable insight on the type of information investors find useful in ABS transactions. A system of modified reporting under the Exchange Act has developed, first through exemptive orders under Exchange Act Section 12(h),[54] and then subsequently through staff no-action letters and interpretative positions.

The Commission recognizes that securitization is playing an increasingly important role in the evolution of the fixed income financial markets. Our staff has attempted to accommodate the different nature of ABS and evolving business practices, while reducing unnecessary or impractical compliance burdens, through its numerous no-action and interpretive positions. However, the accumulated informal guidance, while helpful to some ABS transactions, has diminished the transparency of applicable requirements because an ABS registrant or investor seeking to understand the applicable requirements must review and assimilate a large body of no-action letters and other staff positions. This time-consuming practice decreases efficiency and transparency and leads to uncertainty and common problems. Many issuers, investors and other market participants have requested a defined set of regulatory requirements for guidance.[55] Staff reviews of filings provide further evidence that many compliance issues may be mitigated and potential issues avoided through clearer and more transparent regulatory requirements. Recent market events involving distressed transactions also have highlighted the need for improved disclosures as well as a renewed attention on servicing practices.[56] The Commission believes it is thus appropriate to clarify the regulatory requirements for asset-backed securities in order to increase market efficiency and transparency and provide more certainty for the overall ABS market and its investors and other participants.

III. Discussion of the Proposals

A. Securities Act Registration

1. Current Requirements

The 1992 Release, as part of a broad effort to expand access to shelf registration, allowed shelf registration for offerings of investment grade[57] asset-backed securities without requiring a reporting history requirement for the issuing entity.[58] As a result, a sponsor or depositor may register asset-backed securities to be offered on a delayed basis in the future through one or more offerings, or ''takedowns,'' of securities off of the shelf registration statement. Since the 1992 Release, shelf registration on Form S–3 has become the predominant method of registration for public offerings of asset-backed securities. Offerings generally are only registered

[49] See Release No. 33–6499 (Nov. 17, 1983) [48 FR 52889] and Securities Act Rule 415(a)(1)(vii) (17 CFR 230.415(a)(1)(vii)).

[50] See note 27 above.

[51] 15 U.S.C. 80a–1 *et seq.*

[52] See Release No. IC–19105 (Nov. 19, 1992) [57 FR 56248] and Investment Company Act Rule 3a–7 (17 CFR 270.3a–7). See also Release No. IC–18736 (May 29, 1992) [57 FR 23980] (proposing Investment Company Act Rule 3a–7 and explaining the application of the Investment Company Act to ABS transactions). The application of the Investment Company Act to ABS transactions is beyond the scope of this release. We note, however, that an ABS transaction that relies on Rule 3a–7 must comply with the conditions of that rule regardless of whether the issuer may register the offering of its asset-backed securities on Form S–3 or S–1. We encourage pre-filing conferences with the staff to discuss, as appropriate, questions or issues that may arise regarding the availability of Rule 3a–7, or any other applicable exemption, under the Investment Company Act to an ABS transaction.

[53] See, *e.g.*, Release No. 33–8238 (Jun. 5, 2003) [68 FR 36636] (Management's report on internal control over financial reporting and certification of disclosure in Exchange Act reports); Release No. 33–8220 (Apr. 9, 2003) [68 FR 18788] (Standards relating to listed company audit committees); Release No. 33–8183 (Jan. 28, 2003) [68 FR 6006] (Commission requirements regarding auditor independence); and Release No. 33–8177 (Jan. 23, 2003) [68 FR 5110] (Disclosure required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002).

[54] 15 U.S.C. 78*l*(h).

[55] See, *e.g.*, Letter from the Association for Investment Management and Research (''AIMR'') to Brian J. Lane, Director, Division of Corporation Finance, ''Recommendations for a Disclosure Regime for Asset-Backed Securities'' (Sep. 30, 1996); Letter from the Investment Company Institute (''ICI'') to Michael H. Mitchell, Special Counsel, Division of Corporation Finance, ''Asset-Backed Securities Offerings'' (Oct. 29, 1996); Letter from the Bond Market Association (''BMA'') to Brian Lane, Director, Division of Corporation Finance, ''Response to Staff Request for Suggestions Concerning Possible Reforms of Disclosure and Reporting Rules for Mortgage and Asset-Backed Securities'' (Nov. 5, 1996); Letter from BMA to Jonathan G. Katz, Secretary, Securities and Exchange Commission, ''Securities Acts Concepts and Their Effects on Capital Formation (Release No. 33–7314) (File No. S7–19–96)'' (Nov. 8, 1996); Letter from the Mortgage Bankers Association of America (''MBA'') to Brian J. Lane, Director, Division of Corporation Finance (Feb. 18, 1997); Letter from The Association of the Bar of the City of New York to Jonathan G. Katz, Secretary, Securities and Exchange Commission, ''Securities Act Release No. 33–7606A File No. S7–30–98'' (Apr. 5, 1999); Letter from American Bar Association (''ABA'') to Jonathan G. Katz, Secretary, Securities and Exchange Commission, ''The Regulation of Securities Offerings (File No. S7–30–98)'' (Jun. 29, 1999); Letter from ICI to Jonathan G. Katz, Secretary, Securities and Exchange Commission, ''The Regulation of Securities Offerings (File No. S7–30–98)'' (Jun. 29, 1999); Letter from MBA to Jonathan G. Katz, Secretary, Securities and Exchange Commission, ''The Regulation of Securities Offerings (File No. S7–30–98)'' (Jun. 30, 1999); Letter from Merrill Lynch & Co., Inc. to Securities and Exchange Commission, ''The Regulation of Securities Offerings (File No. S7–30–98)'' (Jun. 30, 1999); Letter from Residential Funding Corporation to Securities and Exchange Commission, ''File No. S7–30–98—The 'Aircraft Carrier Release' '' (Jun. 30, 1999); Letter from BMA to David B.H. Martin, Director, Division of Corporation Finance, ''Securities Act Reform'' (Nov. 30, 2001); and Letter from BMA to Alan L. Beller, Director, Division of Corporation Finance, ''Prior Correspondence Regarding Asset-Backed Securities Reform'' (Apr. 23, 2002).

[56] See, *e.g.*, notes 120, 136, 139, 262 and 264 below.

[57] ''Investment grade'' is defined in General Instruction I.B.2 of Form S–3 to mean that, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in Exchange Act Rule 15c3–1(c)(2)(vi)(F) (17 CFR 240.15c3–1(c)(2)(vi)(F))) has rated the security in one of its generic rating categories which signifies investment grade. Typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

[58] Securities Act Rule 415 (17 CFR 230.415) permits registration of offerings of securities on a delayed or continuous basis, and paragraph (a)(1)(x) of that rule permits such registration with respect to offerings registered (or qualified to be registered) on Form S–3. The 1992 Release, among other things, added General Instruction I.B.5 to Form S–3, which permits registration of offerings of investment grade asset-backed securities. Certain mortgage-backed securities, as defined in Section 3(a)(41) of the Exchange Act (15 U.S.C. 78c(a)(41)), were previously permitted to be offered on a delayed basis under Securities Act Rule 415(a)(1)(vii). See note 49 above.

on another form, most likely Form S–1 and less frequently Form S–11, if for some reason the securities technically do not meet the definition of ''asset-backed security'' in General Instruction I.B.5 of Form S–3 or an interpretation of that definition.

For offerings registered on a shelf basis on Form S–3, the prospectus disclosure in the registration statement is often presented through the use of two primary documents: The ''base'' or ''core'' prospectus and the prospectus supplement. The base prospectus outlines the parameters of the various types of ABS offerings that may be conducted in the future, including asset types that may be securitized, the types of security structures that may be used and possible credit enhancements. The registration statement at the time of effectiveness also contains a form of prospectus supplement, which outlines the format of deal-specific information that will be disclosed at the time of each takedown. At the time of a takedown, a final prospectus supplement is prepared which describes the specific terms of the takedown, and the base prospectus and the final prospectus supplement together form the final prospectus which is filed with the Commission pursuant to Securities Act Rule 424(b).[59]

2. Definition of Asset-Backed Security

Currently, the term ''asset-backed security'' is defined only for purposes of Form S–3. As many of our proposals relate to the treatment of asset-backed securities regardless of the form on which their offering is initially registered, we are proposing to move the definition of ''asset-backed security'' to the definition section of proposed Regulation AB, our proposed sub-part in Regulation S–K for asset-backed securities (discussed more fully in Section III.B). We propose to retain any additional conditions appropriate for Form S–3 eligibility, such as an investment grade requirement, in General Instruction I.B.5 of Form S–3. Under our proposed format, however, a security that met the general definition of ''asset-backed security'' would be subject to the disclosure and other requirements we propose regardless of how registered.

After more than ten years of experience with the definition of ''asset-backed security,'' we believe that the core definition is still sound. The definition allows broad flexibility as to asset types and structures that we believe should be subject to the alternative disclosure and regulatory regime that exists for asset-backed securities. As the Commission stated in the 1992 Release, the definition does not distinguish between pass-through (*i.e.*, equity) and pay-through (*i.e.*, debt) asset-backed securities nor does it limit application to a list of ''eligible'' assets that can be securitized, so long as such assets meet the general principle that they are financial assets that by their terms convert into cash within a finite time period.[60] We believe, conversely, that the alternative regime for asset-backed securities would not be appropriate for securities that fall outside the definition.

Experience with the definition has resulted in several interpretations since its adoption. These interpretations have developed primarily through staff processing of ABS registration statements and in a few instances through staff no-action letters. As such, these interpretations may not always have been transparent.

Accordingly, we propose to retain the same basic definition of asset-backed security, with one modification discussed below with respect to leases. We also propose to codify several clarifying interpretations of the definition that recognize and build upon the operational and structural distinctions between ABS and non-ABS transactions. In many cases, through the process of codifying these interpretations, we also are proposing to expand many of the existing interpretations to allow additional asset types and transaction features to be considered an ''asset-backed security,'' including for purposes of shelf registration if the asset-backed securities meet the additional criteria for registration on Form S–3, such as the investment grade requirement.

Our proposed definition and interpretations are intended to establish parameters for the types of securities that are appropriate for our proposed alternative regulatory regime for asset-backed securities, including, for securities that meet the additional criteria for Form S–3 registration, delayed shelf registration and the use of certain written communications. The proposals would not mean or imply that public offerings of securities outside of these parameters may not be registered with the Commission, but only that the disclosure and other requirements in the regime for asset-backed securities are not designed for those securities. The proposals would mean that such securities would need to rely on non-ABS form eligibility for registration, including shelf registration. Additional disclosures are currently required for such securities under our existing disclosure regime.

a. Basic Definition

Under our proposal, the basic definition of ''asset-backed security'' would be ''a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distributions of proceeds to the securityholders; provided that in the case of financial assets that are leases, those assets may convert to cash partially by the cash proceeds from the disposition of the physical property underlying such leases.''[61] The only change we propose from the current definition is the addition of the proviso with respect to leases, discussed below.

The proposed definition of ''asset-backed security'' includes the same basic concept of a discrete pool of financial assets that by their terms convert into cash within a finite time period. We believe this does not include so-called ''synthetic'' securitizations.[62]

[59] 59 17 CFR 230.424(b).

[60] For example, common stock and similar equity instruments would not meet this general principle.

[61] As the Commission stated in the 1992 Release, the definition is sufficiently broad to encompass any self-liquidating asset which by its terms converts into one or more cash payments within a finite time period. There are no substantive requirements as to the timing of the cash flows under the definition, such as that they must be constant and uninterrupted. The payments on the asset-backed securities, however, must be based primarily upon the cash flow from the pool assets.

[62] Synthetic securitizations do not meet the basic concepts embodied in our definition of an asset-backed security for several reasons. For example, payments on the securities in a synthetic securitization comprise or include payments based on the value of a reference asset, unrelated to the value of or payments on any actual assets in the pool. Payment is therefore by reference to an asset not in the pool instead of primarily from the performance of a discrete pool of financial assets that by their terms convert into cash and are transferred to a separate issuing entity. Neither does the derivative act as credit enhancement on existing pool assets or as rights or other assets designed to ensure timely servicing or distribution, because it does not relate to the value of any pool asset but instead relates to an external asset, in order to bring the risk of that asset into the pool synthetically. Further, in a synthetic securitization, if a credit event occurs there may be a transfer of assets that would no longer make the pool discrete.

Another example of a synthetic exposure would be a transaction where the asset pool consists of securities coupled with a swap or other derivative under which payments are made based on the value of an equity or commodity or other index such that the payments on the security comprise or include payments based on the performance of the external index and not by the performance of the actual securities in the pool. Our view that securities resulting from synthetic securitizations are not ABS within the proposed definition is not altered by the fact that payments on the swap or other derivative based on the value of assets or indices not related

Synthetic securitizations are a relatively recent development in structured finance designed to create exposure to an asset that is not transferred to or otherwise part of the asset pool. These synthetic transactions are often effectuated through the use of credit derivatives such as a credit default swap or total return swap. Synthetic securitizations do not actually own the underlying assets; instead, the assets that are to constitute the actual ''asset pool'' under which the return on the ABS is primarily based are only referenced through the credit derivative.

Questions regarding the proposed definition of ''asset-backed security:''

• We request comment on our proposed definition. Are any further modifications to the definition necessary? If so, what modifications should be made and why?

b. Nature of the Issuing Entity

The first set of interpretations we propose to codify relates to the nature of the issuing entity in whose name the asset-backed securities are issued. In this regard, we believe that two interpretations always have been implied. We propose to codify both as additional conditions to the definition of ''asset-backed security.''

The first condition is that neither the depositor nor the issuing entity is an investment company under the Investment Company Act, nor will either become one as a result of the asset-backed securities transaction. If either was the case, we believe the separate regulatory regime for investment companies should be followed in lieu of our proposals for asset-backed securities.

The second condition is that the issuing entity must be passive and its activities restricted to the asset-backed securities transaction. In particular, the activities of the issuing entity must be limited to passively owning or holding the pool of assets, issuing the asset-backed securities supported or serviced by those assets, and other activities reasonably incidental thereto.[63] As we stated in the proposing release for the 1992 amendments, the legal nature of the issuing entity—whether a trust, limited purpose subsidiary or other legal person—is not necessarily relevant.[64] However, we believe the limited function and permissible activities of the issuing entity are fundamental to the notion of a security that is to be backed solely by a pool of assets.

Questions regarding the nature of the issuing entity:

• We request comment on the proposed conditions regarding the nature of the issuing entity. Is the proposed condition on the passive and restricted nature of the issuing entity appropriate? Is any additional specificity or clarification needed for the condition? Should there be any exceptions to the condition? If so, what would they be and how would they be consistent with the notion of an ''asset-backed security?''

• Should there be any additional conditions on the nature of the issuing entity?

c. Delinquent and Non-Performing Pool Assets

In 1997, Commission staff issued a no-action letter clarifying that an asset pool having total delinquencies of up to 20% at the time of the proposed offering may still be considered an ''asset-backed security.'' [65] In addition, there also exists a longstanding staff interpretive position that no non-performing assets may be included as part of the asset pool at the time of the proposed offering. The issue in either case is that such assets may no longer be (or in the case of non-performing assets, are not) converting into cash within a finite time period, as required by the definition of asset-backed security, given that such assets are not performing in accordance with their terms and management or other action may be needed to convert them to cash.

We propose to codify these interpretations. First, we propose that no non-performing assets may be part of the original asset pool at the time of issuance of the asset-backed securities.[66] Part of the difficulty for issuers in complying with the existing interpretive position is that there is no uniform definition of what is a ''non-performing asset.'' We understand that the point at which a financial asset is considered ''non-performing'' is often dependent upon asset type, with some financial assets being considered non-performing before other types of financial assets would. However, we believe the point at which the financial asset should be charged-off appears to be a consistent reference point, even if the point at which that event would occur may vary. Accordingly, we propose to define ''non-performing'' to be a pool asset if any of the following was true:

• The pool asset meets the requirements in the transaction agreements for the asset-backed securities for when a pool asset should be charged-off; or

• The pool asset meets the charge-off policies of the sponsor.[67]

We believe this definition provides flexibility for different asset classes while still ensuring that no assets are included in the pool that would otherwise be considered to be non-performing and thus charged-off under

to the assets in the pool held by the issuer are conditioned on performance of the assets in the pool held by the issuer. Because payments in synthetic securitizations are based on the performance of assets or indices not included in the pool, such a securitization would not fall within the ABS definition. Payments on ABS must be based primarily on the performance of the financial assets in the pool.

Synthetic securitization transactions differ from ABS transactions where swaps or other derivatives are used either to reduce or alter risk resulting from assets contained in the pool held by the issuer, or to provide credit enhancement related to assets in the pool. For example, the existence of an interest rate or currency swap covering either or both of the principal or interest payments on assets in the pool held by the issuer are designed to reduce or alter risk resulting from those assets and fall within the definition of asset-backed security. The return on the ABS are still based primarily on the performance of the financial assets in the pool.

As another example of a swap or other derivative permissible in an ABS transaction, a credit derivative such as a credit default swap could be used to provide viable credit enhancement for asset-backed securities. For example, a credit default swap may be used to reference assets actually in the asset pool, which would be analogous to buying protection against losses on the pool asset. The issuing entity would pay premiums to the counterparty (as opposed to the counterparty paying the premiums to the issuing entity). If a credit event occurred with respect to the referenced pool asset, the counterparty would be required to make settlement payments regarding the pool asset or purchase the asset to provide recovery against losses.

[63] In this regard, so-called ''series trusts'' would not qualify as an ''asset-backed security'' under our proposed definition. Under a series trust, the same trust will hold multiple pools of assets and will issue multiple classes of securities, some of which are backed by one pool while others are backed by other pools. Securities backed by one pool do not have rights to the other pools. In this instance, the issuing entity is not limited to owning and holding one asset pool and issuing securities backed by that pool. This is not to be confused with a master trust structure typical in credit card ABS and discussed later where all securities are backed by one pool, which would meet the definition. Of course, an ABS transaction with one asset pool could divide allocations of the cash flows from the pool among separate classes of securities and still qualify as an ''asset-backed security.''

[64] See Release No. 33–6943 (July 16, 1992) [57 FR 32461].

[65] See *Bond Market Ass'n* (Oct. 8, 1997). The no-action letter also confirmed that notwithstanding whether a security meets the definition of ''asset-backed security'' set forth in General Instruction I.B.5 of Form S–3, an offering of securities may nevertheless be eligible for registration on Form S–3 so long as the issuer satisfies the issuer requirements in General Instruction I.A. (including, but not limited to, the reporting history requirements in General Instructions I.A.2 and I.A.3) and satisfies an applicable transaction requirement in General Instruction I.B. (*e.g.*, a registered offering of investment grade securities under General Instruction I.B.2). This option, which has always existed without regard to General Instruction I.B.5, would remain under our proposals.

[66] Consistent with the existing staff no-action letter, the cut-off date (the date on and after which collections on the pool assets accrue for the benefit of the ABS holders) may be employed to establish delinquency and non-performance levels.

[67] As a result, the charge-off requirement that was more restrictive would govern.

an objective standard. We propose to require disclosure of these charge-off policies in Regulation AB, discussed more fully in Section III.B.

We also propose to codify a delinquency concentration limit in a manner consistent with the staff no-action letter. However, as we are proposing a general definition of ''asset-backed security'' regardless of eligibility for shelf registration, we propose two separate delinquency concentration limits. For the general definition (*e.g.*, for offerings that could be registered on a non-shelf basis on Form S–1), we propose that delinquent assets may not constitute 50% or more, as measured by dollar volume, of the original asset pool at the time of issuance of the asset-backed securities. We believe concentrations above that threshold begin to raise serious doubt that the transaction should be characterized as an ''asset-backed security'' as the payments on the securities in such transactions would appear to depend more on the ability of the entity or entities that provide collection services for the delinquent assets than on the self-liquidating nature of the underlying assets. For shelf registration eligibility, we propose to retain the existing 20% delinquency concentration level. For purposes of determining whether a pool asset is delinquent under either threshold, we propose to define a pool asset as ''delinquent'' if any portion of a contractually required payment on the asset is 30 days or more past due. This is the existing standard in the staff no-action letter.[68]

With regard to determining delinquency, one potential area of concern is improper re-aging or restructuring of delinquent accounts, such as declaring an asset with multiple past-due payments as current even if only the last payment was made. Improper re-aging or recharacterization of delinquent accounts cannot be employed for purposes of satisfying delinquency concentration limits. We propose to clarify in the definition of ''delinquent'' that a pool asset that was more than one payment past due could not be characterized as not delinquent if only partial payment on the total past due amount had been made, unless the obligor had contractually agreed to restructure the obligation, such as part of a workout plan.[69] In proposing our delinquency limits, we also are proposing to require disclosure, discussed more fully in Section III.B., of policies regarding grace periods, re-aging, restructures or other such practices on delinquencies. We also propose disclosure on an on-going basis, discussed more fully in Section III.D., regarding material modifications, extensions or waivers to pool asset terms, fees, penalties or payments.

Questions regarding proposals for delinquent and non-performing assets:

- We request comment on the codification of these existing interpretations. Is there a reason to re-evaluate these interpretations? In particular, should there still be an absolute bar on non-performing assets? We also request comment on the proposed delinquency concentration limits. The 50% non-shelf limit is designed to help assure that even those asset-backed securities that do not qualify for shelf registration are appropriately subject to our proposed ABS disclosure and reporting regime. Should either limit be higher or lower? Should these tests be conducted at any time other than issuance of the asset-backed securities?
- We request comment on our proposed definitions of ''non-performing'' and ''delinquent.'' Should the definition of non-performing be tied to the charge-off policies of both the transaction documents and the sponsor? Is it necessary to require disclosure of the sponsor's charge-off policies? Is the proposed clarification regarding re-aging appropriate? Should there be a specific delinquency date for when an asset is non-performing? What would that date be (*e.g.*, 90 or 180 days delinquent)? If possible, please provide supporting data in relation to current market practices.

d. Lease-Backed Securitizations and Residual Values

The one change we propose to the basic definition of ''asset-backed security'' is to expand the definition to include securitizations backed by leases where part of the cash flows backing the securities is to come from the disposal of the residual asset underlying the lease (*e.g.*, selling an automobile at the end of an automobile lease).[70] In that instance, the asset-backed securities are not backed solely by financial assets that ''by their terms convert into cash,'' because the transaction also involves a physical asset that must be sold in order to obtain cash. As a result, securitizations where a portion of the cash flow to repay the securities is anticipated to come from the residual value of the physical property do not fall within the current definition of ''asset-backed security'' in Form S–3 and thus are often registered on a non-shelf basis on Form S–1.

Lease-backed ABS have grown into a common and recognized segment of the overall ABS market.[71] However, even though we are recognizing the growth in lease-backed ABS that include securitizations of residual value, such securitizations are subject to additional factors that are not present in securitizations backed solely by financial assets that convert into cash. Residual value is often determined at the inception of a lease contract and represents an estimate of the leased property's resale value at the end of the lease. Assumptions and modeling are necessary to determine the amount of the residual value. In addition, the transaction is not simply dependent on the servicing and amortization of the pool assets, but also on the capability and performance of the party that will be used to convert the physical property into cash and thus realize the residual values.

The higher the percentage of cash flows that are to come from residual values, the more important these other factors become and the less the transaction resembles a traditional securitization of financial assets for which our regime for asset-backed securities is designed. We propose to address this concern in two ways. First, we propose additional disclosures, discussed more fully in Section III.B., on how residual values were estimated and derived, statistical information on historical realization rates and disclosure of the manner and process in which residual values will be realized, including disclosure about the entity that will convert the residual values into cash. Second, similar to existing practice regarding delinquencies, we propose limits on the percentage of the cash flow anticipated to come from residual values in order to be considered an ''asset-backed security.''

In proposing residual value limits, we recognize that market practice regarding lease-backed securitizations vary on the typical percentage of cash flows that are expected to come from residual values. For example, auto lease securitizations often have higher residual value percentages than equipment-backed securitizations due to the higher resale values that often exist between automobiles and other equipment. Accordingly, after reviewing residual value percentages for typical lease-backed securitizations, we propose that for the general definition of ''asset-backed security,'' the portion of the cash

[68] See note 65 above.

[69] We propose similar language for the definition of ''non-performing.'' We propose to define ''obligor'' to mean any person who is directly or indirectly committed by contract or other arrangement to make payments on all or part of the obligations on a pool asset.

[70] Securitizations backed solely from the payment on the leases and not including the residual value of the underlying physical property would not of course need to comply with the proposed thresholds.

[71] See, *e.g.*, Fitch, Inc., ''Under the Hood: Automobile Lease ABS Uncovered'' (Jun. 14, 2000).

flow to repay the securities anticipated to come from the residual value of the physical property underlying the leases may not constitute:

- For automobile leases, 60% or more, as measured by dollar volume, of the original asset pool at the time of issuance of the asset-backed securities;[72] and
- For all other leases, 50% or more, as measured by dollar volume, of the original asset pool at the time of issuance of the asset-backed securities.

In addition, we propose a more stringent limitation for cash flow from residual values for offerings of securities backed by leases other than automobile leases that may be registered on Form S–3 and thus eligible for shelf registration. For Form S–3 eligibility, we propose that for leases other than automobile leases, the portion of the cash flow anticipated to come from residual values may not constitute 20% or more, as measured by dollar volume, of the original asset pool at the time of issuance of the asset-backed securities, which we believe is consistent with market practice and the types of offerings that would be appropriate for shelf eligibility. We believe these proposals will expand eligibility of lease-backed transactions for shelf registration and appropriately permit lease-backed transactions under our proposed rules while continuing to apply the basic principles underlying the definition of ''asset-backed security.''

Questions regarding the proposals for lease-backed ABS:

- Should ABS backed in part by cash flows from residual values be included in the definition of asset-backed security? Does the proposed proviso to the definition of asset-backed security capture the types of lease transactions that include residual values? Should there be any additional requirements for such securitizations apart from those proposed?
- We request comment on our proposed limits on the cash flows that are anticipated to come from residual values. Should there be such limits? What alternatives could be used in lieu of limits to address the concerns identified? Is there a disclosure-based solution that would preclude the need for such limits? Are there additional concerns we have not identified? Should there be different limits for automobile leases versus other leases? Should there be different limits for non-automobile leases for shelf registration eligibility? Should there be such limits for automobile leases? Should any of the proposed limits be higher or lower? Should the limits be based on a different amount (*e.g.*, percentage of offering proceeds instead of asset pool)? If possible, please provide supporting data in relation to current market practices.

e. Exceptions to the ''Discrete'' Requirement

The last set of interpretations we propose to codify relates to exceptions to the requirement in the definition of ''asset-backed security'' that the asset pool be ''discrete.'' The existence of the ''discrete'' requirement is to prevent a level of portfolio management that is not contemplated by the definition of ''asset-backed security'' or consistent with this registration and reporting regime. In addition, the lack of a ''discrete'' requirement would make it difficult for an investor to make an informed investment decision when the composition of the pool is unknown or could change over time.

However, ever since the original definition of ''asset-backed security'' was adopted, there has been some confusion over the meaning of the term ''discrete'' in the definition, particularly with respect to language in the definition that specifies the asset pool must be a ''discrete pool of receivables or other financial assets, either fixed or revolving.'' The 1992 Release specified that the phrase ''fixed or revolving'' was added ''in order to make clear that the definition covers 'revolving' credit arrangements, such as credit card and short-term trade receivables, home equity loans and automotive dealer floorplan financings, where account or loan balances revolve due to periodic payments, charge-offs and closings of the receivables.''[73] Thus, the basic principle is that the balance of a pool asset may revolve, but not the asset pool itself.[74]

Nevertheless, in response to market developments, the staff has allowed certain exceptions, with limits, to the discrete pool requirement. These exceptions relate to master trusts, prefunding periods and revolving periods. In a master trust, the ABS transaction contemplates adding additional pool assets in connection with future issuances of asset-backed securities backed by the same, but expanded, asset pool. Pre-existing securities also would therefore be backed by the same expanded asset pool. In a prefunding period, a limited portion of the proceeds of the offering is set aside for the future acquisition of additional pool assets within a specified period of time after the issuance of the asset-backed securities. In a revolving period, a limited amount of cash flows from the asset pool may be recycled for a specified period to acquire new pool assets instead of being applied to payments on the asset-backed securities.[75]

The staff's interpretive history in this area has resulted in limits on which asset classes may use these structures and still be considered an ''asset-backed security.''[76] We now propose to codify these three exceptions and also expand them so that they are applicable to all asset types.[77] A transaction could employ one or more of these features and still qualify as an ''asset-backed security.'' These expansions should result in increased flexibility in structuring transactions that meet market demands without regard to regulatory restrictions.

As in the case of our proposals for lease-backed ABS that involve residual values, we believe the concern relating to these structures can be appropriately addressed through disclosure, both at the time of issuance of the asset-backed securities as well as on an ongoing basis through disclosure of how the asset pool is materially changing.[78] As such, we

[72] For purposes of our proposal, automobile leases would include motorcycle leases but not leases for leisure craft such as watercraft or snowmobiles. The 60% threshold is consistent with our understanding of how the market currently views auto lease-backed ABS.

[73] See note 27 above. The 1992 Release also explained that, ''In credit card financings, for example, the securities are backed by current and future receivables generated by specified credit card accounts. The balances of the pool assets fluctuate as new receivables are generated and existing amounts are paid or charged off as a default. If the accounts do not generate sufficient cash flow to support the securities, the sponsor may be required to assign additional receivables from other accounts to the public security holders' interest in the pool.''

[74] There are additional instances when the asset pool may change under the current definition without infringing the ''discrete pool'' requirement. For example, often the depositor or other seller of the pool assets will make standard representations and warranties regarding the pool assets, such as to their principal balance and status at the time of transfer to the trust. If an asset fails to meet the requirements of those representations or warranties, there may be obligations for the depositor to repurchase or substitute that asset for assets that do comply with the representations or warranties. These pool composition changes are permissible under the current defintion as ''rights or other assets designed to assure the servicing or timely distribution of proceeds to securityholders.'' There is thus no need to specify a separate exception from the ''discrete'' requirement for such instances.

[75] The period after the revoling period when cash flows are applied to payments on the asset-backed securities is often called the ''amortization'' or ''pay-down'' period.

[76] For example, nearly all asset classes may employ a limited prefunding period. However, only a limited subset of asset classes are permitted to have revolving periods. Not all of these interpretations may be transparent.

[77] But see note 111 and the accompanying text regarding other factors that may limit the use of these features where the distribution of the underlying pool assets may need to be separately registered.

[78] See, *e.g.*, Letter from the Investment Company Institute to Michael H. Mitchell, Special Counsel, Division of Corporation Finance, ''Asset-Backed Securities Offerings'' (Oct. 29, 1996).

are proposing more detailed disclosures in Regulation AB, discussed more fully in Section III.B., regarding the operation of such structures and changes to the asset pool over time.

Consistent with current staff practice, we also are proposing limits on the amount and duration of prefunding and certain revolving periods to limit the amount of changes to the asset pool, while still allowing flexibility to accommodate market demands. These limits are designed to establish parameters for the types of securities that should be subject to the ABS regulatory regime. As with lease-backed ABS, we believe these proposals will expand eligibility of these structures while continuing to apply the basic principles underlying the definition of ''asset-backed security.''

Our proposal would allow master trust structures to meet the definition of ''asset-backed security'' without any pre-determined limits.[79] For prefunding periods, we propose separate limits for shelf and non-shelf offerings similar to our proposals for lease-backed ABS. For the general definition of ''asset-backed security,'' the amount of proceeds that may be used for a prefunding period may be up to 50% of offering proceeds and the length of the prefunding account may last up to one year from the date of issuance of the asset-backed securities. As with our other proposed thresholds, we believe prefunding periods above these thresholds begin to raise serious doubt that the transaction should be characterized as an ''asset-backed security.'' For Form S–3 eligibility, we propose that the amount of proceeds that may be used for a prefunding period may be up to 25% of offering proceeds over a similar one-year period. With larger prefunding periods, as with larger revolving periods discussed below, we believe investors should be entitled to the additional time and information they would receive that is typical for transactions conducted on a non-shelf basis.

For revolving periods, our proposals would recognize the nature of the asset being securitized (*i.e.*, whether it itself is fixed or revolving). For receivables or other financial assets that by their nature revolve (*e.g.*, credit cards, dealer floorplan financings or home equity lines of credit), there would as today be no limit on the number of assets that may revolve nor a limit on the duration of the revolving period. For fixed receivables or other financial assets (*e.g.*, standard residential mortgages, auto loans and leases), we propose limits similar to prefunding periods; that is, the general definition of ''asset-backed security'' would specify that the additional assets that may be acquired in the revolving period may constitute up to 50% of the proceeds of the offering and the duration of the revolving period may last for up to one year from the date of issuance of the asset-backed securities. For Form S–3 eligibility, the revolving period would be limited to 25% of proceeds over a one-year period.

Questions regarding proposed exceptions to the ''discrete pool'' requirement:

- Should asset-backed securities transactions be allowed to have master trusts, prefunding periods and revolving periods? Are there some asset types where the inclusion of such features should disqualify any issued securities from being considered an ''asset-backed security?'' Should one or more of the features (*e.g.*, master trusts or revolving periods) not be included or expanded for all asset types? Are there any additional exceptions that should be made?
- Should there be any pre-determined limits on master trust structures? Are the proposed limits appropriate for the use of prefunding or revolving periods? Should there be such limits? What alternatives could be used in lieu of limits? Should there be different limits for shelf registration eligibility? Should there be different limits based on the nature of the asset (fixed or revolving)? Should there be a limitation that the assets that may be acquired in a prefunding or revolving period are of the same character as the original pool? Should any of the proposed limits be higher or lower? Should the limits be based on a different amount? Should the length of prefunding or revolving periods be longer or shorter than one year? If possible, please provide supporting data in relation to current market practices. Please see Section III.B.4. for comment requested regarding disclosure related to these features.

3. Securities Act Registration Statements

a. Form Types

We do not propose a new registration statement form for offerings of asset-backed securities. We preliminarily believe that the existing form structure is sufficient, provided there are appropriate instructions in the applicable forms as to their use for ABS offerings. We do propose to limit the registration of asset-backed securities offerings to two forms: Form S–1 or Form S–3.[80] As is currently the case, Form S–3 would retain the requirements that would qualify an offering for delayed shelf registration on that form. Form S–1 would thus become the form for all offerings that meet the basic definition of an ''asset-backed security'' but do not meet the additional eligibility requirements for Form S–3 (*e.g.*, investment grade and proposed additional limits on lease-backed ABS, delinquent pool assets and prefunding and revolving periods). We propose to amend our other Securities Act registration statement forms for primary offerings to exclude explicitly their use for ABS offerings.[81] Since as discussed below we do not intend to have a separate disclosure regime or requirements for foreign ABS, there is no need to provide separate form types for foreign ABS offerings. These offerings also would be registered on Forms S–1 or S–3, as applicable.

While Form S–3 currently specifies eligibility for ABS offerings, neither it nor any other form clarifies how the form is to be prepared for such an offering. Therefore, we propose separate general instructions for both Form S–1 and Form S–3 to specify use for ABS offerings.

Proposed General Instruction VI. to Form S–1 would clarify how that form is to be prepared for an ABS offering. In particular, the proposed instruction would clarify who is to sign the registration statement (discussed more fully in Section III.A.3.d.) as well as the menu of required disclosure items. As to the latter, the proposed instruction would identify the existing items in the form that may be omitted as well as substitute core disclosure items from proposed Regulation AB that would be required. As discussed in Section III.B., proposed Items 1102–1118 of Regulation AB would represent the basic disclosure package for registered ABS offerings. Any other applicable items specified in Form S–1, such as the description of the securities and the offering, would continue to be required.[82] The proposed application of the disclosure items for Form S–1 is presented in the following table:

[79] Of course, each additional issuance of securities backed by the same pool and the additional pool assets would need to be consistent with the requirements for an ''asset-backed security.''

[80] Form S–4 also would remain available with respect to transactions, such as exchange offers, authorized by that Form.

[81] See proposed amendments to Form S–2, S–11, F–1, F–2 and F–3. Any offerings meeting the definition of asset-backed security that previously used one of these forms for registration, such as Form S–11, in lieu of Form S–3 would henceforth be registered on Form S–1 instead. As discussed in Section III.F., we also are proposing to clarify that ABS issuers could not qualify as a ''small business issuer.'' Therefore, ABS offerings would be ineligible for Forms SB–1 and SB–2 (referenced in 17 CFR 239.9 and 17 CFR 239.10).

[82] As is generally the case today, no disclosure need be provided in response to items that are not applicable to the transaction in question. See Securities Act Rule 404(c) (17 CFR 230.404(c)).

PROPOSED DISCLOSURE FOR FORM S–1 FOR REGISTERED ABS OFFERINGS

Existing form items	Required if applicable	May be omitted
Item 1. Forepart of Registration Statement and Outside Front Cover Page of Prospectus	•	
Item 2. Inside Front and Outside Back Cover Pages of Prospectus		
Item 3. Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges	•	
Item 4. Use of Proceeds	•	
Item 5. Determination of Offering Price	•	
Item 6. Dilution	•	
Item 7. Selling Security Holders	•	
Item 8. Plan of Distribution	•	
Item 9. Description of Securities to be Registered	•	
Item 10. Interests of Named Experts and Counsel	•	
Item 11. Information with Respect to the Registrant:		
(a) Item 101 of Regulation S–K, description of business		•
(b) Item 102 of Regulation S–K, description of property	•	[1] •
(c) Item 103 of Regulation S–K, legal proceedings		•
(d) Item 201 of Regulation S–K, market price of and dividends on the registrant's common equity and related stockholder matters.	•	
(e) Financial statements meeting the requirements of Regulation S–X		•
(f) Item 301 of Regulation S–K, selected financial data		•
(g) Item 302 of Regulation S–K, supplementary financial information		•
(h) Item 303 of Regulation S–K, management's discussion and analysis of financial condition and results of operations.		•
(i) Item 304 of Regulation S–K, changes in and disagreements with accountants on accounting and financial disclosure.		•
(j) Item 305 of Regulation S–K, quantitative and qualitative disclosures about market risk		•
(k) Item 401 of Regulation S–K, directors and executive officers		[2] •
(l) Item 402 of Regulation S–K, executive compensation		[2] •
(m) Item 403 of Regulation S–K, security ownership of certain beneficial owners and management		[3] •
(n) Item 404 of Regulation S–K, certain relationships and related transactions		[4] •
Item 12. Disclosure of Commission Position on Indemnification for Securities Act Liabilities	•	
Item 13. Other Expenses of Issuance and Distribution	•	
Item 14. Indemnification of Directors and Officers	•	
Item 15. Recent Sales of Unregistered Securities	•	
Item 16. Exhibits and Financial Statement Schedules	•	
Item 17. Undertakings	•	
Additional Disclosure Items from Regulation AB:		
Items 1102–1118 of Regulation AB	•	

[1] Descriptions regarding pool assets and relevant property underlying the pool assets would be covered under new Items in proposed Regulation AB.
[2] If the issuing entity does not have any executive officers or directors.
[3] Except for Item 403(a) of Regulation S–K and if the issuing entity does not have any executive officers or directors.
[4] If the issuing entity does not have any executive officers or directors. We propose a separate item in Regulation AB regarding affiliations and related transactions among transaction participants.

Proposed General Instruction V. to Form S–3 would perform a similar function for that form. Unlike current practice on Form S–1, non-ABS offerings on Form S–3 rely predominately on incorporation by reference of Exchange Act reports for disclosure unrelated to the offering. As a result, existing Form S–3 does not set forth a detailed menu of disclosure items apart from disclosure about the offering. However, because a reporting history is not required for ABS for Form S–3 eligibility, investment grade ABS offerings registered on that form often must present all of their disclosure in the base prospectus and prospectus supplement in lieu of incorporating information by reference. Accordingly, the proposed Form S–3 instruction for ABS does not specify any existing items that may be omitted, but rather simply specifies the addition of the same basic disclosure package from Regulation AB. The other disclosure items required by Form S–3, such as the description of the securities and the offering, would continue to be required as applicable. Therefore, as shown in the following table, the effect of the proposed general instruction is to add the basic disclosure package of proposed Items 1102–1118 of Regulation AB:

PROPOSED DISCLOSURE FOR FORM S–3 FOR REGISTERED ABS OFFERINGS

Existing form items	Required if applicable	May be omitted
Item 1. Forepart of Registration Statement and Outside Front Cover Page of Prospectus	•	
Item 2. Inside Front and Outside Back Cover Pages of Prospectus	•	
Item 3. Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges	•	
Item 4. Use of Proceeds	•	
Item 5. Determination of Offering Price	•	
Item 6. Dilution	•	
Item 7. Selling Security Holders	•	
Item 8. Plan of Distribution	•	

PROPOSED DISCLOSURE FOR FORM S–3 FOR REGISTERED ABS OFFERINGS—Continued

Existing form items	Required if applicable	May be omitted
Item 9. Description of Securities to be Registered	•	
Item 10. Interests of Named Experts and Counsel	•	
Item 11. Material Changes	•	
Item 12. Incorporation of Certain Information by Reference	•	
Item 13. Disclosure of Commission Position on Indemnification for Securities Act Liabilities	•	
Item 14. Other Expenses of Issuance and Distribution	•	
Item 15. Indemnification of Directors and Officers	•	
Item 16. Exhibits	•	
Item 17. Undertakings	•	
Additional Disclosure Items from Regulation AB:		
Items 1102—1118 of Regulation AB	•	

Questions regarding proposed form types:

• We request comment on our proposal to require ABS offerings to be registered on either Form S–1 or Form S–3. Is there a reason to continue to provide access to another form type? Would there be any reason to provide a separate form type specifically for ABS?

• We request comment on the proposed general instructions to Forms S–1 and S–3. Is the proposed menu of disclosure items appropriate? Should any additional items be included or omitted? For example, should information required by Item 305 of Regulation S–K regarding quantitative and qualitative disclosures about market risk be included? Should disclosure be required of any changes in or disagreements with accountants used in prior transactions by the sponsor or depositor involving the same asset class regarding attestations of assessments of compliance with servicing criteria? If so, should the disclosure be similar to that required by existing Item 304 of Regulation S–K? Are there any additional instructions that should be included for ABS offerings?

b. Presentation of Disclosure in Base Prospectuses and Prospectus Supplements

In proposing to specify the menu of disclosure items applicable for ABS offerings eligible for Form S–3, and thus shelf registration, we do not intend to change the current practice or ability to present such disclosure in a separate base prospectus and prospectus supplement, a practice also available for non-ABS offerings.[83] Items in the basic disclosure package that are known or reasonably available should continue to be described in the base prospectus, while disclosure dependent on the final terms of the particular takedown could still be provided in the prospectus supplement.[84] A form of prospectus supplement would still be required to accompany the base prospectus in the registration statement at the time of effectiveness that outlines the format of deal-specific information that will be disclosed at the time of each takedown.[85]

As referenced in the 1992 Release, the type or category of asset to be securitized must be fully described in the registration statement at the time of effectiveness. The structural features contemplated also should be disclosed. In addition, risks associated with changes in interest rates or prepayment levels should be fully disclosed. The various scenarios under which payments on the asset-backed securities could be impaired also should be discussed, as well as identification of the types or categories of securities that may be offered, such as interest-weighted or principal-weighted classes (including IO or PO securities), planned amortization or companion classes or residual or subordinated interests.

In presenting disclosure in base prospectuses and prospectus supplements, registrants are reminded that, as is the case today for all shelf offerings, the base prospectus must fully describe the types of offerings contemplated by the registration statement. A takedown off of a shelf that involves assets, structural features, credit enhancement or other features that were not described as contemplated in the base prospectus will usually require either a new registration statement (*e.g.*, to include additional assets) or a post-effective amendment (*e.g.*, to include new structural features or credit enhancement) rather than simply describing them in the final prospectus filed with the Commission pursuant to Securities Act Rule 424.[86] Registrants should exercise discretion, however, in describing only the material

[83] However, as stated in the 1992 Release and as applicable to all shelf offerings, registrants are reminded that disclosure in the registration statement at the time of effectiveness should accurately reflect the registrant's current plans and arrangements with respect to the distribution of its securities. If a registrant plans to conduct a prompt takedown of asset-backed securities, the registration statement at the time of effectiveness must include all available information regarding the offering, including information about the asset pool, subject to any omissions permitted by Securities Act Rule 430A (17 CFR 230.430A), including a completed prospectus supplement and not just a form of prospectus supplement. Tax and legality opinions reflecting the takedown and related consents also would need to be filed pre-effectively with respect to any proposed offering contemplated to occur promptly.

[84] For example, the base prospectus should likely contain risk factors applicable to the transaction as a whole or the nature of the securities to be issued. The base prospectus also should include a discussion of the material Federal income tax consequences from investing in asset-backed securities. Of course, the prospectus supplement would include any additional risk factors or more specific disclosure as to tax consequences applicable to the particular structure and securities to be offered.

[85] In addition, any applicable opinions of counsel regarding tax consequences and the legality of the securities being registered would continue to be filed prior to effectiveness of the registration statement. See Items 601(b)(5) and 601(b)(8) of Regulation S–K. Note that these requirements exist independently from any contractual requirements of the transaction to deliver opinions at the closing of the asset-backed securities transaction. Where a prompt offering under the registration statement is not contemplated, opinions filed as of effectiveness may be appropriately conditioned or qualified pending the actual issuance of securities in the future. However, the opinions filed as of the time of effectiveness must still be signed opinions, not unsigned or draft forms of opinion. For each takedown that occurs, as with other exhibits representing the final terms of the takedown, amended or final opinions without such conditions or qualifications must be filed, either as an exhibit to the registration statement (See Securities Act Rule 462(d) (17 CFR 230.462(d)) which provides for immediate effectiveness of a post-effective amendment filed solely to add exhibits), or under cover of Form 8–K and incorporated by reference into the registration statement.

[86] Regarding the registration of market-making or remarketing transactions on Form S–3, in non-ABS transactions the registration statement is kept current by the incorporation by reference of subsequent Exchange Act reports. In an ABS transaction, the incorporation by reference of subsequent Exchange Act reports also is important, although the information in those reports does not include the extent of disclosure in the registration statement regarding the asset pool, such as the pool composition tables. Consistent with staff interpretations, this information should be kept current for use in ABS market-making and remarketing transactions. This can be accomplished either by filing a new prospectus under Securities Act Rule 424 or through the filing of a Form 8–K with the updated information that is incorporated by reference.

asset types or features reasonably contemplated to be included in an actual takedown in lieu of attempting to identify every conceivable permutation, no matter how remote. Such a practice only exacerbates unnecessarily the length of the base prospectus and limits the usefulness of this method of disclosure by including unnecessary and uninformative disclosure that obscures material information.

We do propose to specify in the proposed general instruction to Form S–3 the existing requirement to prepare separate base prospectuses and forms of prospectus supplements when multiple asset types may be securitized. As stated in the 1992 Release, a registration statement may not merely identify several alternative types of assets that may be securitized. A separate base prospectus and form of prospectus supplement must be presented for each asset class that may be securitized in a discrete pool in a takedown under that registration statement. Any difference in country of origin or country of property securing the pool assets also would require a separate base prospectus and form of prospectus supplement for each country.

An additional issue that often results in staff comment is the inclusion of language in registration statements that investors should rely on the information in the prospectus supplement if the terms of a particular series of securities conflict or vary between the base prospectus and the accompanying prospectus supplement. Disclosure in prospectus supplements regarding the transaction may enhance disclosure in the base prospectus regarding contemplated transactions, but should not contradict it. Similarly, including language to the effect of ''Except as otherwise provided in the prospectus supplement'' will permit some supplemental or modified terms of transactions, but should not be construed as creating the ability to add asset types or structural features in a takedown that were not otherwise contemplated by and described in the base prospectus.

Questions regarding presentation of disclosure in base prospectuses and prospectus supplements:

- Is any additional guidance or clarification necessary regarding the presentation of base prospectus and prospectus supplement disclosure? Should we be more specific, including by rule if necessary, on what information must be in the base prospectus as opposed to the prospectus supplement? If so, how should disclosures be delineated? Are there additional ways to cut down on unnecessary volume or detail in base prospectuses?
- Is the proposed specification that a separate base prospectus and form of prospectus supplement must be presented for each asset class and country of origin appropriate? If not, how would the staff ensure the base prospectus provides clear disclosure that did not confuse investors?
- Does the process of a base prospectus and a later prospectus supplement ensure that investors have adequate information at the time of their investment decision? Do the provisions permitting additional written communications in shelf ABS offerings, discussed in Section III.C., permit adequate information to be provided to investors in that time?

c. Form S–3 Eligibility Requirements for ABS

We propose to maintain the existing requirement for ABS Form S–3 eligibility that the asset-backed securities must be rated ''investment grade'' by a nationally recognized statistical rating organization, or NRSRO, at the time of offer and sale to the public.[87] The definition of ''investment grade'' would remain the same as for other investment grade securities that may be registered on Form S–3.[88] The ''investment grade'' requirement has existed for over ten years with respect to asset-backed securities and for over twenty years with respect to other non-convertible securities. The Commission is engaged in a review of the role of credit rating agencies in the operation of the securities markets, including whether credit ratings should continue to be used for regulatory purposes under the Federal securities laws.[89] However, pending outcome of that review, we propose to maintain the same rules and standards currently used for purposes of Form S–3 eligibility.

As discussed previously, we propose four additional conditions regarding the types of asset-backed securities that would qualify for Form S–3 eligibility. First, we propose to codify the current position that delinquent assets may not constitute 20% or more, as measured by dollar volume, of the original asset pool. Second, for securities backed by leases other than automobile leases, the portion of the cash flow to repay the securities anticipated to come from the residual value of the physical property underlying the leases may not constitute 20% or more, as measured by dollar volume, of the original asset pool. Third, the offering may not contemplate a prefunding account in excess of 25% of the proceeds of the offering or that lasts for more than one year. Finally, with respect to fixed financial assets that do not by their nature revolve, the amount of additional assets to be acquired in a revolving period may not exceed 25% of the proceeds of the offering or last for more than one year.

Consistent with existing requirements, we do not propose to add a reporting history requirement for ABS Form S–3 eligibility. However, we do propose codifying that reporting obligations regarding other asset-backed securities transactions established by the sponsor and the depositor have been complied with for the prior 12 months for continued Form S–3 eligibility for new transactions.[90] This proposal would not require that there be a reporting history with respect to any prior transactions, only that any existing or prior requirements during the past year have been met. This would include all prior reporting obligations during the preceding year, even if and only up until those obligations were suspended at some point during the year pursuant to Section 15(d) of the Exchange Act. While we believe the instances when this requirement would not be met should be rare, we do not believe it would be appropriate to continue to allow the benefits of shelf registration to new transactions established by sponsors or depositors that have not complied with ongoing reporting obligations involving previous asset-backed securities transactions.

Questions regarding Form S–3 eligibility:

- Should we continue to require an investment grade requirement for Form S–3 eligibility? Are any modifications to that requirement necessary? Should alternatives be considered, such as investor sophistication, minimum denomination or experience criteria?[91] If so, what criteria should be considered?
- Are there any additional conditions that should be required to qualify for Form S–3 eligibility? Are the proposed conditions appropriate?
- Should our proposed clarification of the impact of prior reporting obligations be limited to prior transactions by the same sponsor and depositor involving the same asset class? If so, why?

[87] NRSRO would continue to have the same meaning as used in 17 CFR 240.15c3–1(c)(2)(vi)(F).

[88] See General Instruction I.B.2 of Form S–3 and note 57 above.

[89] See Release No. 33–8236 (Jun. 4, 2003) [68 FR 35258]. For a detailed discussion on credit rating agencies and the Commission's use of credit ratings under the Federal securities laws, see the U.S. Securities and Exchange Commission, ''Report on the Role and Function of Credit Rating Agencies in the Operation of the Securities Markets, As Required by Section 702(b) of the Sarbanes-Oxley Act of 2002'' (Jan. 2003). The Report is available on our website.

[90] This proposal with regard to the depositor is consistent with existing staff policy.

[91] See note 89 above.

d. Determining the ''Issuer'' and Required Signatures

We propose to clarify which entity is considered the ''issuer'' under the Securities Act with respect to an offering of asset-backed securities. The Securities Act defines the term ''issuer'' in part to include every person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions), the term issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provision of the trust or other agreement or instrument under which the securities are issued.[92] Under current staff positions, the depositor must sign the Securities Act registration statement for an ABS offering. In addition, the issuing entity also must sign in the rare situation where it is formed prior to effectiveness.

We propose to clarify that the depositor for the asset-backed securities, acting solely in its capacity as depositor to the issuing entity, is the ''issuer'' for purposes of the asset-backed securities of that issuing entity.[93] Further, our proposed rule would specify that the person acting in its capacity as the depositor for the issuing entity of an asset-backed security is a different ''issuer'' from that same person acting as a depositor for any other issuing entity or for purposes of that person's own securities. As the proposed definition of asset-backed security would clarify that the issuing entity would need to be a passive special purpose investment vehicle, the proposed rule would apply regardless of the issuing entity's form of organization.

By clarifying that the person acting as the depositor in its capacity as depositor to the issuing entity is a different ''issuer'' from that person in respect of its own securities, any applicable exemptions from registration that person may have with respect to its own securities would not be applicable to the asset-backed securities.[94] Similarly, the reporting history with respect to a particular class of asset-backed securities would not affect Form S–3 eligibility with respect to the depositor's or sponsor's own securities, although as discussed above we do propose that the reporting history with respect to prior asset-backed securities transactions established by the sponsor or the depositor could affect continued Form S–3 eligibility for future ABS transactions.

Consistent with this proposal, we propose to codify in the general instructions for Forms S–1 and S–3 that the registration statement would need to be signed, as is currently the case, by the depositor, the depositor's principal executive officer or officers, principal financial officer and controller or principal accounting officer, and by at least a majority of the depositor's board of directors or persons performing similar functions. We would no longer require the issuing entity to sign if formed prior to effectiveness as such a requirement would be superfluous.

Questions regarding proposed definition of ''issuer'' and signatures required:

- We request comment on our proposed rule clarifying the ''issuer'' for an asset-backed security. In addition to, or in lieu of the depositor, should another entity be considered the ''issuer,'' such as the sponsor, the servicer, the trustee or the issuing entity? What would be the bases for designating such entity or entities as the ''issuer?''
- Is there still a reason to require the issuing entity to sign the registration statement if formed prior to effectiveness? If so, who should sign on behalf of the issuing entity? Should any other party to the transaction be required to sign the registration statement?
- Our proposal regarding which individuals of the depositor must sign is consistent with requirements for all registration statements. Should they be modified for ABS? If so, how?

4. Foreign ABS

While not as prevalent as in the U.S., securitization by foreign issuers has been developing rapidly.[95] However, asset-backed securities issued by a foreign issuer[96] or that are backed by foreign assets raise special issues due to potential differences in the legal and regulatory regime of the relevant home country. Differing laws and practices regarding banking regulation, accounting, bankruptcy, property rights, secured transactions, ''true sale,'' tax, asset servicing, consumer protection and other matters may alter fundamentally the basic principles underlying an ''asset-backed security.'' Also, given the early stage of securitization in some foreign markets, ABS may be used not just as an alternative funding source, but more for capital management, including efforts to ''prune'' a lender's portfolio by off-loading poorly performing assets.[97]

As a result of these concerns, the staff currently requires additional conditions for the processing of Form S–3 registration statements involving foreign ABS offerings. These conditions may include first requiring one or more registered offerings on a non-shelf basis on Form S–1 or S–11 that is fully reviewed by the staff, as well as other steps or conditions to help assure that novel or unique questions can be addressed by the staff. As experience with a particular issuer, asset type and laws related to asset-backed issues in the home country increases, the requirements decrease. Nevertheless, while designed to address the concerns noted above, these additional steps and conditions can result in delays and possible impediments to access to the U.S. public capital markets through shelf registration for foreign ABS, even if the other requirements for shelf registration, such as an investment grade rating, can be met.

[92] See Section 2(a)(4) of the Securities Act (15 U.S.C. 77b(a)(4)).

[93] See proposed Securities Act Rule 191 (17 CFR 230.191). We propose an identical rule for purposes of the Exchange Act. See proposed Exchange Act Rule 3b-19 (17 CFR 240.3b–19) and Section III.D.2. As noted in Section III.B.2., we propose to define the ''depositor'' as the depositor who receives or purchases and transfers or sells the pool assets to the issuing entity. For asset-backed securities where there is not an intermediate transfer of the assets from the sponsor to the issuing entity, the term ''depositor'' would refer to the sponsor. See proposed Item 1101(e) of Regulation AB. It should be noted that the definition of ''issuer'' under the Investment Company Act is different from the definitions in the Securities Act and the Exchange Act. See 15 U.S.C. 80a–2(a)(22). Our proposals would not affect that definition.

[94] For example, in an ABS transaction where there is not an intermediate transfer of the pool assets from the sponsor to the issuing entity and the sponsor is a bank, the proposed rule would not mean that because the bank is acting as depositor, the asset-backed securities would then be a ''security issued * * * by a bank'' and thus exempt from registration under Section 3(a)(2) of the Securities Act (15 U.S.C. 77c(a)(2)). See, *e.g.*, *Bank of America National Trust & Savings Ass'n* (May 19, 1977).

[95] For example, one source estimates that non-U.S.ABS issuance grew from $93 billion in 2000 to $185 billion in 2003. See Asset-Backed Alert (pub. by Harrison Scott Publications).

[96] The term ''foreign issuer'' is defined in Securities Act Rule 405 (17 CFR 230.405) as ''any issuer which is a foreign government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country.''

[97] See, *e.g.*, Brian Bremner *et al.*, ''An Exit Plan for Japan?'' Business Week, Oct. 26, 1998. Our separate proposed limits on delinquency concentrations and non-performing assets would act somewhat as a limiter on such transactions qualifying as an ''asset-backed security.'' In particular, the proposed standard for non-performing assets would be linked to the charge-off policies of the sponsor, regardless of whether those policies were enforced by the sponsor or any relevant regulatory authority.

To address the foreign and legal and regulatory issues while appropriately treating foreign ABS transactions, we are not proposing a different disclosure or regulatory regime for foreign ABS, with the one exception discussed below. Foreign ABS would be registered on the same Securities Act registration forms as domestic ABS, and with the exception of the disclosure discussed below, foreign ABS would be subject to the same disclosure requirements in proposed Regulation AB. Foreign ABS offerings registered on Form S–3 also would be eligible for our proposals regarding the use of ABS informational and computational material and ABS research reports discussed in Section III.C.

Like several of our other proposals, we believe that many of the concerns relating to foreign ABS can be appropriately addressed through adequate disclosure. As such, we are proposing an additional general instruction in Regulation AB focused on foreign ABS that if asset-backed securities are issued by a foreign issuer, are backed by foreign assets, or are affected by credit enhancement or other support provided by a foreign entity, then in providing the disclosures required, the filing also must describe any pertinent governmental legal or regulatory or administrative matters and any pertinent tax matters, exchange controls, currency restrictions or other economic, fiscal, monetary or potential factors that could materially affect payments on the performance of, or other matters relating to, the assets contained in the pool or the asset-backed securities.[98] This disclosure should particularly address the material items and legal and regulatory or administrative factors discussed above. Similar to the proposed requirement that registrants have separate base prospectuses for different asset classes, as discussed in Section III.A.3.c., is a proposed requirement that a registrant would need to prepare separate base prospectuses for each country of origin or country of property securing the pool assets.

We would expect that at the time of filing, the registration statement would include fully developed disclosure clearly articulating the material differences and effects of the home country legal and regulatory regime. In this regard, we also encourage pre-filing conferences with the staff where appropriate to discuss the home country legal and regulatory environment, the proposed transaction and the relevant disclosures that would be required.[99]

We also do not propose a different Exchange Act reporting structure for foreign ABS. We believe periodic disclosure of distribution and pool performance information, reports regarding servicing compliance (including an attestation report on an assessment of compliance with servicing criteria) and current disclosure of significant events would be equally relevant and applicable for foreign ABS as they are for domestic ABS. Thus, like domestic ABS, foreign ABS would be required to report on Forms 10–D, 10–K and 8–K. In addition, ongoing disclosures would be required in Forms 10–D and 10–K regarding any material impact caused by foreign legal and regulatory developments during the period covered by the report which had not been previously described.

Questions regarding foreign ABS:

- We request comment on the application of our proposals to foreign ABS. Is there a need to create different regulatory requirements for foreign ABS? If so, what accommodations should be made and why? In particular, is there any reason why foreign ABS should be subject to differing ongoing Exchange Act reporting obligations than domestic ABS? We request comment particularly from the point of views of potential issuers of foreign ABS who would prepare this information as well as potential investors in foreign ABS regarding what information would be material to their investing decisions.
- Should our proposed general instruction regarding foreign ABS disclosure be more specific? Are there any particular categories of disclosure that should be delineated?
- Are there any investor protection concerns raised by the approach of the proposals to foreign ABS? Should there be any additional conditions for Form S–3 eligibility for foreign ABS? For example, should there be a requirement of one or more previous registered offerings on a non-shelf basis? Should certain representations or undertakings be required, such as that subsequent offerings will be substantially similar to prior transactions? Should there be any minimum denomination requirements, investor sophistication or other suitability requirements regarding the types of investors that may invest? Should we have different standards regarding the type of pool assets (*e.g.*, level of delinquencies) that may be securitized? Should any of these conditions also be imposed with respect to Form S–1, such as an investment grade requirement?
- Are there structures commonly used in foreign ABS transactions that would be restricted from the definition of ''asset-backed security'' under our proposals? Would this limit the ability of these transactions to register public offerings in the U.S.? Are there any foreign structures that would be contemplated by our proposals but should not be considered appropriate for an ''asset-backed security?''

5. Proposed Exclusion From Exchange Act Rule 15c2–8(b)

Through a series of staff no-action letters, in connection with offerings of asset-backed securities eligible for registration on Form S–3, broker-dealers are not required under Exchange Act Rule 15c2–8(b) to deliver a copy of a preliminary prospectus to any person who is expected to receive a confirmation of sale at least 48 hours prior to the sending of such confirmation.[100] Without these no-action letters, most broker-dealers would be required to deliver a preliminary prospectus in ABS offerings because Rule 15c2–8(b) requires such delivery if the issuer has not previously been required to file reports with the Commission pursuant to Section 13(a)[101] or 15(d) of the Exchange Act, which most ABS issuers at the time of the ABS offering are not. In arguing for the no-action relief, the incoming requests to the staff cited the ability to use term sheets and computational material as substitutes,[102] the expense of preparing a preliminary prospectus and practical difficulties in preparing a preliminary prospectus given that the structure of an ABS transaction often evolves during the offering process.

Given our more than eight years of experience with the staff no-action letters, we are proposing to codify the position as a formal exclusion from Exchange Act Rule 15c2–8(b).[103] Although we propose to codify the staff position regarding Rule 15c2–8(b), the proposal does not affect any other obligation in that rule nor any other prospectus delivery obligation that may

[98] See proposed Item 1100(e) of Regulation AB. Information specified in Item 101(g) of Regulation S–K and Instruction 2 to Item 202 of Regulation S–K also would be required by the proposed Item.

[99] Registrants also should consider building additional time into their planning schedules given the possibility for staff review of the disclosure The review of these disclosures could include, for example, representative prospectus supplement disclosure, including statistical disclosure, regarding a hypothetical portfolio of financial assets that would be securitized in a takedown under the registration statement.

[100] See *Bond Market Ass'n* (Dec. 15, 2000); *Bond Market Ass'n* (Dec. 15, 1999); *Bond Market Ass'n* (Nov. 20, 1998); *PSA The Bond Market Ass'n* (Sep. 26, 1997); and *Public Securities Ass'n* (Dec. 15, 1995).

[101] 15 U.S.C. 78m(a).

[102] See Section III.C.1.

[103] The original no-action relief included a condition that the ABS offering would not contemplate a prefunding account in excess of 25% of the principal balance of the offered securities, which was consistent with staff practice regarding prefunding periods at the time. As we are proposing specific prefunding limits in the definition of ''asset-backed security'' and limiting Form S–3 to a 25% prefunding limit, the prefunding limit contained in the no-action letters for the Exchange Act Rule 15c2–8(b) exclusion will now be in Form S–3 eligibility requirements.

be applicable. The proposed exclusion only would be available with respect to registered offerings of investment grade asset-backed securities that meet the requirements of General Instruction I.B.5 of Form S–3. With respect to asset-backed securities that do not meet Form S–3 requirements (*i.e.*, those that would be registered on Form S–1), we believe investors should be entitled to the additional time and information they would receive as a result of Rule 15c2–8(b). We also believe that because of a separate registration statement for each Form S–1 offering, the impact of complying with the rule is less significant in that context.

Although we do propose to codify the exclusion from Rule 15c2–8(b) for Form S–3 ABS, we are concerned with statements from investors in previous communications to the staff that a combination of factors, including the introduction of shelf registration for ABS, relief from Rule 15c2–8(b) and the ability to use term sheets and computational material, has reduced the amount of time and information investors have to make informed investment decisions.[104] In this regard, we note that investors should have adequate information at the time of an investment decision in an ABS offering, as in the case of all offerings. We request comment regarding these concerns.

Questions regarding proposed exclusion from Exchange Act Rule 15c2–8(b):

- Should we codify an exclusion from the preliminary prospectus delivery requirements of Rule 15c2–8(b) for Form S–3 ABS? Do investors have enough time and information before the offering to make fully informed investment decisions? What alternatives might exist to Rule 15c2–8(b) to address this concern?
- What would be the costs and benefits of not codifying the staff position? Should there be any additional conditions to the exclusion? Should the proposed exclusion not apply to ABS targeted to non-institutional investors? For example, should preliminary prospectus delivery be required if the ABS is expected to have low minimum investment denominations (*e.g.*, less than $1,000) or for ABS that are to be listed? Should the exclusion be available for foreign ABS?
- Is the proposed limitation to Form S–3 ABS still appropriate? If not, under what circumstances should the proposal be extended to Form S–1 ABS? In particular, are there any additional conditions that should be required for extending the exclusion to Form S–1 ABS?

6. Registration of Underlying Pool Assets

a. Current Requirements

The 1992 Release included a statement that the definition of ''asset-backed security'' does not encompass securities issued in structured financings for one obligor or group of related obligors. It also stated that asset-backed offerings with a significant asset concentration—that is, a significant concentration of obligations of one obligor or related obligors—may involve one or more co-issuers under Securities Act Rule 140.[105] In interpreting these provisions, the staff has focused on ensuring that an ABS offering does not constitute an unregistered distribution of underlying securities and that non-S–3 eligible registrants do not circumvent Form S–3 eligibility requirements by attempting to structure their offering as an asset-backed offering. One of the basic premises underlying ABS offerings is that an investor is buying participation in the assets. Therefore, if the assets being securitized are themselves securities under the Securities Act, the offering of those securities also must be registered or exempt from registration from the Securities Act.[106]

In considering whether the distribution of the underlying assets must be registered in addition to the distribution of the ABS, the basic proposition is that where the underlying securities themselves are not exempt from registration, the depositor must be free to publicly resell the underlying securities without registration. Otherwise, their distribution must be registered. If registration of the underlying securities distribution is required, certain conditions and disclosures have developed through the staff comment process and industry practice regarding the method and manner of such registration. These conditions are designed to provide clear disclosure to investors of the different distributions involved, the relationships between the distributions and investor rights with respect to each distribution.

The nature of the distribution of the underlying securities is the important factor in determining whether concurrent registration is required, not necessarily their concentration in the pool. For example, if a $100 million asset pool included $5 million of securities that were not freely resalable by the depositor without registration, then the distribution of those $5 million of securities through the ABS distribution also would need to be registered, even though such securities only constituted 5% of the asset pool. Similarly, if a depositor obtained $100 million of freely resalable securities of one obligor from the secondary market, the offering of ABS backed by those securities would not require concurrent registration of the distribution of the underlying securities, even though one obligor represented 100% of the pool, because the securities were not purchased from the issuer or underwriter but rather were purchased in the secondary market. In that case, additional disclosure would be required regarding the concentrated obligor, including financial information about the obligor, but the concentration itself would not trigger a separate registration requirement.[107] As a result, the definition of ''asset-backed security'' may encompass securities issued in structured financings for one obligor or group of related obligors, so long as any required disclosure about the underlying obligor is provided and any distribution of the underlying securities is registered, if required.

b. Proposal for When Registration Is Required

To provide further clarification and regulatory certainty regarding this topic, we propose to codify in substantial part existing staff positions, as well as to streamline the conditions that would be required if the distribution of the underlying securities also must be registered.[108] First, we propose to delineate the conditions when registration of the distribution of the underlying security would not be required. Most asset types that are securitized today, including residential

[104] See, *e.g.*, Letter from ICI to Michael H. Mitchell, Special Counsel, Division of Corporation Finance, ''Asset-Backed Securities Offerings'' (Oct. 29, 1996); and Letter from AIMR to Brian J. Lane, Director, Division of Corporation Finance, ''Recommendations for a Disclosure Regime for Asset-Backed Securities'' (Sep. 30, 1996). These letters also questioned the premise that there are ongoing dialogues with investors regarding structuring publicly offered ABS classes.

[105] 17 CFR 230.140. Securities Act Rule 140 states, in pertinent part, as follows:

''A person, the chief part of whose business consists of the purchase of the securities of one issuer, or of two or more affiliated issuers, and the sale of its own securities, * * * to furnish the proceeds with which to acquire the securities of such issuer or affiliated issuers, is to be regarded as engaged in the distribution of the securities of such issuer or affiliated issuers within the meaning of section 2(a)(11) of the [Securities] Act.''

[106] Similarly, if a loan participation were securitized, that would be viewed as a public distribution of the loan participation and the loan participation would therefore be a security, the offer and sale of which would be subject to the registration requirements of the Securities Act. See, *e.g., Pollack* v. *Laidlaw Holdings*, 27 F.3d 808 (2nd Cir. 1994).

[107] See Sections III.B.6 and 7. See also Section III.B.9. regarding alternative methods that may be available to present information regarding the concentrated obligor, such as through incorporation by reference or by including a reference to the obligor's Commission filings.

[108] See proposed Securities Act Rule 190 (17 CFR 230.190).

mortgages, student loans, auto loans and credit card receivables, would meet these conditions and thus would not be affected.

Under our proposal, in an ABS offering where the asset pool includes securities of another issuer, unless the underlying securities are exempt from registration under the Securities Act, the offering of the underlying securities itself must be registered as a primary offering of such securities, unless all of the following are true:

- The depositor would be free to publicly resell the underlying securities without registration under the Act;
- Neither the issuer of the underlying securities nor any of its affiliates has a direct or indirect agreement, arrangement, relationship or understanding, written or otherwise, relating to the underlying securities and the asset-backed securities transaction; and
- Neither the issuer of the underlying securities nor any of its affiliates is an affiliate of the sponsor, depositor, issuing entity or underwriter of the asset-backed securities transaction.

The first condition states the basic proposition that the securities of the underlying issuer must be freely resalable without registration. Consistent with existing staff practice, we propose to include two examples to clarify this condition. First, the underlying securities may not include restricted securities (*e.g.*, privately placed securities) that do not meet the conditions for resale in Securities Act Rule 144(k) (*e.g.*, a two-year holding period by non-affiliates).[109] Second, the offering of the asset-backed security could not constitute part of a distribution of the underlying securities. Underlying securities which at the time of their purchase for the asset pool are part of a subscription or unsold allotment would be considered a distribution of the underlying securities.

We also propose to codify a staff interpretive position where the ABS offering involves a sponsor, depositor or underwriter that was an underwriter or an affiliate of an underwriter in a registered offering of the underlying securities.[110] Under the proposal, the distribution of the asset-backed securities would not constitute part of a distribution of the underlying securities if the underlying securities were purchased at arm's length in the secondary market at least three months after the last sale of any unsold allotment or subscription by the affiliated underwriter that participated in the registered offering of the underlying securities. In this instance, we believe three months provides sufficient certainty that the purchase was not part of the original distribution.

The second and third conditions clarify that if the issuer of the underlying securities is engaged in the distribution of its securities through the asset-backed securities or is affiliated with the sponsor, depositor, issuing entity or any underwriter for the ABS offering, then registration of the underlying distribution would be required along with registration of the ABS offering.

If any of the three conditions was not met, the offering of the relevant underlying securities itself would be required to be separately registered as a primary offering of such securities. Such registration would need to be conducted in accordance with the following proposed conditions:[111]

- If the ABS offering is registered on Form S–3, the offering of the underlying securities itself must be eligible to be registered under Form S–3 or F–3 as a primary offering of such securities;[112]
- The plan of distribution in the registration statement for the offering of the underlying securities contemplates this type of distribution at the time of the commencement of the ABS offering;[113]
- The prospectus for the ABS offering describes the plan of distribution for both the underlying securities and the asset-backed securities;
- The prospectus relating to the offering of the underlying securities is delivered simultaneously with delivery of the prospectus relating to the ABS offering, and the prospectus for the ABS offering includes disclosure that the prospectus for the offering of the underlying securities will be delivered with it or is combined with it;
- The prospectus for the ABS offering identifies the issuing entity, depositor, sponsor and each underwriter for the ABS offering as an underwriter for the offering of the underlying securities;
- Neither prospectus disclaims or limits responsibility by the issuing entity, sponsor, depositor, trustee or any underwriter for information regarding the underlying securities; and
- If the ABS offering and the underlying securities offering are not made on a firm commitment basis, the issuing entity or the underwriters for the ABS offering must distribute a preliminary prospectus for both the underlying securities offering and the ABS offering that identifies the issuer of the underlying securities and the expected amount of the issuer's underlying securities that is to be included in the asset pool to any person who is expected to receive a confirmation of sale of the ABS at least 48 hours prior to sending such confirmation.[114]

c. Proposed Exceptions From Disclosure and Delivery Conditions

Some ABS transactions are structured such that the asset pool consists of one or more financial assets that represent an interest in or the right to the payments or cash flows of another asset pool solely in order to facilitate the asset-backed issuance and not in order to re-securitize other securities. For example, some older credit card master trust structures have added an ''issuance trust'' structure to provide additional flexibility in the types of ABS that may be offered. An issuance trust generally receives a collateral certificate from the master trust representing an interest in the master trust asset pool. The master trust often may have issued its own ABS backed by the same pool. The issuance trust then issues its own ABS backed by the collateral certificate, and hence indirectly by the whole master trust pool.

Similarly, in some auto lease transactions, the auto leases and car titles often are originated in the name of a separate trust, sometimes called an ''origination'' or ''titling'' trust, to avoid administrative expenses in retitling the physical property underlying the leases. The origination trust will issue to the issuing entity for the ABS a certificate, often called a ''special unit of beneficial interest'' or SUBI, representing a beneficial interest in a pool of leases and automobiles in the origination trust which is to constitute the asset pool. The ABS issuing entity will issue ABS backed by the SUBI certificate, and hence indirectly by the assets underlying the SUBI.

In each instance, these structures are solely designed to facilitate the ABS transaction. The ABS will be primarily serviced by cash flows from the

[109] 17 CFR 230.144(k). The term ''restricted securities'' is defined in Securities Act Rule 144(a)(3) (17 CFR 230.144(a)(3)).

[110] See, *e.g.*, Section VIII.B.3.b.i. of the Division of Corporation Finance's ''Current Issues and Rulemaking Projects'' (Nov. 14, 2000).

[111] The proposed conditions, except as noted, are consistent with existing staff practice. In addition, as a result of the proposed conditions, a prefunding or revolving period could not be used to purchase unidentified securities whose distribution would need to be registered. We also do not propose to codify an existing staff condition that the prospectus include affirmative disclosure that ABS holders may proceed directly against issuers and underwriters of the underlying securities because even without such a condition ABS holders could proceed directly against such parties.

[112] This condition ensures that an offering of underlying securities that itself would not be eligible for shelf registration could not be conducted through the distribution of an ABS offering that was shelf eligible.

[113] For underlying securities that have already been registered under a previous shelf registration statement, this may require a post-effective amendment to that registration statement to incorporate this type of distribution into the plan of distribution description.

[114] In this instance, this condition would therefore overrule the proposed exclusion from Exchange Act Rule 15c2–8(b).

underlying pool assets.[115] However, the deposit of the certificate of interest regarding the other pool would likely fail to satisfy our proposed conditions to avoid registration of its distribution. In fact, the deposit of the certificate of interest is concurrently registered today in connection with ABS offerings involving these structures.

While these certificates do trigger additional registration obligations, they do not raise the same issues discussed above regarding the resecuritization of other underlying securities because they are merely facilitating structural devices.[116] Accordingly, although the distribution of the underlying financial asset in connection with the ABS offering would still need to be separately registered, we propose to exclude such transactions from the proposed disclosure and delivery conditions above with respect to other resecuritizations, if the following conditions were met:[117]

- Both the issuing entity for the asset-backed securities and the entity issuing the underlying financial asset were established under the direction of the same sponsor or depositor;
- The financial asset was created solely to satisfy legal requirements or otherwise facilitate the structuring of the ABS transaction;
- The financial asset was not part of a scheme to avoid registration or our resecuritization proposals; and
- The financial asset was held by the issuing entity and was a part of the asset pool for the asset-backed securities.

Questions regarding registration of underlying financial assets:

- We request comment on the list of conditions that clarify when the distribution of underlying securities in the asset pool needs to be separately registered. Are any modifications or clarifications necessary? Should we address further examples?
- We also request comment on the proposed conditions codifying the manner of registration of the underlying securities distribution. Are any modifications or clarifications necessary? Should any of these conditions no longer be required? Should any additional conditions be added?
- Should transactions that involve features such as issuance trusts or SUBIs be excluded from the proposed disclosure and delivery conditions? Should we specify more particularly the manner in which they should be registered? Does our proposed list of conditions adequately identify the relevant structures while excluding the resecuritization of other underlying securities? Are any other exceptions necessary?

B. Disclosure

1. Proposed Regulation AB

No disclosure items currently exist that are specifically tailored to asset-backed securities. While some disclosure items in Regulation S–K are relevant, such as a description of the security, most items do not elicit the most useful disclosure for ABS investors. There is generally no business or management to describe; rather, information about the pool assets, servicing, transaction structure, flow of funds and enhancements is more relevant. Analysis regarding the characteristics of the pool assets is necessary to determine the timing and amount of expected payments on the assets and thus payments on the ABS. In addition, the legal and often complex flow of funds of the transaction and the impact of any credit enhancement or other support must be analyzed. Through the staff comment process and industry practice, informal disclosure practices have developed. These practices, however, may not be fully transparent to issuers and investors.

We propose a new principles-based set of disclosure items in one central location in a subpart of Regulation S–K, called Regulation AB.[118] These disclosure items, which are based on existing disclosure practices, would form the basis for disclosure in both Securities Act registration statements and Exchange Act reports for asset-backed securities. As noted in Sections III.A. and D., specific disclosure requirements in ABS registration statements and forms would be keyed to items in Regulation AB in a manner consistent with the integrated disclosure system applicable to other issuers.

We believe a principles-based approach would provide the best framework for disclosure in the context of asset-backed securities. In addition, due to differences between asset classes, we believe it would be impractical to provide an exhaustive list of disclosure items required for each asset class. Not only do we believe this approach would be impractical due to the many existing asset classes that are securitized today, it would not provide any effective guidance with respect to new asset classes that may be securitized in the future. Due to the dynamic nature of the ABS market, any such list would likely become outdated.

Under our proposed principles-based approach, we identify the disclosure concept or objective required and provide one or more illustrative examples. Application of the particular concept or objective would need to be tailored in preparing and presenting the disclosure to the information material to the particular transaction and asset-type involved. The balance we strive to achieve through this approach is to provide enough clarity so that the disclosure concept or objective is understood and can be applied on a consistent basis, while not providing too much detail that could obscure or override the concept or objective. Of course, in some instances we believe we must and therefore do propose certain disclosure items with greater specificity. Further, we propose to codify several existing percentage tests that provide guidance as to when particular disclosure is required, particularly regarding concentrated obligors or significant credit enhancement or other support. We believe these proposed breakpoints provide consistency, comparability and clarity.

The structure of Regulation AB would be as follows:

- Item 1100 would set forth items of general applicability for the whole subpart, such as guidance regarding the presentation of delinquency and loss information when it is required, alternative methods for presenting third party financial information (discussed further in Section III.B.9.) and guidance regarding disclosures related to foreign ABS (previously discussed in Section III.A.4.).
- Item 1101 would set forth definitions applicable to asset-backed securities.
- Items 1102—1118 would constitute the basic disclosure required for Securities Act registration statements for ABS offerings. In addition, several of the items would be required on an ongoing basis in Exchange Act reports, such as updated financial information regarding certain third parties and disclosure regarding legal proceedings.
- Item 1119 would form the basis for disclosure required in distribution reports on proposed Form 10–D regarding cash flows and performance of the asset pool and the allocation of cash flows and distribution of payments on the ABS. This item is discussed more fully in Section III.D.4.
- Items 1120 and 1121 would address two long-standing requirements for the Form 10–K report based on market practice and the modified reporting system. Item 1120 would specify the form of the proposed report on compliance with servicing criteria based on an assessment by the depositor or servicer. It also would require filing of the registered public accounting firm's attestation report on

[115] See Section III.B.2 regarding our proposed general instruction regarding the scope of disclosure that would be required regarding these structures. In addition, any additional material risks regarding these structures should be clearly described.

[116] These other resecuritizations would be subject to the proposals in the previous section on the method and manner of registering the distribution of the underlying securities.

[117] Any separate registration of the distribution of the underlying financial asset would need to be on a form eligible for such distribution. The issuer of the underlying financial asset would need to sign the registration statement and any intervening transferors of the asset to the ABS issuing entity would need to be named as underwriters.

[118] See proposed Items 1100–1121 of Regulation AB.

the assessment. This item is discussed more fully in Section III.D.7. Item 1121 would specify the form of the separate servicer compliance statement. This compliance statement pertains to the servicer's compliance with the particular servicing agreement for the transaction, as opposed to an attested assertion of compliance against a general set of servicing criteria. This item is discussed more fully in Section III.D.5.

Many of our proposed disclosure items are based on the market-driven disclosures that appear in filings today. In addition, our consideration of the proposed disclosure items was informed by the staff review process as well as the staff's participation in the 2003 MBS Disclosure Report. However, we are concerned that disclosure practice without a previously defined set of universal disclosure standards has resulted in the inclusion of undue boilerplate language in ABS filings, particularly prospectuses and registration statements, and a disproportionate emphasis on legal recitations of transaction terms. Further, as disclosure practice may have been driven primarily by the staff review process and by observing and conforming to filings for other transactions, disclosures may have been included from other filings or retained from prior filings without necessarily considering their applicability or continued applicability with respect to the transaction in question.

However, the cumulative effect of these practices is to diminish in some cases the usefulness of the document through the accumulation of unnecessary detail, duplicative or uninformative disclosure that obscures material information and legalistic recitations of transaction terms. Efforts to revise disclosure documents in response to our ''plain English'' initiative have certainly helped by demonstrating that even the most complex structures can be described clearly and accurately without resorting to overly legalistic presentations.[119] However, we believe more work can be done regarding the manner and content of disclosures.

Therefore, in connection with our proposed codification of a universal set of disclosure items, we seek a reevaluation by transaction participants of the manner and content of presented disclosure, including the elimination of unnecessary boilerplate and immaterial legal recitations of terms. Transaction participants should view this rulemaking initiative as an opportunity to evaluate whether there is information that has been included in registration statements and prospectuses that is not required, not material and not useful to investors, and therefore should be reduced or omitted. Transaction participants should similarly consider whether disclosure should be revised so that its relevance to the transaction in question is more apparent and is presented in a manner that is more focused on providing clear and understandable disclosure for investors. Transaction participants also should continue to be mindful of the plain English disclosure principles to avoid legalistic or overly complex presentations and recitations that make the substance of the disclosure difficult to understand. Transaction participants should continue to focus on the use of tabular presentations, flow charts and other design elements that aid understanding and analysis.

In addition to the manner and presentation of disclosures, we also are concerned that existing disclosure standards may not adequately capture certain categories of information that may be material to an asset-backed securities transaction, such as the background, experience, performance and roles of various transaction parties, including the sponsor, the servicer and the trustee. While asset-backed securities are not intended to be direct obligations of these entities, it seems apparent from recent market events that their roles often can be as important to the performance of an ABS transaction as the transaction structure or its governing documents.[120]As a result, our proposed disclosure items relating to these entities are designed to elicit more useful information in these areas.

Consistent with current practice, we do not propose to require audited financial statements for the issuing entity in either Securities Act or Exchange Act filings. It does not appear that audited financial statements prepared in accordance with generally accepted accounting principles would provide material information to investors.[121] Often a new issuing entity is created for each transaction, so prior financial information about that entity would likely be of little use. On an ongoing basis, while an annual audit could provide benefits in providing some assurance with respect to controls over the administration of the transaction and the pool assets, we preliminarily believe our proposal to require an attestation by a registered public accounting firm as to an assessment of compliance with particular servicing criteria discussed in Section III.D.7. is a more direct and targeted approach to achieve such objectives. Similarly, we believe that one of the other objectives for financial statements—to present results of financial activity during a period—can be addressed more particularly by our proposed disclosure requirements regarding distributions on the asset-backed securities.

Questions regarding overall approach to proposed Regulation AB:

- We request comment on our proposed principles-based approach for Regulation AB. Should we provide detailed disclosure guides by asset type instead? In evaluating the proposed items in Regulation AB, do the items provide sufficient clarity in identifying the disclosure concept? Should we be more specific (or less specific) regarding any particular items?
- We also request comment on methods to improve the usefulness of disclosure documents. What additional actions can we take to encourage focus on clear and understandable material disclosures?
- Is additional disclosure regarding the background, experience, performance and role of transaction parties needed? In evaluating the proposed disclosure items relating to these parties, should we be more specific on particular aspects that should be disclosed?
- Should audited financial statements be required to be filed for issuing entities? If so, for what periods? What would be the costs and benefits of such a requirement? Should they be required in some filings (*e.g.*, ongoing Exchange Act reports) but not others (*e.g.*, Securities Act registration statements)? Are there alternative methods to reach the same objectives that would be achieved by requiring financial statements?
  - Are one or more of the basic audited financial statements (balance sheet, statement of income, retained earnings, or cash flows) more relevant for issuing entities than the

[119] See, *e.g.*, Release No. 33–7497 (Jan. 28, 1998) [63 FR 6370]. See also Division of Corporation Finance Staff Legal Bulletin No. 7A, ''Plain English Disclosure'' (Jun. 7, 1999) and Office of Investor Education and Analysis, ''A Plain English Handbook: How to Create Clear SEC Disclosure Documents'' (Aug. 1998). All of these documents are available on our website at *www.sec.gov.*

[120] *See*, *e.g.*, Michael Gregory, ''Lessons of Risk in AAA-rated ABS: In the Rare Bankruptcy, It's Servicers, Not Collateral, That Are the Problem,'' Investment Dealers Digest, Mar. 15, 2004; Luis Araneda, ''Distress in Credit Card ABS,'' Asset Securitization Report, Mar. 3, 2003, at 8; Moody's Investors Service, Inc., ''Securitizations that Dodge Bankruptcy 'Bullet' Rest on Qualitative Strengths'' (Sep. 16, 2002); ''Integrity Analysis to the Forefront: Is Issuer Quality More Important Than Structure,'' Asset Securitization Report, Oct. 14, 2002, at 4; Moody's Investors Service, Inc., ''Two Key Components of Mortgage Servicer Ratings Are Technical Ability and Financial Stability'' (Dec. 2, 2002); Moody's Investors Service, Inc., ''Evaluating Seller/Servicer Risk Concentrations in Structured Transactions Wrapped by Financial Guarantors'' (Jan. 30, 1998); and *Securitization of Financial Assets* § 8.08 (2nd ed. 1996).

[121] For example, GAAP financial statements are primarily based on historical cost measurements and allocations that are not necessarily meaningful to an ABS investor that is trying to assess the amount and timing of cash distributions from an ABS transaction.

others? If so, which one(s) and should it (they) be required to be filed?

○ Should a statement of cash flows using the direct method be required? [122]

○ What additional disclosures would be relevant if only one or more basic financial statements, rather than full audited financial statements, are provided (for example, disclosures about the fair value of financial instruments pursuant to FASB Statement 107)? [123]

○ Instead of GAAP financial statements, should financial statements be required that are prepared on another basis, such as on the basis of cash receipts and cash disbursements?[124]

2. Forepart of Registration Statement and Prospectus

Existing Items 501–503 of Regulation S–K would still provide the basic disclosure requirements for the forepart of Securities Act registration statements and registration statement prospectuses, which cover items such as the cover page of the prospectus, the prospectus summary and risk factors. Proposed Items 1102 and 1103 of Regulation AB would amplify those requirements by providing guidance on preparing those sections for ABS offerings consistent with current practice. In particular, they would clarify information that is to appear on the cover page of the prospectus, as well as inform the type and manner of presentation for ABS-specific disclosure items for the prospectus summary.

As with prospectuses for all registered offerings, disclosure on the cover page is to be limited and brief. For example, credit enhancement disclosure for the cover page should consist of only brief identifying statements, such as bond insurance provided by the particular named insurer.

Consistent with common ABS-specific items such as a summary of the flow of funds and credit enhancement, disclosure specified for the summary would include disclosure of the classes offered by the prospectus and classes issued in the same transaction or residual or equity interests in the transaction not being offered by the prospectus.[125] Also required would be a summary of any prefunding or revolving periods, such as the length and amount of such periods and the requirements for assets that may be added.[126] A summary of the amount or formula for calculating the servicing fee, including the source of payment of those fees and their distribution priority, also would be separately required in the prospectus summary.

We do not propose to identify a representative list of risk factors that may be common to many ABS transactions. We are concerned that any such list would result in boilerplate and generic disclosures in all prospectuses even if not applicable to the particular transaction. Registrants should take care in analyzing the most significant factors that make the ABS offering speculative and risky, and explain briefly yet particularly how those risks affect investors. We do propose to clarify that in identifying risk factors, registrants are to identify any risks that may be different for investors in any offered class of asset-backed securities (such as subordinated classes or principal-weighted or interest-weighted classes), and if so, identify such classes and describe such differences.

Questions regarding proposed disclosure for forepart of registration statement and prospectus:

• Are any modifications needed to the proposed list of items? Should we be more specific (or less specific) regarding any items?

• Should we provide a list of representative risk factors? How could we address our concern that any such list would become boilerplate disclosure in all filings?

3. Transaction Parties

a. Sponsor

We propose to define the ''sponsor'' as the person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity. As discussed above, in addition to basic identifying information about the sponsor, we propose to require a description of the sponsor's securitization program. The purpose of the description would be to provide context within which to analyze the characteristics and quality of the asset pool.

Such a description would consist of both a general discussion of the sponsor's experience in securitizing assets of any type, as well as a more detailed discussion of the sponsor's experience in and overall procedures for originating or acquiring and securitizing assets of the type to be included in the current transaction. Information should be included, to the extent material, regarding the size, composition and growth of the sponsor's portfolio of assets of the type to be securitized and information or factors related to the sponsor that may be materially relevant to an analysis of the origination or performance of the pool assets. For instance, this could include whether any prior securitizations organized by the sponsor have defaulted or experienced an early amortization or other performance triggering event, or if any action was taken outside the ordinary performance of the transaction to prevent such an occurrence.

Other relevant information, to the extent material, would include the sponsor's credit-granting or underwriting criteria for the asset types being securitized (and the extent to which they have changed), the extent to which the sponsor outsources to third parties any of its origination or purchasing functions and the extent to which the sponsor relies on securitization as a funding source. A description of the sponsor's roles and responsibilities in its securitization program and the sponsor's participation in structuring the transaction also would be required, including whether the sponsor or an affiliate is responsible for the selection of the pool assets.

In addition to this information, an increasingly valuable tool to analyze performance is the use of static pool

[122] *See* paragraph 27 of FASB Statement No. 95, Statement of Cash Flows (Nov. 1987).

[123] *See* FASB SFAS No. 107, Disclosures about Fair Value of Financial Instruments (Dec. 1991).

[124] The cash basis system of accounting is a system in which an issuer recognizes revenues when it receives cash and records expenses as it makes disbursements. Reporting oil and gas royalty trusts sometimes prepare financial statements under this system of accounting. *See, e.g.,* Topic 12.E. to Release No. SAB–103 (Dec. 17, 2003) [68 FR 26840].

[125] A particular issuance of asset-backed securities often involves one or more publicly offered classes (*e.g.,* classes rated investment grade) as well as one or more privately placed classes (*e.g.,* non-investment grade subordinated classes). In most instances, the subordinated classes act as structural credit enhancement for the publicly offered senior classes by receiving payments after, and therefore absorbing losses before, the senior classes. Cash flows from the pool assets back both the senior classes and the subordinate classes, and thus allocation of the cash flows to the subordinate classes could affect directly or indirectly the publicly offered classes. For example, while historically the servicing fee is near the top of the flow of funds, if the servicing fee in the flow of funds is subordinated below payments to the subordinated classes, and there are insufficient funds to pay the servicing fee in full after distribution to the subordinated classes, then the drop in the level of funds to the servicer could impact overall servicing, which could affect cash flows to senior classes. Identification of all classes and their impact on the transaction is thus relevant to the offering of the publicly offered classes. So long as the description of the non-offered classes is presented in this manner, that description alone in the prospectus would not raise general solicitation issues with respect to the private placement of the subordinated classes.

[126] Similar disclosure would be required for other instances when pool assets could be added, removed or substituted (for example, non-compliance with representations and warranties regarding pool assets). Like all of the proposed disclosure items, reference to particular activities would not imply that limits that exist elsewhere regarding such activities (*e.g.,* the requirement that the asset pool be ''discrete'') could be disregarded.

data.[127] Such data indicate how the performance of groups, or static pools, of assets, such as those originated at different intervals, are performing over time. By presenting comparisons between originations at similar points in the assets' lives, such data allow the detection of patterns that may not be evident from overall portfolio numbers and thus may reveal a more informative picture of material elements of portfolio performance and risk.

For example, while presentation of a delinquency or loss statistic at the pool level, such as an overall charge-off rate, may be useful, it does not indicate the amount and timing of charge-offs over time. Static pool analysis may indicate that more recent originations are experiencing higher delinquencies at each point in their life cycle than older originations, which could suggest a declining quality in the obligor pool or a possible relaxation of credit standards. In that case, as more seasoned originations with a lower delinquency profile matured and exited the asset pool, the pool would increasingly be left with more recent originations with a higher delinquency profile, which may begin to affect performance. However, the overall delinquency statistic presented at the beginning of the transaction would be a blending of all originations and thus may not indicate the potential performance change. Without static pool data, an investor might have no means to identify a material potential increase in delinquency rates that would be indicated by these data.

Static pool data for several different data groups may be material for the current offering. For example, static pool data for the sponsor's overall portfolio can indicate origination trends relevant to how a currently offered pool can be expected to perform, particularly if the offered pool is unseasoned. Static pool data on a pool level basis with respect to prior securitized pools of the sponsor also can provide valuable information on both the quality and experience of pool selection as well as additional insight into asset performance. Finally, if the offered pool is seasoned, static pool data based on originations in the pool itself may reveal trends that may not be evident by aggregate pool-level statistics.

We have previously received requests that disclosure of such data should be received because investors view static pool data regarding delinquency and loss experience as important information in evaluating an investment in asset-backed securities.[128] We understand that such data are often available to sponsors and in many instances may be used in the rating process for asset-backed securities. We propose to require disclosure of such data if material to the transaction. In particular, we propose to require three years of static pool data with respect to the sponsor's overall portfolio (or for such shorter period as the sponsor has been making originations or purchases) because we preliminarily believe this would be the minimum period to provide meaningful evaluation of the data.[129] Such data should be presented for delinquency and loss information relevant to the particular asset type involved. Similarly, increments for the static pools and increments in which performance is presented (*e.g.*, monthly or quarterly) should be material to the asset type being securitized. Statistical data should be presented in tabular or graphical format, such as by loss curves, if such presentation will aid understanding.

If material, static pool data also would be required on a pool level basis with respect to prior securitized pools involving the same asset type established by the sponsor during the period. Static pool data, whether with respect to the sponsor's portfolio, prior pools or the pool itself, should be presented separately, to the extent material, according to factors relevant to the pool involved, such as by asset term, asset type, yield, geography or ranges of credit scores or other applicable measures of obligor credit quality. Selection of factors should result in disclosure of material information. How and according to which factors static pool information is presented, if at all, will depend on the particular asset class, the sponsor's history and the asset pool and transaction involved. Our proposals would not require preparation or disclosure of static pool data for data groups or factors that are immaterial.

In providing static pool data that is material to the transaction, registrants are encouraged to provide accompanying explanatory information about the data to place it in context for the current pool, such as how the composition of the offered pool may differ from the static pool data provided. In instances where the particular assets selected for the pool differ materially from the data provided regarding the overall portfolio or prior transactions, such additional information may be required.[130]

b. Depositor

We propose to define the ''depositor'' as the person who receives or purchases and transfers or sells the pool assets to the issuing entity. For asset-backed securities transactions where there is not an intermediate transfer of assets from the sponsor to the issuing entity, the sponsor would be deemed to be the depositor.[131]

If the depositor was not the same entity as the sponsor, separate identifying information about the depositor would be required, including information on the ownership structure of the depositor and the general character of any activities of the depositor other than securitizing assets. In addition, if materially different from the sponsor, information similar to that discussed above regarding the depositor's securitization program and its experience would be required. Finally, disclosure would be required regarding any continuing duties of the depositor after issuance of the asset-backed securities with respect to the asset-backed securities or the pool assets.

c. Issuing Entity and Transfer of Asset Pool

The nature of the issuing entity and the transfer of the pool assets is elemental to the concept of securitization. We propose to define the ''issuing entity'' to mean the trust or other entity created at the direction of the sponsor or depositor that owns or holds the pool assets and in whose name the asset-backed securities supported or serviced by the pool assets are issued.

Consistent with existing practice, disclosure would be required regarding both the nature of the issuing entity and the sale or transfer of the pool assets. Information about the issuing entity

[127] *See*, *e.g.*, Moody's Investors Service, Inc., ''Undisclosed Truths: Are ABS Investors Being Left in the Dark?'' (May 23, 1996) and Letter from AIMR to Brian J. Lane, Director, Division of Corporation Finance, ''Recommendations for a Disclosure Regime for Asset-Backed Securities'' (Sep. 30, 1996). Static pool data also is sometimes referred to as ''vintage data.''

[128] *See, e.g.*, note 104 above.

[129] We also propose to require static pool data to the extent material for the pool itself.

[130] *See* Securities Act Rule 408 (17 CFR 230.408); Exchange Act Section 10(b) (15 U.S.C. 78j(b)); Exchange Act Rule 10b–5 (17 CFR 240.10b–5); and Exchange Act Rule 12b–20 (17 CFR 240.12b–20).

[131] As noted in Section III.B.5, some ABS transactions, such as issuance trusts, are structured such that the asset pool consists of one or more financial assets that represent an interest in or the right to the payments or cash flows of another asset pool. In an issuance trust structure, the collateral trust certificate that is deposited into the asset pool comes from the master trust. For ABS transactions where the person transferring or selling the pool assets is itself a trust, we propose to specify that the ''depositor'' of the issuing entity is the depositor of that trust.

itself would include a description of its permissible activities, restrictions on activities and capitalization. The governing documents of the issuing entity would need to be filed as an exhibit.[132] The material terms of any management or administration agreement for the issuing entity also would need to be described,[133] and such agreement would need to be filed as an exhibit. If the issuing entity has its own executive officers, board of directors or persons performing similar functions, all of Item 403 of Regulation S–K, as well as Items 401, 402 and 404 of Regulation S–K, would be required.

In addition to a material narrative description of the sale or transfer of the pool assets, such information also should be provided graphically or in a flow chart if it will aid understanding. The discussion also must describe the creation (and perfection and priority status) of any security interests for the benefit of the transaction. Information would be required on the amount paid or to be paid for the pool assets, including the principles followed in determining such amounts, as well as information on any expenses incurred in connection with the selection and acquisition of the pool to be payable from offering proceeds.

Disclosure would be required to the extent material regarding any provisions or arrangements included to address any one or more of the following issues:[134]

- Whether any security interests granted in connection with the transaction are perfected, maintained and enforced;
- Whether a declaration of bankruptcy, receivership or similar proceeding with respect to the issuing entity can occur;
- Whether in the event of a bankruptcy, receivership or similar proceeding with respect to the sponsor, originator, depositor or other seller of the pool assets, the issuing entity's assets will become part of the bankruptcy estate or subject to the bankruptcy control of a third party; and
- Whether in the event of a bankruptcy, receivership or similar proceeding with respect to the issuing entity, the issuing entity's assets will become subject to the bankruptcy control of a third party.

Of course, any material risks related to the above must be discussed in the risk factors section of the prospectus.[135] Consistent with current practice and our proposed disclosure, we do not propose to require the filing of any statement or opinion, such as an opinion of counsel, regarding any of the above items, although we request comment on this point.

d. Servicers

The role of the servicer is often not limited to administration and collection of the pool assets. The servicer also often is the primary party responsible for calculating the flow of funds for the transaction, preparing distribution reports and disbursing funds to the trustee who in turn uses the allocations provided by the servicer to distribute funds to security holders. Our proposed definition of ''servicer'' is designed to capture this entire spectrum of activity to include both collection and asset maintenance activities as well as cash flow allocation and distribution functions for the ABS. We propose to define ''servicer'' as any person responsible for the management or collection of the pool assets or making allocations or distributions to holders of the asset-backed securities. This would include parties often referred to as ''administrators.'' Also, given that some of these functions may be performed by the trustee in certain transactions, the definition would clarify that the term ''servicer'' does not include a trustee for the issuing entity or the asset-backed securities that makes allocations or distributions to holders of the asset-backed securities, if the trustee receives such allocations or distributions from a servicer and the trustee does not otherwise perform the functions of a servicer.

Given the increasing realization of the importance of the role of the servicer in ABS transactions, our proposed disclosure requirement regarding servicers is designed to elicit additional information regarding their function, experience and servicing practices.[136] We also recognize that many transactions use multiple servicers to perform different servicing functions. For example, an ABS transaction may involve one or more master servicers that oversee the actions of other servicers and perform allocation and distribution functions. Different servicers, often called ''primary servicers,'' may be responsible for primary contact with obligors and collection efforts. In addition, one or more ''special servicers'' may exist for specific servicing functions, such as borrower work-out or foreclosure functions. While some servicers may be affiliated with the sponsor, other non-affiliated sub-servicers may be employed. Understanding the material aspects of the entire servicing function is important to understanding how servicing may impact expected performance.

Our proposed disclosure requirements would require information regarding the entire servicing function, including a clear description of the roles, responsibilities and oversight requirements of the entire servicing process and the parties involved. In addition, separate information would be required regarding certain sub-servicers. In particular, where servicing of the pool assets utilizes multiple servicers, separate information would be required for the master servicer, each affiliated servicer, each unaffiliated servicer (such as primary servicers) that services 10% or more of the pool assets and any other servicer, such as a special servicer, that performs work-outs, foreclosures or other material aspect of the servicing of the pool assets upon which the performance of the pool assets or the asset-backed securities is materially dependent. The 10% threshold we propose for unaffiliated servicers is consistent with our proposed thresholds for disclosure regarding other parties to the ABS transaction, such as third party originators, concentrated obligors and providers of enhancement or other support. We believe this breakpoint provides consistency and clarity in determining a triggering event for disclosure, and is consistent with many other longstanding standards used for our existing disclosure requirements.[137]

For servicers where disclosure is required, the information to be provided can be categorized into three general

[132] Proposed Item 1100(f) of Regulation AB would specify that where agreements or other documents are specified by Regulation AB to be filed as exhibits to a registration statement, such final agreements or other documents, if applicable, may be incorporated by reference as an exhibit to the registration statement, such as by filing a Form 8–K in the case of offerings registered on Form S–3.

[133] Any such description should include the specific material duties imposed on the parties and not generic disclosure such as ''various administrative services.''

[134] If applicable law prohibits the issuing entity from holding the pool assets directly (for example, an ''eligible lender'' trustee must hold student loans originated under the Federal Family Education Loan Program of the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*)), a description would be required of any arrangements to hold the pool assets on behalf of the issuing entity. Disclosure would need to be included regarding steps taken regarding bankruptcy separation and remoteness, as applicable, with respect to any such additional entity.

[135] In addition, additional disclosure may be required depending on the disclosures provided about any such issues, provisions or arrangements. *See* Securities Act Rule 408 (17 CFR 230.408); Exchange Act Section 10(b) (15 U.S.C. 78j(b)); Exchange Act Rule 10b–5 (17 CFR 240.10b–5); and Exchange Act Rule 12b–20 (17 CFR 240.12b–20).

[136] *See, e.g.*, Fitch, Inc., ''Seller/Servicer Risk Trumps Trustee's Role in U.S. ABS'' (Mar. 4, 2003).

[137] *See, e.g.*, Items 101(c)(7), 503(d), 601(b)(4)(ii) and 911(c)(5) of Regulation S–K (17 CFR 229.101(c)(7), 17 CFR 229.503(d), 17 CFR 229.601(b)(4)(ii) and 17 CFR 229.911(c)(5)); Instruction 2 to Item 103 of Regulation S–K (17 CFR 229.103); Instruction 1(a)(2) to Item 401 of Regulation S–K (17 CFR 229.401); and Topic 1.I. to Release No. SAB–103.

categories: Basic information and experience; the agreement with the servicer and servicing practices; and back-up servicing. Basic information and experience regarding the servicer would include a description of the general character of the servicer's business and how long it has been servicing assets. As with the sponsor, this description would include both a general discussion of the servicer's experience in servicing assets of any type, as well as a more detailed discussion of the servicer's experience in, and procedures for, servicing assets of the type included in the current transaction. Information should be included, to the extent material, regarding the size, composition and growth of the servicer's portfolio of serviced assets of the type to be securitized and information on factors related to the servicer that may be material to an analysis of the servicing of the pool assets, such as collection processes, billing processes, computer systems and back-up systems.

Other information that may be material could include whether any prior securitizations involving the servicer have defaulted or experienced an early amortization or other performance triggering event because of servicing, the extent of outsourcing the servicer utilizes or if there has been previous disclosure of material noncompliance with servicing criteria with respect to other securitizations involving the servicer. Disclosure would be required of any material changes to the servicer's policies or procedures in servicing assets of the same type during the past three years in order to demonstrate recent trends involving the servicer. Finally, information regarding the servicer's financial condition would be required where it could have a material impact on one or more aspects of servicing of the pool assets and where those aspects could materially impact pool performance on the asset-backed securities. General financial information would not be required. We are seeking particular information that could have a material impact as described.

The material terms of the servicing agreement and the servicer's duties regarding the asset-backed securities transaction would need to be described, and the servicing agreement would be required to be filed as an exhibit. A description of the servicer's servicing practices also would be required, which would include such commonly disclosed items as:[138]

- The manner in which collections on the pool assets will be collected and maintained, including the extent of commingling of funds.
- Terms or arrangements regarding advances of funds regarding cash flows, including interest or other fees charged and terms of recovery. Statistical information regarding past advance activity would be required, if material.
- The servicer's process for handling delinquencies and losses.
- Any material ability to waive or modify any terms, fees, penalties or payments on the pool assets.
- Custodial requirements regarding the pool assets.
- Any material minimum criteria the servicer is required to meet not specified in our proposed list of servicing criteria discussed in Section III.D.7.

As the ABS market has matured, another aspect of such transactions that has increased in importance is the role of servicer transition arrangements, or back-up servicing.[139] An efficient transition from one servicer to another can be essential to prevent portfolio deterioration and possible losses. However, depending on the nature of the assets and the availability of alternative servicers, the process of transferring servicing can be complex. In particular, if the existing servicing fee in a transaction is insufficient to attract a replacement servicer, delays may occur that could affect portfolio performance, and any additional fees required by a replacement servicer could affect cash flows that otherwise would be available to security holders.

As a result, the scrutiny of back-up servicing arrangements has increased, including the level of arrangements with a particular back-up servicer, often referred to in market practice as how ''warm'' the back-up servicer is. We propose to require disclosure regarding any terms regarding a servicer's removal, replacement, resignation or transfer, including arrangements regarding, and any qualifications required for, a successor servicer. Material information on the process for transferring servicing would need to be described, as well as any provisions for the payment of expenses associated with a servicing transfer or any additional fees that may be charged by a successor servicer.

e. Trustees

An ABS transaction may involve one or more trustees. For example, there may be a separate trustee for the issuing entity and for the ABS indenture. In addition to basic identifying information about any such trustee, disclosure would be required regarding the general character of the trustee's business, the trustee's prior experience in similar ABS transactions, indemnification provisions, limitations on liability and removal or replacement provisions.

Recently, there has been debate in the market on the nature and role of the trustee in ABS transactions, in particular the trustee's level of oversight regarding the transaction.[140] To help provide transparency to this topic, we are proposing to require explicit disclosure of the trustee's duties and responsibilities regarding the asset-backed securities under the governing documents and under applicable law. In providing this information, the description should address factors such as the extent to which the trustee independently verifies distribution calculations, access to and activity in transaction accounts, compliance with transaction covenants, use of credit enhancement, the addition, substitution or removal of pool assets, and the underlying data used for such determinations. In addition, the proposed item would require disclosure of any actions required by the trustee, including whether notice is required to investors, rating agencies or other third parties, upon an event of default, potential event of default (and how defined) or other breach of a transaction covenant. The required percentage of a class or classes of asset-backed securities needed to require the trustee to take action also would need to be described.

f. Originators

Some ABS transactions involve pool assets that were not originated by the sponsor. The sponsor may have acquired the pool assets from a separate originator or through one or more intermediaries in the secondary market before securitizing them. If the pool

[138] Note that while this is a proposed list of commonly disclosed items, there may exist other applicable requirements regarding these items as well. For example, Investment Company Act Rule 3a–7(a)(4)(iii) has requirements for segregating funds.

[139] *See, e.g.*, note 136; ''Trustees Seek to Reinforce Loan Servicing,'' Asset-Backed Alert, Jul. 18, 2003; and Moody's Investors Service, Inc., ''Warming Up to Backup Servicing: Moody's Approach'' (Aug. 8, 1997).

[140] Compare, *e.g.*, Moody's Investors Service, Inc., ''Moody's Re-examines Trustee's Role in ABS and RMBS'' (Feb. 4, 2003) with the American Bankers Association, ''The Trustee's Role in Asset-Backed Securities'' (Mar. 10, 2003). See also ''Moody's Unearths Trustee Failures,'' Asset-Backed Alert, Jun. 27, 2003; ''Trustee Role Seen as 'Minimal' at ASF Gathering,'' Asset Securitization Report, Jun. 16, 2003, at 12; and Paul Beckett, ''Asset-Backed Deals Draw Scrutiny—Trustees Must Administer and Oversee, Moody's Says, or Downgrades are Likely,'' The Wall Street Journal, Feb. 5, 2003, at C13.

assets from a single originator or group of affiliated originators reach a certain concentration threshold, information regarding that originator and its own origination program may become relevant.

Accordingly, we propose to require disclosure regarding any originator apart from the sponsor that has originated, or is expected to originate, 10% or more of the pool assets. As noted above with respect to disclosure regarding unaffiliated servicers, a 10% threshold is consistent with our proposed thresholds for disclosure regarding other parties to the transaction, such as concentrated obligors and providers of enhancement or other support. For any originator that meets the 10% threshold, the originator's origination program would need to be described, to the extent material, including the size and composition of the originator's portfolio, as well as other information material to an analysis of the performance of the pool assets, such as the originator's credit-granting or underwriting criteria.

g. Other Transaction Parties and Scope of Disclosure

ABS transactions may involve additional or intermediate parties other than the typical ones identified above, such as intermediate transferors. We propose to clarify in the general applicability section of Regulation AB that if the ABS transaction involves such a party, information is required to the extent material regarding that party and its role, function and experience in relation to the asset-backed securities and the asset pool.[141] The material terms of any agreement with such party would need to be described, and the agreement with that party would need to be filed as an exhibit.

In addition, as noted in Section III.A.6., some ABS transactions arestructured such that the asset pool consists of one or more financial assets that represent an interest in or the right to the payments or cash flows of another asset pool, such as in the case of an origination trust in an automobile lease transaction. In many cases, such structures are established under the direction of the same sponsor and depositor and are designed solely to facilitate the ABS transaction. The actual source of the cash flows that are to be used to service the asset-backed securities is the asset pool underlying the intermediate financial asset. Consistent with current practice, we propose to clarify that in such an instance, references to the asset pool and the pool assets of the issuing entity also include the other asset pool.[142] As such, required disclosure regarding the composition of the asset pool would include disclosure of the composition of the underlying asset pool, as material. In addition, our proposed requirement for an assessment of compliance with servicing criteria and the proposed servicer compliance statement would encompass the assets underlying the intermediate financial asset.

Questions regarding proposed disclosure for transaction parties:

- We request comment on the proposed disclosure regarding transaction parties. We also request comment on our proposed definitions. Are there additional parties not mentioned that should be specifically referenced? For each particular disclosure item, are there any modifications that should be made to the list of items to be disclosed? For example, should information regarding personnel or management of the sponsor, servicer or other party, including any recent turnover in personnel or management, be listed as an additional item for disclosure, if material? Should any of the examples of disclosure be added explicitly to the proposed items? Would information about the depositor's securitization program ever materially differ from the sponsor's? Several rating agencies provide ratings for servicers. Should these be required to be disclosed?
- Should specific financial information be required regarding any of the transaction parties? If so, for which parties should information be required? What information should be required (*e.g.*, audited financial statements) and for what periods? Under what circumstances should such information be required? Should audited financial statements be required for the servicer? Would this place too much emphasis on the servicer?
- We request comment on the proposed requirement to include static pool data for the sponsor's portfolio and for prior securitized pools by the sponsor. Is such data material? Is such data available? Is additional clarity needed regarding the scope of the requirement? For what period should such data be presented? How should variations in what may be relevant for each asset type or asset pool be considered? Are there particular statistics that should be specifically identified for presentation on a static pool basis? If data on a static pool basis are required, should any updates to the data be required on an ongoing basis? If so, what data should be updated, how often and where should they appear? Should we require explanatory information about static pool data?
- Is additional specificity required for disclosure of the transfer of the pool assets? For example, should there be any modifications to the disclosure regarding bankruptcy separation, bankruptcy remoteness and the creation of security interests? In the case of sponsors that acquire pool assets for securitization from other originators or issuers, should there be disclosure of the difference between the acquisition price and the price paid by the issuing entity?
- Should any statement or opinion, such as an opinion of counsel, regarding any bankruptcy separation or bankruptcy remoteness issues be required to be filed? Should they only be required if they are required by the underlying transaction documents? Should there be disclosure if such opinions are not provided?
- We request comment on requiring more disclosure regarding sub-servicers. What are the ramifications of including additional disclosure regarding sub-servicers, including the material terms of the agreements with such sub-servicers? Is such disclosure important to investors? Are there instances where this information should not be required?
- Is a 10% breakpoint appropriate for triggering disclosure regarding unaffiliated servicers and significant originators? Should the percentage be higher (*e.g.*, 20%) or lower (*e.g.*, 5%)? Should a specific percentage not be used for determining when disclosure is appropriate? Is disclosure regarding other servicers that account for a material portion or aspect of the servicing of the pool assets appropriate?
- Should the proposed disclosure regarding the trustee include more explicit examples of activities that the trustee does and does not do? Should there be disclosure of any other entity that would perform such activities if the trustee does not? Is the same disclosure needed for both the trustee for the issuing entity and the trustee for the ABS indenture?
- Should any information regarding third party originators be required other than what is provided today? If so, is it practical to obtain such information? Should material static pool data regarding such originators be required?
- We request comment on the clarification regarding the application of our proposals to the asset pool underlying a financial asset that represents an interest in or the right to the payments or cash flows of that asset pool. Does our proposed list of conditions adequately identify the relevant structures?

4. Pool Assets

Information about the composition and characteristics of the asset pool is a cornerstone of the disclosure necessary to make an informed investment decision regarding an asset-backed security. As noted above, we do not propose detailed industry guides for each asset type to be securitized. However, while the material characteristics will vary depending on the nature of the pool assets, there are certain broad categories of disclosure and examples of common characteristics that can be identified as representative of the material disclosure that is to be provided. The actual disclosure to be provided would need to be tailored to the asset type and asset pool involved for the particular offering, just as it is today.

[141] *See* proposed Item 1100(d) of Regulation AB.

[142] *Id.*

a. Pool Composition

Under our proposal, certain general information regarding the asset pool would be required, including a brief description of the asset type to be securitized and a general description of the material terms of the pool assets. In addition, the solicitation, credit-granting or underwriting criteria used to originate or purchase the pool assets would need to be described. The selection criteria for the asset pool also would need to be described, as well as the cut-off date or similar date for establishing pool composition. Finally, the effects of any legal or regulatory provisions would need to be described, such as any bankruptcy, consumer protection, predatory lending, privacy, property rights or foreclosure laws or regulations, to the extent they may materially affect pool asset performance or payments or expected payments on the asset-backed securities.[143]

As information about the asset pool necessarily includes statistical information, the need for clear and material presentations is important. Appropriate introductory and explanatory information should be provided to introduce characteristics and any terms or abbreviations used. As is the case today, statistical information should be presented in tabular or graphical format, if it would aid understanding. Statistical information also should be presented in appropriate distributional groups or incremental ranges material to an analysis of the information, in addition to presenting appropriate overall pool totals, averages and weighted averages.[144]

Currently, statistical disclosures by distribution groups or ranges often present just the number, amount and percentage of pool assets for each group or range. If material, registrants also should provide statistical information for each group or range by other material variables, such as, among others, average balance, weighted average coupon, average age and remaining term, average loan-to-value or similar ratio, and weighted average credit score or other applicable measure of obligor credit quality. Similarly, when presenting averages on an aggregate basis and within each group or range, registrants should consider providing minimums and maximums underlying the averages. As is often the case today, historical data on pool assets is to be provided, as appropriate, such as the lesser of three years or the time such assets have existed, to allow a material evaluation of the pool data.

Examples of material characteristics specified in the proposed disclosure item that may be common for many asset types and representative of disclosures currently provided include:

- Number of each type of pool assets.
- Asset size, such as original balance and outstanding balance as of a designated cut-off date.
- Interest rate or rate of return, including type of interest rate if the pool includes different types, such as fixed and floating rates, and annual percentage rate.
- Capitalized or uncapitalized accrued interest.
- Age, maturity, remaining term, average life (based on different prepayment assumptions), current payment/prepayment speeds and pool factors, as applicable.
- Servicer, if different servicers service different pool assets.
- If a loan or similar receivable: amortization period; loan purpose; loan status; loan-to-value (LTV) ratios and debt service coverage ratios (DSCR); type and/or use of underlying property, product or collateral; and number of points or other origination charges paid on the pool assets.
- If a receivable or other financial asset with a revolving balance, such as a credit card receivable: monthly payment rate; maximum credit lines; average account balance; yield percentages; type of receivable account; finance charges, fees and other income earned; gross and net purchases and returns granted; and percentage of full-balance and minimum payments made.
- Whether the pool asset is secured or unsecured, and if secured, the type(s) of collateral.
- Ranges of standardized credit scores of obligors and other information regarding obligor credit quality.
- Billing and payment procedures, including frequency of payment, payment options, fees, charges and origination or payment incentives.
- Information about the origination channel and origination process for the pool assets, such as originator information (and how acquired) and level of origination documentation required, as applicable.
- Geographic distribution, such as by state or other material geographic region.[145] In particular and consistent with existing practice and our other proposed thresholds for increased disclosure, if 10% or more of the pool assets are or will be located in any one state or other geographic region, information is to be provided regarding any economic or other factors specific to such state or region that may materially impact the pool assets or pool asset cash flows. In addition, if material, statistical data should be provided according to the factors or variables in this proposed list for each such geographic concentration.
- If material, other concentrations material to the asset type (*e.g.*, school type for student loans), with information regarding such concentrations similar to that provided for geographic concentrations.

In addition to the above and consistent with existing practice, delinquency and loss information for the pool would be required. A proposed item of general applicability for Regulation AB would provide guidance regarding the presentation of such information.[146] In addition to overall delinquency percentages, delinquency experience is to be presented in 30-day increments, beginning with assets 30–59 days delinquent, through the point that assets are written off or charged off as uncollectable. At a minimum, such information is to be presented by number of accounts and dollar amount. Disclosure also would be required on how delinquencies, charge-offs and uncollectable accounts are defined or determined, addressing the effect of any grace period, re-aging, restructure or other practices on delinquency experience. Similar information would be required with respect to the sponsor in a registration statement or otherwise if delinquency and loss information was being presented with respect to the sponsor.

As discussed in Section III.B.3.a., we also propose to require static pool data for the asset pool regarding delinquency and losses, to the extent material. As with static pool data at the sponsor level, additional explanatory disclosure regarding the static pool data could be included, and in some cases could be required.[147] We recognize, however, that there may be instances where such static pool data would not be material, such as where the asset pool predominantly consisted of new originations without a history of data to present.

In a commercial mortgage-backed securitization, given the importance of the underlying properties, our sample list of proposed disclosure items for these assets is consistent with similar disclosure required by existing Form S–11 for the registration of offerings of securities for certain real estate

[143] An instruction to the proposed Item would specify that unless a material concentration of assets exists, it is not necessary to provide details of the laws in each jurisdiction apart from the material potential effects of such laws. A legalistic description or recitation of the laws or regulations in a particular jurisdiction would not be required.

[144] As noted in the proposed Item, in making any calculations regarding overall pool balances, any funds set aside for a prefunding account should be disregarded.

[145] An instruction to this proposed item would specify that for most assets, such as credit card accounts, automobile leases, trade receivables and student loans, the location of the asset is the underlying obligor's billing address. For assets involving real estate, such as mortgages, the location of the asset is where the physical property underlying the asset is located.

[146] *See* proposed Item 1100(b) of Regulation AB.

[147] *See* note 130 above.

companies. This information would include, to the extent material: [148]

- Net cash flow information from the pool assets and the components of net cash flow.
- Location and general character of all materially important real properties.
- Nature and amount of other material mortgages, liens or encumbrances.
- Proposed renovation, improvement or development programs.
- Competitive conditions.
- Management of the properties, occupancy rates and property uses.
- Material tenants and lease terms.

b. Sources of Pool Cash Flow

In some ABS transactions, cash flows to support the asset-backed securities come from more than one source, such as in lease-backed transactions that include separate cash flows from lease payments and from the sale of the residual asset at the termination of the lease. In such instances, disclosure would be required, consistent with what is provided today, of the specific sources of funds and their uses, including, if applicable, the relative amount and percentage of funds that are to be derived from each source. Any assumptions, data, models and methodology used to derive such amounts also would need to be described.

As discussed in Section III.A.2.d., we propose additional specific disclosures if the asset pool includes leases or other assets where a portion of the cash flow is anticipated to come from the residual value of an underlying physical asset. Such disclosure would include information on how residual values are estimated and derived, statistical information regarding estimated residual values and historical statistics on turn-in rates and residual value realization rates. Information also would be required regarding the manner and process in which residual values are to be realized, including disclosure of the entity that will convert the residual values into cash and the experience of such entity. Finally, disclosure would be required of the effects if not enough cash flow was received from the realization of residual values, whether there existed any provisions to address such a contingency, as well as how any cash flow greater than that necessary to repay security holders would be allocated.

[148] Similar to Form S–11, an instruction to the proposed disclosure item would specify that what is required is information material to an investor's understanding of the asset-backed securities. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required.

c. Changes to the Asset Pool

As discussed in Section III.A.2.e., we are proposing more detailed disclosures on when and how the composition of an asset pool may change, such as through a prefunding or revolving period. Such disclosure would include:

- The term or duration of any prefunding or revolving period.
- Aggregate amounts and percentages involved in the prefunding or revolving period.
- Triggers that would terminate limits or terminate such periods.
- When and how new pool assets may be added, removed or substituted, and the acquisition or underwriting criteria for additional pool assets, and the party that makes determinations on such changes.
- Any minimum requirements to add or remove pool assets.
- Temporary investment of funds pending use.
- How investors will be notified of any changes to the asset pool.

d. Rights and Claims Regarding the Pool Assets

When pool assets are transferred to the issuing entity, the sponsor, transferor or other party often makes certain representations and warranties concerning the pool assets, such as to their principal balance and status at the time of transfer. If an asset fails to meet the requirements of those representations or warranties, there may be obligations for the depositor to repurchase or substitute that asset for assets that do comply with the representations and warranties. Consistent with current practice, disclosure of these rights and remedies would be required. Similarly, disclosure would be required regarding any material direct or contingent claims that parties other than the holders of the asset-backed securities have on any pool assets, such as prior mortgages, liens or encumbrances.

Questions regarding proposed disclosure for the asset pool:

- We request comment on the proposed disclosure regarding the asset pool. Are there any modifications that should be made to the list of representative items to be disclosed? For example, is additional specificity needed regarding when and how the asset pool may change? Is the disclosure regarding rights and claims regarding the pool assets appropriate?
- Is the proposed disclosure regarding lease-backed ABS appropriate? Is additional specificity needed regarding residual value disclosures or how residual values are to be realized?
- Should additional guidance be provided on the methods to present statistical disclosure so that it is presented in a clear and understandable format?
- Similar to our proposals for the sponsor, we request comment on the proposed requirement to include static pool data for the asset pool. Is such data material to an investment decision? Is it readily available for presentation? Is additional clarity needed regarding the scope of the requirement? Should any updates to the data be required on an ongoing basis? If so, what data should be updated, how often should they be updated, and where should they appear?

5. Transaction Structure

Existing Item 202 of Regulation S–K would continue to provide the core disclosure requirements for describing the securities being offered. Proposed Item 1112 of Regulation AB would provide additional guidance consistent with existing practice for preparing this disclosure for asset-backed securities. For example, the item would clarify that an explanation is to be given of the types or categories of securities that may be offered, such as interest-weighted or principal-weighted classes or planned amortization or companion classes, as well has how principal and interest on each class of securities is calculated and payable. Other specified items would include amortization, performance or similar triggers or events (and their effects on the transaction if triggered), overcollateralization or undercollateralization information, cross-default or cross-collateralization provisions, voting requirements to amend the transaction documents and any minimum standards, restrictions or suitability requirements regarding ownership of the securities.

A clear description of the flow of funds for the transaction would be required. Such a description would include payment allocations, rights and distribution priorities among all classes of the issuing entity's securities, and within each class, with respect to cash flows, credit enhancement and any other structural features in the transaction. Any requirements directing cash flows would need to be described, such as to reserve accounts, along with a description of the purpose and operation of those requirements. In addition to an appropriate narrative description, the flow of funds should be presented graphically if doing so would aid understanding.

There has been increased emphasis in the market on the level of fees and expenses involved in an ABS transaction.[149] To provide increased transparency of this information in a unified location, we propose to require in a separate table an itemized list of all estimated fees and expenses to be paid or payable out of the cash flows for the transaction. This fee and expense table would indicate for each item the

[149] *See, e.g.*, notes 136 and 140 above.

amount of the fee or expense, its general purpose, the party receiving such fees or expenses, the source of funds for such fees or expenses (if different from other fees or expenses or if such fees or expenses are to be paid from a specified portion of the cash flows) and the distribution priority of such expenses. If the amount of a fee or expense was not fixed, the formula used to determine it would need to be provided. The tabular presentation could be accompanied by footnotes or other accompanying narrative disclosure to the extent necessary for an understanding of the timing or amount of such fees and expenses. In addition, through footnote or other accompanying narrative disclosure, disclosure would be required if any, and if so how, any fees or expenses could be changed without notice to, or approval by, security holders.

Other disclosures regarding the transaction structure would include information on the frequency of distribution dates and the collection periods for the pool assets and arrangements for cash held pending use, including identification of the parties with access to cash balances and the authority to make decisions regarding their investment and use. Information on the ownership of any residual or retained interests to the cash flows would be required, as well as the disposition of excess cash flow. Disclosure would need to be provided of any requirements to maintain a minimum amount of excess cash flow or spread from, or retained interest in, the transaction, and effects on the transaction if the requirements were not met.

As with any fixed-income security, optional or mandatory redemption or termination provisions would need to be described, including any ''clean up'' calls if the principal balance of the pool assets reaches a specified minimum level. Many ABS transactions include ''clean up'' calls whereby the securities are called and the trust terminated before its stated termination date when the administrative costs no longer justify the limited outstanding life.[150] This is typically conducted only when less than 10% of the outstanding pool balance is outstanding. We also propose to codify the existing staff position that the title of any class of securities with an optional or mandatory redemption or termination feature that may be exercised when 25% or more of the original principal balance of the pool assets is still outstanding must include the word ''callable.'' This is to alert investors that the callable feature is greater than a typical ABS ''clean up'' call.

We propose to require additional information if the transaction structure involves a master trust. For example, information would be required to the extent material regarding any additional securities already outstanding or that may be issued in the future that are backed by the same asset pool, including:

- The relative priority of those additional securities to the securities being offered and their respective rights to the underlying pool assets and cash flows;
- Allocations of cash flow from the asset pool and any expenses or losses among the various series or classes;
- Terms under which additional series or classes may be issued and pool assets increased or changed; and
- The terms of any security holder approval or notification of any additional issuance.

In describing generally the scope of disclosure expected in ABS registration statements, the 1992 Release specifically referenced disclosure regarding prepayment, maturity and yield considerations that may be material to ABS. In our proposed disclosure requirements, a description would be required, which is often provided today, of any material models, including material assumptions and limitations, used as a means to identify cash flow patterns with respect to the pool assets. Similarly, the disclosure would need to explain, to the extent material, the degree to which each class of securities is sensitive to changes in the rate of payment on the pool assets, and describe the specific consequences of such changing rate of payment.[151] Consistent with market practice, statistical information of such effects is to be provided, such as the effect of prepayments on yield and weighted average life at one or more given prepayment speeds. Any special allocations of prepayment risks among the classes of securities would need to be described, as well as whether any class protects other classes from the effects of the uncertain timing of cash flow.

Questions regarding proposed disclosure regarding the transaction structure:

- We request comment on the above proposed disclosure regarding transaction structure. Are there any modifications that should be made to the list of items? For example, is additional specificity needed regarding the information that should be provided regarding prepayment, maturity and yield considerations?
- Is a separate itemized fee and expense table useful, or would disclosure of fees and expenses as part of a flow of funds discussion be sufficient?
- If the proposal regarding an assessment of compliance with servicing criteria is modified, should additional disclosure be required regarding controls and procedures over collections and cash balances?
- Is the proposed disclosure about additional series or classes of securities in master trust structures sufficient? Should disclosure of additional information be required?

6. Significant Obligors

In most securitizations, the asset pool represents obligations of a large enough number of separate obligors that information on any individual obligor is not material. However, as discussed in Section III.A.6., as concentration with a particular obligor or group of related obligors increases, additional disclosures regarding that obligor or group of related obligors, including financial information, is required. Analogizing to the standards in Topic 1.I of Staff Accounting Bulletin No. 103, current staff and market practice is to require additional disclosures regarding a particular obligor or group of related obligors when concentration reaches 10%, with more particular disclosures at 20%.[152]

Consistent with this long-standing practice, we propose to define a ''significant obligor'' that would trigger additional disclosures as any of the following:

- An obligor or a group of affiliated obligors on any pool asset or group of pool assets if such pool asset or group of pool assets represents 10% or more of the asset pool;
- A single property or group of related properties securing a pool asset or a group of pool assets if such pool asset or group of pool assets represents 10% or more of the asset pool; or
- A lessee or group of affiliated lessees if the related lease or group of leases represents 10% or more of the asset pool.

Instructions to the proposed definition would clarify that if separate pool assets, or properties underlying pool assets, are cross-defaulted and/or cross-collateralized, such pool assets are to be aggregated and considered together in determining concentration levels. With respect to lessees, the concentration calculation must focus on the leases whose cash flow supports the asset-backed securities directly or indirectly, regardless of whether the asset pool contains the leases themselves, mortgages on properties

[150] *See* Frank J. Fabozzi *et al.*, The Handbook of Nonagency Mortgage-Backed Securities, at 165 (1997).

[151] This would include, for example, information on interest rate sensitivity.

[152] Topic 1.I. to Release No. SAB–103.

that are the subject of the leases or other assets related to the leases. Finally, if the pool asset is a mortgage or lease relating to real estate and non-recourse to the obligor, and the obligor does not manage the property or does not own other assets and has no other operations, then the obligor need not be considered a separate significant obligor from the real estate. Otherwise, if any of the 10% tests were met, the obligor would be a separate significant obligor for which disclosure would be required.

For each significant obligor, both descriptive and financial information would be required consistent with existing practice. Descriptive information would include the identity of the significant obligor, its organizational form, the general character of its business, the nature of the concentration and the material terms of the pool assets or the agreements with the obligor involving the pool assets.

Consistent with current practice, different levels of financial information would be required depending upon the level of concentration.[153] If the pool assets relating to a significant obligor represented 10% or more, but less than 20%, of the asset pool, selected financial data required by Item 301 of Regulation S–K would need to be provided.[154] If the pool assets relating to the significant obligor represented 20% or more of the asset pool, audited financial statements meeting the requirements of Regulation S–X would be required. Both thresholds represent long-standing breakpoints in Commission and staff requirements for determining the level of required financial disclosure.[155] Section III.B.9. discusses proposals for alternative methods that may be available, subject to conditions, to present this disclosure, such as through incorporation by reference or by including a reference to the obligor's Commission filings.

We propose instructions to address exceptions to the requirement to provide financial information regarding a significant obligor. For example, no financial information would be required if the obligations of the significant obligor as they relate to the pool assets are backed by the full faith and credit of the United States. Similarly, no financial information would be required if the obligations of the significant obligor as they relate to the pool assets are backed by the full faith and credit of a foreign government, if the pool assets are investment grade securities. Otherwise, information required by paragraph (5) of Schedule B of the Securities Act[156] regarding the foreign government could be incorporated by reference. If the significant obligor was an asset-backed issuer and the pool assets relating to the significant obligor were asset-backed securities, rather than financial information we would require disclosure under proposed Items 1104–1113 and 1117 of Regulation AB regarding such asset-backed securities.

Questions regarding proposed disclosure regarding significant obligors:

- We request comment on the proposed definition of significant obligor. Are any modifications necessary? Is the test of whether the pool asset represents 10% or more of the asset pool the appropriate test? Should it instead be based on cash flows supporting the offered ABS, the principal amount of the offered asset-backed securities or a combination of any of these tests? Is the application to lessees appropriate? Should any other particular entities be included or excluded?
- Are the 10% and 20% breakpoints still appropriate for triggering when different levels of financial disclosure should be required? Should they be changed?
- We also request comment on the level of disclosure to be required, both descriptive and financial, regarding significant obligors. Are there alternative disclosures that should be required or permitted? For example, in the case of an insurance company or other regulated entity that is not subject to Exchange Act reporting requirements and does not otherwise provide GAAP financial statements, should financial statements prepared under the entities' regulatory accounting principles be acceptable as a substitute?
- Should there be any additional exclusions to when financial information would be required? Are the proposed instructions regarding governments and asset-backed securities appropriate?

7. Credit Enhancement and Other Support

The definition of asset-backed security contemplates the inclusion of ''rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.'' Credit enhancement or other support for asset-backed securities can be provided in a variety of ways, including features internally structured into the transaction to provide support as well as externally provided enhancement. Disclosure would be required of all such methods of enhancement, to the extent material, including any of the following:[157]

- Any external credit enhancement designed to ensure that the asset-backed securities or pool assets will pay in accordance with their terms, such as bond insurance, letters of credit or guarantees;
- Any mechanisms to ensure that payments on the asset-backed securities are timely, such as liquidity facilities, lending facilities, guaranteed investment contracts and minimum principal payment agreements;
- Any derivatives that are used to reduce or alter risk resulting from financial assets in the asset pool and that provide payments in return for payments on such assets, such as interest rate or currency swaps, or that are used to provide credit enhancement related to assets in the pool;[158] and
- Any internal credit enhancement structured into the transaction to increase the likelihood that one or more classes of asset-backed securities will pay in accordance with their terms, such as subordination provisions, overcollateralization, reserve accounts, cash collateral accounts or spread accounts.

Disclosure of the material terms of any agreement to provide such enhancement would be required, including any limits on the timing or amount of the enhancement or any conditions that must be met before the enhancement can be accessed. Provisions permitting the substitution of enhancement also would need to be disclosed. The agreement relating to the enhancement would be required to be filed as an exhibit to the filing.

Similar to significant obligors, enhancement or other support by a particular entity or group of affiliated entities may reach a certain level of concentration such that additional disclosures, including financial disclosures, would be appropriate. Consistent with current practice, we propose that if an entity or group of affiliated entities providing enhancement or other support for the asset-backed securities is liable or contingently liable to provide payments representing 10% or more of the cash flow supporting any offered class of asset-backed securities, additional information, both descriptive and financial, would be required. The descriptive information would include the name of the enhancement provider, its organizational form and the general character of its business.

[153] See, *e.g.*, Section VIII.B.3.a.ii. of the Division of Corporation Finance's ''Current Issues and Rulemaking Projects'' (Nov. 14, 2000).

[154] 17 CFR 229.301.

[155] See, *e.g.*, note 152 above.

[156] 56 15 U.S.C. 77aa.

[157] In addition to the level of disclosure required, credit enhancement may raise questions as to whether a separate security is involved that needs to be separately registered. For example, a guarantee of a security, rather than on the underlying assets, would be a separate ''security'' under Section 2(a)(1) of the Securities Act (15 U.S.C. 77b(a)(1)) and must be covered by a Securities Act registration statement filed by the guarantor, as issuer, unless exempt from registration.

[158] Derivatives that are not related to the financial assets, such as credit default swaps or other derivatives designed to create a synthetic exposure to an external asset or index, are not permitted under the definition of ''asset-backed security.'' See, *e.g.*, note 62 and the accompanying text.

Also consistent with current practice and our proposals for significant obligors, we propose to use 10% and 20% thresholds in determining the level of financial information that would be required regarding an enhancement provider. In particular, if any entity or group of affiliated entities that provided enhancement or other support for the asset-backed securities was liable or contingently liable to provide payments representing 10% or more, but less than 20%, of the cash flow supporting any class of the asset-backed securities, selected financial data required by Item 301 of Regulation S–K would need to be provided. If the entity or group of affiliated entities was liable or contingently liable to provide payments representing 20% or more of the cash flow supporting any class of the asset-backed securities, audited financial statements meeting the requirements of Regulation S–X would be required. As with financial disclosure regarding significant obligors, Section III.B.9. discusses a proposal for an alternative method that may be available to incorporate the information by reference. We also propose similar instructions if the obligations of the enhancement provider are backed by the full faith and credit of the United States or certain foreign governments.

These disclosure requirements would apply to all providers of external credit or liquidity enhancement, insurance or guarantees, counterparties to swap or hedging arrangements, interest rate exchange arrangements, interest rate cap or floor arrangements, currency exchange arrangements or similar arrangements, and any other parties providing external credit enhancement or other support for payments on the asset-backed securities. Enhancement may support payment on the pool assets or payments on the asset-backed securities themselves.

Unlike current practice, our proposals would base the triggering event for disclosure on payments that the enhancement provider is liable or contingently liable to provide. Valuation of the enhancement, such as for swaps or other derivatives, would not be the relevant test. Even if a swap, such as an interest rate swap, was currently ''out of the money'' and no payments were required, if the swap provider was contingently liable for more than 10% of the cash flow supporting a class (for example, if interest rates changed), disclosure would be required on the same basis as any other form of enhancement, such as a guarantee, even though probability of payment on the guarantee likewise could be remote due to a high quality asset pool.

Questions regarding proposed disclosure regarding credit enhancement and other support:

- We request comment on our proposals for disclosure regarding credit enhancement and other forms of support for an ABS transaction. Are any modifications necessary? Are there any additional examples we should provide?
- Is the test of whether the enhancement provider is liable or contingently liable for payments representing 10% or more of the cash flows to any class of the asset-backed securities the appropriate test? If not, why? What alternatives should be used? Should different tests be used for different forms of enhancement? What would be the rationale for different tests?
- Are the 10% and 20% breakpoints still appropriate for triggering when different levels of financial disclosure should be required? Should they be changed?
- We also request comment on the level of disclosure to be required, both descriptive and financial. Are there alternative disclosures that should be required or permitted? For example, in the case of an insurance company or other regulated entity that is not subject to Exchange Act reporting requirements and does not otherwise provide GAAP financial statements, should financial statements prepared under the entities' regulatory accounting principles be acceptable as a substitute?
- Should there be any additional exclusions as to when financial information would be required? Are the proposed instructions regarding U.S. and foreign government-backed obligations appropriate?

8. Other Basic Disclosure Items

a. Tax Matters

Consistent with existing practice, the registration statement would need to include a brief, clear and understandable summary of:

- The tax treatment of the asset-backed securities transaction under federal income tax laws.
- The material federal income tax consequences of purchasing, owning and selling the asset-backed securities. In addition, if any of the material federal income tax consequences are not expected to be the same for investors in all classes offered by the registration statement, the material differences would need to be described.
- The substance of counsel's tax opinion, including identification of the material consequences upon which counsel has not been asked, or is unable, to opine.

The filing and disclosure of tax opinions is a frequent topic of staff comment. The requirements with respect to tax opinions in ABS transactions are generally consistent with the requirements for non-ABS transactions.[159] For example, when using a ''short form'' tax opinion where disclosure in the prospectus is to constitute counsel's opinion, the tax opinion filed as an exhibit to the registration statement must confirm or adopt the statements in the prospectus discussion as counsel's opinion. It is not sufficient for the tax opinion to merely state that the disclosure in the prospectus is accurate in all material respects. Registrants and their counsel should take care in preparing and describing tax opinions consistent with practices required for Securities Act registration statements.[160]

b. Legal Proceedings

In lieu of Item 103 of Regulation S–K, we propose a more tailored disclosure item for material legal proceedings with respect to asset-backed securities. For example, under the proposed disclosure item, a brief description would be required regarding any legal proceedings pending or known to be threatened against the sponsor, depositor, trustee, issuing entity, any servicer or any enhancement provider, or of which any property of the foregoing is the subject, that is material to security holders. Similar information would be required as to any such proceedings known to be contemplated by governmental authorities.

c. Affiliations and Certain Relationships and Related Transactions

There often can be several affiliations between parties in an ABS transaction. For example, the servicer often is an affiliate of the sponsor. We propose to require a description of whether, and if so, how, the sponsor, depositor or issuing entity is an affiliate of any of the following parties: servicer, trustee, originator of at least 10% of the pool assets, significant obligor, significant enhancement provider, underwriter or other material party identified with respect to the transaction. Disclosure also would be required, to the extent known, of any affiliate relationships among any of the parties listed above. An ''affiliate'' of, or a person ''affiliated'' with, a specified person, is defined in Commission rules to mean ''a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.''[161]

We also propose disclosure regarding whether there is, and if so, the general character of, any business relationship, agreement, arrangement, transaction or understanding entered into outside the ordinary course of business or on terms other than would be obtained in an arm's length transaction with an unrelated third party, apart from the asset-backed securities transaction, between the sponsor, depositor or issuing entity and any of the above referenced parties that either currently exists or that existed during the past two years that is material to an investor's understanding of the asset-backed securities. An instruction to the proposed item would clarify that what would be required is information material to an investor's understanding of the asset-backed securities. A detailed description or

[159] See also note 85.

[160] See Item 601(b)(8) of Regulation S–K.

[161] See, *e.g.*, Securities Act Rule 405 and Exchange Act Rule 12b–2. The term ''control'' also is defined in those rules as ''the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.''

itemized listing of all commercial relationships among the parties would not be required. Instead, the disclosure should indicate whether any relationships outside of the asset-backed securities transaction do exist that meet the specified standard, including materiality to an understanding of the asset-backed securities, and the general character of those relationships. However, disclosure of specific relationships involving or related to the ABS transaction and the pool assets, including the material terms and approximate dollar amount involved, would be required to the extent material. For example, material credit arrangements relating to the pool assets provided by an underwriter or promoter for the asset-backed securities, such as providing a warehouse line of credit to fund originations or acquisitions pending securitization, would need to be described.

d. Ratings

We propose to codify current industry practice by requiring disclosure of whether the issuance or sale of any class of the offered securities is conditioned on the assignment of a rating by one or more rating agencies, whether or not NRSROs.[162] If so, each rating agency must be identified as well as the minimum rating that must be assigned. A description regarding any arrangements to have such rating monitored while the securities are outstanding also would be required.

e. Reports and Additional Information

Post-issuance reporting of information regarding an ABS transaction is important to an understanding of transaction performance and, hence, investment decisions, including whether existing holders should sell their securities and whether prospective buyers should purchase them. Such disclosures in the ABS context generally involve both updated information about pool performance as well as information on allocations and distributions of cash flows to holders of the securities and other third parties according to the flow of funds. Investors necessarily consider the availability and quality of transaction reporting in determining whether, and at what level, to invest in such securities.

In addition to disclosure regarding reports to be filed with the Commission, we propose to require disclosure, which is often provided today, of the reporting investors can expect to receive and be able to access. This disclosure would need to include a description of the reports or other documents required under the transaction agreements, including the information to be included in the reports, the schedule and manner of their distribution or availability and who will prepare the reports.

We also propose to require disclosure of whether website access will be provided to Commission and transaction reports.[163] Disclosure would be required in the prospectus regarding whether the issuing entity's annual reports on Form 10–K, distribution reports on Form 10–D, current reports on Form 8–K and amendments to those reports filed or furnished with the Commission will be made available on the website of a specified transaction party (*e.g.*, sponsor, depositor, servicer, issuing entity or trustee) as soon as reasonably practicable after such material is electronically filed with, or furnished to, the Commission. As the Commission specified in its release adopting similar disclosure for accelerated filers, we interpret the ''as soon as reasonably practicable'' standard to mean that the report would be available, barring unforeseen circumstances, on the same day as filing.[164] In addition, disclosure would be required regarding:

- Whether other reports to security holders or information about the asset-backed securities will be made available in this manner;
- If filings will be made available in this manner, the Web site address where such filings may be found; and
- If filings and other reports will not be made available in this manner, the reasons why they will not and whether an identified transaction party voluntarily will provide electronic or paper copies of those filings free of charge upon request.

The guidance provided in the Commission's release adopting similar disclosure for accelerated filers, such as how the Web site access can be provided, would be equally applicable to this disclosure.[165] In addition, the inclusion of the Web site address in response to the disclosure requirement would not, by itself, include or incorporate by reference the information on the site into the prospectus or registration statement, unless the registrant otherwise acts to incorporate the information by reference.[166] Similarly, the proposed disclosure is not designed to create new duties under the antifraud provisions of the federal securities laws or in private rights of action or to alter any existing liability provisions. For example, the new disclosure would not separately create or otherwise affect any duty to update prior statements.

Questions regarding other proposed basic disclosure items:

- We request comment on these other basic disclosure items. Are there any modifications that should be made to these items? For example, is additional specificity needed regarding the tax consequences that should be described?
- What should be the proper scope for disclosure of affiliations and relationships between transaction parties? Should any modifications be made to the proposed disclosure item? Are all of the proposed related party transaction disclosures useful, or should the disclosure be limited from what is proposed? Should disclosure be required regarding any relationships at an individual level, such as with an executive officer or director of the sponsor, depositor or issuing entity, if applicable, that exists in connection with or apart from the asset-backed securities transaction?
- Should additional disclosure regarding ratings or the rating process be required? For example, should disclosure of fees paid to rating agencies be required? Should we require an explanation of what an NRSRO rating addresses and the characteristics the rating does not address?
- With regard to the content of reports that will be provided to investors, should a copy of the form of the report to be used be included with the registration statement or filed as an exhibit?
- We request comment on the proposed disclosure regarding Web site access to reports. Should disclosure also be required on an ongoing basis in the Form 10–K or in distribution reports? Is additional guidance necessary in how to comply with the proposal? Should alternative methods be considered in promoting the availability of transaction reporting to investors and market participants?
- Are there additional areas of disclosure that should be separately identified? For example, should there be a separate disclosure item for legal investment considerations, such as ERISA qualifications?

9. Alternatives to Present Third Party Financial Information

As discussed in Sections III.B.6. and 7., there are instances both today and under our proposals when additional financial information regarding third parties would be required in ABS filings, including financial information about significant obligors and significant providers of enhancement or other support. Over time, through several no-action letters and interpretations, the staff has permitted alternative methods to present or refer to this information if it exists in other Commission filings of the third party. The first alternative allows incorporation by reference of the third party's financial information into the ABS filing. The second alternative, available only with respect to significant obligors, allows an ABS filing to reference the significant obligor's Exchange Act reports on file with the Commission in lieu of providing the information.

We propose to codify both of these alternatives and clarify the conditions

[162] We are not proposing to codify one of the items specified for disclosure in the 1992 Release, which was an explanation of what an NRSRO rating addresses and the characteristics the rating does not address. We believe this issue no longer requires general clarification with respect to the ABS market.

[163] ''Accelerated filers,'' as defined in 17 CFR 240.12b–2, already are required to include similar disclosure in their annual reports on Form 10–K. See Item 101(e)(4) of Regulation S–K.

[164] See Release No. 33–8128 (Sep. 5, 2002) [67 FR 58480].

[165] *Id.*

[166] In Release No. 33–7856 (Apr. 28, 2000) [65 FR 25843], we provided interpretive guidance on the effect of including a Web site address in other situations. We are not changing that guidance for those other situations.

for their use. Both alternatives would relate only to the presentation of financial information regarding the third party. Information specific to the asset-backed securities transaction, such as the material terms of the pool assets in the case of significant obligors or the enhancement in the case of an enhancement provider, would still be required as is the case today.

a. Incorporation by Reference

The first alternative is derived from several staff no-action letters that permit the incorporation by reference of financial information regarding certain bond insurers from their or their affiliated entities' Exchange Act reports.[167] We propose to codify the expansion of these positions by the staff to permit incorporation by reference (by means of a statement in the ABS filing to that effect) of the required financial information of any enhancement provider from its Exchange Act reports (or the reports of the entity that consolidates such party), if the following conditions were met:[168]

- The third party or entity that consolidates the third party in its financial statements is subject to the Exchange Act reporting requirements and is current with its reporting for the past twelve months (or such shorter period that it has been required to file reports);
- The reports to be incorporated by reference include (or properly incorporate by reference) the financial statements of the third party or such information is consolidated into the financial statements of the entity that consolidates the third party;
- The filing incorporating the information by reference describes any and all material changes to the incorporated information which have occurred subsequent to the filing of the incorporated information; and
- If included in a prospectus or registration statement, the prospectus also states that all documents subsequently filed by such third party, or the entity that consolidates the third party, prior to the termination of the offering also will be deemed to be incorporated by reference into the prospectus.

This option also could be used to include the information required of any significant obligor.

As we propose to expand the basic definition of asset-backed security to registered offerings on Form S–1, we also are proposing to permit incorporation by reference of third party financial information for ABS offerings registered on that form. In addition, several amendments to our existing incorporation by reference and updating rules are necessary to reflect incorporation by reference of information of third party filings in Securities Act registration statements.[169] For example, if the registrant was relying on the incorporation by reference alternative for third party financial information, it would need to make an undertaking in its registration statement, similar to that required for existing registration statements that rely on incorporation of subsequent Exchange Act reports of the registrant,[170] that, for purposes of determining any liability under the Securities Act, each filing of the annual report of the third party that is incorporated by reference in the registration statement will be deemed to be a new registration statement relating to the securities offered by that registration statement, and the offering of such securities at that time will be deemed to be the initial bona fide offering thereof.

We also propose to add three instructions that would remind registrants of our other existing incorporation by reference and updating requirements. The first instruction would remind ABS issuers that in addition to the proposed conditions above, any information incorporated by reference must comply with any other applicable Commission rules pertaining to incorporation by reference.[171] The second instruction would remind issuers that any applicable requirements under the Securities Act or our rules and regulations regarding the filing of a written consent for the use of incorporated material also would apply to the material incorporated by reference.[172] For example, if a subsequent Form 10–K of a third party was being used to update the ABS registration statement under Section 10(a)(3) of the Securities Act,[173] any required consents would need to be filed under a filing by the ABS issuer, such as in a Form 10–K, 10–D or 8–K with respect to registered offerings on Form S–3. The third instruction reminds issuers that any undertakings set forth in Item 512 of Regulation S–K would apply to any material incorporated by reference in a registration statement or prospectus.

Request for comment on the incorporation by reference alternative:

- We request comment on the alternative that permits incorporation by reference of required third party financial information. Should any of the conditions to the proposal be modified? Should the proposal be allowed for all significant obligors and enhancement providers that meet the proposed conditions?
- Is it appropriate to extend incorporation by reference for third parties to registered ABS offerings on Form S–1? Would it be appropriate to extend it to all parties?
- We also request comment on our proposed amendments to the incorporation by reference and updating rules to accommodate the proposal. In particular, we request comment on the proposed undertaking for incorporation by reference of third party information. Is additional guidance necessary regarding updating requirements?

b. Reference Information

The second alternative to presenting third party financial information is derived from several staff no-action letters and interpretive positions that permit reference to the Exchange Act reports of a significant obligor in lieu of inclusion of the obligor's financial information in the filing or incorporating them by reference.[174] In particular, these positions recognize the practical difficulties that may be involved in obtaining the required information or the necessary consent to use the information, or the ability to evaluate the information, from an unaffiliated significant obligor whose securities have been securitized without any obligor involvement in the ABS transaction. A common example of such a situation is a sponsor that acquires outstanding corporate debt securities of other issuers in purely secondary market transactions (*i.e.*, there is no relationship to the issuer or the issuer's distribution) and securitizes them in a transaction where one or more of these issuers is a significant obligor.

Under our proposal, an ABS filing may include a reference to a significant obligor's Exchange Act reports (which would include a statement of how those reports may be accessed, including the third party's name and Commission reporting number) in lieu of providing the required financial information in the

[167] See *Financial Security Assurance, Inc.* (Jul. 16, 1993); *MBIA Insurance Corp.* (Sep. 6, 1996); and *AMBAC Indemnity Corp.* (Dec. 19, 1996).

[168] If the conditions were not met, the required information would need to be provided in the filing.

[169] See, *e.g.*, proposed amendments to Items 10 and 512 of Regulation S–K and Securities Act Rule 411.

[170] See, *e.g.*, Item 512(c) of Regulation S–K.

[171] Other such rules include Rule 10(d) of Regulation S–K; Rule 303 of Regulation S–T (17 CFR 232.303); Rule 411 of Regulation C; and Exchange Act Rules 12b–23 and 12b–32 (17 CFR 240.12b–23 and 17 CFR 240.12b–32).

[172] See, *e.g.*, Securities Act Rule 439 (17 CFR 230.439).

[173] 15 U.S.C. 77j(a)(3).

[174] See, *e.g.*, *Morgan Stanley & Co., Inc.* (Jun. 24, 1996). This letter related to exchangeable securities rather than ABS, but the concept has been subsequently extended to ABS by the staff. See Section VIII.B.3.b.i. of the Division of Corporation Finance's ''Current Issues and Rulemaking Projects'' (Nov. 14, 2000).

filing, if the following conditions were met:[175]

- Neither the significant obligor nor any of its affiliates has had a direct or indirect agreement, arrangement, relationship or understanding, written or otherwise, relating to the asset-backed securities transaction, and neither the third party nor any of its affiliates is an affiliate of the sponsor, depositor, issuing entity or underwriter of the asset-backed securities transaction;[176]
- The significant obligor meets at least one of the eligibility categories discussed below; and
- An undertaking is included that if the significant obligor ceases to meet any of the eligibility conditions, either the required information will be provided or the transaction, or that portion of the transaction, will terminate.

The first condition would clarify that the significant obligor must be unaffiliated and otherwise not involved with the ABS transaction. If the obligor was affiliated or involved with or participating in the ABS transaction, the policy argument to permit reference to the third party's reports in lieu of presenting the information or incorporating it by reference because of the potential impracticality in obtaining it is not present. As a result, the proposed reference alternative would not be available for financial information regarding a significant enhancement provider due to its involvement in the transaction and the information would have to be included in the filing or, if the conditions in Section III.B.9.a. are met, incorporated by reference.

The second condition refers to the categories of significant obligors that would be eligible for the reference alternative. Consistent with existing staff positions and market practice, the proposed eligible categories relate to the existing Form S–3 eligibility of the significant obligor. For example, the first category would be a significant obligor eligible to use Form S–3 or F–3 for a primary offering of non-investment grade securities pursuant to General Instruction I.B.1 of such forms, which requires a $75 million public float.[177] A second category would be a significant obligor that would be eligible to register the related pool assets under General Instruction I.B.2 of Form S–3 or F–3 (*i.e.*, the pool assets relating to the significant obligor are non-convertible investment grade securities). A third and fourth category would relate to pool assets guaranteed by a parent or subsidiary of the significant obligor where both the information requirements under Rule 3–10 of Regulation S–X[178] and applicable Form S–3 or Form F–3 eligibility requirements (such as General Instruction I.C.3 of Form S–3) are met.

A fifth category would relate to significant obligors that are U.S. government-sponsored enterprises. Several GSE's historically have not been subject to Exchange Act reporting requirements. The staff has made accommodations for several of these entities so long as they have outstanding securities held by non-affiliates with a market value of $75 million or more and publicly make available audited financial statements prepared in accordance with generally accepted accounting principles and extensive business information. Our proposal would clarify the meaning of this requirement by permitting reference if the GSE had $75 million outstanding of securities held by non-affiliates and the GSE makes information publicly available on an annual and quarterly basis, including audited financial statements prepared in accordance with generally accepted accounting principles covering the same periods that would be required for audited financial statements under Regulation S–X and non-financial information consistent with that required by Regulation S–K.

A final category relates to significant obligors where the pool assets in question are themselves asset-backed securities. We would permit reference in this instance if the significant obligor was filing Exchange Act reports and was current in such reporting for at least twelve calendar months and any portion of a month immediately preceding the filing referencing the obligor's reports (or such shorter period that the obligor was required to file such materials). We do not propose to include an additional existing staff condition that the significant obligor has outstanding securities in excess of $75 million because we do not believe a market capitalization condition is relevant in the context of underlying ABS.

Because of the possibility that corporate debt issuers could suspend their reporting requirements, the staff has permitted ABS issuers securitizing such debt to include a provision that, if a significant obligor's financial information is not available, the transaction, or a portion of the transaction, would terminate, such as by distributing the pool assets to investors or selling the pool assets and liquidating the asset-backed securities. This option to terminate the transaction has developed through market practice where it is believed that the alternative of including the information in the ABS filing might become impractical or impossible. Our proposal addresses this problem and allows termination as an option. However, if the termination option was elected, the transaction, or that portion of the transaction, must terminate before updated information regarding the third party would be required. Provisions that the transaction would terminate ''in a reasonable time'' or after a given period of time would not be an alternative to providing information regarding a third party that otherwise would be required.

Request for comment on the reference alternative:

- We request comment on the alternative that permits reference to a third party's Exchange Act reports on file with the Commission in lieu of providing that information. Should any of the conditions to the proposal be modified? Should a termination option be recognized? We also request comment on the limitation of the proposal to only unaffiliated and uninvolved significant obligors. What are the reasons that would justify reference to reports by affiliated obligors, others involved in the transaction or an enhancement provider even though that entity is involved with the ABS transaction?
- We request comment on the proposed codification of the eligible categories of significant obligors for which reference information would be permitted. Given the size of most ABS transactions, would a $75 million requirement for outstanding securities add value for the ABS category?

C. Communications During the Offering Process

1. ABS Informational and Computational Material

a. Current Requirements

The Securities Act restricts the types of offering communications that a registrant or those acting on its behalf (such as an underwriter) may use during a registered public offering.[179] The level of restriction depends on the period during which the communications are to occur. Before the registration statement is filed, all offers, in whatever

[175] Like the incorporation by reference alternative, the reference alternative would be available to ABS offerings registered on Form S–1.

[176] See Section III.A.6. as to registration and resulting disclosure issues if the ABS transaction also comprises a distribution of underlying securities. These registration and disclosure issues are not dependent on whether the issuer of the underlying securities is a significant obligor.

[177] Public float is the aggregate market value of a company's outstanding voting and non-voting common equity (*i.e.*, market capitalization) minus the value of common equity held by affiliates of the company. See General Instruction I.B.1 to Form S–3.

[178] 17 CFR 210.3–10.

[179] *See* Section 5 of the Securities Act (15 U.S.C. 77e).

form, are prohibited.[180] After the registration statement is filed until it is declared effective, offers made in writing (including by e-mail or Internet), by radio or by television must conform to the information requirements of Section 10 of the Securities Act.[181] Thus, the only written material that may be used in connection with the offering of the securities during this period is a preliminary prospectus meeting the requirements of Section 10, which must be filed with the Commission.[182] After the registration statement is declared effective, the registrant may use additional materials to offer the securities, but only if it delivers a final prospectus that meets the requirements of Section 10(a) of the Securities Act before or with those materials.[183]

The structuring of various classes of ABS can be quite complex involving a detailed analysis of the asset pool and a complicated allocation of pool asset cash flows. Given the important focus on tranching and pool characteristics, including potential cash flow patterns, sponsors or underwriters often wish to provide to potential investors computational materials and term sheets identifying the structure and underlying assets prior to finalizing the deal structure and printing the final prospectus. These materials may help investors understand the proposed transaction and analyze prepayment assumptions and other issues affecting yield and flow of funds. This information, which often includes detailed statistical and tabular data, would be impractical to provide orally. Historically, few investors have had the computer resources to prepare these analytics themselves.

Following a series of staff no-action letters from the mid-1990's, ABS issuers are permitted to use term sheets and computational material after the effectiveness of a registration statement but before availability and delivery of a final Section 10(a) prospectus.[184] Under these no-action letters, three basic types of materials can be used: Structural term sheets; collateral term sheets; and computational materials. Structural term sheets identify the proposed structure of the securities being offered, such as the parameters of the various types of classes offered. Collateral term sheets provide information regarding the proposed underlying assets. Computational materials contain statistical data displaying for a particular class of asset-backed securities the yield, average life, expected maturity, interest rate sensitivity, cash flow characteristics or other such information under specified prepayment, interest rate, loss or related scenarios.

The existing staff no-action letters contain filing requirements for the use of these materials, and provide that no confirmations of sale can be sent until the filing requirements are met. The filing requirements vary depending upon the type of material used and how it is used. Subject to various conditions, any collateral term sheet used before the final prospectus is delivered that represents a substantive change from a prior collateral term sheet must be filed on Form 8–K within two business days of first use and incorporated by reference into the registration statement for the offering.

Under slightly more complex conditions, structural term sheets and computational materials used before the final prospectus is available must be filed on Form 8–K prior to or with the filing of the final prospectus and incorporated by reference into the registration statement. If the materials are provided after the final prospectus is available but before it is delivered, they must be filed as soon as possible but not later than two business days of first use. Materials that relate to abandoned structures or that are furnished before the structure of the entire issue is finalized to investors which have not indicated their intention to purchase the ABS need not be filed.

We understand that where they are used, term sheets and computational material often represent the primary, if not the only, written materials that are used to offer asset-backed securities. We also understand that advances in technology over the ten years since the first no-action action letter was issued have raised several interpretive issues regarding the scope and application of the letters. For example, an increasing number of investors possess or have access to the analytical capacity to perform their own models and scenarios on pool data and therefore may request data at the individual pool asset level, or ''loan level'' data, instead of summarized charts and tables.[185] There has been some concern over whether the existing no-action letters would permit disclosure at this level of granularity. In addition, various third party services have developed over the past decade that allow issuers and underwriters to import collateral and structural data about a proposed transaction into a format that allows investors to conduct their own analytics and computations with self-selected assumptions and estimates in lieu of relying on underwriters to perform these functions for them. This has raised questions over what information should be filed with the Commission under the no-action letters where such services are used.

b. Proposed Exemptive Rule

We are proposing to codify the concept in the staff no-action letters that permits the use of ABS informational and computational material after the effectiveness of a registration statement for an offering of asset-backed securities registered on Form S–3 but before delivery of the final Section 10(a) prospectus. Recognizing the current use of these materials in providing an increased flow of information to investors, the flexibility to tailor materials to specifically identified investor needs, and the liability for false and misleading statements or omissions, we believe permitting the use of ABS informational and computational material for Form S–3 ABS after effectiveness of the registration statement would be appropriate in the public interest and consistent with the protection of investors under the proposed conditions discussed below, including the proposed filing conditions. Accordingly, we propose to exempt from Section 5(b)(1) of the Securities Act the use of these materials during that period if certain specified conditions are met, including filing requirements.[186] In doing so, we propose to streamline the conditions in the no-action letters for how the materials can be used and when they must be filed. The proposed rule would make clear, however, that similar to our existing communications exemptions regarding business combination transactions, the exemption would not be available to communications that may technically comply with the rule,

[180] *See* Section 5(c) of the Securities Act (15 U.S.C. 77e(c)).

[181] 15 U.S.C. 77j. *See* Section 5(b)(1) of the Securities Act (15 U.S.C. 77e(b)(1)).

[182] Person-to-person oral offers are allowed during this period and do not have to satisfy the informational requirements of Section 10. *See* note 179 above.

[183] 15 U.S.C. 77j(a).

[184] *See* note 28 above.

[185] See, *e.g.*, ''Investors Gain Clout, Urge Specifics,'' Asset-Backed Alert, Jun. 6, 2003.

[186] See proposed Securities Act Rule 167. Similar to our existing rules that allow communications in business combination transactions outside of the Section 10 prospectus, for ABS informational and computational material we propose a general Securities Act Rule that sets forth the basic exemption and its conditions (proposed Securities Act Rule 167) and a rule under Regulation C (17 CFR 230.401 through 230.498) that sets forth the filing requirements for such communications (proposed Securities Act Rule 426). For more on our exemptive rules in the business combination context, see Release No. 33–7760 (Oct. 22, 1999) [64 FR 61408].

but have the primary purpose or effect of conditioning the market for another transaction or are part of a plan or scheme to evade the requirements of Section 5 of the Securities Act.[187]

The proposed exemption only would be available with respect to registered offerings of investment grade asset-backed securities that meet the requirements of General Instruction I.B.5 of Form S–3. We believe this is consistent with the intent of the existing staff no-action letters. We also believe offerings of asset-backed securities meeting the additional requirements for Form S–3 registration represent the appropriate categories of offerings that should be permitted to use ABS informational and computational material outside of the registration statement prospectus. The proposed rule, like the existing staff no-action letters, would not be available to offerings that meet the definition of asset-backed security but are registered on Form S–1.

Similar to requests we have received regarding non-ABS offerings, the Commission and the staff have received requests over the past several years with respect to ABS to liberalize the use of communications in and around the registered offering process beyond those allowed by the existing staff no-action letters and our proposed exemptive rule.[188] The existing staff no-action letters already permit ABS offerings on Form S–3 to use significantly more material outside of the Section 10 prospectus than non-ABS offerings. Requests for further relaxation of the communications restrictions, including the type of materials that can be used, when they can be used and filing and liability requirements, raise broad issues that also are implicated by requests we have received to relax communication restrictions for non-ABS offerings. Staff in our Division of Corporation Finance is currently developing recommendations to the Commission on potential reforms to the registration process under the Securities Act, including potential reforms to the communications restrictions. We plan to address the issue of whether additional accommodations to the communications restrictions would be appropriate, including for ABS offerings, in connection with any recommendations on broader reforms. Therefore, our approach here involves the existing allowance for additional materials in the ABS context.

Questions regarding the proposed exemptive rule:

- We request comment on the proposed exemptive rule. What is the use of these materials in today's market? Is the proposed exemption consistent with the use of these materials? Does the use of these materials provide investors with enough time and information to make informed investment decisions?
- We do not propose to limit eligibility for the exemption on any variables such as transaction size or asset type. However, under the existing no-action letters we see few filings related to the use of term sheets or computational material outside of MBS. Should we limit eligibility by size, asset type or other variable? Is the use of these materials not necessary for other asset classes? Is there a reason why more of these materials are not filed?
- Should the exemption not be available to ABS targeted to non-institutional investors? For example, should the exemption not be available to ABS expected to have low minimum investment denominations (*e.g.*, less than $1,000) or ABS that are to be listed?
- Is the proposed limitation to registered offerings on Form S–3 still appropriate? If not, under what circumstances should the proposal be extended to offerings on Form S–1? The existing letters and our proposals require filing of material on Form 8–K that is incorporated by reference into the registration statement. They also only apply to the use of materials after the effective date of the registration statement (*e.g.*, before a takedown off of an effective shelf registration statement). How would this procedure work with respect to non-shelf registered offerings on Form S–1?
- Are any clarifying amendments necessary for ABS with respect to Securities Act Rule 134?[189] This rule deems certain limited communications announcing an offering (often called a ''tombstone'' announcement) not a prospectus so long as the communication is limited to the items specified in that rule. What items would be appropriate for ABS (*e.g.*, announcing the asset type being securitized, asset concentrations, sponsor, servicer or weighted average life, maturity or coupon), and why should they be included?

c. Proposed Definition of ABS Informational and Computational Material

In the existing no-action letters, there is an overlap between the descriptions of structural term sheets, collateral term sheets and computational materials. There also are differences regarding which and how materials are to be filed depending on the type of materials used. These differences can create uncertainty as to when material needs to be filed given the overlapping descriptions. We propose to consolidate the descriptions of the materials that may be used under a single definition of ''ABS informational and computational material.'' ABS informational and computational material would be defined as a written communication consisting solely of one or some combination of the following:

- A brief summary of the structure of an offering of asset-backed securities that sets forth the name of the issuer, the size of the offering and the structure of the offering (such as the number of classes, seniority and priority and other terms of payment);
- Descriptive factual information regarding the pool assets underlying an offering of asset-backed securities, typically including data regarding the contractual and related characteristics of the underlying pool assets, such as weighted average coupon, weighted average maturity and other factual information regarding the type of assets comprising the pool;
- Static pool data, as discussed previously, for the sponsor's portfolio, prior transactions or the asset pool itself; or
- Statistical information displaying for a particular class of asset-backed securities the yield, average life, expected maturity, interest rate sensitivity, cash flow characteristics, total rate of return, option adjusted spread or other financial or statistical information relating to the class or classes under specified prepayment, interest rate, loss or other hypothetical scenarios. Examples of such information under the definition would include:
  - Statistical results of interest rate sensitivity analyses regarding the impact on yield or other financial characteristics of a class of securities from changes in interest rates at one or more assumed prepayment speeds;
  - Statistical information showing the cash flows that would be associated with a particular class of asset-backed securities at a specified prepayment speed; and
  - Statistical information reflecting the financial impact of losses based on a variety of loss or default experience, prepayment, interest rate and related assumptions.

These proposed items are intended to include existing structural term sheets, collateral term sheets and computational materials and also to clarify that static pool data would be permitted. Consistent with our proposal discussed below for one unified filing

[187] For similar provisions, see Securities Act Rules 165 and 166 (17 CFR 230.165 and 17 CFR 230.166).

[188] See, *e.g.*, Letter from BMA to Brian J. Lane, Director, Division of Corporation Finance, ''Response to Staff Request for Suggestions Concerning Possible Reforms of Disclosure and Reporting Rules for Mortgage and Asset-Backed Securities'' (Nov. 5, 1996); Letter from BMA to Jonathan G. Katz, Secretary, Securities and Exchange Commission, ''Securities Acts Concepts and Their Effects on Capital Formation (Release No. 33–7314) (File No. S7–19–96)'' (Nov. 8, 1996); Letter from MBA to Jonathan G. Katz, Secretary, Securities and Exchange Commission, ''The Regulation of Securities Offerings (File No. S7–30–98)'' (June 30, 1999); Letter from Residential Funding Corporation to Securities and Exchange Commission, ''File No. S7–30–98—The 'Aircraft Carrier Release' '' (June 30, 1999); Letter from BMA to David B.H. Martin, Director, Division of Corporation Finance, ''Securities Act Reform'' (Nov. 30, 2001); and Letter from BMA to Alan L. Beller, Director, Division of Corporation Finance, ''Prior Correspondence Regarding Asset-Backed Securities Reform'' (Apr. 23, 2002).

[189] 17 CFR 230.134.

rule for these materials, ABS informational and computational material may be used that includes one or more of these basic types of materials in one set of materials without concern over the characterization of the material or differing standards regarding when it must be filed.[190]

While we do not intend to change the general scope of the materials that may be used, we do wish to clarify several interpretive issues regarding the no-action letters. First, and as noted above, some have been concerned whether the existing no-action letters would permit ''loan level'' information to be provided. We believe providing data at the individual pool asset level is permitted under the no-action letters and would continue to be permitted under our proposal. In providing such detail, however, issuers and underwriters should be mindful of any privacy, consumer protection or other regulatory requirements regarding the disclosure of individual information, such as including Social Security Numbers, especially given that in most cases the data must be publicly filed with the Commission.

Second, questions have arisen over what information should be considered ABS informational and computational material and filed with the Commission under the no-action letters, and by extension our proposal, regarding investor analytics or other third party services that allow issuers and underwriters to import into a system or otherwise provide data regarding structure or underlying assets that investors can then use to conduct their own analytics and computations. In the case of third party services, a particular relationship with the individual third party service may affect the analysis, such as whether the issuer or the underwriter are affiliates with the service provider or how the compensation is structured with the third party. Otherwise, if the investor analytics or third party service simply allow an investor to perform its own calculations based on collateral and structural inputs and models provided by the issuer or underwriter, only the inputs, models and other information provided by the issuer or underwriter would constitute ABS informational and computational material for purposes of the existing no-action letters and our proposal.[191]

Some also have questioned the format in which the material must be filed, as the third party service may employ a unique file format for the data inputs. Consistent with an allowance already in the no-action letters and in our proposed filing rule discussed below, issuers and underwriters may aggregate data presented in ABS informational and computational material that are to be filed and file such data in consolidated form, so long as any such aggregation does not result in the omission of any information that should have been filed or makes the information misleading. Presentation of the information should be in an understandable form. While the preference is to file material using the same presentation used for investors, just as with other documents that contain computer instructions or formatting code, executable code used by a program to read the information is not to be filed.[192]

Questions regarding the proposed definition of ABS informational and computational material:

- We request comment on the proposed definition of ABS informational and computational material, including the proposed addition of static pool data to the types of materials that may be used. Does the definition reflect the scope of materials that are used under the existing no-action letters?
- Consistent with the no-action letters, we do not propose content restrictions for the material so long as it meets the definition of ABS informational and computational material. Is this still an appropriate approach? Of course, even without content restrictions, the antifraud rules and other liability provisions applicable to the material would continue to apply.
- Are additional interpretive clarifications necessary regarding loan level detail or third party analytics providers? Is any additional clarification needed regarding other uses of ABS informational and computational material?

d. Proposed Conditions for Use

Under our proposed rule, two conditions would be required for ABS informational and computational material:

- The communications would need to be filed to the extent required under our proposed filing rule (discussed in Section III.C.1.e.);[193] and
- The communication must include prominently on the cover page:
  - The issuing entity's name and depositor's name;
  - The Commission file number for the related registration statement;
  - A statement that the communication is ABS informational and computational material used in reliance on our proposed rule; and
  - A legend that urges investors to read the relevant documents filed or to be filed with the Commission because they contain important information. The legend also must explain to investors that they can get the documents for free at the Commission's website and describe which documents are available free from the issuer or an underwriter.

These proposed conditions are consistent with the requirements of the existing staff no-action letters. We do not propose to require additional legends from the no-action letters that the information contained in the material supercedes all prior ABS informational and computational material for the offering or will be superseded by the description of the offering contained in the Section 10(a) prospectus.[194] Instead, we propose the legend indicated above alerting investors of the documents filed or to be filed with the Commission. We also do not propose to require the condition in the letters that any required filings must be made before an Exchange Act Rule 10b–10 confirmation of sale may be sent.[195] The filing requirement discussed below would be a separate requirement under Commission rules, and thus conditioning the exemption on when a Rule 10b–10 confirmation could be sent does not appear to be warranted as an additional incentive for filing.

While the existing no-action letters require, and our proposal would require, a limited legend, we understand that today issuers or other users of these materials sometimes include additional legends or disclaimers in the materials. Several of these additional legends or disclaimers are inappropriate. As discussed more fully below, the materials are considered prospectuses and in many instances also must be

[190] As a result, the proposed definition would subsume the concept of ''Series Term Sheets'' addressed in the Greenwood Trust Company no-action letter where a Series Term Sheet was defined as a combined collateral and structural term sheet. See note 28 above.

[191] Any subsequent modification or updates to the information provided by the issuer or an underwriter would be considered new ABS informational and computational material no different than if a separate set of materials were prepared. As provided for in the no-action letters and our proposed rule, data presented in ABS informational and computational material that are to be filed may be aggregated and filed in consolidated form, so long as any such aggregation does not result in the omission of any information that should have been filed or makes the information misleading.

[192] See, *e.g.*, Rule 106 of Regulation S–T (17 CFR 232.106).

[193] Consistent with the no-action letters, failure by a particular underwriter to cause the filing of materials in connection with an offering would not affect the ability of any other underwriter who has complied with the procedures to rely on the exemption.

[194] Such statements do not appear applicable considering that not all of the information—particularly the computational material—is included or updated in subsequent materials or the final prospectus.

[195] See 17 CFR 240.10b–10.

filed with the Commission and incorporated by reference into the registration statement. Thus, disclaimers of responsibility or liability that would be inappropriate for a prospectus or registration statement also are inappropriate for these materials.

Examples of inappropriate legends or disclaimers include disclaimers regarding accuracy or completeness and statements requiring investors to read or acknowledge that they have read any disclaimers or legends or the registration statement.[196] Language indicating that the communication is neither a prospectus nor an offer to sell or a solicitation or an offer to buy also would be inappropriate. Finally, as the information in many instances must be publicly filed, statements that the information is privileged, confidential or otherwise restricted as to use or reliance also are inappropriate.

Consistent with a similar provision in our communications exemptions for business combination transactions,[197] we propose to clarify that the exemption for ABS informational and computational material is applicable not only to the offeror of the asset-backed securities, but also to any other party to the asset-backed securities transaction and any persons authorized to act on their behalf that may need to rely on and complies with the rule in communicating about the transaction. This ensures that affiliates, underwriters, dealers and others acting on behalf of the parties to the transaction would be permitted to rely on the exemption. While we realize that in many circumstances the exemptions would not be necessary for persons other than the parties to the transaction or the parties making the offer, we do not want to chill the appropriate free flow of the information where it would be helpful to investors and efficient capital formation.

However, we do not propose another provision that currently exists in the communications exemptions for business combination transactions that a good faith immaterial or unintentional failure to file or delay in meeting the filing requirements would not result in a loss of protection under the exemption, primarily because an analogous provision does not exist in the current staff no-action letters for ABS term sheets and computational materials.[198] This provision was added to the business combination rule to address concerns raised by commenters on its proposal regarding the potential chilling of communications and that people would not use the new rule as a result. The ABS market has been operating for almost a full decade under the existing staff no-action letters without such a provision, and the lack of such a provision does not appear to have chilled the use of such materials. However, we do request comment below on whether, and if so why, such a provision would be justified now.

Questions regarding the proposed conditions to the exemption:

- We request comment on our proposed conditions to the exemption, including whether any additional conditions would be appropriate. For example, we request comment on the basic information and legend we propose to require for the materials. Should any additional information be required? Is any of the proposed information not necessary? Is any additional clarification about inappropriate disclaimers or legends necessary?
- Is the proposed clarification that the exemption also is applicable to any other party to the asset-backed securities transaction and any persons authorized to act on their behalf appropriate? Is any additional clarification needed?
- While the ABS market has operated under the no-action letters for nearly a decade without it, should the rule include an exception for a good faith immaterial or unintentional failure to file or delay in meeting the filing requirements? Has the absence of this exception chilled communications? Why would such an exception be appropriate now?

e. Proposed Filing Requirements

As noted above, under the staff no-action letters, there are currently multiple filing requirements depending on the type of materials used and the circumstances in which they are used. We propose to streamline these requirements into a unified filing rule that would apply regardless of the type of materials used. We believe this proposal will result in a more consistent approach and ease compliance without a significant drop in investor protection.

Under our proposal, the following ABS informational and computational material would need to be filed:

- For each prospective investor that had indicated to the underwriter that it would purchase all or a portion of the class of asset-backed securities to which such materials relate, all materials relating to such class that were provided to such prospective investor;[199] and
- For any other prospective investor, all materials provided to that prospective investor after the final terms have been established for all classes of the offering.

If the materials met the conditions above, they would need to be filed on Form 8–K (under proposed Item 6.01 of that Form), and thereby incorporated by reference into the registration statement, by the later of the due date for filing the final prospectus or two business days of first use.

The cover page of Form 8–K would need to disclose the Commission file number of the related registration statement for the asset-backed securities. Consistent with the no-action letters, ABS informational and computational material that relate to abandoned structures or that are furnished to a prospective investor prior to the time the final terms have been established for all classes of the offering where such prospective investor has not indicated to the underwriter its intention to purchase the asset-backed securities need not be filed.

The proposed rule clarifies, as do the letters, that ABS informational and computational material that does not contain new or different information from that which was previously filed need not be filed. In addition, the issuer may aggregate data presented in ABS informational and computational material that are to be filed and file such data in consolidated form, so long as any such aggregation does not result in the omission of any information that should have been filed or makes the information misleading. Finally, the filing rule clarifies that certain communications allowed under other Commission rules, though they may technically fall into the definition of ABS informational and computational material, need not be filed under this filing rule, such as limited notices of the offering meeting the requirements of Securities Act Rules 134, 135 and 135c,[200] Exchange Act Rule 10b–10[201] confirmations, prospectuses filed under Securities Act Rule 424 and research

[196] Such disclaimers of responsibility by the issuer are also inappropriate.

[197] See, *e.g.*, Securities Act Rule 165(d) (17 CFR 230.165(d)).

[198] See, *e.g.*, Securities Act Rule 165(e) (17 CFR 230.165(e)). As noted in the adopting release for Rule 165, this provision is similar to the good faith standard in Rule 508(a) of Regulation D (17 CFR 230.508(a)). In addition, although an immaterial or unintentional failure to file or delay in filing does not render the exemption in Rule 165 unavailable, it is a violation of the filing requirement in Securities Act Rule 425 (17 CFR 230.425). Factors identified in the adopting release to be considered in determining whether a delay in filing is immaterial or unintentional include: the nature of the information, the length of the delay, and the surrounding circumstances, including whether a bona fide effort was made to file timely. See Release No. 33–7760.

[199] This provision would apply regardless of whether the indication to purchase is given before or after the final terms have been established for all classes of the offering.

[200] 17 CFR 230.134; 17 CFR 230.135; and 17 CFR 230.135c.

[201] 17 CFR 240.10b–10.

reports relying on one of our safe harbors discussed below.[202]

Under the existing no-action letters and our proposal, multiple ABS informational and computational material for an offering may need to be filed. For example, if an underwriter provides a set of materials to an investor, and the investor then asks for and the underwriter provides an additional set of materials with the same pool and structure but with different modeling assumptions (*e.g.*, different expectations of future interest rates or prepayment speeds), then both sets of materials would need to be filed if the offering was completed with that same structure or the investor had indicated an intention to purchase. Similarly, if multiple investors requested different analytics on the same structure but with different assumptions, each set of materials would need to be filed under the same circumstances.

Consistent with the no-action letters, ABS informational and computational material would not be excluded from the definition of ''offer,'' ''offer to sell,'' ''offer for sale'' or ''prospectus'' under the Securities Act.[203] To the extent these communications constitute offers, they currently would be subject to liability under Section 12(a)(2) of the Securities Act.[204] The proposed rule would specify that material used in reliance on the proposed exemption would be considered ''prospectuses'' and thus subject to Section 12(a)(2) liability, even if not filed. In addition, the materials that are filed on Form 8–K would be incorporated by reference into the registration statement, which is subject to liability under Section 11 of the Securities Act,[205] consistent with the existing staff no-action letters.

The staff no-action letters were issued when electronic filing on EDGAR was still in its relative infancy. At that time, EDGAR only accepted submissions in ASCII format. Participants argued that data included in computational material, which could be extensive, were in formats that were impractical to convert into ASCII format for electronic filing. In response, we amended our EDGAR filing rules to exempt computational materials filed as an exhibit to Form 8–K from electronic filing.[206] Instead, such materials can currently be filed in paper under cover of a Form SE.[207]

There have been several advances to EDGAR since the original staff no-action letters. In particular, EDGAR now accepts HTML documents in addition to ASCII documents and also accepts filings made over the Internet. Even non-ABS registrants now routinely include detailed statistical and tabular data in their EDGAR filings. We no longer believe that the filing of ABS informational and computational material needs an electronic filing exemption. Filing in paper form is of little practical use to investors as the material cannot be retrieved electronically.

Accordingly, we propose to eliminate the electronic filing exemption for these materials.[208] By treating these materials consistently with nearly all other material filed with the Commission, we hope to realize the same investor benefits and efficiencies in information transmission, dissemination, retrieval and analysis achieved since we began mandating EDGAR filing in 1993.

Questions regarding the proposed filing requirements:

- We believe our proposed unified filing rule will result in better administration and compliance with the filing requirements. However, it is possible that under the proposal some collateral term sheets that are required to be filed today under the no-action letters would no longer be filed. For example, the current no-action letters require all collateral term sheets to be filed. However, the existing letters use overlapping definitions and it is thus difficult to distinguish what truly is a ''collateral term sheet'' versus what is acceptable ''background information'' that can be included in computational material, which is not always required to be filed. We also understand that current practice is to call such materials ''computational material.'' We are thus proposing to codify current practice and treat all ABS informational and computational material the same. However, is it common practice to prepare multiple collateral term sheets separate from computational materials? Would the lack of filing each collateral term sheet result in substantial harm due to a reduction in materials filed?
- Under the no-action letters and our proposals, not all materials need be filed. Should all material related to the offering be filed? Are the conditions for the material that is to be filed appropriate? Should filing requirements distinguish between material provided or containing information provided by the issuer, on the one hand, and materials provided by underwriters or dealers not containing such issuer information, on the other? If so, why, and how should the two be differentiated?
- The filing requirement does not require filing until the later of the filing of the final prospectus or two business days of first use. Should there be an earlier filing requirement, such as always two business days of first use, even if the deadline is before filing of the final prospectus? Conversely, while the proposed deadlines are consistent with the no-action letters, is there any reason to shorten or extend the deadlines, and if so, to what period?
- Are any additional clarifications or modifications needed on when or how such materials need to be filed?
- We request comment on liability requirements for ABS informational and computational material. While the existing liability framework does not appear to have chilled the use of such materials, is there any reason to re-evaluate the liability framework for them? If so, how and why?
- Should we not remove the EDGAR filing exemption for ABS informational and computational material? Are there particular difficulties or unreasonable expenses that would be associated with electronic filing of such material that would still exist under EDGAR? If so, please explain and quantify any such expenses in relation to other electronic filings.

2. Research Reports

a. Current Requirements

The publication or distribution by a broker or dealer of information, opinions or recommendations with respect to an issuer or its securities around the time of a registered offering can present issues under the communications restrictions of the Securities Act, especially if the broker is or will be a participant in the distribution of the securities.[209] In particular, such a report may constitute an offer to sell the securities and would thus constitute an illegal offer if published or distributed before a

[202] Similar clarifying provisions exist in our existing communications exemptions for business combination transactions.

[203] See 15 U.S.C. 77b(a)(3) and 15 U.S.C. 77b(a)(10).

[204] 15 U.S.C. 77*l*(a)(2).

[205] 15 U.S.C. 77k.

[206] See Rule 311(j) of Regulation S–T (17 CFR 232.311(j)).

[207] 17 CFR 239.64.

[208] As electronically filed documents, ABS informational and computational material would be eligible for any applicable hardship exemptions similar to other filings that must be made electronically, such as the temporary hardship exemption in Rule 201 of Regulation S–T (17 CFR 232.201). However, the practice that existed prior to adoption of the electronic filing exemption in Rule 311(j) of Regulation S–T of seeking a continued hardship exemption for the filing of these materials would not be appropriate except in the rarest of circumstances. See Rule 202 of Regulation S–T (17 CFR 232.202). We do not believe that the routine filing of such material would qualify for a continued hardship exemption.

[209] The Commission's Securities Act safe harbors in this area (Rules 137, 138 and 139) refer to the publication by a broker or dealer of information, an opinion or a recommendation with respect to a registrant's securities or in some instances the registrant itself. For sake of simplicity, we refer to these publications in this release as ''research reports.'' By using this convention, we do not mean necessarily to encompass the separate definition of ''research report'' in Section 15D of the Exchange Act (15 U.S.C. 78o–6) added by the Sarbanes-Oxley Act. Nor do our proposals affect in any way the applicability of that Section, any of our other rules with respect to research reports or any applicable SRO rules or other requirements regarding research reports.

registration statement is filed, or it may constitute an illegal written offer to sell securities that does not meet the information requirements of Section 10 of the Securities Act if published or distributed after the registration statement is filed.

To recognize the potential benefits of research reports while limiting their potential misuse to promote a securities offering, the Commission has previously issued Securities Act Rules 137, 138 and 139. These rules create safe harbors that describe circumstances under which brokers or dealers may publish or distribute research reports in and around a registered offering without fear of violating Section 5 of the Securities Act through making an illegal offer or using a non-conforming prospectus. The existing rules look to the broker's participation in an offering, differences between the securities offered and those covered in the research report and the size and reporting history of the issuer.

However, the conditions in those rules do not correspond well to ABS offerings. For example, several of the requirements in the research rules, particularly Rule 139 (the applicable rule where the broker also is participating in the registered offering), require issuer size and reporting history requirements, neither of which are applicable to most asset-backed securities.

In response, the staff of the Division of Corporation Finance issued a no-action letter in 1997 to provide a separate safe harbor for the publication of research reports by brokers or dealers in and around offerings of asset-backed securities registered or to be registered on Form S–3.[210] The no-action letter contained conditions for the safe harbor adapted from Rules 137, 138 and 139 and modified to address asset-backed securities. We now propose to codify this safe harbor with several minor adjustments to add it to our existing research report safe harbors.[211]

b. Proposed ABS Research Report Safe Harbor

As with the existing no-action letter, the proposed safe harbor would be available only with respect to ABS offerings registered on Form S–3. That is, it would only be available with respect to offerings of investment grade asset-backed securities that meet the requirements of General Instruction I.B.5 of Form S–3. Similar to our proposals for ABS informational and computational material and existing Rule 139, we believe offerings of securities meeting the additional requirements for Form S–3 registration represent the appropriate categories of offerings for the safe harbor.

Under our proposal, the publication or distribution by a broker or dealer of a research report with respect to investment grade asset-backed securities meeting the criteria of General Instruction I.B.5 of Form S–3 will not be deemed to constitute an offer for sale or offer to sell such asset-backed securities registered or proposed to be registered, even if the broker or dealer is or will be a participant in the registered offering, if the following conditions are met:[212]

- The broker or dealer must have previously published or distributed with reasonable regularity information, opinions or recommendations relating to Form S–3 ABS backed directly (or, with respect to securitizations of other securities, indirectly) by substantially similar collateral as that directly or indirectly backing Form S–3 ABS that is the subject of the information, opinion or recommendation that is proposed to be published or distributed.
- If the securities for the registered offering are proposed to be offered, offered or part of an unsold allotment or subscription, the information, opinion or recommendation must not:
  - Identify those securities;
  - Give greater prominence to specific structural or collateral-related attributes of those securities than it gives to the same attributes of other ABS that it mentions;[213] and
  - Contain any ABS informational and computational material relating to those securities.
- If the material identifies specific ABS of a specific issuer and specifically recommends that such ABS be purchased, sold or held by persons receiving such material, then a recommendation as favorable or more favorable as to such ABS must have been published by the broker or dealer in the last publication of such broker or dealer addressing such ABS prior to the commencement of its participation in the distribution of the securities whose offering is being registered.
- Sufficient information is available from one or more public sources to provide a reasonable basis for the view expressed by the broker or dealer with respect to the ABS that are the subject of the information, opinion or recommendation.
- If the material published by the broker or dealer identifies other ABS backed directly or indirectly by substantially similar collateral as that directly or indirectly backing the securities whose offering is being registered and specifically recommends that such ABS be preferred over other ABS backed by different types of collateral, then the material must explain in reasonable detail the reasons for such preference.

Not included in the above list of proposed conditions is a condition in the existing no-action letter that the research material must refer as required by law or applicable rules to any relationship that may exist between the issuer of the information, opinion or recommendation and any participant of the offering. A footnote in the incoming request for the no-action letter stated that the condition ''contemplates statutory provisions such as Section 17(b) of the [Securities] Act or relevant SRO standards requiring disclosure of possible sources of bias.'' Because the types of disclosures contemplated already are themselves separate regulatory requirements, we do not believe this additional condition is necessary for the safe harbor. Further, no similar condition exists in Rules 137, 138 or 139 even though the situation is analogous. However, our decision not to propose this condition here does not otherwise affect any requirement that would require disclosure of such relationships.

As with our proposal for the use of ABS informational and computational material, the staff has received several requests to liberalize the ABS research report safe harbor beyond the staff no-action letter.[214] In 1998, the Commission proposed an extensive revision of Rules 137, 138 and 139.[215] Those proposals would have removed or altered several conditions in those rules that were adapted for use in the no-action letter for the ABS research report safe harbor. As with communications restrictions, staff in our Division of Corporation Finance is reviewing those 1998 proposals and the comments received in possibly developing new recommendations to the Commission on potential reforms to the research report safe harbors. To the extent the existing safe harbors are modified, we also would consider similar modifications to the ABS safe harbor. Therefore, our

[210] See note 29 above.

[211] See proposed Securities Act Rule 139a (17 CFR 230.139a). Note that the proposed safe harbor would be a non-exclusive safe-harbor the same as existing Rules 137, 138 and 139. Each of the existing safe harbors in Rules 137, 138 and 139 would remain available with respect to asset-backed securities if the conditions for the particular safe harbor were met.

[212] Consistent with the existing no-action letter, in the case of a multi-tranche registered offering of asset-backed securities, each tranche would be treated as a different security.

[213] Consistent with the staff no-action letter, this condition would not by itself prevent the dissemination of research material that focuses on a single topic (*e.g.*, a single collateral attribute, asset type (but not a particular obligor), structural attribute or market sector).

[214] See, *e.g.*, Letter from BMA to David B.H. Martin, Director, Division of Corporation Finance, ''Securities Act Reform'' (Nov. 30, 2001); and Letter to Alan L. Beller, Director, Division of Corporation Finance, ''Prior Correspondence Regarding Asset-Backed Securities Reform'' (Apr. 23, 2002).

[215] See Release No. 33–7606A (Nov. 13, 1998) [63 FR 67174].

approach here, like our proposal for ABS informational and computational material, is consistent with the existing safe harbor in the staff no-action letter, with the few alterations discussed above.

Questions regarding the proposed ABS research report safe harbor:

- We request comment on the proposed safe harbor. We have reorganized and reordered the conditions from the staff no-action letter and altered the wording slightly to make them easier to read and consistent with terms used in our other proposals. We otherwise did not mean to change the intent or scope of the original no-action letter. Are any additional revisions necessary or would any additional clarifications be appropriate?
- We also request comment on the continued applicability of any of the conditions or whether any additional conditions are necessary. For example, should the condition regarding disclosures of additional relationships be retained?
- Our proposal, like the 1997 no-action letter, does not contain any instructions. Are any instructions or clarifications necessary for a codification of the ABS research report safe harbor?
- Is the limitation to offerings on Form S–3 still appropriate? If not, under what circumstances should the proposal be extended to offerings on Form S–1? In particular, are there any additional conditions that should be required for extending the safe harbor to Form S–1 offerings?

D. Ongoing Reporting Under the Exchange Act

1. Current Requirements

As discussed previously, post-issuance reporting regarding an asset-backed security is important to monitoring and understanding the performance of both the asset pool and transaction parties.[216] Issuers of asset-backed securities are not exempt from Exchange Act reporting requirements. In particular, if asset-backed securities are to be listed on a national securities exchange, they must be registered pursuant to Section 12 of the Exchange Act[217] and file reports pursuant to Section 13(a) of the Exchange Act.[218] Even without a listing, an offering of asset-backed securities pursuant to an effective Securities Act registration statement triggers a reporting obligation under Section 15(d) of the Exchange Act with respect to those securities, at least for a period of time. This obligation automatically suspends as to any fiscal year, other than the fiscal year within which the registration statement became effective, if, at the beginning of such fiscal year, the securities of each class to which the registration statement relates are held of record by less than 300 persons.[219]

As most asset-backed securities are not presently listed and are held by less than three hundred record holders, most publicly offered asset-backed securities cease reporting with the Commission once they qualify for the automatic suspension. In the context of shelf registration statements where a new issuing entity is used for the issuance of each separate series of securities, a new reporting obligation is incurred with respect to those securities. Reporting regarding the asset-backed securities by that issuing entity may stop if those securities subsequently meet the suspension requirements of Section 15(d) of the Exchange Act (*e.g.*, held of record by less than 300 persons at the beginning of any fiscal year other than the fiscal year in which the takedown occurred), notwithstanding that separate issuing entities of the same sponsor may issue additional asset-backed securities during the fiscal year.

Regardless of an ability to suspend reporting under the Exchange Act, ABS transaction agreements often require continued reporting of information to security holders. More and more issuers also are making such information available through their websites. Third party services continue to evolve to provide post-issuance performance data, although coverage may not be uniform.

Even though asset-backed securities are subject to an Exchange Act reporting obligation, the type and frequency of disclosure required under the Exchange Act with respect to operating companies generally is not relevant with respect to asset-backed securities. As a result, issuers of asset-backed securities have requested and received, first through Commission exemptive orders under the Exchange Act and later through scores of staff no-action letters, permission to modify the reports they may file to fulfill their reporting obligation.[220]

Under the modified reporting system, in lieu of quarterly reports on Form 10–Q, reports on Form 8–K typically are filed based on the frequency of distributions on the asset-backed securities (predominantly monthly), which in turn generally match the payment frequency of the underlying pool assets. These filings include a copy of the servicing or distribution report required by the ABS transaction agreements that contains unaudited information about the performance of the assets, payments on the asset-backed securities and any other material developments that affect the transaction. Disclosure that otherwise would be required by certain items of Form 10–Q, such as legal proceedings, material uncured defaults and matters submitted to a vote of security holders, also are required for the Form 8–K distribution report for the period in which such events occurred.

In addition to these ''periodic'' filings on Form 8–K, current reports on Form 8–K also are required, but only for a narrow list of events. Insider reporting under Section 16 also is generally not required.

An annual report on Form 10–K is still required, but the information required is reduced and modified. Audited financial statements for the issuing entity are not generally required. In lieu of audited financial statements, the ABS issuer must file as exhibits to the Form 10–K a servicer compliance statement and a report by an independent public accountant. The servicer compliance statement addresses compliance by the servicer with its obligations under the servicing agreement for the reporting period. The accountant's report generally relates to the report required under the transaction agreements from an independent public accountant attesting to an assertion of compliance regarding particular servicing criteria.

As a result of implementation of the Sarbanes-Oxley Act, and in

[1] See Section III.B.8.e.

[217] 15 U.S.C. 78*l*.

[218] See Section 12(b) of the Exchange Act (15 U.S.C. 78*l*(b)). In addition, asset-backed securities that constitute equity securities also may need to register under Section 12(g) of the Exchange Act (15 U.S.C. 78*l*(g)) if they meet certain size and ownership requirements. Voluntarily registration of such securities also is permitted under Section 12(g). Whether registered under Section 12(b) or 12(g), reporting under Section 13(a) is required.

[219] If the duty to report is suspended, a Form 15 is required to be filed 30 days after the beginning of the first fiscal year it is suspended. See Exchange Act Rule 15d–6 (17 CFR 240.15d–6). See also Exchange Act Rule 12h–3 (17 CFR 240.12h–3). The term ''held of record'' is defined in Exchange Act Rule 12g5–1 (17 CFR 240.12g5–1).

[220] As representative examples of the many actions in this area, see, *e.g.*, Release No. 34–16520 (Jan. 23, 1980) (order granting application pursuant to Section 12(h) of Home Savings and Loan Association); Release No. 34–14446 (Feb. 6, 1978) (order granting application pursuant to Section 12(h) of Bank of America National Trust and Savings Association); *CWMBS, Inc.* (Feb. 3, 1994); and *Bank One Auto Trust 1995–A* (Aug. 16, 1995). Such relief generally includes language stating that similar relief will apply to subsequent issuances of substantially similar securities representing ownership interests in a trust whose principal assets are substantially similar to the assets covered by the no-action letter. After many years of issuing modified reporting no-action letters, the staff ceased requiring each new registrant to obtain a new no-action letter and has instead instructed new ABS issuers they could look to an existing modified reporting no-action letter granted with respect to another issuer which has substantially similar characteristics to the new asset-backed securities for requirements of Exchange Act reporting. If the specified requirements in a particular exemptive order or no-action letter are not satisfied, the relief is not available.

consideration of the existing requirement in the modified reporting system that accountant's attest as to compliance with servicing criteria, the Commission exempted asset-backed issuers from the reporting requirements regarding internal control over financial reporting.[221] They must, however, include a certification required by Section 302 of that Act with their annual report on Form 10–K. In a staff statement originally published on August 29, 2002 and subsequently revised on February 21, 2003, the staff provided a tailored form of certification for use with ABS annual reports to address the realities of their structure as well as to address the information included in their reports under the modified reporting system.[222] In addition, the staff statement provided alternatives with respect to who can sign the certification given the lack of a traditional CEO or CFO. Under the staff statement, a designated officer of the depositor, servicer or trustee may sign the certification, and alternate language for the certification is permitted depending on which entity's officer is making the certification.

2. Determining the ''Issuer'' and Operation of the Section 15(d) Reporting Obligation

We propose to codify the basic modified reporting system for asset-backed securities, including the forms to use and how they are to be prepared. As noted in Section III.A.4., we do not propose a separate Exchange Act reporting system for foreign ABS. Foreign ABS would report on Forms 10–K, 10–D and 8–K, the same as domestic ABS.

First we propose to clarify the definition of ''issuer'' with respect to the reporting obligation and the nature and operation of the Section 15(d) reporting obligation with respect to asset-backed securities. The relevant aspects of the definition of ''issuer'' under the Exchange Act are identical to the Securities Act definition.[223] The modified reporting no-action letters generally have allowed Exchange Act reports to be signed and filed ''on behalf of the trust'' by either the depositor, servicer or trustee.

Similar to our proposal for the Securities Act, we propose to clarify that the depositor for the asset-backed securities, acting solely in its capacity as depositor to the issuing entity, is the ''issuer'' for purposes of the asset-backed securities of that issuing entity.[224] Like our proposal for the Securities Act, our proposal specifies that the person acting in its capacity as depositor for the issuing entity of an asset-backed security is a different ''issuer'' from that same person acting as a depositor for any other issuing entity or for purposes of that person's own securities. For example, the depositor for a particular issuing entity created for the first takedown under a shelf registration statement would be deemed to be a different ''issuer'' than that depositor acting as depositor for a subsequent issuing entity created for a subsequent takedown under the same registration statement.[225] Like our proposed Securities Act rule, our proposed Exchange Act rule would apply regardless of the issuing entity's form of organization.

This approach addresses the reality of ABS offerings by different issuing entities registered on the same shelf registration statement are not related. Furthermore, it places responsibility for Exchange Act reporting with the party most able to oversee the reporting requirements. Finally, this approach differentiates reporting with respect to each issuing entity, and thus each ABS transaction, and does not require continuous reporting with respect to transactions that would otherwise be able to suspend reporting.

Consistent with this proposal, we propose to identify who must sign Exchange Act reports. The particular requirements we propose are presented along with our other proposals for each report discussed below. The principle is that the depositor would be required to sign Exchange Act reports, although we would permit an authorized representative of the servicer to sign on behalf of the issuing entity as an alternative.

As discussed in more detail in the next section, a takedown of asset-backed securities by a new issuing entity triggers a new reporting obligation under Exchange Act Section 15(d). Separate EDGAR filing codes need to be established for the new issuing entity created at the time of each takedown to ensure that Exchange Act reports related to these ABS are filed under a separate file number from other ABS or from the depositor's or sponsor's own securities. Issuers should not ''combine'' reporting regarding multiple transactions in one report or with a report for the depositor's or sponsor's own securities.

In addition to clarifying who is the ''issuer,'' we propose to clarify several interpretive positions regarding the operation of the Section 15(d) reporting obligation with respect to asset-backed securities.[226] The first position relates to the time when any reporting obligation begins. Where an aggregate amount of asset-backed securities to be offered on a delayed basis is registered on Form S–3, until the first takedown of securities under the registration statement, there is no asset pool or securities to report about and no Exchange Act reporting requirement. It is only when the first takedown occurs and ABS are issued that ongoing reporting becomes relevant. Accordingly, we propose to codify a longstanding interpretive position that no annual or other reports need be filed pursuant to Section 15(d) until the first bona fide sale in a takedown of securities under the registration statement.[227] For example, if a Form S–3 shelf registration statement was declared effective on October 1, 2004 but no takedown occurred until February 1, 2005, no reports would need to be filed until after the first takedown. The first reporting obligation would be triggered by the first takedown of asset-backed securities.[228]

[221] See note 35 above.

[222] See Division of Corporation Finance, ''Statement: Compliance by Asset-Backed Issuers with Exchange Act Rules 13a–14 and 15d–14'' (Aug. 29, 2002); and Division of Corporation Finance, ''Revised Statement: Compliance by Asset-Backed Issuers with Exchange Act Rules 13a–14 and 15d–14'' (Feb. 21, 2003). In addition, the staff subsequently issued two no-action letters to address resecuritizations (*Merrill Lynch Depositor, Inc.* (Mar. 28, 2003)) and auto lease and similar securitizations (*Mitsubishi Motors Credit of America, Inc.* (Mar. 27, 2003)).

[223] See Section 3(a)(8) of the Exchange Act (15 U.S.C. 77c(a)(8)).

[224] See proposed Exchange Act Rule 3b–19 (17 CFR 240.3b–19). The proposed rule in the Exchange Act is identical to the proposed rule for the Securities Act. See proposed Securities Act Rule 191 (17 CFR 230.191) and Section III.A.3.d. We propose to define the term ''asset-backed issuer'' as an issuer whose reporting obligation results from either the registration of an offering of asset-backed securities under the Securities Act, or the registration of a class of asset-backed securities under Section 12 of the Exchange Act.

[225] Likewise, any applicable exemptions from reporting that the personacting as depositor may have with respect to its own securities would not be applicable to the asset-backed securities.

[226] These proposals only would be applicable to reporting obligations under Section 15(d). They are not meant to affect any reporting obligation that may exist as to any class of asset-backed securities registered under Section 12 of the Exchange Act. For example, a Section 15(d) reporting obligation is automatically suspended while a class of securities is registered under Section 12 and reporting pursuant to Section 13(a) of the Exchange Act. See Exchange Act Section 15(d). Hence, any discussion regarding suspension of the Section 15(d) reporting obligation would not be applicable while a class of securities is reporting pursuant to Section 13(a).

[227] See proposed Exchange Act Rule 15d–22(a).

[228] A few modified reporting no-action letters permitted the filing of no reports, including a Form 10–K, if the takedown occurred near the end of a fiscal year and no distribution had occurred prior to the end of the fiscal year. See, *e.g., Fleet Finance Home Equity Trust 1990–1* (Apr. 9, 1991); *AIC*

We also propose to codify the current position that the starting and suspension dates for any reporting obligation with respect to a takedown of asset-backed securities is determined separately for each takedown.[229] For example, if takedowns involving different issuing entities occurred in 2004 and 2005, the reporting obligation related to the issuing entity created with respect to the 2004 takedown would be separate from the reporting obligation related to a different issuing entity created with respect to the 2005 takedown. If at the beginning of the 2005 fiscal year the securities in the 2004 takedown were held of record by less than 300 holders, the reporting obligation related to the issuing entity for the 2004 takedown would be suspended.[230] Of course, the suspension of that reporting obligation would have no effect on any separate reporting obligation related to the issuing entity with respect to the 2005 takedown or related to issuing entities created with respect to any other takedown.

Finally, we propose a separate rule to address the separate Section 15(d) reporting obligation that may be involved in ABS transactions where the issuing entity holds a pool asset that represents the interest in or the right to the payments or cash flows of another asset pool.[231] As discussed in Section III.A., some credit card and auto lease ABS transactions are structured such that the issuing entity's asset pool consists of one or more of such intermediate financial assets. For example, in an issuance trust structure, the asset pool of the issuing entity for the ABS consists of a collateral certificate representing an interest in the asset pool of the credit card master trust. In many instances, the deposit of the collateral certificate into the issuing entity's asset pool must be separately registered along with the registration of the offering of the issuing entity's asset-backed securities, thereby triggering a separate reporting obligation under Section 15(d) with respect to the collateral certificate.

Recognizing that these structures are designed solely to facilitate the structuring of the transaction, separate reports regarding the intermediate financial asset would provide no additional information to investors. Accordingly, we propose that no separate annual and other reports need be filed with respect to the intermediate financial asset's reporting obligation, if the following conditions were met:[232]

- Both the issuing entity for the asset-backed securities and the entity that issued the financial asset were established under the direction of the same sponsor or depositor;
- The financial asset was created solely to satisfy legal requirements or otherwise facilitate the structuring of the ABS transaction;
- The financial asset is not part of a scheme to avoid registration or reporting requirements of the Act;
- The financial asset is held by the issuing entity and is a part of the asset pool for the asset-backed securities; and
- The offering of the asset-backed securities and the offering of the financial asset were both registered under the Securities Act.

The proposed rule would not affect any reporting obligation applicable with respect to the asset-backed securities, nor would it affect any obligation to provide information regarding the financial asset or the underlying asset pool in the ABS reports.[233]

Questions regarding proposed definition of ''issuer'' and operation of the Section 15(d) reporting obligation:

- We request comment on our proposed rule clarifying the ''issuer'' of asset-backed securities for purposes of the Exchange Act. In addition to or in lieu of the depositor, should another entity be considered the ''issuer,'' such as the sponsor, the servicer, the trustee or the issuing entity? What would be the bases for requiring the servicer to be the reporting entity?
- Should the ability to suspend reporting under Section 15(d) be revisited? For example, should it be a condition or required undertaking for registration statement form eligibility or for any of our other proposals that Exchange Act reporting will continue for the life of the asset-backed security? What would be the relative costs and benefits of such a requirement?
- We request comment on our proposed interpretive rules regarding the operation of the Section 15(d) reporting obligation. Should any of these positions be revised? Are additional interpretations or accommodations necessary?
- Should there be an accommodation for separate Section 15(d) reporting obligations that may exist as a result of the registration of an intermediate financial asset, such as in an issuance trust/SUBI structure? Does our proposed list of conditions adequately identify the relevant structures?

3. Reporting Under EDGAR

We do not propose to change how documents regarding asset-backed securities are to be filed on EDGAR. However, there have been inconsistencies by ABS issuers with respect to the filing of registration statements and annual and periodic reports on EDGAR, thus making it difficult and time-consuming for investors and others to locate documents related to particular asset-backed securities. As such, we are providing the following guidance on how to submit documents on EDGAR that will enable investors and others to locate material information about particular asset-backed securities more efficiently. This guidance clarifies existing practice regarding how documents are to be submitted on EDGAR.

Registration statements and annual and other periodic reports are filed in electronic format on EDGAR. Each entity that makes an EDGAR submission is assigned a Central Index Key code, or ''CIK'' code. For submissions to appear under the correct entity, the correct CIK code must be included in the EDGAR submission header.

Because typically no issuing entity exists at the time of filing, the depositor initially submits the registration statement registering the offering of an aggregate amount of asset-backed securities on EDGAR under its own CIK code. With each takedown of asset-backed securities by a new entity off the registration statement, a new reporting obligation under Exchange Act Section 15(d) is created. The EDGAR system will automatically generate a new CIK code and an Exchange Act reporting file number for the new entity when the depositor includes a ''serial'' tag in the header of the prospectus filed under Securities Act Rule 424(b) to report the takedown.[234] The depositor must

Premium Finance Loan Master Trust (Apr. 3, 1995); and *Toyota Auto Receivables 1995–A Grantor Trust* (Dec. 19, 1995). Even if the period was short, we believe that information regarding the servicing of the asset pool for the period (particularly the servicer compliance statement and assessment of compliance with servicing criteria) would still be important information to provide to investors in an annual report, even if no distributions were made to investors prior to the fiscal year end. Accordingly, the accommodation in those letters would no longer be available.

[229] See proposed Exchange Act Rule 15d–22(b).

[230] An annual report on Form 10–K for the 2004 fiscal period with respect to the classes in the 2004 takedown would be required although the report is not required until 90 days after the end of the 2004 fiscal period.

[231] See proposed Exchange Act Rule 15d–23. This proposed rule would not be applicable with respect to underlying securities that do not meet its proposed conditions, such as the securitization of outstanding corporate debt securities or other ABS the offering of which must be separately registered under the Securities Act.

[232] As with note 226 above, these proposals would only be applicable with respect to the reports filed pursuant to Section 15(d) for the intermediate financial asset. They would not affect any other reporting obligation that may exist with respect to the issuer of the intermediate financial asset, such as other securities by that entity.

[233] See proposed Item 1100(d) of Regulation AB.

[234] There are instances when materials relating to a particular ABS transaction may be filed before the filing of the final Rule 424 prospectus that generates the new CIK code and Exchange Act reporting file number for the new issuing entity. For example, with respect to one or more classes of asset-backed

Continued

include the complete name of the new entity as part of the serial tag.[235] Subsequent takedowns from the same registration statement that create new reporting entities should follow the same approach for obtaining separate CIK codes and file numbers through serial tags.[236]

When these procedures are followed, the Rule 424(b) prospectus will appear under both the depositor's and the new issuing entity's CIK codes. The issuer in its capacity as depositor for newly created entities should prepare separate annual, periodic and other reports for each issuing entity and file such reports under the separate CIK code for each issuing entity.[237] To make these subsequent filings under the newly created issuing entities, the sponsor will have to obtain additional access codes by creating and submitting Form IDs to the SEC using the SEC's website.

The creation of new issuing entities by identifying the serial tag in the Rule 424 filing header effectively separates the reporting obligation of the depositor from that of the new entities. Filing separate annual, periodic and other reports for each issuing entity provides easier access to information on a particular issuing entity and its asset-backed securities, which will increase transparency of such information for investors as well as the market for these securities. Also, submitting separate Exchange Act reports under the issuing entity's CIK code will facilitate tracking of the respective issuing entity's reporting obligation, as well as when such reporting obligation may be suspended under Section 15(d) of the Exchange Act, if applicable.

Conversely, we do not believe providing required information for multiple issuing entities in a ''combined'' annual or periodic report containing information regarding multiple issuing entities of a single sponsor or depositor is consistent with these objectives.[238] Combined reporting contributes to confusion on the part of investors attempting to locate a report on EDGAR relating to the securities that are relevant to that investor. Combined reporting forces investors and other users to wade through superfluous information in order to retrieve information that is relevant to them. Further, combined reports create inefficiencies in the storage, retrieval, and analysis of information on EDGAR, which impedes market access and staff review.

Questions regarding reporting on EDGAR:

• We request comment on any additional ways to make reporting on EDGAR less time-consuming or costly for ABS issuers while still providing an efficient and usable retrieval system for investors and the marketplace. For example, under the current system a filer must affirmatively indicate through a serial tag that a new issuing entity is being created when a prospectus is filed pursuant to Rule 424(b) to generate the new issuing entity's separate CIK code. Would it be more effective to require a mandatory serial tag for such filings or establish an ''opt-out'' system for the serial tag (in lieu of the current ''opt-in'' system)?

4. Distribution Reports on Proposed Form 10–D

Under the modified reporting system, periodic distribution and pool performance information is generally filed on Form 8–K in lieu of filing quarterly reports on Form 10–Q. However, investors are not able to easily distinguish these Form 8–K reports from other reporting on Form 8–K, such as the reporting of extraordinary events or the filing of transaction agreements.

Form 8–K is not designed to be a report filed on a periodic basis. Accordingly, we propose one new form type for asset-backed securities, Form 10–D, to act as the report for the periodic distribution and pool performance information.[239] To codify this type of reporting, we propose to require that every asset-backed issuer subject to Exchange Act reporting requirements must make reports on Form 10–D.[240] Consistent with the existing modified reporting system, these reports would be required to be filed within 15 days after each required distribution date on the asset-backed securities, as specified in the governing documents for such securities, although we request comment on this proposed deadline. A report would be required regardless of whether the required distribution was actually made or whether a distribution report was in fact prepared or delivered under the governing documents.

It is our understanding that in most ABS transactions, the trustee is the recipient and not necessarily the preparer of this information, and the depositor or the servicer is thus in a better position with respect to possession, responsibility and awareness of the information that would need to be reported. Our proposed

securities that are to be listed on a national securities exchange, an Exchange Act registration statement, such as a Form 8–A (referenced in 17 CFR 249.208a), often must be filed before the final Rule 424(b) prospectus is filed. In addition, under the existing no-action letters and our proposals regarding ABS informational and computational material, such material could be voluntarily filed on Form 8–K before the final Rule 424(b) prospectus is filed.

We are considering programming changes to the EDGAR system to permit the generation of a new CIK code and an Exchange Act reporting file number for a new issuing entity before the Securities Act Rule 424(b) prospectus is filed. Until these programming changes are made, such materials should be filed under the CIK code for which the Securities Act registration statement was filed, which is usually the depositor's CIK code. Note that if a new CIK code and Exchange Act reporting file number for the new issuing entity had been previously generated (*e.g.*, a preliminary prospectus with respect to the offering had been filed), these materials should be filed under the CIK code of the issuing entity. In either case, to insure increased efficiencies in the filing and processing of such material, we encourage the depositor to list the name of the issuing entity on the cover page of the material. For example, to ensure that the certifications that we receive from the exchanges may be properly matched against the Form 8–A's on file, the Form 8–A should identify the specific issuing entity. Where the Form 8–A calls for the name of the registrant, depositors should list their name but include a notation that they are filing on behalf of the issuing entity and name the issuing entity.

[235] In the past, issuing entity names have been truncated in order to comply with EDGAR requirements regarding the permissible length of a company name. These abbreviations, historically assigned by SEC staff, sometimes were not consistently applied. A recent upgrade to the EDGAR system now permits company names of up to 150 characters in length. See Release No. 33–8409 (Apr. 19, 2004). The staff believes this revision will alleviate many of the problems we have seen in the past regarding inconsistent abbreviation of names.

[236] For example, if a depositor completes five takedowns from a shelf registration statement and creates five separate issuing entities, then each separate issuing entity should have its own CIK code. After obtaining a CIK code for the issuing entity, the depositor must obtain additional EDGAR codes from the Commission for the issuing entity to enable it to file additional documents under the CIK code. The Commission recently adopted rules to change this process. See Release No. 33–8410 (Apr. 21, 2004).

[237] Once the issuing entity's CIK code is generated, subsequent filings relating to the transaction relating to that issuing entity should be filed under that CIK code. The filing of documents under the issuing entity's CIK code under cover of Form 8–K, such as unqualified legality and tax opinions, would not affect the incorporation by reference of these documents into the registration statement originally filed under the depositor's CIK code.

[238] We understand the staff in a few isolated instances has previously allowed combined reporting on a limited basis. See, *e.g., TMS Home Equity Trust 1992–D–I; TMS Home Equity Trust 1992–D–II* (Mar. 22, 1993) and *The Money Story, Inc.; TMS Home Equity Trust 1993–A–I* (Aug. 4, 1993) (allowing combined reporting with respect to two trusts). The staff believes these rare exceptions have led to the current practice of a few registrants combining in some instances information on dozens of issuing entities into a lengthy combined report. The result is filings that can run for hundreds of pages that are unfriendly to the user.

[239] See proposed 17 CFR 249.312. Like our other Exchange Act reports, the proposed form would be subject to all applicable requirements of the general rules and regulations under the Exchange Act for the preparation, signing and filing of Exchange Act reports, including Regulation 12B (17 CFR 240.12b–1 *et seq.*); Regulation 13A (17 CFR 240.13a–1 *et seq.*); and Regulation 15D (17 CFR 240.15d–1 *et seq.*). In addition, the report would be required to be submitted in electronic form in accordance with the EDGAR rules set forth in Regulation S–T.

[240] See proposed Exchange Act Rules 13a–17 and 15d–17.

signature requirements for Form 10–D reflect this understanding by proposing that the report must be signed by either the depositor, or in the alternative, on behalf of the issuing entity by a duly authorized representative of the servicer. If multiple servicers were involved in the servicing of the pool assets, a duly authorized representative of the master servicer (or entity performing the equivalent functions) would need to sign if a representative of the servicer was to sign the report on behalf of the issuing entity. These signature proposals are consistent with our proposals for who must sign the annual report on Form 10–K, the Section 302 certification and the proposed report on an assessment of compliance with servicing criteria. We do not propose to permit the trustee to sign the report as an alternative to the depositor or the servicer.

Consistent with the modified reporting system, the proposed disclosure content for Form 10–D would consist of the distribution and pool performance information for the distribution period as well as certain non-financial disclosures, similar to those required by Part II of Form 10–Q, that occurred during the period. The proposed menu of disclosure items for Form 10–D is presented in the following table:

PROPOSED DISCLOSURE FOR FORM 10–D

Form items and source of disclosure required
Item 1. Distribution and Pool Performance Information (proposed Item 1119 of Regulation AB).
Item 2. Legal Proceedings (proposed Item 1115 of Regulation AB).
Item 3. Sales of Securities and Use of Proceeds (Item 2 of Part II of Form 10–Q).
Item 4. Defaults Upon Senior Securities (Item 3 of Part II of Form 10–Q).
Item 5. Submission of Matters to a Vote of Security Holders (Item 4 of Part II of Form 10–Q).
Item 6. Significant Obligors of Pool Assets (proposed Item 1111(b) of Regulation AB).
Item 7. Significant Enhancement Provider Information (proposed Item 1113(b)(2) of Regulation AB).
Item 8. Other Information.
Item 9. Exhibits (Item 601 of Regulation S–K).

The requirement with respect to distribution and pool performance information would require the registrant to provide the information required by proposed Item 1119 of Regulation AB and to attach as an exhibit to the Form 10–D the distribution report delivered to the trustee or security holders, as the case may be, pursuant to the transaction agreements for the related distribution date. Recognizing that the distribution report specified under the transaction agreements will likely contain most, if not all, of the disclosures about the distribution and pool performance that would be required by proposed Item 1119 of Regulation AB, any information required by that Item that was included in the attached distribution report would not need to be repeated in the Form 10–D. As a result, and as is typically the case today with distribution reports filed under Form 8–K, no additional information may be required in the Form 10–D with respect to distribution or pool performance if all of the required information was included in the attached distribution report. However, taken together, the attached distribution report and the information provided in the Form 10–D would need to contain all of the information required by Item 1119 of Regulation AB.

Proposed Item 1119 of Regulation AB would require a description of the distribution and the performance of the asset pool during the distribution period. Recognizing the variety of asset types that can be securitized and the variety of transaction structures that can be used, we do not propose a standardized format for the presentation of either the information required by Item 1119 of Regulation AB or the distribution report prepared under the transaction agreements. However, while the material characteristics will vary depending on the nature of the transaction, we believe there are certain broad categories of disclosure and examples of common characteristics that can be identified as representative of the material disclosure that should be provided and that is often provided today. Proposed Item 1119 of Regulation AB would set forth examples of such information based on the disclosures currently provided under the modified reporting system. The actual disclosure to be provided would need to be tailored to the asset pool and transaction involved. In addition, appropriate introductory and explanatory information should be provided to introduce material terms, parties and abbreviations used, and statistical information should be presented in tabular and graphical formats, if such presentations will aid understanding.

Examples of material characteristics in proposed Item 1119 of Regulation AB, which are based upon disclosures commonly provided today, include:

- Applicable record dates, accrual dates, determination dates and distribution dates.
- Cash flows received and their sources (including portfolio yield, if applicable).
- Calculated amounts and distribution of the flow of funds for the period itemized by type and priority of payment, including fees and expenses, payments with respect to enhancement, distributions to security holders and excess cash flow.
- Beginning and ending principal balances of the asset backed securities.
- Beginning and ending balances of transaction accounts, such as reserve accounts, and account activity during the period.
- Amounts drawn on any credit enhancement or other support and amounts still available.
- Updated pool composition information for the period, such as the number and amount of pool assets at the beginning and ending of each period, weighted average coupon, weighted average life, weighted average remaining term, pool factors, prepayment amounts, current payment/prepayment speeds and other prepayment or interest rate sensitivity information.[241]
- Delinquency and loss information for the period.
- The amount, terms and purpose of any advances made or reimbursed during the period.
- Material modifications, extensions or waivers to pool asset terms, fees, penalties or payments.
- Breaches of material pool asset representations or warranties or transaction covenants.
- Information on ratio, coverage or other tests used for determining any early amortization, liquidation or other performance trigger and whether the trigger was met.

Because we are proposing to expand the availability of prefunding periods, revolving periods and master trusts, we also propose to expand the related periodic disclosure regarding these structures to include information regarding any new issuance of asset-backed securities backed by the same asset pool and any pool asset additions, removals, substitutions and repurchases, such as through a prefunding or revolving period. Such information would include any material changes in solicitation, credit-granting, underwriting, origination, acquisition or pool selection procedures.

Further, if the addition, removal or substitution of pool assets had materially changed the composition of the asset pool as a whole, updated pool composition information would be required to the extent such information had not been provided previously. Such information would include information required by proposed Items 1107, 1109, 1110 and 1111 of Regulation AB applied

[241] For asset-backed securities backed by leases where a portion of the cash flow to repay the asset-backed securities is anticipated to come from the residual value of the physical property underlying the leases, this information also would include turn-in rates and residual value realization rates.

taking the revised pool composition into account. No information would be required, however, if substantially the same information had been provided previously in an effective registration statement under the Securities Act or a prospectus timely filed pursuant to Securities Act Rule 424 under the same CIK code regarding a subsequent issuance of asset-backed securities backed by the same pool.

Regarding the other proposed disclosure items for Form 10–D, the information regarding legal proceedings, sales of securities, use of proceeds, submission of matters to a vote of security holders, defaults on senior securities and other information is consistent with the non-financial disclosures in Form 10–Q that are required under the modified reporting system.[242] For legal proceedings, we would reference the tailored ABS disclosure in proposed Item 1115 of Regulation AB. As with legal proceedings disclosure in Form 10–Q, a proceeding only would need to be reported for the distribution period in which it first became a reportable event and in subsequent periods where there had been material developments. The other proposed disclosure items would contain cross-references to similar items in Form 10–Q.

Proposed Items 6 and 7 of Form 10–D would require updated financial information about significant obligors and providers of enhancement, to the extent updated information was required. Such information only would need to be included in the first distribution report filed after updated financial information regarding the third party would be required under Regulation S–X. Reports for periods in which updated information would not be required would reference the previous filing that included the most recent information. As discussed in Section III.B.9., alternative methods may be available, subject to conditions, to present information regarding the third party, such as through incorporation by reference or by including a reference to the third party's Commission filings.

Similar to recent revisions to Form 10–Q, we propose to provide that if any event occurs that required the filing of a Form 8–K during the period covered by the particular distribution report, but was not disclosed on Form 8–K, the Form 10–D must include the disclosure prescribed by the relevant Form 8–K item for the period during which that event occurred. Like Form 10–Q, this would apply to all Form 8–K items, including those covered by the recently enacted Form 8–K safe harbor from liability under Exchange Act Section 10(b) or Rule 10b–5 for failure to timely file certain Form 8–K reports.[243] With respect to the Form 8–K items covered by the safe harbor, the safe harbor extends only until the due date of the next report of the issuer for the relevant periodic period in which the Form 8–K was not timely filed. As with similar disclosure now required in Forms 10–Q and 10–K, failure to make such disclosure would subject the issuer to potential liability under Section 10(b) and Rule 10b–5, in addition to potential liability under Section 13(a) or 15(d).

Request for comment on proposed Form 10–D:

- We request comment on proposed Form 10–D. Would a separate form type for distribution reports be beneficial? Should additional parties be permitted to sign the report? Is there any additional identifying information that should be provided on the cover page?
- What should be the appropriate deadline for Form 10–D reports? Given that the Form 10–D will in most cases consist only of the distribution report and also given advancements in technology, should the proposed 15-day deadline be shorter (*e.g.*, 2 business days, 5 days, 10 days)? Should the deadline be tied to the delivery of the distribution report to the trustee? If so, what would be the effect of such a deadline if there was a failure to send a report to the trustee? Should the deadline be tied to the end of the distribution period?
- As an alternative to the current system, should it be required (*e.g.*, through a condition to an exemption to filing with the SEC or for continued Form S–3 eligibility) that distribution reports are posted on a specified party's website within a certain time period (*e.g.*, same day or 2 business days after the distribution date) and not filed with the Commission until the Form 10–K (*e.g.*, so that it is filed and subject to the Section 302 certification)? What would be the advantages and disadvantages of such a system? Under such a system, should non-financial disclosures, such as those incorporated from Part II of Form 10–Q, still be required to be filed during the distribution period in which the events occurred?
- Should the frequency of the Form 10–D report be based on the payment or collection frequency of the underlying pool assets, regardless of the distribution frequency of the asset-backed securities, so that updated pool performance information is included? How often do payments on the asset-backed securities not match payments on the underlying pool assets?
- The modified reporting system did not clearly contemplate any filing extensions for distribution information, such as those available under Exchange Act Rule 12b–25.[244] Under that rule, registrants that face extenuating circumstances have the ability to gain a one-time filing extension for five calendar days for quarterly reports and fifteen calendar days for annual reports, if certain conditions are met. Is there a reason to provide a comparable filing extension for proposed Form 10–D? If so, what would be the length of such an extension (*e.g.*, 2, 5 or 10 days)? Under what circumstances or conditions should such an extension be available?
- We request comment on the manner of presenting distribution and pool performance information. Should the distribution report required by the transaction agreements still serve as the primary method for presentation of this information? Are there better alternatives to our proposal regarding the interaction between Form 10–D and that report? Should the presentation of any information be standardized?
- Are there any modifications that should be made to the list of representative items that should be disclosed regarding the distribution or asset performance? In particular, are there additional items that should be added or should any proposed items be deleted? For example, what amount of detail regarding updated pool composition information should be specified? Should there be a requirement to update all or some part of the information required by proposed Item 1110 of Regulation AB? Should any of the representative items be specifically mandated for disclosure and not just as examples of representative material disclosure?
- Our proposed disclosure regarding changes to the asset pool, such as those that involve a master trust or a prefunding or revolving period, could result in additional disclosures from those that are currently provided today, particularly regarding material changes to the composition of the asset pool. Are these disclosures desirable? Are there alternatives to provide this information to investors? Should some or all of this information instead be filed on a more current basis on Form 8–K? Is the exception for providing this information if it is provided in a Rule 424 prospectus filed under the same CIK code appropriate? Should disclosures only be required if the pool differs materially by a certain percentage from the original pool? Should there instead be an express limitation in the definition of asset-backed security that pool changes may not materially alter the characteristics of the asset pool or alter the characteristics by some set percentage (*e.g.*, 2%, 5%)? How should such changes be measured?
- If a previous filing, including the registration statement or ABS informational and computational material, included the

[242] See Release No. 33–8400 (Mar. 16, 2004) [69 FR 15594] (the ''Form 8–K Release'') regarding recent changes to these items of Form 10–Q that would be incorporated into the similar disclosure that would be required under proposed Form 10–D.

[243] As discussed more fully in Section III.D.8., this safe harbor only applies to a failure to file a report on Form 8–K for certain specified items. Material misstatements or omissions in a Form 8–K will continue to be subject to Section 10(b) and Rule 10b–5 liability. In addition, the safe harbor does not apply to liability under Section 13(a) or 15(d) or with respect to any failure to satisfy any other separate disclosure obligation that may exist.

[244] 17 CFR 240.12b–25.

results of any payment or sensitivity analyses, models or estimates or projections regarding items such as expected yield, maturity or pool performance, should there be a requirement to disclose any material changes between the previously disclosed information and the actual performance of the pool assets or the asset-backed securities? Should any such information appear in the annual report on Form 10–K as well as, or in lieu of, Form 10–D?

• We also request comment regarding the proposed other disclosure items for Form 10–D. Should any additional disclosures be required (*e.g.*, quantitative and qualitative disclosures about market risk required by Item 305 of Regulation S–K)? [245] Should any of the proposed disclosures codifying the principles of the existing modified reporting system now be omitted?

5. Annual Reports on Form 10–K

Similar to our proposed general instructions for Forms S–1 and S–3, we propose a separate general instruction for Form 10–K to specify how that form is to be used for an annual report with respect to asset-backed securities.[246] Under the proposed instruction, the depositor's name and sponsor's name also would need to be listed on the cover page of the Form 10–K.[247]

The proposed instruction would clarify who is to sign the Form 10–K. Consistent with the existing requirements for who must sign the Sarbanes-Oxley Section 302 certification, the report would need to be signed either on behalf of the depositor by the senior officer in charge of securitization of the depositor, or on behalf of the issuing entity by the senior officer in charge of the servicing function of the servicer. If a servicer was to sign the report on behalf of the issuing entity and multiple servicers were involved in the servicing of the pool assets, the senior officer in charge of the servicing function of the master servicer (or entity performing the equivalent functions) would sign. For the same reasons as the Form 10–D, we do not propose to permit the trustee to sign the report as an alternative to the depositor or the servicer.

The proposed general instruction would identify the existing items in the form that may be omitted as well as substitute items from proposed Regulation AB that would be required. Any other applicable items specified in Form 10–K would continue to be required.[248] The requirements specified are consistent with the modified reporting system. The proposed application of the disclosure items for Form 10–K is presented in the following table:

PROPOSED DISCLOSURE FOR FORM 10–K FOR ABS

Existing form items	Required if applicable	May be omitted
Item 1. Business		•
Item 2. Properties		•
Item 3. Legal Proceedings		•
Item 4. Submission of Matters to a Vote of Security Holders	•	
Item 5. Market for Registrant's Common Equity and Related Stockholder Matters	•	
Item 6. Selected Financial Data		•
Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations		•
Item 7A. Quantitative and Qualitative Disclosure About Market Risk		•
Item 8. Financial Statements and Supplementary Data		•
Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure	•	
Item 9A. Controls and Procedures		•
Item 9B. Other Information	•	
Item 10. Directors and Executive Officers of the Registrant		• [1]
Item 11. Executive Compensation		• [1]
Item 12. Security Ownership of Certain Beneficial Owners and Management		• [2]
Item 13. Certain Relationships and Related Transactions		• [1]
Item 14. Principal Accountant Fees and Services		•
Item 15. Exhibits and Financial Statement Schedules	•	
Additional disclosure items from Regulation AB		
Item 1111(b) of Regulation AB, Significant Obligor Financial Information	•	
Item 1113(b)(2) of Regulation AB, Significant Enhancement Provider Financial Information	•	
Item 1115 of Regulation AB, Legal Proceedings	•	
Item 1117 of Regulation AB, Affiliations and Certain Relationships and Related Transactions	•	
Item 1120 of Regulation AB, Compliance with Applicable Servicing Criteria	•	
Item 1121 of Regulation AB, Servicer Compliance Statement	•	

[1] If the issuing entity does not have any executive officers or directors.
[2] Except for Item 403(a) of Regulation S–K and if the issuing entity does not have any executive officers or directors.

As noted in the table above, security ownership information required by Item 403(a) of Regulation S–K would be required. In addition, if the issuing entity had its own executive officers, board of directors or persons performing similar functions, all of Item 403 of Regulation S–K, as well as Items 401, 402 and 404 of Regulation S–K, would be required. As discussed in Section III.B.1., we do not propose to require audited financial statements for the issuing entity, nor do we propose to add reporting requirements regarding internal control over financial reporting.

Regarding the proposed items to be included from Regulation AB, information about legal proceedings

[245] 17 CFR 229.305.

[246] See proposed General Instruction J. to Form 10–K. We also propose to codify existing staff position that General Instruction I. to Form 10–K (Omission of Information by Certain Wholly-Owned Subsidiaries) is not applicable with respect to asset-backed issuers.

[247] While we propose to include the identification of these additional parties on the cover page, the report should still be filed on EDGAR only under the issuing entity's CIK code. See Section III.D.3.

[248] As is generally the case today, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made. See Exchange Act Rule 12b–13 (17 CFR 240.12b–13).

required by proposed Item 1115 of Regulation AB would need to be provided, as well as information on affiliate relationships and related party transactions required by proposed Item 1117 of Regulation AB. Updated financial information regarding significant obligors and enhancement providers also would be required, although alternative methods may be available, subject to conditions, to present the information, such as through incorporation by reference or by including a reference to their Commission filings. Our proposed reporting requirement regarding an assessment of compliance with servicing criteria is discussed in Section III.D.7.

We propose to codify the requirement in the modified reporting system that a servicer compliance statement must be filed as an exhibit to the Form 10–K.[249] The servicer compliance statement requires a statement of compliance regarding the servicer's obligations under the particular servicing agreement for the ABS transaction. This is different from both our proposed assessment of compliance with servicing criteria, which is an assessment against a single set of criteria applicable to all ABS transactions, and the Section 302 certification, which is related to disclosure in Commission reports.

Like the existing requirement under the modified reporting system, the proposed servicer compliance statement would be a statement, signed by an authorized officer of the servicer, to the effect that a review of the activities of the servicer and its performance under the servicing agreement had been made under the officer's supervision, and that to the best of the officer's knowledge and except as otherwise disclosed, the servicer has fulfilled its obligations under the agreement in all material respects throughout the reporting period. If multiple servicers were involved in servicing the pool assets, a separate compliance statement would be required from each servicer that meets the criteria in proposed Item 1107(a) of Regulation AB (*i.e.*, master servicer, each affiliated servicer, each unaffiliated servicer that services 10% or more of the pool assets and any other servicer that performs a material aspect of the servicing of the pool assets). We believe this is consistent with general practice and should result in coverage of the material aspects of the servicing function.

Questions regarding proposed Form 10–K disclosure:

- We request comment on the proposed general instruction to Form 10–K. Should additional or different parties be permitted to sign the report? Should the designated person to sign be someone else, such as the entity's principal executive officer?
- Is the proposed menu of disclosure items appropriate? Should any additional items be included or omitted? Is the proposed presentation of this menu clear? Are there any additional instructions that should be included for ABS offerings?
- Should updated pool composition information be required for the Form 10–K? For example, several modified reporting no-action letters require aggregate distribution and pool performance information for the reporting period. Should such disclosure be required for the Form 10–K? Should there be a requirement to update and restate all or some part of the information required by proposed Item 1110 of Regulation AB, such as static pool information?
- Should specific financial information be required regarding any transaction parties, such as the sponsor, servicer or issuing entity? If so, for which parties should information be required? What information should be required (*e.g.*, audited financial statements)? Under what circumstances should such information be required? Should any such information also be provided in distribution reports on Form 10–D?
- We request comment on the proposed servicer compliance statement. Would such a statement still be beneficial? In particular, would this compliance statement still be necessary given the Sarbanes-Oxley Section 302 certification and the proposed assessment of compliance with servicing criteria?
- If multiple servicers are involved, should additional statements be required by servicers other than the master servicer? Is the proposal to require each Item 1107(a) servicer to submit a compliance statement appropriate? Should compliance statements be limited to only the master servicer? Should servicer compliance statements be required for Form 10–D's as well?

6. Certifications Under Section 302 of the Sarbanes-Oxley Act

In June, 2003, the Commission adopted amendments to its general rules relating to certifications required by the Sarbanes-Oxley Act, including providing the form of the Section 302 certification in the exhibit requirements in Item 601 of Regulation S–K.[250] We propose to amend Item 601 of Regulation S–K to add also the specific form and content of the required ABS Section 302 certification to the exhibit filing requirements.[251]

In specifying the form of the ABS Section 302 certification, we propose several amendments to the form provided in the revised staff statement to reflect our other substantive Exchange Act proposals.[252] Other changes reflect the approach that the language of the certification must not be revised in providing the certification apart from the alternatives specified. Instead, any issues should be addressed through disclosure in the reports. The proposed form of certification would be as follows:[253]

CERTIFICATION

I, [identify the certifying individual], certify that:

1. I have reviewed this report on Form 10–K and all reports on Form 10–D required to be filed in respect of the period covered by this report on Form 10–K of [identify the issuing entity];

2. Based on my knowledge, the information in these reports, taken as a whole, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading as of the last day of the period covered by this report;

3. Based on my knowledge, all of the distribution, servicing and other information required to be provided under Form 10–D for the period covered by this report is included in those reports;

4. [I am responsible for reviewing the activities performed by the servicer(s) and based on my knowledge and the compliance review conducted in preparing the servicer compliance statement required in this report under Item 1121 of Regulation AB, and

[249] See proposed Item 1121 of Regulation AB. Proposed amendments to Item 601 of Regulation S–K would specify that the servicer compliance statement would be filed as Exhibit 35 to the Form 10–K.

[250] See Release No. 33–8238 (Jun. 5, 2003) [68 FR 36636].

[251] See proposed amendments to Item 601 of Regulation S–K and Exchange Act Rules 13a–14 and 15d–14. Under Exchange Act Rules 13a–14 and 15d–14, the requirements relating to the ABS Section 302 certification are specified in paragraph (d) of those Rules. The proposed amendments to Item 601 of Regulation S–K would segregate the separate forms of Section 302 certifications for non-ABS issuers (required by paragraph (a) of Exchange Act Rules 13a–14 and 15d–14) from those for ABS filings (paragraph (d) of Exchange Act Rules 13a–14 and 15d–14). In both instances, Section 302 certifications would still be filed under Exhibit 31. We also are proposing to revise Exchange Act Rules 13a–14(d) and 15d–14(d) to delete from those paragraphs the detailed description of the contents of the ABS Section 302 certifications. We propose several other technical amendments to the rules regarding certifications, including amendments to Exchange Act Rule 12b–15 and paragraph (c) of Exchange Act Rules 13a–14 and 15d–14 to confirm the Commission's intention that those provisions also apply with respect to ABS Section 302 certifications required by paragraph (d) of Exchange Act Rules 13a–14 and 15d–14.

[252] We believe the combination of these and other proposed amendments would render the two staff no-action letters issued subsequent to the revised staff statement no longer necessary. See *Merrill Lynch Depositor, Inc.* (Mar. 28, 2003) and *Mitsubishi Motors Credit of America, Inc.* (Mar. 27, 2003).

[253] Unlike Section 302 certifications, certifications required by Section 906 of the Sarbanes-Oxley Act are required only in periodic reports that contain financial statements filed by the issuer. See 15 U.S.C. 1350. We do not propose to require reports on Form 10–K to contain the ABS issuer's financial statements, and thus a Section 906 certification requirement would not be triggered.

except as disclosed in the reports, the servicer has fulfilled its obligations under the servicing agreement; and]

[Based on my knowledge and the servicer compliance statement required in this report under Item 1121 of Regulation AB, and except as disclosed in the reports, the servicer has fulfilled its obligations under the servicing agreement; and]

5. This report discloses all material instances of noncompliance with the servicing criteria as provided in Item 1120 of Regulation AB based on an assessment of compliance with such criteria.

[In giving the certifications above, I have reasonably relied on information provided to me by the following unaffiliated parties [name of servicer, sub-servicer, co-servicer, depositor or trustee].]

Date: _____

_____

[Signature]

[Title]

Compared to the revised staff statement, paragraphs 1 and 3 would be revised to reflect the addition of proposed Form 10–D and the fact that the certification covers the information filed in those distribution reports rather than Form 8–K. Paragraph 4 would refer to the servicer compliance statement that would be explicitly required by our rules. In addition and consistent with the revised staff statement, two alternatives would be provided for paragraph 4 depending on who was signing the Form 10–K report. The first version would be used when the servicer was signing the report on behalf of the issuing entity. The second version would be used when the depositor was signing the report. Paragraph 5 of the certification would be revised to refer specifically to our proposed assessment of compliance with servicing criteria. Consistent with the nature of that proposal and consistent with our recent amendments to our certification requirements,[254] the paragraph also would reference ''material instances of noncompliance'' in lieu of language in the revised staff statement that refers to ''significant deficiencies.''

Because asset-backed issuers do not typically have a principal executive officer or principal financial officer, the signature requirements for the ABS certifications differ from other issuers. Consistent with the revised staff statement, our proposed amendments would specify who must sign the certification. We propose that the certification must be signed by either the senior officer in charge of securitization of the depositor if the depositor is signing the Form 10–K report, or the senior officer in charge of the servicing function of the servicer if the servicer is signing the Form 10–K report on behalf of the issuing entity.[255] If multiple servicers were involved in servicing the pool assets, the senior officer in charge of the servicing function of the master servicer (or entity performing the equivalent functions) must sign if a representative of the servicer is to sign, and references in the certification would relate to the master servicer. As is the case today for all Section 302 certifications, a natural person must sign the certification in his or her individual capacity, although the title of that person in the organization of which he or she is an officer may be included under the title.

These signature requirements are consistent with our proposal for who must sign the Form 10–K and who must make the assessment of compliance with servicing criteria. The same person that signs the Form 10–K must sign the Section 302 certification. As we are not proposing to permit the trustee to sign the annual report, we do not propose the third alternative in the revised staff statement of allowing a representative of the trustee to sign the Section 302 certification.

Consistent with the revised staff statement, we propose to include an instruction to the certification to clarify that because the signer of the certification must rely in certain circumstances on information provided by unaffiliated parties outside of the signer's control, the signer in such situation may reasonably rely on information that unaffiliated trustees, depositors, servicers, sub-servicers or co-servicers have provided. As is the case today, if the signer does so, it would need to provide an additional statement in the certification identifying the unaffiliated parties on which the signer reasonably relied. Like the revised staff statement, we do not propose to specify the manner in which reasonable reliance may be established. The reasonable reliance instruction for the Section 302 certification would not be applicable with respect to affiliated parties, nor would it be applicable with respect to information from the registered public accounting firm performing the attestation on the assessment of compliance with servicing criteria.

Questions regarding certifications:

- We request comment on the certification requirements for ABS filings. Are any modifications needed to the form of certification? For example, is paragraph 5 necessary if the proposed assessment of compliance with servicing criteria is adopted? Are any modifications necessary for particular types of ABS transactions?
- Should additional or different persons be permitted to sign the proposed certification? For example, should we permit the trustee to sign the certification? Should both the depositor and the servicer sign a certification? Should the designated person to sign for an entity be someone else, such as the entity's principal executive officer?
- Because they would be filing Form10–D distribution reports, ABS issuers would be exempt from filing Form 10–Q quarterly reports. Should each Form 10–D be certified directly rather than at the end of the fiscal period?
- Is the reasonable reliance instruction necessary?

7. Report of Compliance With Servicing Criteria and Accountant's Attestation

a. Current Requirements

i. Requirements Under the Modified Reporting System

As noted above, the modified reporting system does not require audited financial statements for the issuing entity in the annual report on Form 10–K, but instead requires a report by an independent public accountant regarding servicing. This framework was developed based on the recognition that one of the most important elements affecting an investor's assessment of a particular asset-backed security is the performance of the servicer and that an independent third party checking some aspect of the servicing function provides a certain level of assurance and transparency regarding the servicer's performance.

The form of reporting and accountant involvement varies based on the no-action letter relied upon in preparing the Form 10–K. The most common example involves an assessment and assertion by the servicer of compliance with standard servicing criteria and an examination-level attestation of the servicer's assertion by an independent public accountant. This disclosure-based system identifies for investors those aspects of the standard servicing criteria with which the transaction is in material compliance.

Another form of reporting that is used more rarely to fulfill the modified reporting requirement involves the performance of certain detailed agreed-upon procedures by an independent public accountant.[256] The procedures that are generally agreed to by the servicer and the investors, or the trustee on the investors' behalf, generally

[254] See note 250 above.

[255] See proposed amendments to paragraph (e) of Exchange Act Rules 13a–14 and 15d–14.

[256] Given the multitude of modified reporting no-action letters, other isolated alternatives also exist. For example, a small minority of transactions will specify alternate servicing standards that may be used, such as criteria specifically in or attached as an exhibit to the pooling and servicing agreement.

involve the independent public accountant re-performing certain accounting procedures performed by the servicer relating to the servicing of the transaction and the underlying pool assets. The accountant then prepares a report describing the agreed-upon procedures performed and the results of such procedures.[257]

ii. Uniform Single Attestation Program for Mortgage Bankers (USAP)

Most assertions on and disclosure regarding compliance with servicing criteria are based on criteria set forth in the Uniform Single Attestation Program for Mortgage Bankers, or USAP, developed by the Mortgage Bankers Association of America (MBA).[258] The accountant's report attesting to the assertion under the USAP is prepared in accordance with SSAE No. 10.[259] The servicer's assertion as to compliance and the accompanying accountant's report are commonly referred to as a ''USAP Report.''

A task force of the MBA created the USAP during the early stages of development of securitization as a mortgage financing technique to provide uniform minimum criteria against which the servicing of mortgage-backed securities could be assessed. It was created at a time when most securitizations consisted of either simple pass-through or pay-through structures of simple pools of residential mortgages. As new, more-complex ABS transactions were introduced into the marketplace and additional asset types were securitized, the USAP, in the absence of any other well-recognized criteria, continued to be used as the default criteria for assessment and disclosure of servicer performance.

The USAP describes uniform minimum servicing criteria against which a servicing entity is to assess material compliance. In general, the servicer's management will make a written assertion about compliance with the USAP minimum criteria for a particular period (usually a year). The accountant engaged to perform the examination engagement will evaluate the servicer's assertion regarding compliance with the minimum servicing criteria.[260]

In an examination of an assertion on compliance with the USAP's minimum servicing criteria, an accountant seeks to obtain reasonable assurance regarding the assertion that there has been compliance, in all material respects, with those minimum criteria. Unlike an agreed-upon procedures engagement, specific findings (or exceptions) are not reported under a USAP Report unless the accountant concludes that the assertion is not fairly stated in all material respects.[261]

iii. Limitations of USAP in Context of ABS Reporting

While the USAP has by default become the dominant criteria to assess servicing compliance for purposes of fulfilling the accountant report requirement of the modified reporting system, it has significant limitations in the context of ABS reporting. The USAP was originally written to address compliance criteria related to residential mortgage loan servicing. Over time, it has been extended to other ABS transactions, such as those involving auto loans. However, the USAP's minimum servicing criteria may not adequately capture the needs of investors in ABS transactions other than mortgage-backed securities. Some of the USAP criteria may not be applicable to these other asset types (*e.g.*, criteria regarding property tax escrow accounts), and are often specifically excluded from the assertion of compliance and the related accountant's report. There does not appear to be any consistency as to which USAP criteria are applied to a particular asset type outside of residential mortgage loans, so the list of exceptions varies from issuer to issuer, even in the same asset class. In addition, rarely are substitute criteria included that would be relevant to that asset class, further diminishing the scope and relevance of the final report for other asset classes.

Another difficulty with the current criteria is that they do not clearly address the totality of activities and parties involved in servicing an ABS transaction, even for mortgage-backed securities. The USAP does not completely address the full spectrum of servicing functions, including allocation and distribution functions, that are important in an ABS transaction, particularly as the complexity of flow of funds calculations has increased. In addition, the current system does not contemplate the fact that multiple unaffiliated parties may be involved in servicing an asset-backed security. Accordingly, the current system does not place responsibility for assessing compliance for all aspects of the servicing function with a single party to help assure that they are addressed, which is especially important if multiple parties are involved. As a result, the current system potentially leaves gaps in servicing compliance reporting.

b. Proposed Assessment and Attestation of Servicing Compliance

We have previously noted the need to focus attention on the role of the servicer in the performance of an ABS transaction.[262] The performance of the servicer and compliance with its responsibilities is of material importance to the performance of an ABS transaction. Recent events in both the ABS and non-ABS markets have highlighted the need for appropriate controls and processes and mechanisms

[257] Specifically, Chapters 1 and 2 of Statements on Standards for Attestation Engagements No. 10 (SSAE No. 10), *Attestation Standards: Revision and Recodification* (Jan. 2001) (codified in AT section 601), set forth the standards that accountants are required to follow in performing agreed-upon procedure engagements. Paragraph 2.06 of SSAE No. 10 specifies the conditions for engagement performance which includes, among other things, a requirement that the accountant ascertain that the criteria have been agreed upon with the specified parties (in this case, the servicer and the investors requesting the report). Paragraph 2.07 sets forth that this can be accomplished in one of three ways: comparing the procedures to be applied to written requirements of the specified parties, discussing the procedures to be applied with appropriate representatives of the specified parties involved, or reviewing relevant contracts with correspondence from the specified parties. Further, paragraph 2.06(e) requires that the specific subject matter to which the procedures are to be applied is subject to reasonably consistent measurement.

[258] Mortgage Bankers Association of America, *Uniform Single Attestation Program for Mortgage Bankers* (last rev. 1995).

[259] Specifically, Chapters 1 and 6 of SSAE No. 10 set forth the standards that accountants are required to follow in attesting to an entity's compliance with specified requirements. As set forth in paragraph 1.23, ''the practitioner shall perform the engagement only if he or she has reason to believe that the subject matter is capable of evaluation against criteria that are suitable and available to users.'' The USAP has generally been accepted by practitioners as meeting that requirement. See paragraphs 1.24 through 1.34 of SSAE No. 10.

[260] SSAE No. 10, paragraph 6.54, provides two methods of reporting: (a) Directly on an entity's compliance or (b) on a responsible party's written assertion regarding compliance. However, SSAE No. 10, paragraph 6.64, states that ''when an examination of an entity's compliance with specified requirements discloses noncompliance with the applicable requirements that the practitioner believes have a material effect on the entity's compliance, the practitioner should modify the report and, to most effectively communicate with the reader of the report, should state his or her opinion on the entity's specified compliance requirements, not on the responsible party's assertion.''

[261] Paragraph 6.36 of SSAE No. 10 states, ''In an examination of an entity's compliance with specified requirements, the practitioner's consideration of materiality differs from that of an audit of financial statements in accordance with GAAS. In an examination of an entity's compliance with specified requirements, the practitioner's consideration of materiality is affected by (a) the nature of the compliance requirements, which may or may not be quantifiable in monetary terms, (b) the nature and frequency of noncompliance identified with appropriate consideration of sampling risk, and (c) qualitative considerations, including the needs and expectations of the report's users.''

[262] See, *e.g.*, notes 120 and 139 above.

to assess compliance with controls and processes.[263]

Similarly, we believe a meaningful assessment and assertion of compliance with a single set of transparent and comprehensive servicing criteria, attested to by an independent third party under recognized professional standards, would provide material information to investors in monitoring the transaction and thus their investments. Investors will be better able to evaluate servicing responsibilities and performance and the reliability of the information they receive. Additionally, the assessment should help to identify potential weaknesses that may adversely affect security holders. We believe that an assessment and attestation regarding servicing compliance achieves these objectives more directly and efficiently than an audit of financial statements or reporting on internal control over financial reporting.

The current modified reporting system does not provide complete transparency as to what is expected of issuers, servicers, accountants and other parties. While the varying no-action letters on this subject need uniform codification, the principal weakness in the current system is the lack of suitable servicing criteria on which reporting can be based. The result has been vast inconsistencies in the type of reporting provided, diminishing its usefulness, relevance and comparability.[264] We also are concerned that the lack of clarity in this area has resulted in inconsistencies and a lack of understanding of what the appropriate scope of this function is intended to be.

As a result, we are proposing to enhance the current framework for reporting on compliance with servicing criteria. Specifically, we are proposing to require an assertion by a ''responsible party,'' which we define in Section III.D.7.b.ii. to be the same entity whose officer signs the report on Form 10–K and makes the Section 302 certification, on compliance with specified servicing criteria in a report filed as an exhibit to the ABS issuer's report on Form 10–K. Further, this proposal contemplates that a registered public accounting firm will issue a report on the responsible party's assertion of compliance with the servicing criteria, and such report will be filed along with the responsible party's assertion as an exhibit to the report on Form 10–K.

As discussed in Section III.D.7.b.vi., we are initially proposing to put forward a single set of servicing criteria for the responsible party and the registered public accounting firm to use in assessing and reporting on servicing compliance, although we request comment on alternative approaches. In particular, as discussed below, we are interested in whether there could be other sources of suitable servicing criteria that could be developed with appropriately objective inputs and appropriate due process that could be alternatives to our proposal. Our proposed disclosure-based criteria are designed to be incrementally broader than the servicing criteria that are generally used today for reporting on servicing compliance, such as those contained in the USAP. We propose that this reporting framework would apply to all ABS issuers. Accordingly, ABS transactions that have historically used other forms of reporting to fulfill the accountant's report requirement pursuant to no-action letters, such as those that use USAP Reports or engage an accountant to perform certain agreed-upon procedures, would use the proposed disclosure-based criteria to satisfy Exchange Act reporting requirements.

If a material instance of noncompliance exists, the proposal would provide investors with information of that fact to assist them in making their investment decisions. We do not propose that material instances of noncompliance with the proposed criteria would have regulatory restrictions on market access, such as an effect on continued form eligibility under the Securities Act for additional ABS transactions.[265] Rather, the assessment and reporting on the criteria would operate within a disclosure-based framework.

i. Responsible Party's Report on Compliance With Servicing Criteria

We propose Item 1120 of Regulation AB to require as an exhibit to the Form 10–K report a report of the responsible party on an assessment of compliance with the proposed servicing criteria, discussed more fully in Section III.D.7.b.vi.[266] Such report would be expected to contain:

- A statement of the responsible party's responsibility for assessing compliance with the servicing criteria.
- A statement that the responsible party used the servicing criteria to assess compliance with the servicing criteria.
- The responsible party's assessment of compliance with the servicing criteria as of and for the period ending the end of the fiscal year covered by the Form 10–K report. The report must include disclosure of any material instance of noncompliance identified by the responsible party.
- A statement that a registered public accounting firm has issued an attestation report on the responsible party's assessment of compliance with the servicing criteria as of and for the period ending the end of the fiscal year covered by the Form 10–K report.

As discussed in Section III.D.7.c., our proposal also would require the attestation report of the registered public accounting firm to be filed as an exhibit to the Form 10–K report.[267]

ii. Proposed Definition of ''Responsible Party''

New Exchange Act Rules 13a–18 and 15d–18 would require that a ''responsible party'' must perform an assessment of compliance with the servicing criteria.[268] We propose to define the ''responsible party'' as either the depositor if the depositor signs the report on Form 10–K, or the servicer if the servicer signs the report on behalf of the issuing entity. If multiple servicers were involved in servicing the pool assets and a representative of the servicer is to sign the report on behalf of the issuing entity, the master servicer (or entity performing the equivalent functions) would be the ''responsible party.'' Consistent with our proposals for who must sign the report on Form 10–K and make the Sarbanes-Oxley Section 302 certification, we believe that depending on the particular transaction, one or the other of these

[263] *Id.* See also note 53 above; ''If Issuers Can Steal, Where's the Deal Cop,'' Asset Securitization Report, Feb. 17, 2003, at 6; and Christine Richard, ''Moody's Trustees Don't See Eye-to-Eye on Trustee Role,'' Dow Jones Newswires, Feb. 4, 2003.

[264] See, *e.g.*, ''SEC Filings Reveal Little ABS Reporting Consistency,'' Asset Securitization Report, Sep. 23, 2002, at 10.

[265] Note, however, that one of the proposed criteria relates to reporting with the Commission. If there was a violation of Commission reporting rules, this may have an effect on continued form eligibility. See Section III.A.3.

[266] See proposed Item 1120(a) of Regulation AB. Proposed amendments to Item 601 of Regulation S–K would specify that the report on the assessment of compliance would be filed as Exhibit 33 to the Form 10–K. Note that this proposal differs from our rules regarding the reporting required by Section 404 of the Sarbanes-Oxley Act where management's report and the accountant's attestation report would appear in the Form 10–K and not as an exhibit. We believe that requiring the ABS reports to appear as exhibits to the report, where they have traditionally appeared under the modified reporting system, will facilitate easy location and access to these reports.

[267] See proposed Item 1120(b) of Regulation AB. Proposed amendments to Item 601 of Regulation S–K would specify that the attestation report of the registered public accounting firm would be filed as Exhibit 34 to the Form 10–K. If the proposal is adopted, the substitution of another type of accountant's report or opinion, such as a USAP report or an agreed-upon procedures report, would not satisfy the reporting requirement. Of course, ABS transaction agreements may continue to require a separate accountant engagement, such as a USAP engagement or an agreed-upon procedures engagement, in addition to our proposal.

[268] See paragraphs (b) and (c) of proposed Exchange Act Rule 13a–18 and 15d–18.

parties would be best suited to be in a position to be responsible for assessing compliance with the proposed criteria regarding the overall servicing function.

iii. Proposed Scope: Period to be Covered

The report contemplated by this proposal would include an assessment of the servicing function for a full fiscal period, rather than just at a point in time. This approach is consistent with the current requirements set forth in the USAP and in other attestation examinations filed with the Commission following the modified reporting system.

iv. Proposed Scope: Level of Reporting

Under the modified reporting no-action letters, different practices have developed regarding the type and scope of the assessment of compliance with servicing criteria. While an assessment of compliance on a transaction-by-transaction basis would provide the most particularized information, current practice appears to lean towards assessment of a given servicer's compliance with servicing criteria in respect of the ''platform'' through which it carries out its servicing activities for all transactions (or all transactions involving a particular asset class). In light of current practice and servicers' focus on overall compliance with standards at the platform level, we are proposing to accept a ''platform'' level assessment for purposes of this requirement.

As such, the proposal contemplates an assessment of compliance with respect to all asset-backed securities transactions involving the responsible party that are backed by assets of the type backing the asset-backed securities covered by the Form 10–K report. This ''platform'' level assessment would permit a single assessment and assertion regarding compliance as compared to requiring separate assessments for each individual transaction involving the responsible party, which would be more costly and might be administratively burdensome. The responsible party, as well as the registered public accounting firm with respect to the attestation engagement, would need to determine the amount of work that would need to be performed to be able to assess compliance with the servicing criteria for the responsible party's servicing of ABS transactions for the same asset class taken as a whole.

We do not propose to specify how a responsible party should determine whether there is a material instance of noncompliance with the servicing criteria. In particular, we do not propose to specify the particular controls, policies or procedures that would be required in order to assert that material compliance with the servicing criteria had been achieved. We believe that each responsible party should be afforded the flexibility to design controls, policies and procedures to fit its particular circumstances.[269]

v. Proposed Scope: Entire Servicing Function

As discussed in Section III.B.2., the servicing of an asset-backed security consists of many functions, including collecting principal, interest and other payments from obligors; paying taxes and insurance from escrowed funds; monitoring and accounting for delinquencies; executing foreclosure if necessary; temporarily investing funds pending distribution; remitting fees and payments to enhancement providers, trustees and others providing services; and allocating and remitting distributions to security holders. Each of these functions can represent a material element of ABS performance.

In addition, the servicing function may be performed by a single party or by multiple parties (*e.g.*, primary servicers, master servicers, trustees, etc.). For example, in some instances, one party may perform the servicing functions that relate to administration of the pool assets while another party may perform the servicing functions that relate to payments to security holders. Currently, when multiple parties are involved in the servicing function, sometimes only one report on servicing compliance by one servicer is filed with the Form 10–K covering only a limited subset of the servicing function. This approach provides no assurance with respect to other aspects of the servicing function. In other instances, multiple reports may be filed, one from each party involved in the servicing function covering only those steps that are applicable for the standards impacted by their work. This approach leads to fragmented reporting that potentially results in certain aspects of the servicing function not being addressed by the reports at all or requiring an investor to ascertain if all aspects have been covered.

To address this issue, we propose that the responsible party would assess material compliance with all of the servicing criteria. The responsible party would be required to use reasonable means to assess whether the parties performing the servicing functions that are material to the servicing function as a whole (*e.g.*, servicers, master servicer, trustee, paying agent) are complying with the servicing criteria in all material respects. A single report approach may necessitate reliance upon unaffiliated third parties. Like the proposed Section 302 certification, our proposal would permit the responsible party to reasonably rely on information provided to the responsible party by unaffiliated parties in making its assessment. This could include examination reports on compliance with particular servicing criteria, SAS 70 reports[270] or other information from unaffiliated parties appropriate on which to base reasonable reliance.

Like the responsible party's own assessment, the information from the unaffiliated party also could be at a ''platform'' level of assessment with respect to ABS or pool assets serviced by that party, thereby facilitating a single assessment and report or other information that could be delivered to multiple responsible parties for purposes of their assessments. For example, if a trustee is responsible for disbursing cash to investors, the trustee could assess compliance with the appropriate servicing criteria and then send a single examination report as to its material compliance with those criteria to multiple responsible parties. Those responsible parties could reasonably rely on such report to assess and assert material compliance as to those criteria with respect to the responsible party's own platform level assessment.

vi. Proposed Servicing Criteria

Currently, the only generally used criteria for assessing and reporting on servicing compliance is the USAP. However, as previously discussed, the USAP was not designed for the breadth of asset classes included in ABS offerings. It also does not address aspects of the servicing function that may be important in servicing asset-backed securities.

The Commission staff is not aware of another framework currently available for use in the ABS market. However, we believe an assessment of and reporting regarding compliance with a single set of transparent and comprehensive servicing criteria and the involvement of an independent third party to attest to

[269] Accountants would be guided in analyzing whether an instance of non-compliance was material by SSAE 10, paragraph 6.36, that focuses on the nature of the compliance requirements, the nature and frequency of noncompliance and qualitative considerations, including the needs and expectations of the report's users.

[270] See Statement on Auditing Standards (SAS) No. 70, Service Organizations, as amended by SAS No. 88, Service Organizations and Reporting on Consistency (AICPA, *Professional Standards,* Vol. 1, AU section 324).

that assessment is an important component of both the existing modified reporting system and the system we propose to adopt. As a result, in the absence of other suitable criteria, we are proposing to establish disclosure-based servicing criteria to be used by the responsible party and the registered public accounting firm in assessing servicing compliance. We believe a single set of servicing criteria that is publicly available would enhance the quality of the assessment of compliance and promote the comparability of reports of different issuers. We also believe such servicing criteria would provide value in establishing market-wide benchmarks with respect to assessing the servicing function.

If other suitable criteria were to be developed for use in assessing servicing compliance, we would consider such criteria for purposes of the proposed requirement. A suitable framework would need to: Be established by a group or body that has followed due process procedures; be free from bias; permit reasonably consistent qualitative and quantitative measurements; be sufficiently complete so that relevant factors that would alter a conclusion about the subject matter were not omitted; and be relevant to the subject matter.[271] This would include criteria that address all material aspects of the servicing function with respect to an asset-backed securities transaction.

We invite comment on whether suitable criteria could be developed by others to meet the objectives of our proposal. Who would develop such criteria? What would be the process in developing such criteria? What would be the timeframe to develop such criteria? Should we provide flexibility in any final requirement that would allow for substitution of alternate suitable criteria that meet certain requirements? What requirements would be appropriate?

The disclosure-based servicing criteria we propose are designed to be incremental to the current criteria in the USAP. Accordingly, many of the proposed servicing criteria are not new. Criteria noting specific timeframes, such as two business days, mirror for the most part the current criteria in the USAP. Those servicing criteria that are incremental to the USAP criteria were developed based on staff study and experience with ABS transactions, including experience gained through the filing review process and the 2003 MBS Disclosure Report.

[1] See AT § 101, paragraph 24.

The servicing criteria we propose consist of four broad categories: General servicing considerations; cash collection and administration; investor remittances and reporting; and pool asset administration. These categories describe major components of the servicing function. Each category contains servicing criteria that have been designed to have general applicability to the servicing of all asset-backed securities. The complete criteria are set forth in the text of paragraph (d) of proposed Item 1120 of Regulation AB. We are seeking comment on the specific criteria set out in the proposed regulatory text. As noted above, some servicing criteria may be more or less applicable depending on the type of asset underlying the ABS transactions. Further, certain servicing criteria have been designed to rely upon the transaction agreements to set forth how certain aspects of the servicing function should operate. As such, the servicing criteria do not necessarily set forth specific details of the servicing function that must exist (*e.g.*, timeframes for foreclosures), but rather rely upon the details set forth in the transaction agreements. We believe the proposed criteria thus appropriately leave the responsibility for determining the details of the servicing functions with investors and ABS issuers. As ABS transaction agreements are required to be filed with the Commission, disclosure of these details for individual transactions would be readily available.

The proposed servicing criteria are summarized as follows:

General servicing considerations. The general servicing considerations are designed to provide disclosure on whether the servicer or other relevant party has instituted policies and procedures for structural monitoring of the ABS securities (*e.g.*, triggers or events of default) and performed other general administrative tasks during the period covered by the report as set forth in the transaction agreements, such as monitoring the activities of third parties to which material servicing activities have been outsourced, maintaining a back-up servicer and maintaining certain insurance coverages in force, if applicable. With the exception of the criterion regarding the maintenance of certain insurance coverages in force, these criteria are not addressed in the current USAP. We believe they are appropriately included given their importance to an ABS transaction.

Cash collection and administration. These servicing criteria are designed to provide disclosure on whether the servicer or other relevant party has administered the collection of cash from obligors, segregated and reconciled such cash for investors and maintained transaction accounts as set forth in the transaction agreements. The servicing criteria included within this section are comparable to those set forth in the USAP, although the current USAP does not have specific criteria to address the maintenance of transaction accounts. We believe disclosure of whether the servicer complies with maintenance of transaction accounts is information investors may need to confirm the ABS transaction is functioning as originally planned.

Investor remittances and reporting. These servicing criteria are designed to provide disclosure on whether the servicer or other relevant party is calculating amounts due to investors and reporting such amounts to investors in accordance with the flow of funds in the transaction agreements. The servicing criteria also are designed to provide disclosure on whether the servicer or other relevant party has allocated and remitted distributions to investors in accordance with the transaction agreements and filed information with the Commission as required by its rules and regulations. While certain elements of these criteria are presently included in the USAP, an explicit assessment of compliance with the flow of funds calculations may be incremental to what is currently performed in satisfying the current USAP criteria. It is our understanding that flow of funds calculations sometimes are extremely complicated and oversight of this function may be critical for proper distributions to investors.

Pool asset administration. These servicing criteria are designed to provide disclosure on whether the servicer or other relevant party is maintaining the pool assets as set forth in the transaction agreements, including:

- Maintaining specified collateral;
- Administering changes to the asset pool;
- Posting payments and other changes regarding pool assets;
- Instituting loss mitigation or recovery actions;
- Administering funds held in trust for an obligor, if required for the pool assets; and
- Maintaining external credit enhancement or other support.

These servicing criteria, mostly included within the USAP, have been incrementally enhanced to encompass more aspects of pool asset maintenance. For example, the USAP does not address external credit enhancement or other support.

vii. Identification of Inapplicable Criteria

Because of the unique and fluid nature of the ABS market, our proposal provides discretion to the responsible party to exclude those servicing criteria that are inapplicable to the servicing of a particular asset class. If certain servicing criteria are not applicable in the context of the asset class backing the asset-backed securities, the inapplicability of the criteria would need to be disclosed in the responsible party's and the registered public accounting firm's reports. This flexibility should not be used to voluntarily exclude otherwise applicable criteria from an assessment of compliance.

viii. Disclosure of Material Instances of Noncompliance

If the responsible party's report on compliance with servicing criteria identified any material instance of noncompliance with the criteria, disclosure would be required in the Form 10–K report of any material impacts or effects that have affected or that may reasonably be likely to affect pool asset performance, servicing of the pool assets or payments or expected payments on the asset-backed securities. As noted above, the period to be covered by the report is consistent with the current practices of assessing compliance as of and for the period ending on a particular date. This is different from reporting regarding internal control over financial reporting under Section 404 of the Sarbanes-Oxley Act, which speaks as of a particular date only. Thus, under our proposal and consistent with general practice today, disclosure would be required of material instances of noncompliance during the reporting period, even if such noncompliance was subsequently corrected in the period. We believe this approach is consistent with our proposal not to require interim evaluations and reporting of compliance or disclosures of changes in reports (*i.e.*, Form 10–D reports) during the Form 10–K reporting period.

c. Attestation Report on Assessment of Compliance

Under the proposal, a registered public accounting firm would be required to attest to, and report on, the assessment of compliance made by the responsible party through performance of an examination engagement.[272] As our proposal would be in lieu of audited financial statements and Sarbanes-Oxley Section 404 reporting, we believe requiring a registered public accounting firm to provide the attestation is important to help assure independence and objectivity for the attestation function, similar to that required with respect to an audit of financial statements. This should increase investor confidence in the reliability of the assessment of compliance. We also remind issuers that a responsible party could not delegate its responsibility to assess compliance with the servicing criteria to the registered public accounting firm.

As noted above, the registered public accounting firm's report would need to be filed as an exhibit to the report on Form 10–K.[273] The attestation examination would need to be made in accordance with standards for attestation engagements issued or adopted by the Public Company Accounting Oversight Board (PCAOB). On April 25, 2003, the Commission approved the PCAOB's adoption of the auditing and attestation standards in existence as of April 16, 2003 as interim auditing and attestation standards.[274] The Attestation Standards for Compliance Attestation (AT § 601) in those interim auditing and attestation standards would currently be used in performing this examination engagement.

We are proposing conforming amendments to Regulation S–X to reflect the attestation report that will be prepared by a registered public accounting firm and to require an ABS issuer to file the attestation report with the report on Form 10–K. Under these proposed amendments, a new ''Attestation report on assessment of compliance with servicing criteria for asset-backed securities'' would be defined as a report in which a registered public accounting firm expresses an opinion, or states that an opinion cannot be expressed, concerning the proposed assessment of compliance by a responsible party with servicing criteria, in accordance with standards on attestation engagements.[275] When an overall opinion cannot be expressed, the registered public accounting firm would need to state why it was unable to express such an opinion. The report would need to be dated, signed manually, identify the period covered by the report and clearly state the opinion of the accountant as to whether the responsible party's assessment of compliance with the servicing criteria was fairly stated in all material respects, or must include an opinion to the effect that an overall opinion cannot be expressed.[276]

This proposal contemplates that the report issued by the registered public accounting firm will be available for general use and will not contain restricted use language. We believe that the proposed servicing criteria would be suitable criteria, as that term is defined in SSAE No. 10, and are available to enable a registered public accounting firm to issue a report on the responsible party's assertion without restricted use language.

Questions regarding proposed assessment of compliance with servicing criteria:

- We request comment on our proposal. Should the Commission specify the form of reporting required in ABS annual reports? For instance, should certain ABS transactions be allowed to use a form of agreed-upon procedures to fulfill the accountant report requirement of the modified reporting system? If so, why? If any additional reporting by an accountant is required by the transaction agreements, should we allow or require it to be filed as an exhibit to the Form 10–K or otherwise described?
- Would audited financial statements of the ABS issuer or servicer be more useful to an ABS investor than a report on servicing compliance and related attestation report by a registered public accounting firm?
- Should there be any revisions to the proposed requirements for the responsible party's report or the accountant's report?
- We request comment on our proposed definition of ''responsible party.'' Should any other entities ever be the ''responsible party'' (*e.g.*, the trustee)? Should one party be required to assess and report on the entire servicing function?
- In lieu of a single assessment of compliance at the servicing ''platform'' level, should separate assessments of compliance be required with respect to each transaction? Does a ''platform'' level assessment provide adequate assurance even if no testing was performed at the individual trust level for the particular Form 10–K report? What would be the relative costs of a ''transaction'' level requirement in relation to the incremental benefits?
- How should unaffiliated parties be treated with respect to the assessment of compliance? Is the proposed approach of having a single responsible party assess material compliance with all of the servicing criteria, regardless of the actual party that performs the criteria, appropriate? Is it appropriate to allow the responsible party to reasonably rely on information from unaffiliated parties to make its own assessment? Is more guidance necessary on

[272] 272 See paragraph (d) of proposed Exchange Act Rules 13a–18 and 15d–18.

[273] As is currently the case under the modified reporting system, to the extent the Form 10–K is incorporated by reference into a Securities Act registration statement, a consent would need to be filed with respect to the accountant's report. See Securities Act Rule 439.

[274] See Release No. 33–8222 (Apr. 25, 2003) [68 FR 23335].

[275] See proposed Rule 1–02(a)(3) of Regulation S–X.

[276] See proposed Rule 2–02(g) of Regulation S–X.

the ability to reasonably rely on information received from unaffiliated parties? Should disclosure be required in the Form 10–K or in the responsible party's report identifying unaffiliated parties upon which the responsible party reasonably relied?

• What alternative approaches would be preferable to the proposed single party approach and why? For example, should separate reports be required for all parties that perform the respective criteria? If so, how will an investor have confidence that all criteria have been assessed? Instead, should the responsible party only assess compliance against the criteria it or an affiliate performs and assess compliance with an additional criterion that it has received reports from unaffiliated parties that perform the other criteria? How should exceptions noted in the unaffiliated parties' reports or the inability to obtain reports be treated? Should the Commission specify the type of reporting that unaffiliated parties must use?

• Is reporting by the accountant on the responsible party's assertion of compliance that covers the entire servicing function feasible? Should an approach be considered that would enable an accountant to make reference to the attestation or other procedures performed by another accountant performing procedures on parts of the servicing function, similar to the approach considered by AU § 543, ''Part of Audit Performed by Other Independent Auditors?'' Would additional guidance be required to make such an approach operational outside the context of a financial statement audit? Do other analogous instances of such reporting already exist?

• Should material instances of noncompliance have regulatory ramifications, such as on Securities Act form eligibility?

• Is the period to be covered by the report appropriate? Should disclosure be required of material instances of noncompliance during the period, even if subsequently cured? Should there be a requirement to make an assessment and report on compliance regarding any interim periods?

• Has the Commission considered all of the servicing criteria in its proposed framework that are important to ABS servicing? If not, what additional criteria should be included in the framework? Answers should provide specific language relating to specific criteria.

• Are some of the servicing criteria included in the Commission's proposed framework more costly than the benefit they provide to investors? Should any of the criteria be modified? Any suggested modifications should provide specific language. We request particular comment on quantification of the costs that would be involved in the proposal.

• Are any of the servicing criteria not subject to objective evaluation for purposes of the responsible party's assertion regarding compliance and the registered public accounting firm's attestation on the assertion regarding compliance? If so, how could they be revised?

• Are there some asset classes or transaction structures where the proposal would not be operational? What alternatives would be appropriate?

• Should additional guidance be given regarding how a responsible party is to determine whether there is a material instance of noncompliance?

• Should disclosure regarding the effects of material instances of noncompliance be required in the Form 10–K report? Should we specify a particular place where this disclosure should appear? Is there any additional information that would be material? For example, should there be disclosure of any identified instances of noncompliance that would be material to the transaction but were not material to the responsible party's overall ''platform'' such that the instances of noncompliance were not noted in the responsible party's overall assertion?

• Should the attestation report be required to be by a registered public accounting firm? What alternatives would be appropriate? Should a non-accountant be permitted to perform the attestation? If so, what would be the professional standards such an entity would use to attest to the assertion of compliance?

d. Alternative Proposal

As discussed in Section III.D.7.b.vii., under our proposal a responsible party may determine that a servicing criterion is inapplicable in the context of servicing a particular ABS transaction and exclude that servicing criterion from its assessment. Otherwise, there would not be flexibility to voluntarily exclude servicing criteria from the assessment. However, we do seek comment on an alternative approach that would permit a responsible party to voluntarily determine which specific servicing criteria to exclude from its assessment (even if they were otherwise applicable to the particular asset class), so long as any excluded criteria were disclosed and the reason for their exclusion was also disclosed. Under this alternate approach, it would be up to the market to decide the weight to attach to any particular criterion in evaluating a transaction where that criterion was excluded.

Questions regarding alternative proposal:

• In exploring such an approach, we seek comment on whether such an approach would be operational and result in useful information to investors.

• Should disclosure of the reasons for the exclusion be required? How could we avoid boilerplate disclosures?

• How should the list of excluded items be presented? Would a list of what was included be better? Should a table or checklist be required clearly indicating what was included or excluded?

• Should it be a requirement that the original registration statement or base or preliminary prospectus for the particular offering identifies the particular servicing criteria that will be excluded?

8. Current Reporting on Form 8–K

On March 11, 2004, the Commission adopted amendments to expand the number of events that are reportable on Form 8–K.[277] The amendments also shorten the Form 8–K filing deadline for most items to four business days after the occurrence of an event requiring disclosure under the form. These amendments are responsive to the ''real time disclosure'' mandate in Section 409 of the Sarbanes-Oxley Act and are intended to provide investors with better and faster disclosure of important events.[278] We believe the objectives of those amendments are equally applicable with respect to asset-backed securities. We propose to clarify application of the Form 8–K reporting items for asset-backed securities. The result of the existing amendments and our proposals will mean that the number of reportable events under Form 8–K with respect to asset-backed securities will increase from current modified reporting requirements.

a. Items Requiring Current Disclosure

Similar to Form 10–K, we propose a general instruction to Form 8–K to specify how the form is to be used with respect to asset-backed securities. Like the Form 10–D, the proposed instruction would permit either the depositor or the servicer to sign Form 8–K reports. The depositor's name and sponsor's name would need to be listed on the cover page of the Form 8–K. The instruction also would identify which of the existing items may be omitted. Any other applicable items specified in Form 8–K would continue to be applicable under existing reporting deadlines. We also propose several ABS-specific items under Section 6 of Form 8–K, discussed below. The resulting application of the Form 8–K items for ABS is presented in the following table:

[277] See the Form 8–K Release.

[278] Section 409 of the Sarbanes-Oxley Act added paragraph (*l*) to Section 13 of the Exchange Act (15 U.S.C. 78m(*l*)), which provides that ''each issuer reporting under section 13(a) or 15(d) shall disclose to the public on a rapid and current basis such additional information concerning material changes in the financial condition or operations of the issuer, in plain English, which may include trend and qualitative information and graphic presentations, as the Commission determines, by rule, is necessary or useful for the protection of investors and in the public interest.''

PROPOSED DISCLOSURE FOR FORM 8–K FOR ABS

Existing form items	Required if applicable	May be omitted
Item 1.01. Entry into a Material Definitive Agreement	•	
Item 1.02. Termination of a Material Definitive Agreement	•	
Item 1.03. Bankruptcy or Receivership	•	
Item 2.01. Completion of Acquisition or Disposition of Assets		•
Item 2.02. Results of Operations and Financial Condition	•	
Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant		•
Item 2.04. Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement	•	
Item 2.05. Costs Associated with Exit or Disposal Activities		•
Item 2.06. Material Impairments		•
Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing		•
Item 3.02. Unregistered Sales of Equity Securities		•
Item 3.03. Material Modifications to Rights of Security Holders	•	
Item 4.01. Changes in Registrant's Certifying Accountant	•	
Item 4.02. Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review		•
Item 5.01. Changes in Control of Registrant		•
Item 5.02. Departure of Directors or Principal Officers. Election of Directors Appointment of Principal Officers		•
Item 5.03. Amendments to Articles of Incorporation or Bylaws Change in Fiscal Year.	•	
Item 5.04. Temporary Suspension of Trading Under Registrant's Employee Benefit Plans		•
Item 5.05. Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics		•
Item 7.01. Regulation FD Disclosure	•	
Item 8.01. Other Events	•	
Item 9.01. Financial Statements and Exhibits	•	
Additional items to be added to form 8–K for ABS		
Item 6.01. ABS Informational and Computational Material	•	
Item 6.02. Change of Servicer or Trustee	•	
Item 6.03. Change in Credit Enhancement or Other External Support	•	
Item 6.04. Failure to Make a Required Distribution	•	
Item 6.05. Sales of Additional Securities	•	
Item 6.06. Securities Act Updating Disclosure	•	

b. Clarifying Amendments to Existing Items

We propose several clarifying instructions to the existing items that would remain applicable for ABS. For example, we propose to clarify that a reportable event under Items 1.01 and 1.02 also would include the entry into, modification of or termination of a material transaction agreement, even if the issuing entity was not a party to the transaction, such as a servicing agreement. A proposed instruction to Item 1.03 would clarify that disclosure also would be required under that item if the depositor (or servicer if the servicer signs the report on Form 10–K on behalf of the issuing entity) becomes aware of the entry of bankruptcy or receivership of the sponsor, depositor, servicer, trustee, significant obligor, significant enhancement provider or other material party involved in the ABS transaction. A proposed instruction to Item 2.02 would reference that disclosure made in a distribution report filed with the Commission on proposed Form 10–D would not trigger disclosure under that item. A proposed instruction to Item 2.04 would clarify that a reportable event also would include the occurrence of an early amortization, performance trigger or other event, including an event of default, that would materially alter the payment priority or distribution of cash flows regarding the asset-backed securities or the amortization schedule for the asset-backed securities. We would clarify that the applicable accountant to which Item 4.01 relates would be the accountant engaged to provide the attestation report on assessment of compliance with servicing criteria. Finally, for Item 5.03 regarding amendments to governing documents, an instruction would clarify that regardless of the basis of reporting (Section 13 or 15(d)), any amendment to the governing documents of the issuing entity of the asset-backed securities would trigger disclosure under that Item.

c. Proposed New Items

We propose to add several new ABS-specific reportable events to Form 8–K. These new items would be grouped under Section 6 to the Form. As with the existing Form 8–K items, we believe that, with the exception of the proposed Item regarding ABS informational and computational material, which is designed to facilitate the categorization of Form 8–K disclosures, these proposed items represent events that unquestionably or presumptively have such significance that timely disclosure should be required. All of the proposed items, except for proposed Item 6.01, would have a four business day reporting deadline similar to other Form 8–K reportable events. Filing deadlines with respect to proposed Item 6.01 would be pursuant to our proposals for filing ABS informational and computational material discussed in Section III.C.1.

The following is a discussion of the proposed new items.[279]

Item 6.01. ABS Informational and Computational Material.

This proposed Item would set forth a Form 8–K item to report any ABS informational and computational material filed in connection with our

[279] In the release for the March amendments, the Commission recognized that a registrant may need to report a given event under multiple items. General Instruction D to Form 8–K permits a registrant to file a single Form 8–K that sets forth the required disclosure once as long as the number and captions for all applicable items are included.

ABS communications proposals.[280] It would not otherwise create an obligation to file such material.

Item 6.02. Change of Servicer or Trustee.

If a servicer that met the proposed thresholds for disclosure in Item 1107 of Regulation AB or a trustee had resigned or had been removed, replaced or substituted, or if a new servicer or trustee had been appointed, disclosure would be required of the date the event occurred and the circumstances surrounding the change. In addition, information relating to the transition, such as that required by proposed Item 1107(c) of Regulation AB, would be required. If a new servicer or trustee had been appointed, a description required by the applicable item of Regulation AB relating to that party would be required.

Item 6.03. Change in Credit Enhancement or Other External Support.

This item would require disclosure of the loss, addition or material modification of any material credit enhancement or other support provided by a third party.[281] If any such enhancement was terminated other than by expiration of the contract on its stated termination date or as a result of all parties completing their obligations, disclosure would be required of the date of termination, identity of the parties to the agreement, a brief description of the terms of the enhancement, a brief description of the material circumstances surrounding the termination and any material early termination penalties paid or to be paid out of cash flows. If any new enhancement was added, disclosure specified in proposed Item 1113 of Regulation AB would be required regarding the new enhancement. If any existing material enhancement had been materially modified, a brief description of the material terms and conditions of the amendments would be required. An instruction would specify that disclosure under this Form 8–K item would be required whether or not the issuing entity was a party to any agreement regarding the enhancement if the loss, addition or modification of such enhancement materially affects, directly or indirectly, the asset-backed securities, the pool assets or the cash flows underlying the asset-backed securities.

Item 6.04. Failure to Make a Required Distribution.

If a required distribution to holders of the asset-backed securities was not made as of the required distribution date under the transaction documents, disclosure would be required of the failure and the nature of the failure. Accelerated disclosure under this item would not replace the requirement to file a report on proposed Form 10–D with respect to the related distribution period (*e.g.*, to include pool performance information).

Item 6.05. Sales of Additional Securities.

In lieu of Items 2.03 and 3.02 of Form 8–K, this new item would require disclosure of the information specified in paragraphs (a) through (e) of Item 701 [282] and paragraph (e) of proposed Item 1112 of Regulation AB regarding any sale of securities that are either backed by the same asset pool or are otherwise issued by the issuing entity, whether or not registered under the Securities Act.[283] Consistent with Item 3.02 of Form 8–K, for purposes of determining the filing date for the Form 8–K under this proposed Item 6.05, the registrant would have no obligation to disclose information under this Item until an enforceable agreement, whether or not subject to conditions, had been entered into under which the securities were to be sold. If there was no such agreement, the registrant must provide disclosure within four business days after the occurrence of the closing or settlement of the transaction or arrangement under which the securities were to be sold. An instruction to the proposed Item would provide that no information would be required at all under the Item if substantially the same information had been provided previously in an effective registration statement under the Securities Act or a prospectus timely filed pursuant to Securities Act Rule 424 under the same CIK code regarding a subsequent issuance of asset-backed securities backed by the same pool.

Item 6.06. Securities Act Updating Disclosure.

The last proposed Item is intended to address instances where the composition of the actual asset pool at the time of issuance of the asset-backed securities differs from the composition of the pool described in the final prospectus for the offering. Reflecting a current staff position, if, with respect to a takedown off of a shelf registration statement on Form S–3, the composition of the asset pool at the time of issuance of the asset-backed securities differed by 5% or more from the description of the asset pool in the final prospectus filed for the takedown pursuant to Securities Act Rule 424, disclosure about the actual asset pool would be required, including disclosure regarding any new significant obligors, servicers or significant originators.[284] No report would be required if substantially the same information was provided in a post-effective amendment to the Securities Act registration statement or in a subsequent Rule 424 prospectus.

d. Safe Harbor and Eligibility To Use Form S–3

In the March amendments, the Commission addressed concerns raised by commenters over the effect of failure to file Form 8–K reports on liability under Exchange Act Section 10(b) and Exchange Act Rule 10b–5. The Commission adopted a limited safe harbor for a defined subset of Form 8–K items that provides that no failure to file a Form 8–K that is required to be filed solely by reason of the provisions of the Form shall be deemed to be a violation of Section 10(b) and Rule 10b–5.[285] The limited safe harbor was granted only to a subset of Form 8–K items premised on the recognition that those items may require quick assessments of the materiality of the event, adding difficulty to the determination of whether a triggering event has occurred. The existing Form 8–K safe harbor extends only until the due date of the periodic report for the relevant period in which the Form 8–K was not timely filed.

[280] See Section III.C.1.

[281] An instruction to the proposed item would clarify that disclosure regarding changes to material enhancements would be reported under proposed Item 6.03 in lieu of Items 1.01 and 1.02 of Form 8–K.

[282] 17 CFR 229.701. Of course, information required by Item 701(d) regarding the exemption from registration claimed would not be applicable with respect to disclosure of a registered offering of securities.

[283] This proposed item would provide initial disclosure of the sale. As discussed in Section VIII.D.4., material changes to pool composition that resulted from the sale would be required in the distribution report on Form 10–D for the applicable period, unless previously disclosed in an effective registration statement or Rule 424 prospectus regarding a subsequent issuance of asset-backed securities backed by the same asset pool.

[284] This reportable event only would be applicable with respect to offerings registered on Form S–3. For registered offerings on Form S–1, due to restrictions on incorporation by reference, if the final asset pool likewise differed from the final Rule 424 prospectus, a post-effective amendment to the registration statement would be required as is the case today. Of course, for Form S–3 registered offerings, some changes in pool composition or other features of a transaction not reflected in previous disclosure would be so significant that a filing on Form 8–K would not be the appropriate means to address the changes.

[285] See paragraph (c) of Exchange Act Rules 13a–11 and 15d–11. The safe harbor only applies to a failure to file a report on Form 8–K. Material misstatements or omissions in a Form 8–K continue to be subject to Section 10(b) and Rule 10b–5. In addition, if a duty to disclose exists for some reason other than the Form 8–K requirement, the safe harbor is not available.

Given the nature of the proposed ABS-specific reportable events, we preliminarily propose to extend the safe harbor to proposed Item 6.03, Change in Credit Enhancement or Other External Support. This Item appears to meet the criteria of the existing subset of Form 8–K items to which the safe harbor applies. As discussed in Section III.D.4., because we propose that asset-backed securities would be excluded from quarterly reporting on Form 10–Q, we propose to provide in Form 10–D that disclosure prescribed by a required but not filed item of Form 8–K would need to be included in the Form 10–D report for the period during which that event occurred. Consistent with similar requirements in Forms 10–K and 10–Q, failure to make such disclosure in the Form 10–D report would subject a company to potential liability under Section 10(b) and Rule 10b–5 regarding any of the covered items in the safe harbor, in addition to potential liability under Section 13(a) or 15(d).

In the March amendments, the Commission also addressed concerns over the effect of failure to file Form 8–K reports with respect to Form S–3 eligibility.[286] The Commission clarified that an untimely filing on Form 8–K of the items covered by the Section 10(b) and Rule 10b–5 safe harbor would not result in loss of Form S–3 eligibility, so long as Form 8–K reporting is current at the time of filing. As noted in Section III.A.3., we propose that reporting obligations regarding other asset-backed securities transactions established by the sponsor or the depositor must be complied with for continued Form S–3 eligibility for new transactions. Consistent with the March amendments, we would clarify that an untimely filing on Form 8–K regarding one of the items covered by the Section 10(b) and Rule 10b–5 safe harbor for another ABS transaction would not result in loss of Form S–3 for new transactions, so long as the Form 8–K reporting obligations for the prior obligations are current at the time of filing.

Questions regarding proposed Form 8–K reporting:

- We request comment on our proposed amendments to Form 8–K for asset-backed securities. Should additional or different parties be permitted to sign the report?
- Should any additional reportable events be included or omitted? For example, current Item 3.01 with regard to delistings is limited only to common equity securities and thus may be omitted for most ABS issuers. Should the Item be made applicable with respect to any listing with respect to a class of asset-backed securities? Should Item 4.02 regarding non-reliance on a previously issued audit report apply with respect to the proposed attestation report on an assessment of compliance with servicing criteria? Should Item 5.02 apply if the issuing entity has executive officers or directors?
- Are any other clarifying instructions needed regarding Items that would remain applicable? Are the proposed new Items sufficiently clear and detailed? Are any modifications necessary? For example, should we clarify how differences in pool composition in proposed Item 6.06 should be measured? Should disclosure of additional issuances of securities be required on Form 8–K even if disclosed in an effective registration statement or Rule 424 prospectus?
- Given that most ABS transactions report distributions monthly, should any Form 8–K items be reported in the Form 10–D instead? Would this create too long of a delay? Should such an approach not be permitted for transactions that report distributions quarterly or semi-annually? Would differences between the reporting requirements for different ABS transactions be confusing? Should any of the items be revised in the case of a master trust?
- Which Form 8–K items for asset-backed securities should be included in the safe harbor? Should the safe harbor extend only until the next required Form 10–D? Are there any additional accommodations that should be made with respect to Form 8–K reporting with respect to ABS transactions?

9. Other Exchange Act Proposals

a. Proposed Exclusion From Form 10–Q

As noted above, we propose to codify the requirement to file reports tied to distributions on asset-backed securities in lieu of quarterly reporting on Form 10–Q. The non-financial items that are in Form 10–Q would be required in proposed Form 10–D. As with our proposals for Form 10–K, we do not believe that the financial item requirements of Form 10–Q would be meaningful with respect to issuing entities. Accordingly, we are proposing to exclude asset-backed securities from quarterly reporting on Form 10–Q.[287]

b. Proposed Exemptions From Section 16

Under the modified reporting system, issuers of asset-backed securities are not subject to the disclosure requirements under Section 16(a) of the Exchange Act to report transactions and holdings of directors, officers and principal shareholders. In arguing for no-action relief, incoming requests to the staff indicated that the issuing entity often does not have directors and officers. In addition, the requesters advocate that any holders of asset-backed securities representing more than a ten percent interest in the issuing entity would not have access to more information concerning the trust than any other certificate holder, which would alleviate any risk of short-term profits based on inside information proscribed by Section 16.

We are proposing to exempt asset-backed securities from Section 16 in its entirety.[288] In addition to the reporting requirements in Section 16(a), we believe the other subparts of Section 16 are equally inapplicable to asset-backed issuers given the passive nature of the issuing entity, including the restrictive activities of the issuing entity in connection with the ABS transaction. We believe such an exemption for asset-backed securities would be appropriate in the public interest and consistent with the protection of investors.

c. Proposals Regarding Transition Reports

Current Exchange Act Rules 13a–10 and 15d–10 set forth reporting requirements that may be applicable when an issuer changes its fiscal year end. Transition reports are required to assure a continuous flow of information to investors and the marketplace. Although financial and business information normally required in transition reports may not be relevant to ABS transactions, information on the performance of the asset pool during the transition period is relevant to investors of asset-backed securities.

We are proposing amendments to our transition report rules that would clarify their application to asset-backed issuers.[289] Under the proposed amendments, an asset-backed issuer that changed its fiscal year end would be required to file a transition report on Form 10–K covering the transition period between the closing date of the issuer's most recent fiscal year and the opening date of its new fiscal year.[290] The asset-backed issuer must provide all information required in response to

[286] Similar amendments were made with respect to Form S–2 and Securities Act Rule 144 (17 CFR 230.144).

[287] See proposed amendments to Exchange Act Rule 13a–13 and Rule 15d–13.

[288] See proposed amendment to Exchange Act Rule 3a12–12.

[289] See proposed amendments to Exchange Act Rules 13a–10 and 15d–10.

[290] For example, if an issuer whose most recent fiscal year ended on December 31, 2003 decided to change its fiscal closing date to June 30, 2004, the transition period for which a transition report must be filed under either Rule 13a–10 or 15d–10 would be January 1, 2004 through June 30, 2004. A current report on Form 8–K also would be required announcing the change in fiscal year. See Item 5.03 of Form 8–K. A transition report on Form 10–K would not be required if the transition period covers one month or less and the first annual report for the newly adopted fiscal year covers the transition period as well as the fiscal year. Section 302 certifications would be applicable to transition reports on Form 10–K.

proposed General Instruction J. of Form 10–K, including filing the servicer compliance statement and the assessment of compliance and attestation report regarding compliance with servicing criteria. The servicer compliance statement and assessment reports would reflect the same transition period covered by the transition report. Of course, any obligation to file distribution reports under proposed Form 10–D would continue to apply regardless of a change in fiscal year.

Questions regarding other Exchange Act proposals:

• Should we codify the exclusion from quarterly reporting on Form 10–Q for asset-backed issuers? Should we exempt asset-backed securities from Section 16? Should the non-reporting provisions of Section 16 remain applicable with respect to asset-backed issuers or other participants in an ABS transaction? Should the result be different if the issuing entity has officers or directors?

• Should all of the applicable Form 10–K items be required for a transition report? For example, are there any item requirements under proposed General Instruction J. of Form 10–K that would not be important to investors with respect to the transition period? Should we require a separate report even if the transition period is one month or less?

E. Other Miscellaneous Proposals

In addition to our more substantive proposals, we also are proposing several minor and technical amendments to our rules and forms to address the regulatory treatment of ABS. These proposals include:

• Updating references to reflect proposed new definitions and references; [291]

• Removing instructions and references that would no longer be applicable; [292]

• Including cross-references for certain disclosure items in Regulation S–K to items in proposed Regulation AB that clarify their application for asset-backed securities; [293]

• Clarifying that an ABS issuer could not be eligible for the disclosure system for ''small business issuers'' because that disclosure system, like most of the basic Regulation S–K disclosure system, is not applicable to asset-backed securities; [294] and

• Clarifying that Regulation BTR [295] is not applicable to any acquisition or disposition of an asset-backed security.[296]

Questions regarding these miscellaneous proposals:

• We request comment on these proposed changes. Are any additional clarifying amendments needed to reflect our proposals?

• We request comment on the proposed exclusion of ABS issuers from the definition of ''small business issuer.'' Is there anything analogous to a ''small business issuer'' in the ABS context, and if so, is there a need to create different regulatory requirements for ABS by smaller issuers? If so, what accommodations should be made and why? By what level should a ''small ABS issuer'' be determined (*e.g.*, size of sponsor, size of offering, etc.)

• We request comment on any additional areas that should be addressed regarding the registration, disclosure or reporting requirements for asset-backed securities under the Securities Act or the Exchange Act.

F. Transition Period

While most of our proposals codify existing staff and market practice, we also are proposing several changes that may require implementation time. We are considering appropriate timing for implementation of the proposals, if adopted, and how best to allow for an orderly transition as a result of the new requirements imposed by the proposals. We are initially considering compliance with the proposals for new registration statements or takedowns off of shelf registration statements beginning three months after the effective date. This would include both the Securities Act and Exchange Act proposals with respect to such newly offered ABS. For outstanding ABS, we are initially considering compliance with the Exchange Act proposals beginning with fiscal years ending six months after the effective date. Of course, registrants could voluntarily comply with any adopted proposals before the compliance dates.

Questions regarding implementation and a transition period:

• Should we provide a transition period with respect to the implementation of all or some portion of our proposals? If so, what proposals should be subject to any transition period and would be an appropriate length for any transition period (*e.g.*, 3 months, 6 months)?

• Should there be different transition periods for different proposals? In particular, should there be an extended transition period for the proposed assessment and attestation of compliance with servicing criteria?

• Are there special considerations we should take into account in providing a transition period with respect to certain issuers, such as foreign ABS, certain asset classes or existing transactions? Should transactions before a certain point be ''grandfathered'' from the proposals? How should any remaining capacity under existing shelf registration statements be treated?

G. General Request for Comment

We request and encourage any interested person to submit comments regarding:

• The proposals that are the subject of this release;

• Specific interpretive guidance under the Investment Company Act concerning issues that may arise in connection with asset-backed issuers' compliance with the proposals set forth in this release;

• Additional or different changes regarding asset-backed securities; or

• Other matters that may have an effect on the proposals contained in this release.

We request comment from the point of view of investors in asset-backed securities on their views of the proposals and any possible changes to the proposals. We also request comment from the point of view of issuers that would be subject to the requirements that would result from the proposals. We request comment from the view of underwriters or other participants in asset-backed securities transactions. With regard to any comments, we note that such comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

IV. Paperwork Reduction Act

A. Background

Our proposals contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[297] We are submitting our proposals to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[298] The titles for the collection of information are:

(1) ''Form S–1'' (OMB Control No. 3235–0065);
(2) ''Form S–3'' (OMB Control No. 3235–0073);
(3) ''Form S–11'' (OMB Control No. 3235–0067);
(4) ''Form 10–K'' (OMB Control No. 3235–0063);
(5) ''Form 8–K'' (OMB Control No. 3235–0288);

[291] See, *e.g.*, proposed amendments to Rules 2–01(c)(7) and 2–07(a) of Regulation S–X; Items 401 and 701 of Regulation S–K; Securities Act Rules 424 and 434; Exchange Act Rules 10A–3, 13a–15 and 15d–15; and Rule 100 of Regulation M.

[292] See, *e.g.*, proposed amendments to Items 308 and 406 of Regulation S–B and Items 308 and 406 of Regulation S–K. The forms required for ABS under our proposals would clarify that these items are no longer applicable to ABS, thus rendering the instructions unnecessary.

[293] See, *e.g.*, proposed amendments to Items 202, 501 and 503 of Regulation S–K.

[294] See, *e.g.*, proposed amendments to Item 10 of Regulation S–B and Exchange Act Rule 12b–2. The term ''small business issuer'' is defined in Item 10 of Regulation S–B and Exchange Act Rule 12b–2 as a U.S. or Canadian issuer with less than $25 million in revenues and public float that is not an investment company. Such issuers are eligible to use Form 10–KSB (17 CFR 249.310b) for their annual reports and Form 10–QSB (17 CFR 249.308b) for their quarterly reports, both of which are keyed off of disclosure items required by Regulation S–B.

[295] 17 CFR 245.101 through 245.104.

[296] See proposed amendment to 17 CFR 245.101.

[297] 44 U.S.C. 3501 *et seq.*

[298] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

(6) ''Regulation S–K'' (OMB Control No. 3235–0071); and
(7) ''Form 10–D'' (a proposed new collection of information).

The regulations and forms listed as Items (1)–(6) were adopted pursuant to the Securities Act and the Exchange Act and set forth the disclosure requirements for registration statements, periodic reports and current reports filed with respect to asset-backed securities and other types of securities to ensure that investors are informed. Form 10–D, if adopted, would represent a new form type for distribution reports currently filed under cover of Form 8–K under the modified reporting system for asset-backed securities, or ABS. The hours and costs associated with preparing, filing and sending these forms constitute reporting and cost burdens imposed by each collection of information. 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.

We are proposing to address comprehensively the registration, disclosure and reporting requirements for asset-backed securities under the Securities Act and the Exchange Act. This includes providing tailored disclosure requirements and guidance for Securities Act and Exchange Act filings involving asset-backed securities. This information is needed so that security holders can make informed investment decisions regarding asset-backed securities. ABS issuers and ABS differ from operating companies and their securities. Many of the Commission's existing disclosure and reporting requirements applicable to operating companies generally do not elicit information that is relevant for ABS transactions. Through the staff filing review process and, where necessary, through staff no-action letters and interpretive statements, an informal disclosure and reporting scheme has developed taking into account evolving industry practices.

With some exceptions noted below, our proposals consolidate and codify current staff positions and industry practice. We propose a new principles-based set of disclosure items, ''Regulation AB,'' as a sub-part of Regulation S–K that would form the basis for disclosure in both Securities Act registration statements and Exchange Act reports. Amendments to the forms referenced above (other than Form S–11) would specify the menu of disclosure items that apply to asset-backed securities, including items contained in new Regulation AB and a limited number of pre-existing disclosure requirements identified in the forms.[299]

These disclosure changes are designed to establish a tailored disclosure system for asset-backed securities offerings. Compliance with the revised disclosure requirements would be mandatory. There would be no mandatory retention period for the information disclosed, and responses to the disclosure requirements would not be kept confidential.

B. Revisions to PRA Reporting and Cost Burden Estimates

Our existing PRA burden estimates for each of the affected collections of information are based on an average of the time and cost incurred by all types of public companies, not just ABS issuers, to prepare a particular information collection. As noted above, however, the existing disclosure and reporting system with respect to ABS that we propose to codify recognizes that information relevant to ABS differs substantially from that relevant to other securities. For each information collection discussed below, we first estimate the average number of hours that an ABS issuer currently spends to complete one of the listed forms. We then estimate the incremental burden change that would result if the Commission adopted the proposed changes. The staff estimated the average number of hours each ABS issuer currently spends completing the form by contacting a number of issuers and other persons regularly involved in completing the forms.

Each entity that files reports with the Commission is assigned a Standard Industrial Classification (SIC) code to indicate the entity's type of business. SIC Code 6189 is used with respect to asset-backed securities. Entities assigned this SIC Code were used as a proxy for estimating the number of responses with respect to ABS issuers. In addition, unless otherwise specified below, all estimates of the number of responses are based on filings made during the Commission's 2003 fiscal year: October 1, 2002 through September 30, 2003.

1. Form S–3

Our current PRA burden estimate for Form S–3 is 398 hours per response. This estimate is based on the assumption that most disclosure regarding the issuer is incorporated by reference from separately required Exchange Act reports. However, because an Exchange Act reporting history is not an ABS condition for Form S–3 eligibility, ABS issuers using Form S–3 often must present all of their disclosure in the registration statement in lieu of incorporating it by reference. As a result, our burden estimate for ABS issuers using Form S–3 under existing requirements is similar to our Form S–1 burden estimate for asset-backed securities, given that all Form S–1 disclosure also must be provided in the form itself.

During our 2003 fiscal year, we received 168 Form S–3 filings related to asset-backed securities compared to 1,695 Form S–3 filings overall. We estimate that currently it takes an ABS issuer an average of 1,000 hours to prepare a Form S–3 for an ABS offering. We estimate that 25% of the burden is borne by the ABS issuer and that 75% of the burden is borne by outside professionals retained by the issuer at an average cost of $300 per hour.[300]

We propose to add a separate general instruction to Form S–3 to specify the disclosure to be provided with respect to ABS offerings. Our proposed disclosure requirements are based to a large extent on the disclosures that appear in ABS Form S–3 filings today. We do, however, propose to require a few additional items that may not appear in all ABS Form S–3 filings today. We preliminarily believe this information already should be readily available to issuers even if not currently disclosed, although some information would require additional attention and diligence before its use in a registration statement. For example, we propose to require delinquency and loss information to be provided on a static pool basis. While the information is, we believe, available, additional time and expense will be involved in including it in registration statements. Our proposals also are designed to elicit more disclosure regarding the background, experience, performance and roles of various transaction parties, including the sponsor, the servicer and the trustee. Other examples of disclosure that may be incremental include:

- How delinquencies and charge-offs are defined and determined;
- The use of prefunding periods, revolving periods and master trust structures;

[299] We are proposing to move all Securities Act registrations of ABS offerings to Form S–1 or Form S–3. Correspondingly, we are reducing our estimate of responses on Form S–11.

[300] This estimate is consistent with the estimate of the allocation of the burden for non-ABS issuers on Form S–1 where all of the required information must be included in the form. The staff estimated the average hourly rate for outside professionals by contacting a number of issuers and other persons regularly involved in completing the forms.

• The realization of residual values in lease-backed ABS;

• The impact of differing legal and regulatory requirements in foreign ABS; and

• Fees and expenses, including a fee and expense table.

We estimate that completing and filing a Form S–3 if the new disclosure requirements are adopted would result in an average increase of approximately 25% to our estimate of the current Form S–3 reporting burden imposed on ABS issuers. As a result, we estimate that, on average, completing and filing a Form S–3 to register ABS if the new disclosure requirements were adopted would result in a burden of 1,250 hours, an increase of 250 hours per response over the current burden. Using our estimates of the percentages of the burden prepared by the issuer and outside professionals, we thus estimate that the proposals would result in an added annual burden of 10,500 hours (168 filings × 250 additional hours × .25) and an added annual cost of $9,450,000 (168 filings x 250 additional hours × .75 × $300 per hour).

2. Form S–1 and Form S–11

Our current PRA burden estimate for Form S–1 is 1,749 hours per response. Unlike Form S–3, this estimate is based on the assumption that all required disclosure is presented in the form. However, as noted above, like Form S–3, the disclosure provided with respect to a registered ABS offering currently differs from that provided with respect to operating companies.

During our 2003 fiscal year, we received 7 Form S–1 filings related to asset-backed securities compared to 247 Form S–1 filings overall. In addition, we received 18 filings on Form S–11 related to asset-backed securities. We are proposing to move all Securities Act registrations of ABS offerings to Form S–1 or Form S–3. Assuming that the filings on Form S–11 could not otherwise be conducted on Form S–3, we estimate that these filings would instead be made on Form S–1. Thus, we estimate that there would be 25 ABS offerings registered on Form S–1. We are correspondingly reducing our estimate of responses on Form S–11 by 18 responses.

For ABS filings on Form S–1, we are using the same estimate as for ABS filings on Form S–3, given that the disclosures in both filings are substantially similar.[301] Thus, we estimate that an ABS Form S–1 filing currently imposes a reporting burden of an average 1,000 hours per response. As with Form S–3, we estimate that 25% of the burden is borne by the ABS issuer and that 75% of the burden is borne by outside professionals retained by the issuer at an average cost of $300 per hour.

As with Form S–3, we propose to add a separate general instruction to Form S–1 to specify the disclosure to be provided with respect to ABS offerings. These disclosures would be substantially similar to those required for Form S–3 filings. As a result, we estimate that completing and filing a Form S–1 if the new disclosure requirements were adopted would result in an increase of approximately 25% over the amount of time currently spent by ABS issuers to complete and file the form. This results in a revised estimate of 1,250 hours per response, an increase of 250 hours per response over the current reporting burden. Using our estimates of the percentages of the burden prepared by the issuer and outside professionals, we thus estimate that the proposals would result in an added annual burden of 1,563 hours (25 filings × 250 additional hours × .25) and an added annual cost of $1,406,250 (25 filings × 250 additional hours × .75 × $300 per hour).

3. Form 10–K

Our current PRA burden estimate for Form 10–K is 2,196 hours per response. Similar to Securities Act registration statements, however, the ongoing periodic and current reporting requirements applicable to operating companies under the Exchange Act differ substantially from the reporting that is most relevant to investors in asset-backed securities. The Commission staff has developed a system of modified Exchange Act reporting for ABS issuers. This includes a modified annual report on Form 10–K involving a reduced amount of disclosure than for operating companies. In addition to a limited menu of Form 10–K disclosure items, the ABS issuer must file as exhibits to the Form 10–K a servicer compliance statement and a report by an independent public accountant. Asset-backed issuers are required to include a certification required by Section 302 of the Sarbanes-Oxley Act in their Form 10–K reports. The staff has provided a tailored form of certification for use with ABS annual reports that we now propose to codify, with minor revisions.

Based on filings in our 2003 fiscal year, we estimate 1,200 Form 10–K filings related to asset-backed securities.[302] Under the modified reporting system, we estimate that currently it takes an ABS issuer an average of 90 hours to prepare a Form 10–K. We estimate that 25% of the burden is borne by the ABS issuer and that 75% of the burden is borne by outside professionals retained by the issuer at an average cost of $300 per hour.

We propose to add a separate general instruction to Form 10–K to specify the disclosure to be provided with respect to ABS offerings. As with Securities Act registration statements, our proposed disclosure requirements are based on the disclosures that appear in ABS Form 10–K filings today. While the proposed disclosures are generally consistent with the disclosures provided today, the most significant difference between our proposed disclosure requirements and the average disclosure that appears today is with respect to the assessment of compliance with servicing criteria. The most common compliance framework being used today is the Mortgage Bankers Association of America's Uniform Single Attestation Program, or USAP. Our proposed criteria are intended to be incrementally broader than the USAP criteria to cover the full spectrum of servicing activities. Our proposals also would require additional disclosure in the Form 10–K report if any material instances of noncompliance were identified.

Under these assumptions, we estimate that completing and filing a Form 10–K if the new disclosure requirements were adopted would result in an average increase of approximately 33% over the amount of time currently spent by entities completing the form. In deriving this estimate, we believe that many issuers will experience costs in excess of this average in the first year of compliance with the proposals. We believe that costs will decrease in subsequent years. This burden also will vary among issuers based on the complexity of the ABS transaction, the

[301] The presentation of the disclosure may be somewhat different if the offering on Form S–3 is to be conducted on a delayed, or ''shelf,'' basis. In that case, the Form S–3 will typically consist of a base prospectus and prospectus supplement in lieu of a single document. However, the content of the disclosures should be substantially similar.

[302] This estimate is based on the number of final prospectuses filed pursuant to Securities Act Rule 424(b) during this period with respect to asset-backed securities. For most ABS offerings, the filing of the prospectus under Rule 424(b) for a takedown of securities results in a new issuing entity and a separate Exchange Act reporting obligation. However, some issuers had been filing ''combined'' reports of filing one Form 10–K covering multiple issuing entities. We are using this estimate to reflect the approximate number of Form 10–K filings that would have been made by ABS issuers in the absence of combined reporting.

number of parties involved, especially servicers, and the nature and level of initial development of their compliance procedures. We have considered all of these factors in formulating our proposed estimates.

As a result, we estimate that, on average, completing and filing a Form 10–K if the new disclosure requirements are adopted would impose a reporting burden on ABS issuers of 120 hours, an increase of 30 hours over the current Form 10–K reporting burden for ABS issuers. Using our estimates of the percentages of the burden prepared by the issuer and outside professionals, we thus estimate that the proposals would result in an added annual burden of 9,000 hours (1,200 filings × 30 additional hours × .25) and an added annual cost of $8,100,000 (1,200 filings × 30 additional hours × .75 × $300 per hour).

We do not believe that the proposed amendments with respect to the Section 302 certification result in a need to alter the burden estimates. These amendments merely reflect conforming amendments already incorporated in the OMB burden estimates (*e.g.*, relocating the certifications from the text of annual report to the ''Exhibits'' section of the report) and minor changes to the wording of the Section 302 certification that do not alter the burden estimates that we previously submitted to OMB.

4. Form 8–K

Our current PRA burden estimate for Form 8–K is 5 hours per response. This is based on the use of that report to disclose the occurrence of certain defined reportable events, some of which are applicable to asset-backed securities. However, under the existing modified reporting system, ABS issuers also use Form 8–K to file periodic distribution and pool performance information. To separate this reporting from the disclosure of current events, we propose one new form type for asset-backed securities, Form 10–D, to act as the report for the periodic distribution and pool performance information. Form 8–K would continue to prescribe certain reportable events that would require current disclosure by ABS issuers. Form 8–K also would continue to be available to report any events that an ABS issuer deems to be of importance to security holders.

During our 2003 fiscal year, we received 12,633 Form 8–K filings related to asset-backed securities compared to 58,421 Form 8–K filings overall. Based on filings in our 2003 fiscal year, we estimate 9,500 filings that would include distribution and pool performance information that would instead appear in Form 10–D under our proposals.[303] Accordingly, assuming that our proposals are adopted, we estimate that there would be a decrease of 9,500 in the total number of Form 8–K filings.

We estimate that the time it takes to prepare a Form 8–K for a reportable event does not vary between an ABS and a non-ABS issuer. Thus, we estimate that an ABS issuer spends, on average, approximately 5 hours completing the form. As with our estimates for non-ABS issuers, we estimate that 75% of the burden is borne by the ABS issuer and that 25% of the burden is borne by outside professionals retained by the issuer at an average cost of $300 per hour.

We propose to add a separate general instruction to Form 8–K to specify the events that would require disclosure under that form. Several reportable events would be excluded with respect to ABS issuers, and a few additional events specific to asset-backed securities would be added. We also propose clarifying amendments to several existing reportable events to identify how they should apply to asset-backed securities.

We estimate that, on average, completing and filing a Form 8–K if the proposals were adopted would require the same amount of time currently spent by entities to complete the form-approximately 5 hours. We do estimate that the number of reportable events on Form 8–K would increase with respect to asset-backed securities as a result of the proposals. For purposes of the PRA, we estimate that the proposals would cause, on average, an increase of two reports on Form 8–K per ABS issuer per year. Based on our estimate of 1,200 ABS issuers, we estimate an increase of 2,400 Form 8–K filings per year. Using our estimates of the percentages of the burden prepared by the issuer and outside professionals, we thus estimate that the proposals would result in an added annual burden of 9,000 hours (2,400 filings x 5 hours x .75) and an added annual cost of $900,000 (2,400 filings x 5 hours x .25 x $300 per hour).

5. Proposed Form 10–D

As discussed above, proposed Form 10–D would be the new form type under which ABS issuers would file their periodic distribution and pool performance information. As discussed above, we estimate that there would be 9,500 Form 10–D filings per year. The proposed disclosure content for Form 10–D would consist of the distribution and pool performance information for the distribution period as well as certain non-financial disclosures, similar to those required by Part II of Form 10–Q, that occurred during the period. The requirement with respect to distribution and pool performance information would require the registrant to provide the information required by proposed Item 1119 of Regulation AB and to attach as an exhibit to the Form 10–D the distribution report delivered to the trustee or security holders, as the case may be, pursuant to the transaction agreements for the related distribution date. However, any information required by Item 1119 of Regulation AB that was included in the attached distribution report would not need to be repeated in the Form 10–D. As a result, and as is typically the case today with distribution reports filed under Form 8–K, we estimate that on average no additional information is likely to be required in the Form 10–D with respect to distribution or pool performance.

Accordingly, we are not including preparation of the distribution report in our burden hour estimates for preparing Form 10–D. We do estimate that it would take approximately 6 hours to assemble the distribution report with the Form 10–D for filing. We also propose a few incremental disclosures regarding distribution and pool performance information, such as those relating to the changes to the asset pool, that may not be required in the average distribution report today. We estimate that these disclosures would result in an average of 10 hours per filing. Finally, we estimate the remaining disclosures for the Form 10–D, such as the disclosures required by Part II of Form 10–Q, would result in an average of 14 hours per filing.

As a result, we estimate that, on average, completing and filing a Form 10–D if the new proposals were adopted would impose a burden of 30 hours per filing. As with our other estimates for Exchange Act reports by non-ABS issuers, we estimate that 75% of the burden is borne by the ABS issuer and that 25% of the burden is borne by outside professionals retained by the issuer at an average cost of $300 per hour. We thus estimate that proposed Form 10–D would result in a total annual burden of 213,750 hours (9,500 filings × 30 hours × .75) and an added annual cost of $21,375,000 (9,500 filings × 30 hours × .25 × $300 per hour). It should be noted, however, that this reflection of the burden predominantly consists of codifying the already existing requirements applicable under

[303] This estimate also reflects the approximate number of distribution report filings that would have been made by ABS issuers in the absence of combined reporting.

the modified reporting system where such filings appear under cover of Form 8–K and are offset by our corresponding reduction in our estimated number of Form 8-K's that would be filed.

6. Regulation S–K

Regulation S–K includes the requirements that an issuer must provide in filings under both the Securities Act and the Exchange Act. Our proposed disclosure changes would include changes to items under Regulation S–K and the addition of a new subpart to Regulation S–K—Regulation AB—that would provide disclosure items particularly tailored to asset-backed securities.[304] However, as noted above, the filing requirements themselves are included in Forms S–1, S–3, 10–K and 8–K and proposed Form 10–D. We have reflected the burden for the new requirements in the burden estimates for those forms. The items in Regulation S–K, including proposed Regulation AB, do not impose any separate burden. We assign one burden hour to Regulation S–K for administrative convenience to reflect the fact that the regulation does not impose any direct burden on companies.

C. Request for Comment

We request comment in order to (a) 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; (b) evaluate the accuracy of our estimates of the burden of the proposed collections of information; (c) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (d) evaluate whether there are ways to 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; and (e) evaluate whether the proposals will have any effects on any other collections of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–21–04. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–21–04, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

V. Cost-Benefit Analysis

The proposed rules and Regulation AB codify staff and industry practice for public offerings of asset-backed securities with incremental changes. They would provide definitive rules for these offerings registered under the Securities Act as well as ongoing reporting by asset-backed issuers under the Exchange Act. In this section, we examine the benefits and costs of our proposed rules. We request that commenters provide views along with supporting data as to the benefits and costs associated with the proposals.

The Commission's corporate offering and disclosure rules were not designed to accommodate some of the special characteristics of ABS offerings. The current offering and disclosure process for ABS has developed through no-action letters, staff comment, market practice and informal staff interpretations. This current informal regulatory regime for asset-backed offerings is sub-optimal for a well-developed market that represents a large portion of the U.S. capital markets. The accumulated informal guidance has diminished the transparency of applicable requirements, potentially decreasing efficiency and leading to uncertainty and common problems. Many issuers, investors and other market participants have requested a defined set of regulatory requirements.[305] Many compliance issues may be mitigated and potential issues avoided through clearer and more transparent regulatory requirements. Establishing clear and transparent requirements also could reduce costs to entry into the market. As a result, the proposals to codify staff position and industry practice with incremental changes would clarify and simplify the process of registering an ABS offering. This should lower the overall costs of complying with the federal securities laws.

In order to improve an investor's understanding of an ABS offering, we propose incremental enhancements to disclosure regarding the participants involved in the ABS transaction and of historical data regarding the performance of the assets backing the current and prior comparable asset-backed offerings, known as static pool data. We propose to improve the current framework for reporting on compliance with servicing criteria that would operate within a disclosure-based framework and cover the entire spectrum of the servicing function in an ABS transaction. An independent public accountant would attest under recognized professional standards for attestation to the responsible party's assertion of compliance with the servicing criteria. We also propose incremental changes to current staff and industry practice to allow certain lease-backed and other ABS immediate access to shelf registration through Form S–3 eligibility, along with incremental disclosure to address the different nature of these offerings. In addition, we are proposing to allow additional asset types to be securitized through master trusts or through transactions using a revolving period, again with incremental disclosure to add transparency to the use of these structures and potential changes to the asset pool over time. We are relaxing restrictions on incorporation by reference. We also are proposing to give foreign issuers access to shelf offerings and Form S–3. Finally, we are providing interpretive guidance in a number of areas in addition to proposed rule changes, such as guidance regarding the preparation of base prospectuses and prospectus supplements and EDGAR reporting, to establish more clear and uniform practices across the ABS market.

[304] We also are proposing technical changes to Regulation S–B, which includes the requirements that a small business issuer must provide in the Securities Act and the Exchange Act similar to Regulation S–K. These technical changes are designed to clarify that Regulation S–B is inapplicable to asset-backed securities. Like, Regulation S–K, Regulation S–B does not impose any separate burden. We previously have assigned one burden hour to Regulation S–B for administrative convenience to reflect the fact that the regulation does not impose any direct burden on companies.

[305] See note 55 above.

A. Parties Eligible To Use the New Regulatory Structure

The definition of asset-backed security would no longer be limited to those issuers eligible to register securities on Form S–3 but expanded to any type of security that meets the proposed definition of an asset-backed security. This would bring all ABS transactions and issuers into an appropriate disclosure system regardless of what Securities Act form they were eligible to use.

Our proposals would codify several clarifying interpretations of existing staff positions to recognize and build upon the operational and structural distinctions between ABS and non-ABS transactions. The current staff position regarding non-performing assets and delinquent assets would be incorporated into the definition of an asset-backed security with clarifying guidance as to how these concepts are to be determined. However, in codifying staff positions, we also are proposing to expand some of them to allow additional asset types and transaction features to be included. For example, the definition of asset-backed security would be expanded so that additional lease-backed ABS would be included. The proposals would allow structures such as master trusts and revolving periods, currently allowed by the staff for only certain asset classes, to be used by all asset-backed issuers. Therefore, if the market found these structures attractive for other asset classes, asset-backed issuers could effectively utilize the structures in their ABS offerings. We propose to increase disclosure to provide greater transparency of changes to pool composition.

The proposed definition and interpretations are intended to establish parameters for the types of securities that are appropriate for our proposed alternative regulatory regime for ABS. The proposals would not mean or imply that public offerings of securities outside of these parameters may not be registered, but only that the disclosure and other requirements in the ABS regime are not designed for those securities. Such securities would need to rely on non-ABS form eligibility for registration, and additional disclosures would be required. This may mean that on the margins the proposed requirements may influence market practice. However, we have taken an expansive approach to the concept of what is an ''asset-backed security'' to minimize such instances and to allow flexibility in market developments.

B. Securities Act Registration

We propose to allow domestic and foreign issuers to use either Form S–1 or Form S–3 to register an offering of asset-backed securities. Transactions backed by additional lease pools also would be allowed to use Form S–3 under the proposal. This will provide the benefit of delayed offerings to foreign issuers and some issuers of ABS backed by lease pools. We believe this will make the offering process less costly for these issuers. We propose to require additional disclosure for these two types of offerings to provide investors with a clear understanding of the unique issues these offerings raise. To remove regulatory uncertainty for issuers, we propose to codify a number of current staff positions, including clarifying and streamlining the conditions when a distribution of underlying pool assets must be concurrently registered with the distribution of ABS. We also propose to codify current staff position that the depositor should sign the registration statement and who is considered the issuer for Securities Act purposes. In very limited situations, the staff required the issuing entity to sign the registration statement. As this did not appear to provide any significant benefit to investors, and in some cases, may have added costs to issuers, we have not codified this position. We believe the proposed rules for Securities Act registration would increase transparency of the current informal regulatory regime for issuers of asset-backed securities, provide increased flexibility for additional ABS transactions and help the asset-backed securities market function more efficiently.

The proposals would revise the instructions for Form S–1 and Form S–3 for registered asset-backed offerings to clarify those items under Regulation S–K that an issuer would be required to disclose, if applicable, and list the items that an issuer would not be required to disclose due to the different nature of the ABS transactions. The instructions for Form S–1 and Form S–3 would include additional disclosure items under Regulation AB, a proposed set of principles-based disclosure requirements for ABS discussed in the next section. We believe the proposed instructions integrate disclosure items for the respective forms, which will reduce compliance costs and provide certainty about the disclosure requirements for issuers while promoting relevant disclosure for investors. We request comment on the type and amount of any potential costs the proposed rules for an asset-backed offering would place on issuers or investors.

The proposals for Form S–3 eligibility would remain essentially the same as under existing practice. We do propose codifying that reporting obligations regarding other ABS transactions established by the depositor have been complied with for the prior 12 months for continued Form S–3 eligibility for new transactions, which is consistent with existing staff policy. We propose to expand this requirement to also cover the reporting history of transactions by the sponsor. This is in order to avoid a sponsor merely setting up a new special purpose entity to obtain Form S–3 eligibility when prior transactions have not complied with Exchange Act reporting. While we believe the instances when this requirement would not be met should be rare, it could have the effect of foreclosing certain issuers from Form S–3 eligibility if they violate reporting requirements for other transactions. However, we do not believe it would be appropriate to continue to allow the benefits of shelf registration to new transactions established by the same market participants that have not complied with ongoing reporting obligations involving previous transactions.

We propose to codify an existing no-action position that broker-dealers involved in Form S–3 ABS transactions do not need to deliver a copy of the preliminary prospectus 48 hours prior to sending a confirmation of sale. The proposal would de-link this exclusion from the current requirement that the ABS transaction not include a prefunding account larger than 25% of the pool. We propose to put the 25% prefunding limitation in Form S–3 eligibility, but allow prefunding accounts up to 50% to be used in transactions registered on Form S–1, which is consistent with the treatment of revolving periods. We believe codifying this position will benefit issuers in the distribution process, but we request comment from investors as to whether this will increase their burden by significantly increasing the number of transactions that are sold within compressed timeframes. We also request comment from issuers if moving transactions with prefunding levels between 25% to 50% of the pool to Form S–1 causes any material burden.

C. Disclosure

The proposed disclosure items under Regulation AB would provide a disclosure structure tailored to the different nature of ABS. We anticipate the proposals would assist issuers and

investors by clarifying the disclosure requirements. In addition, the proposal:

- Confirms that financial statements of the issuing entity are not required for ABS transactions;
- Clarifies when third party financial information is required; and
- Codifies when third party financial information may be incorporated by reference or referred to in registration statements.

The proposed disclosure required under Regulation AB is largely based on current market practices and therefore the increase in costs to issuers should be measured. Recognizing that it would be impractical to provide an exhaustive list of disclosure items for each asset class, the proposed disclosure requirements are principles-based and thus provide flexibility for issuers where doing so would yield more focused and descriptive disclosure for investors and reduce the burden for issuers. We believe the proposal attempts to mitigate the possibility that immaterial information may overwhelm the disclosure by keying many disclosure items to a materiality-based standard. Thus, the proposed disclosure gives registrants, underwriters and their advisors the opportunity to balance the need for registrants to have flexibility when drafting disclosure with investors' need for more transparency. Whether they will take advantage of this opportunity is largely their decision.

The proposals attempt to increase transparency regarding roles and qualification of parties involved in the offering and on-going activities of the ABS transaction. Various market participants have indicated there has been confusion over the roles of parties in particular transactions or types of transactions. Similarly, market participants have indicated the role of the servicer and its servicing practices can materially impact an ABS transaction. In addition, investors have repeatedly requested that we require static pool data. According to these investors, this proposed disclosure would assist investors in analyzing the origination trends of the sponsor's overall portfolio, which would provide material information on both the quality and experience of pool selection and asset performance. As with many other disclosure items, we believe it would be impractical to impose standardized requirements that would be applicable and efficient for all transactions regarding disclosure of this data. Accordingly, the static pool data required would be keyed to the data material to the transaction. We understand almost all issuers already have static pool information available, although it may have to be subjected to additional procedures and diligence before it is included in disclosure documents. We nonetheless believe preliminarily that it should not present a significant burden to issuers, while it will improve transparency for investors in ways that investors have indicated is important. As noted below, we request comment on the type and magnitude of the burden these disclosure requirements would represent to issuers.

The proposed expanded disclosure would offer a greater understanding of the background, previous experience, and specific role of the sponsor, depositor, servicer and trustee. The proposed disclosure on the asset underwriting criteria of the sponsor would provide a clear understanding of the type of assets investors should expect in the asset pool. Some discussion of underwriting criteria is currently included, although it is typically minimal. We do not believe the costs to prepare the proposed disclosure should substantially increase. The proposed disclosure on servicing practices of all servicers materially involved in the maintenance of the asset pool and the existence of contractual back-up servicing is indicative of the importance of the servicer to the ongoing performance of the ABS transaction. We believe the proposals would stimulate higher quality disclosures of key aspects of the ABS transaction and its participants, which would yield more relevant information available to investors and allow them to make better-informed investment choices and potentially reduce the likelihood that pool assets or an ABS transaction will perform dramatically different than anticipated by investors.

This proposed disclosure under Regulation AB may increase the costs to issuers of asset-backed securities. The proposed disclosure is intended to enhance the utility of the disclosure in registration statements and ongoing Exchange Act reports. Issuers may need to reevaluate current disclosure from prior registration statements to determine the scope of additional information. We also encourage issuers to evaluate whether they should eliminate immaterial boilerplate disclosure that is not required under Regulation AB and that does not aid understanding, but that they currently provide. Due to the informal nature of the current requirements, issuers may be unnecessarily including information that is not relevant or helpful to investors. Issuers may need to employ additional resources, including in-house personnel and outside legal counsel, to assist in this evaluation. We anticipate that most of these costs may be short-term or one-time costs in preparing the first registration statement under the proposed codified disclosure regime.

We also estimate that issuers may need extra time to prepare the proposed information or obtain such information from the respective parties to the ABS transaction. However, we believe that parties already provide much of this information to rating agencies during the process of obtaining a rating on the offering, and thus such information should be readily available. Therefore, we do not anticipate that issuers would incur significant costs in complying with the proposed disclosure regime.

For purposes of the Paperwork Reduction Act, we estimate that the incremental burden in preparing the additional Securities Act disclosures would be on average 250 hours per registration statement. Based on our estimated costs of in-house personnel time, we estimate the incremental PRA hour-burden would translate into an approximate cost of $12,967,275.[306] We request comment on the type, amount and duration of any additional costs to comply with the proposed disclosure regime. These additional compliance costs should result in consistent and more tailored information that may assist the capital markets in properly valuing asset-backed securities. These benefits are difficult to quantify.

D. Communications During the Offering Process

The proposals to codify the existing ability to use written communications outside of the registration statement prospectus recognize the current beneficial information these communications provide to potential investors in an ABS offering. The proposals would simplify the definitions of the written communications that an issuer may use and incrementally expand it by allowing the use of static pool data. The proposals also clarify that the scope of the written communications permits data at the individual pool asset level. Loan level data may in some cases assist investors in better understanding the nature of the individual loans included in the pool, which in turn may increase the quality of information available to investors.

[306] We estimate that the additional disclosures for Form S–1 and Form S–3 would result in 12,063 internal burden hours and $10,856,250 in external costs. Assuming a cost of $175/hour for in-house professional staff, the total cost for the internal burden hours would be $2,111,025. Hence the aggregate cost estimate is $12,967,275.

The proposals streamline the filing requirements for these communications by providing that all types of ABS informational and computational material be filed in the same timeframe, thus reducing the regulatory uncertainty for issuers as to when to file written communications. The proposals would eliminate the hardship exemption for filing these materials in paper rather than on EDGAR. Given the developments in our EDGAR system, we believe these materials can be filed easily on EDGAR. The proposals should increase the uniformity and timeliness of information received by investors as well as disseminated to the marketplace. Since all investors almost uniformly access Commission filings electronically, this proposal should significantly benefit them. We request comment on the cost to issuers of eliminating the EDGAR hardship exemption.

We do not propose to change the scope or liability requirements of the material that may be used, so our proposals should not result in incremental costs from existing requirements. Staff in the Division of Corporation Finance is developing recommendations to the Commission on additional potential reforms to the Securities Act registration process for all offerings. We plan to address the issue of whether additional accommodations to the communications restrictions would be appropriate, including for ABS offerings, in connection with any recommendations on broader reforms.

We also propose to codify an existing staff safe harbor regarding the use of research reports published or distributed by a broker or dealer involving ABS. Both the existing safe harbor and our proposal recognize the different nature of ABS by providing tailored conditions for ABS research reports. Given that the proposed safe harbor is consistent with the existing staff safe harbor, it too should not result in incremental costs.

E. Ongoing Reporting Under the Exchange Act

We propose to integrate and streamline the modified reporting structure currently permitted by scores of no-action letters for issuers of asset-backed securities to meet their reporting obligations under the Exchange Act. The proposal clarifies who has the reporting obligation under the Exchange Act and who must file and sign the annual, periodic and current reports. The proposal differs from current practice of allowing trustees to sign since we believe either the depositor or the servicer is the party most able to monitor the ongoing Exchange Act reporting requirements of the ABS transaction. The proposal explains when the reporting obligation begins and may be terminated by the issuer. This should provide certainty to issuers as to when their reporting obligation is suspended.

Our proposals would outline the required disclosure in the Exchange Act reports to ensure uniform reporting by issuers while reducing the information asymmetry between issuers and investors. We propose to codify the current requirements that periodic information be disclosed based on the periodicity of distributions on the securities. We believe most of the information we propose to require is typically disclosed in the current distribution reports. We request comment on the burden of any increased disclosure. Rather than filing these reports on Form 8–K, we propose that issuers use newly proposed Form 10–D for reporting periodic distributions to assist investors and the marketplace in distinguishing such distribution reports from the reporting of significant events relevant to the ABS transaction.

We do not believe the use of Form 10–D rather than Form 8–K for filing these reports would result in additional costs beyond minimal one-time transition costs. Regarding the content of the Form 10–D, we do propose a few incremental disclosures, such as those relating to the changes to the asset pool. For purposes of the Paperwork Reduction Act, we estimate that the burden in preparing these incremental disclosures for the Form 10–D would be on average 10 hours per Form 10–D. Based on our estimated costs of in-house staff time, we estimate the incremental PRA hour-burden would translate into an approximate cost of $17,943,750.[307]

We have reviewed our recently revised Form 8–K requirements and propose the item requirements we believe should be applicable to ABS issuers. In addition, we propose several ABS-specific reportable events for Form 8–K disclosure. The separate filing of reportable events on Form 8–K will accelerate the delivery of information to the capital markets, which should enable investors to better monitor reportable events affecting the asset-backed securities or the relevant parties involved in the ABS transaction. Issuers of asset-backed securities may incur additional costs to report these events under a shorter timeframe; however, these additional costs should be consistent with the costs incurred by corporate issuers of other securities. For purposes of the PRA, we estimate that the proposals would cause, on average, an increase of two reports on Form 8–K per ABS issuer per year. Based on our estimated costs of in-house staff time, we estimate the PRA hour-burden would translate into an approximate cost of $2,475,000.[308]

Under the modified reporting no-action letters, ABS issuers include with their annual report on Form 10–K a report by an independent public accountant attesting to a responsible party's assertion of compliance with servicing criteria. We propose to codify this approach. Under this approach, audited financial statements of the issuing entity and reporting regarding internal control over financial reporting are not required. We also would propose to codify this practice because we believe the costs to provide audited financial statements and reporting regarding internal control over financial reporting would greatly outweigh any minimal benefits obtained from these requirements. We believe our current approach is more cost-effective and beneficial in ABS transactions.

The current modified reporting system does not provide optimal transparency as to what is expected of issuers, servicers, accountants and other parties. We propose to enhance the current framework for reporting on compliance with a single set of transparent and comprehensive servicing criteria regarding an ABS transaction. The only framework generally used today is limited to a specific asset class, covers only limited servicing functions and represents minimum standards. Therefore, we believe the market would benefit by our proposed servicing criteria. We believe that the proposed disclosure-based criteria would improve the quality of the assessment of compliance and elicit disclosure that is comparable among different issuers. We do request comment on whether alternate suitable criteria could be developed for purposes of the proposals.

[307] We estimate that preparing the incremental disclosures would result in 71,250 internal burden hours and $7,125,000 in external costs. Assuming a cost of $175/hour for in-house professional staff, the total cost for the internal burden hours would be $12,468,750. Hence the aggregate cost estimate is $19,593,750. As Form 10–Q Part II information already is required under the modified reporting system, we do not estimate the codification of that reporting obligation would result in incremental costs.

[308] We estimate that the additional Form 8–K filings would result in 9,000 internal burden hours and $900,000 in external costs. Assuming a cost of $175/hour for in-house professional staff, the total cost for the internal burden hours would be $1,575,000. Hence the aggregate cost estimate is $2,475,000.

We propose that the responsible party and the registered public accounting firm would use the proposed servicing criteria in assessing and reporting on servicing compliance. We have attempted to provide flexibility by proposing servicing criteria that are principles-based and thus may be tailored to the servicing operations for ABS transactions of any asset class. In addition, we propose the assessment and reporting on the servicing criteria to operate within a disclosure-based framework. For example, we would allow the responsible party to exclude the particular servicing criteria that are inapplicable to the servicing of a specific asset class provided that the inapplicability of the criteria was disclosed. In addition, the proposal would require the responsible party to disclose if a material instance of noncompliance with the proposed criteria exists to alert investors of potential problems with the servicing function. The proposal would not result in regulatory restrictions on market access such as Form S–3 eligibility. This approach attempts to balance the need for responsible parties to have flexibility when drafting disclosure on the assessment of compliance with the proposed servicing criteria with investors' needs for more transparency.

The proposed criteria cover the full spectrum of servicing asset-backed securities thereby facilitating an evaluation of the servicing activities by the responsible party regardless of whether those servicing activities are conducted by the responsible party or other parties, such as sub-servicers. We believe one of the critical components is calculation of the payments on the securities, also referred to as the ''waterfall.'' Our proposal attempts to cover this part of the servicing function, which is not necessarily part of the scope of the current framework. This improved assessment would enable investors, other responsible parties to the transaction and ultimately the marketplace to analyze the operational quality of the entire servicing function, which should improve investor confidence in the overall performance of the asset-backed securities.

We estimate that the proposed servicing criteria may impose new disclosure requirements on compliance assessments that do not presently utilize the current framework. Since the proposed servicing criteria are designed to evaluate servicing compliance, including compliance related to the waterfall, we estimate that the scope of compliance assessments may need to be enhanced to address these new disclosure requirements. We also understand that additional time and cost may be required to help assure that appropriate parties are accountable for reporting the applicable servicing criteria to the responsible party, which may include an internal assessment of servicing compliance or obtaining reports on servicing compliance from other parties involved in servicing. One of the benefits of a single responsible party approach would be assurance that all aspects of the servicing function have been assessed. To the extent that the responsible party and other parties involved in servicing do not maintain compliance with the proposed criteria and do not wish to publicly disclose this fact, the proposed disclosure-based criteria could lead to these parties instituting appropriate procedures to comply with the criteria and thus incur implementation costs. We request comment on the type, amount and duration of these costs.

Consistent with the modified reporting system, we believe the requirement that a registered public accounting firm attest to the responsible party's assessment of compliance with a single set of servicing criteria is an important component of the proposal. The engagement of an independent accountant improves investor confidence by establishing an independent check on the responsible party's assessment of servicing compliance. In addition, the attestation by the independent accountant may detect material instances of noncompliance with the servicing criteria that may provide early warning signals of potential losses incurred by investors. The proposed attestation of the entire servicing function would increase the costs of preparing the annual report since the accounting costs would likely increase due to the increase in the breadth of servicing function covered. These costs should be mitigated since many of the proposed servicing criteria are based on the current framework and our criteria propose only incremental changes to the current framework.

In addition to the proposed assessment of compliance with servicing criteria, we propose to continue requiring issuers to file a servicer compliance statement regarding compliance with material aspects of the servicing agreement. This codifies current practice and should not by itself result in any additional costs. We also propose to specify the form and content of the Sarbanes-Oxley Section 302 certification for ABS issuers consistent with existing staff practice. We propose minimal changes to the form to reflect our other Exchange Act proposals and to reflect the approach that the language of the certification must not be revised in providing the certification apart from the alternatives specified. Instead, any issues should be addressed through disclosure in the reports. We do not believe these revisions will result in incremental costs and should result in a more uniform and consistent certification process.

For purposes of the Paperwork Reduction Act, we estimate that the incremental burden in preparing the Form 10–K, including the proposed assessment of compliance with servicing criteria, would be on average 30 hours per response. Based on our estimated costs, we estimate the PRA hour-burden would translate into an approximate cost of $9,675,000.[309] We request comment on the type, amount and duration of these costs. We believe this increased burden would result in benefits to the ABS market in terms of an enhanced assessment and disclosure regarding the servicing functions and increased assurance and investor confidence in these disclosures. These benefits are difficult to quantify.

We also reiterate existing staff view that the final prospectus and Exchange Act reports are to be separately filed under the CIK code and file number of the respective issuing entity on EDGAR. This facilitates access to information relevant to the particular securities involved. We anticipate that some issuers not following this existing practice may incur additional costs by preparing separate Exchange Act reports for each issuing entity because some issuers provide combined reports. However, we believe these costs will be limited since issuers are already reporting this information for a particular issuing entity, albeit in a combined report. Some of the issuers that combine reports do so for scores of issuers such that investors may have to sift through hundreds of pages that relate to securities they do not own. Further, combined reporting creates inefficiencies in the storage, retrieval and analysis of EDGAR information.

VI. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of

[309] We estimate that the incremental burden would result in 9,000 internal burden hours and $8,100,000 in external costs. Assuming a cost of $175/hour for in-house professional staff, the total cost for the internal burden hours would be $1,575,000. Hence the aggregate cost estimate is $9,675,000.

1996 (''SBREFA''),[310] a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposals on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 23(a)(2) of the Exchange Act[311] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Section 2(b) of the Securities Act[312] and Section 3(f) of the Exchange Act[313] require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The proposals are intended to increase transparency by amending informal industry and staff practices into a formal regulatory regime for offerings of asset-backed securities under the Securities Act and ongoing reporting under the Exchange Act. We anticipate that these proposals would enhance capital formation by simplifying the process of registering an offering of asset-backed securities allowing parties not fully immersed in the ABS market to ascertain and understand the offering and disclosure requirements, thus promoting efficiency and competitiveness of the U.S. capital markets for asset-backed offerings.

Our specific proposals relate only to transactions that meet our proposed definition for an asset-backed security under the Securities Act. Although the definition for an asset-backed security captures most asset-backed structures, there may be transactions that are fundamentally different from the proposed definition. However, transactions that would not fit the parameters of the definition would still be able to access the capital markets. Instead, these transactions would be required to rely on non-ABS form eligibility for registration, and additional disclosures would be required.

In addition, the proposed principles-based disclosure requirements would allow great flexibility in implementation for all asset classes while enhancing the quality of disclosure for ABS transactions. Similarly, the proposed servicing criteria are intended to provide a comprehensive assessment to evaluate the overall servicing function for the ABS transaction. We anticipate these proposals should improve investors' ability to make informed investment decisions about asset-backed offerings as well as help increase investor confidence in the servicing of ABS transactions. We anticipate this would therefore lead to increased efficiency and competitiveness of the U.S. capital markets. Increased market efficiency and investor confidence also may encourage more efficient capital formation.

The proposals could have certain indirect negative effects. For example, the proposed incremental disclosures would increase transparency regarding a sponsor's or servicer's business practices. However, all such parties would be required to disclose such information equally, and the increased disclosures are designed to facilitate information to investors to improve their ability to make informed investment decisions. In addition, if transactions in the private market for ABS or foreign markets do not result in similar disclosures, issuers could, all things being equal, migrate to those markets to avoid such disclosures. However, there may be limitations on the ability to migrate to these markets given the large size of the U.S. ABS market and potential regulatory or investment restrictions on the ability of investors to purchase non-public ABS. In addition, competitors and markets not subject to the proposed requirements may suffer from decreased investor confidence if the asset-backed offerings lack the transparency of asset-backed offerings that do comply with the disclosure regime.

The proposals are designed to improve the current framework for reporting on compliance with servicing criteria that would operate within a disclosure-based framework and cover the entire spectrum of the servicing function. We believe the proposed servicing criteria will provide value to the ABS industry in establishing market-wide disclosure benchmarks and promote market efficiency by providing meaningful disclosure regarding the overall servicing function by a responsible party that is attested to by an independent public accountant. The disclosure-based framework of the servicing criteria would provide information about the entire servicing function to be publicly available for investors, as well as the marketplace, to monitor the performance of the ABS transaction. This should promote investor confidence and market efficiency by decreasing information asymmetries and promoting more efficient pricing and valuation of the securities. As a result, capital may be allocated more efficiently. In addition, the proposed servicing criteria would promote the comparability of reports of different issuers, thus promoting investor analysis as well as competition among such issuers.

We request comment on whether the proposals, if adopted, would promote efficiency, competition and capital formation or have an impact or burden competition. Commenters are requested to provide empirical data and other factual support for their views if possible.

VII. Regulatory Flexibility Analysis Certification

The Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the proposals contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposals relate to the registration, disclosure and reporting requirements for asset-backed securities under the Securities Act and the Exchange Act. Securities Act Rule 157[314] and Exchange Act Rule 0–10(a)[315] defines an issuer, other than an investment company, to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. As the depositor and issuing entity are most often limited purpose entities in an ABS transaction, we focused on the sponsor in analyzing the potential impact of the proposals under the Regulatory Flexibility Act. The staff analyzed sponsors that conducted registered public offerings of asset-backed securities transactions during 2003. No sponsor had total assets of $5 million or less. Accordingly, the Commission does not believe that the proposals, if adopted, would have a significant economic impact on a substantial number of small entities.

We solicit written comments regarding this certification. We request

[310] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[311] 15 U.S.C. 78w(a)(2).

[312] 15 U.S.C. 77b(b).

[313] 15 U.S.C. 78c(f).

[314] 17 CFR 230.157.

[315] 17 CFR 240.0–10(a).

comment on whether the proposals could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VIII. Statutory Authority and Text of Rule Amendments

The proposals contained in this document are being proposed under the authority set forth in Sections 2, 6, 7, 8, 10, 17, 19 and 28 of the Securities Act,[316] Sections 3, 10, 10A, 12, 13, 14, 15, 16, 23 and 36 of the Exchange Act,[317] and Sections 3, 302, 306, 404, 406 and 407 of the Sarbanes-Oxley Act.[318]

Text of Proposed Amendments

List of Subjects

17 CFR Part 210

Accountants, Accounting, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 228, 229, 232, 239, 242, 245 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 230

Advertising, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows.

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78*l*, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78*ll*, 78mm, 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, unless otherwise noted.

2. Section 210.1–02 is amended by adding paragraph (a)(3) to read as follows:

§ 210.1–02 Definition of terms used in Regulation S–X (17 CFR part 210).

* * * * *

(a)(1) * * *

(3) *Attestation report on assessment of compliance with servicing criteria for asset-backed securities.* The term *attestation report on assessment of compliance with servicing criteria for asset-backed securities* means a report in which a registered public accounting firm, in accordance with §§ 240.13a–18(d) or 240.15d–18(d) of this chapter, expresses an opinion, or states that an opinion cannot be expressed, concerning a responsible party's assessment of compliance with servicing criteria, as required by §§ 240.13a–18 or 240.15d–18 of this chapter, in accordance with standards on attestation engagements. When an overall opinion cannot be expressed, the registered public accounting firm must state why it is unable to express such an opinion.

* * * * *

3. In 17 CFR Part 210, remove the phrase ''as defined in § 240.13a–14(g) and § 240–15d–14(g) of this chapter'' and add, in its place, the phrase ''as defined in § 229.1101 of this chapter'' in the following places:

a. In the introductory text of § 210.2–01(c)(7); and

b. In the introductory text of § 210.2–07(a).

4. Amend § 210.2–02 by:

a. Revising the section heading; and

b. Adding paragraph (g).

The addition and revisions read as follows:

§ 210.2–02 Accountants' reports and attestation reports.

* * * * *

(g) *Attestation report on assessment of compliance with servicing criteria for asset-backed securities.* The attestation report on assessment of compliance with servicing criteria for asset-backed securities, as required by §§ 240.13a–18(d) or 240.15d–18(d) of this chapter, shall be dated, signed manually, identify the period covered by the report and clearly state the opinion of the registered public accounting firm as to whether the responsible party's assessment of compliance with the servicing criteria is fairly stated in all material respects, or must include an opinion to the effect that an overall opinion cannot be expressed. If an overall opinion cannot be expressed, explain why.

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

5. The authority citation for Part 228 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

6. Amend § 228.10 by revising paragraph (a)(1)(iii) to read as follows:

§ 228.10 (Item 10) General

(a) *Application of Regulation S–B.*

* * *

(1) *Definition of small business issuer.*

* * *

(iii) Is not an investment company and is not an asset-backed issuer (as defined in § 229.1101 of this chapter); and

* * * * *

7. Amend § 228.308 by revising the ''Instructions to Item 308'' to read as follows:

§ 228.308 (Item 308) Internal control over financial reporting.

* * * * *

Instruction to Item 308. The small business issuer must maintain evidential matter, including documentation, to provide reasonable support for management's assessment of the effectiveness of the small business issuer's internal control over financial reporting.

§ 228.401 [Amended]

8. Amend § 228.401, ''Instructions to Item 401(e),'' by removing Instruction 4 and redesignating Instruction 5 as Instruction 4.

§ 228.406 [Amended]

9. Amend § 228.406, ''Instructions to Item 406,'' by removing Instruction 3.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

10. The authority citation for Part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 79e, 79j, 79n, 79t, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–

[316] 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77q, 77s and 77z–3.

[317] 15 U.S.C. 78c, 78j, 78j–1, 78*l*, 78m, 78n, 78o, 78p, 78w and 78mm.

[318] 15 U.S.C. 7202, 7241, 7244, 7262, 7264 and 7265.

11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

11. Amend § 229.10, introductory text of paragraph (d), by revising the second sentence to read as follows:

§ 229.10 (Item 10) General.

* * * * *

(d) *Incorporation by reference.* * * * Except where a registrant or issuer is expressly required to incorporate a document or documents by reference (or for purposes of Item 1100(c) of Regulation AB (§ 229.1100(c)) with respect to an asset-backed issuer, as that term is defined in Item 1101 of Regulation AB (§ 229.1101)), reference may not be made to any document which incorporates another document by reference if the pertinent portion of the document containing the information or financial statements to be incorporated by reference includes an incorporation by reference to another document. * * *

* * * * *

12. Amend § 229.202 by:

a. Removing the authority citation following the section; and

b. Adding Instruction 6 to the ''Instructions to Item 202''.

The addition reads as follows.

§ 229.202 (Item 202) Description of registrant's securities.

* * * * *

Instructions to Item 202: * * *

6. For asset-backed securities, see also Item 1112 of Regulation AB (§ 229.1112).

13. Amend § 229.308 by revising the ''Instructions to Item 308'' to read as follows:

§ 229.308 (Item 308) Internal control over financial reporting.

* * * * *

Instruction to Item 308. The registrant must maintain evidential matter, including documentation, to provide reasonable support for management's assessment of the effectiveness of the registrant's internal control over financial reporting.

§ 229.401 [Amended]

14. Amend § 229.401 by removing the phrase ''(as defined in §240.13a–14(g) and § 6240.15d–14(g) of this chapter)'' from Instruction 4 of the Instructions to Item 401(h) and adding, in its place, the phrase ''(as defined in § 229.1101)''.

15. Amend § 229.406, ''Instructions to Item 406,'' by removing Instruction 3.

16. Amend § 229.501 by adding an Instruction to the end of § 229.501 to read as follows:

§ 229.501 (Item 501) Forepart of Registration Statement and Outside Front Cover Page of Prospectus.

* * * * *

Instruction to Item 501. For asset-backed securities, see also Item 1102 of Regulation AB (§ 229.1102).

17. Amend § 229.503 by adding an Instruction to the end of § 229.503 to read as follows:

§ 229.503 (Item 503) Prospectus summary, risk factors, and ratio of earnings to fixed charges.

* * * * * *

Instruction to Item 503. For asset-backed securities, see also Item 1103 of Regulation AB (§ 229.1103).

18. Amend § 229.512 by:

a. Adding a paragraph after the paragraph that begins ''*Provided, however,*'' after paragraph (a)(1)(iii); and

b. Adding paragraph (k).

The revisions read as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(a) * * *

(1) * * *

(iii) * * *

Provided, however, * * *

Provided further, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the registration statement is for an offering of asset-backed securities on Form S–1 (§ 239.11 of this chapter) or Form S–3 (§ 239.13 of this chapter), and the information required to be included in a post-effective amendment is provided pursuant to Item 1100(c) of Regulation AB (§ 229.1100(c)).

* * * * *

(k) *Filings regarding asset-backed securities incorporating by reference subsequent Exchange Act documents by third parties.* Include the following if the registration statement incorporates by reference any Exchange Act document filed subsequent to the effective date of the registration statement pursuant to Item 1100(c) of Regulation AB (§ 229.1100(c)):

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 of a third party that is incorporated by reference in the registration statement in accordance with Item 1100(c)(1) of Regulation AB (17 CFR 229.1100(c)(1)) shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

19. Amend § 229.601 by: a. Revising the exhibit table; b. Redesignating the text of paragraph (b)(31) as paragraph (b)(31)(i); c. Adding paragraph (b)(31)(ii); and d. Revising paragraphs (b)(33) through (b)(98).

The revisions read as follows.

§ 229.601 (Item 601) Exhibits.

(a) *Exhibits and index required.* * * *

* * * * *

Exhibit Table

Instructions to the Exhibit Table

* * * * *

EXHIBIT TABLE

	Securities act forms										Exchange act forms				
	S–1	*S–2*	*S–3*	*S–4*[3]	*S–8*	*S–11*	*F–1*	*F–2*	*F–3*	*F–4*[3]	*10*	*8–K*[5]	*10–D*	*10–Q*	*10–K*
(1) Underwriting agreement	X	X	X	X		X	X	X	X	X		X			
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X	X		X	X	X	X	X	X	X		X	X
(3) (i) Articles of incorporation	X			X		X	X			X	X	X		X	X
(ii) By-laws	X			X		X	X			X	X	X		X	X
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X	X	X	X		X	X
(5) Opinion re legality	X	X	X	X	X	X	X	X	X	X					
(6) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) Correspondence from an independent accountant regarding non-reliance on a previously issued audit report or completed interim review												X			

EXHIBIT TABLE

	Securities act forms										Exchange act forms				
	S–1	*S–2*	*S–3*	*S–4*[3]	*S–8*	*S–11*	*F–1*	*F–2*	*F–3*	*F–4*[3]	*10*	*8–K*[5]	*10–D*	*10–Q*	*10–K*
(8) Opinion re tax matters	X	X	X	X		X	X	X	X						
(9) Voting trust agreement	X			X		X	X			X	X				X
(10) Material contracts	X	X		X		X	X	X		X	X			X	X
(11) Statement re computation of per share earnings	X	X		X		X	X	X		X	X			X	X
(12) Statements re computation of ratios	X	X	X	X		X	X	X		X	X				X
(13) Annual report to security holders, Form 10–Q and 10–QSB, or quarterly report to security holders[1]		X		X											X
(14) Code of Ethics												X			X
(15) Letter re unaudited interim financial information	X	X	X	X	X	X	X	X	X	X				X	
(16) Letter re change in certifying accountant[4]	X	X		X		X					X	X			X
(17) Correspondence on departure of director											X				
(18) Letter re change in accounting principles														X	X
(19) Report furnished to security holders														X	
(20) Other documents or statements to security holders											X				
(21) Subsidiaries of the registrant	X			X		X	X			X	X				X
(22) Published report regarding matters submitted to vote of security holders													X	X	X
(23) Consents of experts and counsel	X	X	X	X	X	X	X	X	X	X		X[2]	X[2]	X[2]	X[2]
(24) Power of attorney	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(25) Statement of eligibility of trustee	X	X	X	X		X	X	X	X	X					
(26) Invitations for competitive bids	X	X	X	X			X	X	X	X					
(27) through (30) [Reserved]															
(31) (i) Rule 13a–14(a)/15d–14(a) Certifications														X	X
(ii) Rule 13a–14(d)/15d–14(d) Certifications[6]															X
(32) Section 1350 Certifications[6]														X	X
(33) Report of compliance with servicing criteria for asset-backed securities															X
(34) Attestation report on assessment of compliance with servicing criteria for asset-backed securities															X
(35) Servicer compliance statement															X
(36) through (98) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(99) Additional exhibits	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

[1] Where incorporated by reference into the text of the prospectus and delivered to security holders along with the prospectus as permitted by the registration statement; or, in the case of the Form 10–K, where the annual report to security holders is incorporated by reference into the text of the Form 10–K.
[2] Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.
[3] An exhibit need not be provided about a company if: (1) with respect to such company an election has been made under Form S–4 or F–4 to provide information about such company at a level prescribed by Form S–2, S–3, F–2 or F–3; and (2) the form, the level of which has been elected under Form S–4 or F–4, would not require such company to provide such exhibit if it were registering a primary offering.
[4] If required pursuant to Item 304 of Regulation S–K.
[5] A Form 8–K Exhibit is required only if relevant to the subject matter reported on the Form 8–K report. For example, if the Form 8–K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.
[6] Pursuant to §§ 240.13a–13(b)(3) and 240.15d–13(b)(3) of this chapter, asset-backed issuers are not required to file reports on Form 10–Q.

* * * * *

(b) *Description of exhibits.* * * *

(31)(i) * * *

(ii) *Rule 13a–14(d)/15d–14(d) Certifications.* If an asset-backed issuer, the certifications required by Rule 13a–14(d) (17 CFR 240.13a–14(d)) or Rule 15d–14(d) (17 CFR 240.15d–14(d)) exactly as set forth below:

CERTIFICATIONS [1]

I, [identify the certifying individual], certify that:

1. I have reviewed this report on Form 10–K and all reports on Form 10–D required to be filed in respect of the period covered by this report on Form 10–K of [identify the issuing entity];

2. Based on my knowledge, the information in these reports, taken as a whole, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading as of the last day of the period covered by this report;

3. Based on my knowledge, all of the distribution, servicing and other information required to be provided under Form 10–D for the period covered by this report is included in those reports;

4. [I am responsible for reviewing the activities performed by the servicer(s) and based on my knowledge and the compliance review conducted in preparing the servicer compliance

[1] With respect to asset-backed issuers, the certification must be signed by either: (1) The senior officer in charge of securitization of the depositor if the depositor is signing the report on Form 10–K; or (2) The senior officer in charge of the servicing function of the servicer if the servicer is signing the report on Form 10–K on behalf of the issuing entity. See Rules 13a–14(e) and 15d–14(e) (§§ 240.13a–14(e) and 240.15d–14(e)). If multiple servicers are involved in servicing the pool assets, the senior officer in charge of the servicing function of the master servicer (or entity performing the equivalent functions) must sign if a representative of the servicer is to sign the certification. If there is a master servicer and one or more underlying servicers, the references in the certification relate to the master servicer. A natural person must sign the certification in his or her individual capacity, although the title of that person in the organization of which he or she is an officer may be included under the signature.

statement required in this report under Item 1121 of Regulation AB, and except as disclosed in the reports, the servicer has fulfilled its obligations under the servicing agreement; and]

[Based on my knowledge and the servicer compliance statement required in this report under Item 1121 of Regulation AB, and except as disclosed in the reports, the servicer has fulfilled its obligations under the servicing agreement; and] [2]

5. This report discloses all material instances of noncompliance with the servicing criteria as provided in Item 1120 of Regulation AB based on an assessment of compliance with such criteria.

[In giving the certifications above, I have reasonably relied on information provided to me by the following unaffiliated parties [name of servicer, sub-servicer, co-servicer, depositor or trustee].] [3]

Date: _____

_____

[Signature]

[Title]

(33) *Report of compliance with servicing criteria for asset-backed securities.* The responsible party's report of compliance with servicing criteria required by § 229.1120(a).

(34) *Attestation report on assessment of compliance with servicing criteria for asset-backed securities.* The attestation report on assessment of compliance with servicing criteria for asset-backed securities required by § 229.1120(b).

(35) *Servicer compliance statement.* The servicer compliance statement required by § 229.1121.

(36) through (98) [Reserved]

* * * * *

§ 229.701 [Amended]

20. Amend paragraph § 229.701(e) by revising the phrase ''Form 10–KSB or Form 10–K (§§ 249.308, 249.308b, 249.308a, 249.310b or 249.310)'' to read ''Form 10–KSB, Form 10–K or Form 10–D (§§ 249.308, 249.308b, 249.308a, 249.310b, 249.310 or 249.312)''.

21. Add subpart 229.1100 consisting of §§ 229.1100 through 229.1121 to read as follows:

[2] The first version of paragraph 4 is to be used when the servicer is signing the report on behalf of the issuing entity. The second version of paragraph 4 is to be used when the depositor is signing the report.

[3] Because the signer of the certification must rely in certain circumstances on information provided by unaffiliated parties outside of the signer's control, this paragraph must be included if the signer is reasonably relying on information that unaffiliated trustees, depositors, servicers, sub-servicers or co-servicers have provided.

Subpart 229.1100—Asset-Backed Securities (Regulation AB)

Sec.

229.1100 (Item 1100) General.
229.1101 (Item 1101) Definitions.
229.1102 (Item 1102) Forepart of registration statement and outside cover page of the prospectus.
229.1103 (Item 1103) Transaction summary and risk factors.
229.1104 (Item 1104) Sponsors.
229.1105 (Item 1105) Depositors.
229.1106 (Item 1106) Issuing entities.
229.1107 (Item 1107) Servicers.
229.1108 (Item 1108) Trustees.
229.1109 (Item 1109) Originators.
229.1110 (Item 1110) Pool assets.
229.1111 (Item 1111) Significant obligors of pool assets.
229.1112 (Item 1112) Structure of the transaction.
229.1113 (Item 1113) Credit enhancement and other support.
229.1114 (Item 1114) Tax matters.
229.1115 (Item 1115) Legal proceedings.
229.1116 (Item 1116) Reports and additional information.
229.1117 (Item 1117) Affiliations and certain relationships and related transactions.
229.1118 (Item 1118) Ratings.
229.1119 (Item 1119) Distribution and pool performance information.
229.1120 (Item 1120) Compliance with applicable servicing criteria.
229.1121 (Item 1121) Servicer compliance statement.

Subpart 229.1100—Asset-Backed Securities (Regulation AB)

§ 229.1100 (Item 1100) General.

(a) *Application of Regulation AB.* Regulation AB (§§ 229.1100 through 229.1121) is the source of various disclosure items for ''asset-backed securities'' filings under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (the ''Securities Act'') and the Securities Exchange Act of 1934 (the ''Exchange Act'') (15 U.S.C. 78a *et seq.*). Definitions to be used in this Regulation AB are set forth in Item 1101.

(b) *Presentation of historical delinquency and loss information.* Several Items in Regulation AB call for the presentation of historical information and data on delinquencies and loss information. In providing such information:

(1) Present delinquency experience in 30-day increments, beginning with assets 30–59 days delinquent, through the point that assets are written off or charged off as uncollectable. At a minimum, present such information by number of accounts and dollar amount. Present statistical information in a tabular or graphical format, if such presentation will aid understanding.

(2) Disclose the total amount of delinquent assets as a percentage of the aggregate asset pool.

(3) Present loss information, as applicable, regarding charge-offs, charge-off rate, gross losses, recoveries and net losses (with a description of how these terms are defined), the number and amount of assets experiencing a loss and the number and amount of assets with a recovery, the ratio of aggregate net losses to average portfolio balance and the average of net loss on all assets that have experienced a net loss.

(4) Categorize all delinquency and loss information by pool asset type.

(5) Describe how delinquencies, charge-offs and uncollectable accounts are defined or determined, addressing the effect of any grace period, re-aging, restructure or other practices on delinquency experience. In a registration statement under the Securities Act or the Exchange Act or otherwise if delinquency and loss information is being presented with respect to the sponsor, also provide such information with respect to the sponsor for assets of the type securitized.

(6) Describe any other material information regarding delinquencies and losses particular to the pool asset type(s), such as repossession information, foreclosure information and real estate owned (REO) or similar information.

(c) *Presentation of certain third party financial information.*

If financial information of a third party is required in a filing by Item 1111(b) of this Regulation AB (Information regarding significant obligors) or Item 1113(b)(2) of this Regulation AB (Information regarding significant enhancement providers), such information may be provided as follows:

(1) *Incorporation by reference.* If the following conditions are met, you may incorporate by reference (by means of a statement to that effect) the reports filed by the third party (or the entity that consolidates the third party) pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)):

(i) Such third party or the entity that consolidates the third party is required to file reports with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act.

(ii) Such third party or the entity that consolidates the third party has filed all reports and other materials required to be filed by such requirements during the preceding 12 months (or such shorter period that such party was required to file such reports and materials).

(iii) The reports filed by such third party, or entity that consolidates the third party, include (or properly incorporate by reference) the financial statements of such third party or such information is consolidated into the financial statements of the entity that consolidates the third party.

(iv) The filing incorporating the information by reference describes any and all material changes to the incorporated information which have occurred subsequent to the filing of the incorporated information.

(v) If included in a prospectus or registration statement, the prospectus also states that all documents subsequently filed by such third party, or the entity that consolidates the third party, pursuant to section 13(a) or 15(d) of the Exchange Act prior to the termination of the offering also shall be deemed to be incorporated by reference into the prospectus.

Instructions to Item 1100(c)(1).

1. In addition to the conditions in paragraph (c)(1) of this section, any information incorporated by reference must comply with all applicable Commission rules pertaining to incorporation by reference, such as Item 10(d) of Regulation S–K (§ 229.10(d)), Rule 303 of Regulation S–T (§ 232.303 of this chapter), Rule 411 of Regulation C (§ 230.411 of this chapter), and Rules 12b–23 and 12b–32 under the Exchange Act (§§ 240.12b–23 and 240.12b–32 of this chapter).

2. In addition, any applicable requirements under the Securities Act or the rules and regulations of the Commission regarding the filing of a written consent for the use of incorporated material apply to the material incorporated by reference. See, for example, § 230.439 of this chapter.

3. Any undertakings set forth in Item 512 of Regulation S–K (§ 229.512) apply to any material incorporated by reference in a registration statement or prospectus.

(2) *Reference information for significant obligors.* If the third party information relates to a significant obligor and the following conditions are met, you may, rather than providing such information, include a reference to the third party's periodic reports (or the third party's parent with respect to paragraph (c)(2)(ii)(C) of this section) under section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) that are on file with the Commission (or otherwise publicly available with respect to paragraph (c)(2)(ii)(F) of this section), along with a statement of how those reports may be accessed, including the third party's name and Commission reporting number, if applicable (See, *e.g.*, Item 1116 of this Regulation AB):

(i) Neither the third party nor any of its affiliates has had a direct or indirect agreement, arrangement, relationship or understanding, written or otherwise, relating to the asset-backed securities transaction, and neither the third party nor any of its affiliates is an affiliate of the sponsor, depositor, issuing entity or underwriter of the asset-backed securities transaction.

(ii) Any of the following is true:

(A) The third party is eligible to use Form S–3 or F–3 (§§ 239.13 or 239.33 of this chapter) for a primary offering of non-investment grade securities pursuant to General Instruction I.B.1 of such forms.

(B) The third party meets the requirements of General Instruction I.A. of Form S–3 or General Instructions 1.A.1, 2, 3, 4 and 6 of Form F–3 and the pool assets relating to such third party are non-convertible investment grade securities, as described in General Instruction 1.B.2 of Form S–3 or Form F–3.

(C) If the third party does not meet the conditions of paragraphs (c)(2)(ii)(A) or (c)(2)(ii)(B) of this section and the pool assets relating to the third party are fully and unconditionally guaranteed by a direct or indirect parent of the third party, General Instruction I.C.3 of Form S–3 or General Instruction I.A.5(iii) of Form F–3 is met with respect to the pool assets relating to such third party and the requirements of Rule 3–10 of Regulation S–X (§ 210.3–10 of this chapter) are satisfied regarding the information in the reports to be referenced.

(D) If the pool assets relating to the third party are guaranteed by a wholly owned subsidiary of the third party and the subsidiary does not meet the conditions of paragraphs (c)(2)(ii)(A) or (c)(2)(ii)(B) of this section, the criteria in either paragraph (c)(2)(ii)(A) or paragraph (c)(2)(ii)(B) of this section are met with respect to the third party and the requirements of Rule 3–10 of Regulation S–X (§ 210.3–10 of this chapter) are satisfied regarding the information in the reports to be referenced.

(E) The pool assets relating to such third party are asset-backed securities and the third party is filing reports pursuant to section 12 or 15(d) of the Exchange Act (15 U.S.C. 78*l* or 78o(d)) and has filed all the material that would be required to be filed pursuant to section 13, 14 or 15(d) of the Exchange Act (15 U.S.C. 78m, 78n or 78o(d)) for a period of at least twelve calendar months and any portion of a month immediately preceding the filing referencing the third party's reports (or such shorter period that such third party was required to file such materials).

(F) The third party is a U.S. government-sponsored enterprise, has outstanding securities held by non-affiliates with an aggregate market value of $75 million or more, and makes information publicly available on an annual and quarterly basis, including audited financial statements prepared in accordance with generally accepted accounting principles covering the same periods that would be required for audited financial statements under Regulation S–X (§§ 210.1–01 through 210.12–29 of this chapter) and non-financial information consistent with that required by Regulation S–K (§§ 229.10 through 229.1121).

(iii) You include an undertaking that if such third party ceases to meet the requirements of paragraphs (c)(2)(i) and (ii) of this section, you will either provide the information required by Item 1111(b) of this Regulation AB, as applicable, relating to such third party or terminate the transaction or that portion of the transaction.

(d) *Other participants to the transaction and pool assets representing interests in certain other asset pools.*

(1) If the asset-backed securities transaction involves additional or intermediate parties not specifically identified in this Regulation AB, the disclosure required by this Regulation AB includes information to the extent material regarding any such party and its role, function and experience in relation to the asset-backed securities and the asset pool. Describe the material terms of any agreement with such party regarding the transaction, and file such agreement as an exhibit.

(2) If the asset pool backing the asset-backed securities includes one or more pool assets representing an interest in or the right to the payments or cash flows of another asset pool, then for purposes of this Regulation AB and §§ 240.13a–18 and 240.15d–18 of this chapter, references to the asset pool and the pool assets of the issuing entity also include the other asset pool and its pool assets if the following conditions are met:

(i) Both the issuing entity for the asset-backed securities and the entity issuing the pool asset to be included in the issuing entity's asset pool were established under the direction of the same sponsor or depositor.

(ii) The pool asset was created solely to satisfy legal requirements or otherwise facilitate the structuring of the asset-backed securities transaction.

Instruction to Item 1100(d)(2)

Reference to the underlying asset pool includes, without limitation, compliance with applicable servicing criteria referenced in §§ 240.13a–18 and 240.15d–18 of this chapter and the servicer compliance statement required by Item 1121 of this Regulation AB. In addition, provide clear and concise disclosure, including by flow chart or other illustration, of the transaction and the various parties involved.

(e) *Foreign asset-backed securities.* If the asset-backed securities are issued by a foreign issuer (as defined in § 230.405 of this chapter), backed by pool assets that are foreign assets, or affected by enhancement contemplated by Item 1113 of this Regulation AB provided by a foreign entity, then in providing the disclosure required by this Regulation AB (including, but not limited to, Items 1104 and 1109 of this Regulation AB regarding origination and securitization practices, Item 1106 of this Regulation AB regarding the sale or transfer of the pool assets, bankruptcy remoteness and collateral protection, Item 1107 of this Regulation AB regarding servicing, Item 1108 of this Regulation AB regarding the rights, duties and responsibilities of the trustee, Item 1110 of this Regulation AB regarding the terms, nature and treatment of the pool assets and Item 1113 of this Regulation AB regarding the enhancement provider), the filing must describe any pertinent governmental legal or regulatory or administrative matters and any pertinent tax matters, exchange controls, currency restrictions or other economic, fiscal, monetary or potential factors that could materially affect payments on the performance of, or other matters relating to, the assets contained in the pool or the asset-backed securities. See also Instruction 2 to Item 202 of Regulation S–K (§ 229.202). In addition, in a registration statement under the Securities Act, provide the information required by Item 101(g) of Regulation S–K (§ 229.101(g)). Disclosure also is required in Forms 10–D (§ 249.312 of this chapter) and 10–K (§ 249.310 of this chapter) with respect to the asset-backed securities regarding any material impact caused by foreign legal and regulatory developments during the period covered by the report which have not been previously described in a Form 10–D, 10–K or 8–K (§ 249.308 of this chapter) filed under the Exchange Act.

(f) *Filing of required exhibits.* Where agreements or other documents in this Regulation AB are specified to be filed as exhibits to a registration statement, such final agreements or other documents, if applicable, may be incorporated by reference as an exhibit to the registration statement, such as by filing a Form 8–K in the case of offerings registered on Form S–3 (§ 239.13 of this chapter).

§ 229.1101 (Item 1101) Definitions.

The following definitions apply to the terms used in Regulation AB (§§ 229.1100 through 229.1121), unless specified otherwise:

(a) *ABS informational and computational material* means a written communication consisting solely of one or some combination of the following:

(1) A brief summary of the structure of an offering of asset-backed securities that sets forth the name of the issuer, the estimated size of the offering and the proposed structure of the offering (such as the number of classes, seniority and priority and other terms of payment).

(2) Descriptive factual information regarding the pool assets underlying an offering of asset-backed securities, typically including data regarding the contractual and related characteristics of the underlying pool assets, such as weighted average coupon, weighted average maturity and other factual information regarding the type of assets comprising the pool.

(3) Static pool data, as referenced in Items 1104(e) and 1110(c) of this Regulation AB.

(4) Statistical information displaying for a particular class or classes of asset-backed securities the yield, average life, expected maturity, interest rate sensitivity, cash flow characteristics, total rate of return, option adjusted spread or other financial or statistical information relating to the class or classes under specified prepayment, interest rate, loss or other hypothetical scenarios. Examples of such information include:

(i) The statistical results of interest rate sensitivity analyses containing data regarding the impact on the yield or other financial characteristics of a class of securities resulting from changes in interest rates at one or more assumed prepayment speeds.

(ii) Statistical information showing the principal and interest cash flows that would be associated with a particular class of asset-backed securities at a specified prepayment speed.

(iii) Statistical information reflecting the financial impact of losses based on a variety of loss or default experience, prepayment, interest rate and related assumptions.

(b) *Asset-backed issuer* means an issuer whose reporting obligation results from either the registration of an offering of asset-backed securities under the Securities Act, or the registration of a class of asset-backed securities under section 12 of the Exchange Act (15 U.S.C. 78*l*).

(c)(1) *Asset-backed security* means a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders; provided that in the case of financial assets that are leases, those assets may convert to cash partially by the cash proceeds from the disposition of the physical property underlying such leases.

(2) The following additional conditions apply in order to be considered an *asset-backed security:*

(i) Neither the depositor nor the issuing entity is an investment company under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or will become an investment company as a result of the asset-backed securities transaction.

(ii) The activities of the issuing entity for the asset-backed securities are limited to passively owning or holding the pool of assets, issuing the asset-backed securities supported or serviced by those assets, and other activities reasonably incidental thereto.

(iii) No non-performing assets are part of the original asset pool at the time of issuance of the asset-backed securities.

(iv) Delinquent assets do not constitute 50% or more, as measured by dollar volume, of the original asset pool at the time of issuance of the asset-backed securities.

(v) With respect to securities that are backed by leases, the portion of the cash flow to repay the securities anticipated to come from the residual value of the physical property underlying the leases does not constitute:

(A) For automobile leases, 60% or more, as measured by dollar volume, of the original asset pool at the time of issuance of the asset-backed securities.

(B) For all other leases, 50% or more, as measured by dollar volume, of the original asset pool at the time of issuance of the asset-backed securities.

(3) Notwithstanding the requirement in paragraph (c)(1) of this section that the asset pool be a discrete pool of assets, the following are considered to be a discrete pool of assets for purposes of being considered an *asset-backed security*:

(i) *Master trusts.* The offering related to the securities contemplates adding additional assets to the pool that backs such securities in connection with

future issuances of asset-backed securities backed by such pool.

(ii) *Prefunding periods.* The offering related to the securities contemplates a prefunding account where a portion of the proceeds of that offering is to be used for the future acquisition of additional pool assets, if such prefunding account does not involve in excess of 50% of the proceeds of the offering and the duration of the prefunding period does not extend for more than one year from the initial date of issuance of securities backed by the asset pool.

(iii) *Revolving periods.* The offering related to the securities contemplates a revolving period where cash flows from the pool assets may be used to acquire additional pool assets, provided, that, for fixed receivables or other financial assets that do not revolve, the amount of additional receivables or financial assets to be acquired in the revolving period does not exceed 50% of the proceeds of the offering and the duration of the revolving period does not extend for more than one year from the initial date of issuance of securities backed by the asset pool.

(d) *Delinquent,* for purposes of determining if a pool asset is delinquent, means if any portion of a contractually required payment is 30 days or more past due. A pool asset that is more than one payment past due cannot be characterized as not delinquent if only partial payment on the total past due amount had been made unless the obligor had contractually agreed to restructure the obligation, such as part of a workout plan.

(e) *Depositor* means the depositor who receives or purchases and transfers or sells the pool assets to the issuing entity. For asset-backed securities transactions where there is not an intermediate transfer of the assets from the sponsor to the issuing entity, the term *depositor* refers to the sponsor. For asset-backed securities transactions where the person transferring or selling the pool assets is itself a trust, the *depositor* of the issuing entity is the depositor of that trust.

(f) *Issuing entity* means the trust or other entity created at the direction of the sponsor or depositor that owns or holds the pool assets and in whose name the asset-backed securities supported or serviced by the pool assets are issued.

(g) *Non-performing,* for purposes of determining if a pool asset is non-performing, means a pool asset if any of the following is true: the pool asset meets the requirements in the transaction agreements for when a pool asset should be charged-off; or the pool asset meets the charge-off policies of the sponsor. A pool asset that is more than one payment past due cannot be characterized as not non-performing if only partial payment on the total past due amount had been made unless the obligor had contractually agreed to restructure the obligation, such as part of a workout plan.

(h) *NRSRO* has the same meaning as the term ''nationally recognized statistical rating organization'' as used in § 240.15c3–1(c)(2)(vi)(F) of this chapter.

(i) *Obligor* means any person who is directly or indirectly committed by contract or other arrangement to make payments on all or part of the obligations on a pool asset.

(j) *Servicer* means any person responsible for the management or collection of the pool assets or making allocations or distributions to holders of the asset-backed securities. The term *servicer* does not include a trustee for the issuing entity or the asset-backed securities that makes allocations or distributions to holders of the asset-backed securities if the trustee receives such allocations or distributions from a servicer and the trustee does not otherwise perform the functions of a servicer.

(k) *Significant obligor* means any of the following:

(1) An obligor or a group of affiliated obligors on any pool asset or group of pool assets if such pool asset or group of pool assets represents 10% or more of the asset pool.

(2) A single property or group of related properties securing a pool asset or a group of pool assets if such pool asset or group of pool assets represents 10% or more of the asset pool.

(3) A lessee or group of affiliated lessees if the related lease or group of leases represents 10% or more of the asset pool.

Instructions to Item 1101(k)

1. Regarding paragraph (k)(3) of this section, the calculation must focus on the leases whose cash flow supports the asset-backed securities directly or indirectly (including the residual value of the physical property underlying the leases if a portion of the cash flow to repay the asset-backed securities is anticipated to come from the residual value of such property), regardless of whether the asset pool contains the leases themselves, mortgages on properties that are the subject of the leases or other assets related to the leases.

2. If separate pool assets, or properties underlying pool assets, are cross-defaulted and/or cross-collateralized, such pool assets are to be aggregated and considered together in determining concentration levels.

3. If the pool asset is a mortgage or lease relating to real estate, the pool asset is non-recourse to the obligor, and the obligor does not manage the property or does not own other assets and has no other operations, then the obligor need not be considered a separate significant obligor from the real estate. Otherwise, the obligor is a separate significant obligor.

(l) *Sponsor* means the person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity.

§ 229.1102 (Item 1102) Forepart of registration statement and outside cover page of the prospectus.

In addition to the information required by Item 501 of Regulation S–K (§ 229.501), provide the following information on the outside front cover page of the prospectus. Present information regarding multiple classes in tables if doing so will aid understanding.

(a) Identify the sponsor, the depositor and the issuing entity (if known).

(b) In identifying the title of the securities, include the series number, if applicable. If there is more than one class of securities offered, state the class designations of the securities offered.

(c) Identify the asset type(s) being securitized.

(d) Include a statement, if applicable and appropriately modified to the transaction, that the securities represent the obligations of the issuing entity only and do not represent the obligations of or interest in the sponsor, depositor or any of their affiliates.

(e) Identify the aggregate principal amount of all securities offered and the principal amount, if any, of each class of securities offered. If a class has no principal amount, disclose that fact, and, if applicable, state the notional amount, clearly identifying that the amount is a notional one. If the amounts are approximate, disclose that fact.

(f) Indicate the interest rate or specified rate of return of each class of security offered. If a class of securities does not bear interest or a specified return, disclose that fact. If the rate is based on a formula or is calculated in reference to a generally recognized interest rate index, such as a U.S. Treasury securities index, either provide the formula on the cover, or indicate that the rate is variable, indicate the index upon which the rate is based and

indicate that further disclosure of how the rate is determined is included in the transaction summary.

(g) Identify the distribution frequency, by class or series where applicable, and the first expected distribution date for the asset-backed securities.

(h) Briefly describe any credit enhancement for the transaction and identify any enhancement provider referenced in Item 1113(b) of this Regulation AB.

Instruction to Item 1102. Also see Item 1112(g)(2) of this Regulation AB regarding the title of any class of securities with an optional or mandatory redemption or termination feature that may be exercised when 25% or more of the original principal balance of the pool assets are still outstanding.

§ 229.1103 (Item 1103) Transaction summary and risk factors.

(a) *Prospectus summary.* In providing the information required by Item 503(a) of Regulation S–K (§ 229.503(a)), provide the following information in the prospectus summary, as applicable. Present information regarding multiple classes in tables if doing so will aid understanding. Consider using diagrams to illustrate the relationships among the parties, the structure of the securities offered (including, for example, the flow of funds or any subordination features) and any other material features of the transaction.

(1) Identify the participants in the transaction, including the sponsor, depositor, issuing entity, servicers and trustee, and their respective roles. Describe the roles briefly if they are not apparent from the title of the role. Identify any originator referenced in Item 1109 of this Regulation AB and any significant obligor.

(2) Briefly identify the pool assets and summarize briefly the size and material characteristics of the asset pool. Identify the cut-off date or similar date for establishing the composition of the asset pool, if applicable.

(3) State briefly the basic terms of each class of securities offered. In particular:

(i) Identify the classes offered by the prospectus and any classes issued in the same transaction or residual or equity interests in the transaction that are not being offered by the prospectus.

(ii) State the interest rate or rate of return on each class of securities offered, to the extent that the rates on any class of securities were not disclosed in full on the prospectus cover page.

(iii) State the expected final and final scheduled maturity or principal distribution dates, if applicable, of each class of securities offered.

(iv) Identify the denominations in which the securities may be issued.

(v) Identify the distribution frequency on the securities.

(vi) Summarize the flow of funds, payment priorities and allocations among the classes of securities offered, the classes of securities that are not offered, and fees and expenses, to the extent necessary to understand the payment characteristics of the classes that are offered by the prospectus.

(vii) Identify any events in the transaction agreements that can trigger liquidation or amortization of the asset pool or other performance triggers that would alter the transaction structure or the flow of funds.

(viii) Identify any optional or mandatory redemption or termination features.

(ix) Identify any credit enhancement or other support for the transaction, as referenced in Item 1113(a) of this Regulation AB, and briefly describe what protection or support is provided by the enhancement. Identify any enhancement provider referenced in Item 1113(b) of this Regulation AB. Summarize how losses not covered by credit enhancement will be allocated to the securities.

(4) Identify any outstanding series or classes of securities that are backed by the same asset pool or otherwise have claims on the pool assets. In addition, state if additional series or classes of securities may be issued that are backed by the same asset pool and briefly identify the circumstances under which those additional securities may be issued. Specify if security holder approval is necessary for such issuances and if security holders will receive notice of such issuances.

(5) Identify if the transaction will include prefunding or revolving periods. If so, indicate:

(i) The term or duration of the prefunding or revolving period.

(ii) For prefunding periods, the amount of proceeds to be deposited in the prefunding account.

(iii) For revolving periods, the maximum amount of additional assets that may be acquired during the revolving period.

(iv) The percentage of the asset pool and any class or series of the asset-backed securities represented by the prefunding account or the revolving period.

(v) Any limitation on the ability to add pool assets.

(vi) The requirements for assets that may be added to the pool.

(6) If pool assets can otherwise be added, removed or substituted (for example, in the event of a breach in representations or warranties regarding pool assets), summarize briefly the circumstances under which such actions can occur.

(7) Summarize the amount or formula for calculating the fee that the servicer will receive for performing its duties, and identify from what source those fees will be paid and the distribution priority of those fees.

(8) Summarize the federal income tax issues material to investors of each class of securities offered.

(9) Indicate whether the issuance or sale of any class of offered securities is conditioned on the assignment of a rating by one or more rating agencies. If so, identify each rating agency and the minimum rating that must be assigned.

(b) *Risk factors.* In providing the information required by Item 503(c) of Regulation S–K (§ 229.503(c)), identify any risks that may be different for investors in any offered class of asset-backed securities, and if so, identify such classes and describe such difference(s).

§ 229.1104 (Item 1104) Sponsors.

Provide the following information about the sponsor:

(a) State the sponsor's name and describe the sponsor's form of organization.

(b) Describe the general character of the sponsor's business.

(c) Describe the sponsor's securitization program and state how long the sponsor has been engaged in the securitization of assets. The description must include a general discussion of the sponsor's experience in securitizing assets of any type as well as a more detailed discussion of the sponsor's experience in and overall procedures for originating or acquiring and securitizing assets of the type included in the current transaction. Information regarding the size, composition and growth of the sponsor's portfolio of assets of the type to be securitized and information or factors related to the sponsor that may be material to an analysis of the origination or performance of the pool assets, such as whether any prior securitizations organized by the sponsor have defaulted or experienced an early amortization triggering event, should be included to the extent material.

(d) Describe the sponsor's roles and responsibilities in its securitization program, including whether the sponsor or an affiliate is responsible for originating, acquiring, pooling or servicing the pool assets, and the

sponsor's participation in structuring the transaction.

(e) *Static pool data.* To the extent material, provide delinquency and loss information, including static pool data in periodic increments (*e.g.*, monthly or quarterly) regarding the delinquency and loss experience of static pools of periodic originations or purchases by the sponsor of assets of the type to be securitized. Provide such data for originations or purchases for the past three fiscal years, or for so long as the sponsor has been making such originations or purchases if less than three years, and the most recent interim period. If material, also provide such information on a pool level basis with respect to prior securitized pools involving the same asset type established by the sponsor during this period. In addition, to the extent material, present static pool data separately according to the factors listed in Item 1110(b) and (c) of this Regulation AB, such as by asset term, asset type, yield, payment rates, geography or ranges of credit scores or other applicable measures of obligor credit quality. Selection of factors should result in disclosure of material information. Present statistical information in tabular or graphical format, such as by loss curves, if such presentation will aid understanding.

§ 229.1105 (Item 1105) Depositors.

If the depositor is not the same entity as the sponsor, provide separately the information regarding the depositor called for by paragraphs (a) and (b) and, to the extent information would be materially different, paragraph (c) of Item 1104 of this Regulation AB. In addition, provide the following information:

(a) Describe the ownership structure of the depositor.

(b) Describe the general character of any activities the depositor is engaged in other than securitizing assets and the time period during which it has been so engaged.

(c) Describe any continuing duties of the depositor after issuance of the asset-backed securities being registered regarding the asset-backed securities or the pool assets.

§ 229.1106 (Item 1106) Issuing entities.

Provide the following information about the issuing entity:

(a) State the issuing entity's name and describe the issuing entity's form of organization, including the State or other jurisdiction under whose laws the issuing entity is organized. File the issuing entity's governing documents as an exhibit.

(b) Describe the permissible activities or any restrictions on the activities of the issuing entity under its governing documents, including any restrictions on the ability to issue or invest in additional securities, to borrow money or to make loans to other persons. Describe any provisions in the issuing entity's governing documents providing for modification of the issuing entity's governing documents, including its permissible activities.

(c) Describe any specific discretionary activities with regard to the administration of the asset pool or the asset-backed securities, and identify the person or persons who will be authorized to exercise such discretion.

(d) Describe any assets owned or to be owned by the issuing entity, apart from the pool assets, as well as any liabilities of the issuing entity, apart from the asset-backed securities. Disclose the fiscal year end of the issuing entity.

(e) If the issuing entity has executive officers, a board of directors or persons performing similar functions, provide the information required by Items 401, 402 and 404 of Regulation S–K (§§ 229.401, 402 and 404) for the issuing entity.

(f) Describe the terms of any management or administration agreement regarding the issuing entity. File any such agreement as an exhibit.

(g) Describe the capitalization of the issuing entity and the amount or nature of any equity contribution to the issuing entity by the sponsor, depositor or other party.

(h) Describe the sale or transfer of the pool assets to the issuing entity as well as the creation (and perfection and priority status) of any security interest in favor of the issuing entity, the trustee, the asset-backed security holders or others, including the material terms of any agreement providing for such sale, transfer or creation of a security interest. File any such agreements as an exhibit. In addition to an appropriate narrative description, also provide this information graphically or in a flow chart if it will aid understanding.

(i) State the amount paid or to be paid for the pool assets, the principles followed or to be followed in determining such amount and identify the persons making the determination and their relationship, if any, with the issuing entity, the depositor, the sponsor, originator identified pursuant to Item 1109 of this Regulation AB, or any underwriter.

(j) If expenses incurred in connection with the selection and acquisition of the pool assets are to be payable from offering proceeds, disclose the amount of such expenses. If such expenses are to be paid to the sponsor, servicer, depositor, issuing entity, originator identified pursuant to Item 1109 of this Regulation AB, any underwriter or any affiliate of the foregoing, separately identify the type and amount of expenses paid to each such party.

(k) Describe to the extent material any provisions or arrangements included to address any one or more of the following issues:

(1) Whether any security interests granted in connection with the transaction are perfected, maintained and enforced.

(2) Whether declaration of bankruptcy, receivership or similar proceeding with respect to the issuing entity can occur.

(3) Whether in the event of a bankruptcy, receivership or similar proceeding with respect to the sponsor, originator, depositor or other seller of the pool assets, the issuing entity's assets will become part of the bankruptcy estate or subject to the bankruptcy control of a third party.

(4) Whether in the event of a bankruptcy, receivership or similar proceeding with respect to the issuing entity, the issuing entity's assets will become subject to the bankruptcy control of a third party.

(l) If applicable law prohibits the issuing entity from holding the pool assets directly (for example, an ''eligible lender'' trustee must hold student loans originated under the Federal Family Education Loan Program of the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*)), describe the arrangements instituted to hold the pool assets on behalf of the issuing entity. Include disclosure regarding the arrangements taken, as applicable, regarding the items in paragraph (k) of this section with respect to any such additional entity that holds such assets on behalf of the issuing entity.

§ 229.1107 (Item 1107) Servicers.

Provide the following information for the servicer. Where servicing of the pool assets utilizes multiple servicers, such as master servicers that oversee the actions of other servicers, primary servicers that have primary contact with the obligor, or special servicers for specific servicing functions, provide the information for the master servicer, each affiliated servicer, each unaffiliated servicer that services 10% or more of the pool assets and any other servicer that performs work-outs, foreclosures or other material aspect of the servicing of the pool assets upon which the performance of the pool assets or the asset-backed securities is materially dependent. In addition, provide clear

introductory description of the roles, responsibilities and oversight requirements of the entire servicing structure and the parties involved.

(a) *Servicer information and experience.* (1) State the servicer's name and describe the servicer's form of organization.

(2) Describe the general character of the servicer's business and state how long the servicer has been servicing assets. The description must include a general discussion of the servicer's experience in servicing assets of any type as well as a more detailed discussion of the servicer's experience in, and procedures for, servicing assets of the type included in the current transaction. Information regarding the size, composition and growth of the servicer's portfolio of serviced assets of the type to be securitized and information on factors related to the servicer that may be material to an analysis of the servicing of the pool assets, such as collection processes, billing processes, computer systems and back-up systems, should be included to the extent material.

(3) Describe any material changes to the servicer's policies or procedures in servicing assets of the same type as the pool assets during the past three years.

(4) Provide information regarding the servicer's financial condition where it could have a material impact on one or more aspects of servicing of the pool assets and where those aspects could materially impact pool performance on the asset-backed securities.

(b) *Servicing agreements and servicing practices.* (1) Describe the material terms of the servicing agreement and the servicer's duties regarding the asset-backed securities transaction. File the servicing agreement as an exhibit.

(2) Describe the manner in which collections on the pool assets will be collected and maintained, such as through a segregated collection account, and the extent of commingling of funds that occurs or may occur from the pool assets with other funds, serviced assets or other assets of the servicer.

(3) Describe to the extent material any special or unique factors involved in servicing the particular type of assets included in the asset pool, such as subprime assets, and the servicer's processes and procedures designed to address such factors.

(4) Describe the terms of any arrangements whereby the servicer is required or permitted to provide advances of funds regarding collections, cash flows or distributions, including interest or other fees charged for such advances and terms of recovery by the servicer of such advances. To the extent material, provide statistical information regarding servicer advances on the pool assets and the servicer's overall servicing portfolio for the past three years.

(5) Describe the servicer's process for handling delinquencies, losses, bankruptcies and recoveries, such as through liquidation of the underlying collateral, note sale by a special servicer or borrower negotiation or workouts.

(6) Describe any ability of the servicer to waive or modify any terms, fees, penalties or payments on the pool assets and the effect of any such ability, if material, on the potential cash flows from the pool assets.

(7) If the servicer has custodial responsibility for the pool assets, describe arrangements regarding the safekeeping and preservation of the assets, such as the physical promissory notes, and procedures to reflect the segregation of the pool assets from other serviced assets. If the servicer does not have custodial responsibility for the pool assets, disclose that fact, identify the party that has such responsibility and provide the information called for by this paragraph for such party.

(8) Describe any material minimum servicing requirements the servicer must meet not specified in Item 1120(d) of this Regulation AB.

(9) Describe any limitations on the servicer's liability regarding the asset-backed securities transaction.

(c) *Back-up servicing.* Describe the terms regarding the servicer's removal, replacement, resignation or transfer, including:

(1) Provisions for selection of a successor servicer and financial or other requirements that must be met by a successor servicer.

(2) The process for transferring servicing to a successor servicer.

(3) Provisions for payment of expenses associated with a servicing transfer and any additional fees charged by a successor servicer. Specify the amount of any funds set aside for a servicing transfer.

(4) Arrangements, if any, regarding a back-up servicer for the pool assets and the identity of any such back-up servicer.

§ 229.1108 (Item 1108) Trustees.

Provide the following information for each trustee:

(a) State the trustee's name and describe the trustee's form of organization.

(b) Describe the general character of the trustee's business and to what extent the trustee has had prior experience serving as a trustee for asset-backed securities transactions involving similar pool assets.

(c) Describe the trustee's duties and responsibilities regarding the asset-backed securities under the governing documents and under applicable law. In addition, describe any actions required by the trustee, including whether notices are required to investors, rating agencies or other third parties, upon an event of default, potential event of default (and how defined) or other breach of a transaction covenant and any required percentage of a class or classes of asset-backed securities that is needed to require the trustee to take action.

(d) Describe any limitations on the trustee's liability regarding the asset-backed securities transaction.

(e) Describe any indemnification provisions that entitle the trustee to be indemnified from the cash flow that otherwise would be used to pay the asset-backed securities.

(f) Describe any contractual provisions or understandings regarding the trustee's removal, replacement or resignation, as well as how the expenses associated with changing from one trustee to another trustee will be paid.

§ 229.1109 (Item 1109) Originators.

Provide the following information for any originator or group of affiliated originators, apart from the sponsor, that originated, or is expected to originate, 10% or more of the pool assets:

(a) The originator's name and form of organization.

(b) To the extent material, a description of the originator's origination program and how long the originator has been engaged in originating assets. The description must include a discussion of the originator's experience in originating assets of the type included in the current transaction. In providing the description, include, if material, information regarding the size and composition of the originator's origination portfolio as well as information material to an analysis of the performance of the pool assets, such as the originator's credit-granting or underwriting criteria for the asset types being securitized.

§ 229.1110 (Item 1110) Pool assets.

Describe the pool assets, including the information described in this Item 1110. Present statistical information in tabular or graphical format, if such presentation will aid understanding. Present statistical information in appropriate distributional groups or incremental ranges in addition to presenting appropriate overall pool totals, averages and weighted averages, if such presentation will aid in the understanding of the data. In addition to

presenting the number, amount and percentage of pool assets by distributional group or range, also provide statistical information for each group or range by variables such as average balance, weighted average coupon, average age and remaining term, average loan-to-value or similar ratio and weighted average credit score or other applicable measure of obligor credit quality. These variables are just examples and should be tailored to the particular asset class backing the asset-backed securities. Consider providing minimums and maximums when presenting averages on an aggregate basis and within each group or range. In addition, provide historical data on the pool assets as appropriate (*e.g.*, the lesser of three years or the time such assets have existed) to allow material evaluation of the pool data. In making any calculations regarding overall pool balances, disregard any funds set aside for a prefunding account.

(a) *General formation regarding pool asset types and selection criteria.* Provide the following information:

(1) A brief description of the type or types of pool assets to be securitized.

(2) A general description of the material terms of the pool assets.

(3) A description of the solicitation, credit-granting or underwriting criteria used to originate or purchase the pool assets, including, to the extent known, any changes in such criteria and the extent to which such policies and criteria are or could be overridden.

(4) The method and criteria by which the pool assets were selected for the transaction.

(5) The cut-off date or similar date for establishing the composition of the asset pool, if applicable.

(6) If legal or regulatory provisions (such as bankruptcy, consumer protection, predatory lending, privacy, property rights or foreclosure laws or regulations) may materially affect pool asset performance or payments or expected payments on the asset-backed securities, briefly identify these provisions and their effects on such items.

Instruction to Item 1110(a)(6). Unless a material concentration of assets exists, it is not necessary to provide details of the laws in each jurisdiction apart from the material potential effects of these laws. A legalistic description or recitation of the laws or regulations in a particular jurisdiction is not required.

(b) *Pool characteristics.* Describe the material characteristics of the asset pool. Provide appropriate introductory and explanatory information to introduce the characteristics and any terms or abbreviations used. While the material characteristics will vary depending on the nature of the pool assets, examples of material characteristics that may be common for many asset types include:

(1) Number of each type of pool assets.

(2) Asset size, such as original balance and outstanding balance as of a designated cut-off date.

(3) Interest rate or rate of return, including type of interest rate if the pool includes different types, such as fixed and floating rates, and annual percentage rate.

(4) Capitalized or uncapitalized accrued interest.

(5) Age, maturity, remaining term, average life (based on different prepayment assumptions), current payment/prepayment speeds and pool factors, as applicable.

(6) Servicer, if different servicers service different pool assets.

(7) If a loan or similar receivable:

(i) Amortization period.

(ii) Loan purpose (*e.g.*, whether a purchase or refinance) and status, if applicable (*e.g.*, repayment or deferment).

(iii) Loan-to-value (LTV) ratios and debt service coverage ratios (DSCR), as applicable.

(iv) Type and/or use of underlying property, product or collateral (*e.g.*, occupancy type for residential mortgages or industry sector for commercial mortgages).

(v) Number of points or other origination charges paid on the pool assets.

(8) If a receivable or other financial asset with a revolving balance, such as a credit card receivable:

(i) Monthly payment rate.

(ii) Maximum credit lines.

(iii) Average account balance.

(iv) Yield percentages.

(v) Type of receivable account.

(vi) Finance charges, fees and other income earned.

(vii) Gross and net purchases and returns granted.

(viii) Percentage of full-balance and minimum payments made.

(9) If the asset pool includes commercial mortgages, the following information, to the extent material:

(i) Net cash flow information that will be generated from the pool assets and the components of net cash flow.

(ii) The location and general character of all materially important real properties underlying the pool assets, including information as to the present or proposed use of and insurance for such properties.

(iii) The nature and amount of all other material mortgages, liens or encumbrances against such properties and their priority.

(iv) Any proposed program for the renovation, improvement or development of such properties, including the estimated cost thereof and the method of financing to be used.

(v) The general competitive conditions to which such properties are or may be subject.

(vi) Management of such properties.

(vii) Occupancy rate expressed as a percentage for each of the last five years.

(viii) Principal business, occupations and professions carried on in, or from the building.

(ix) Number of tenants occupying 10% or more of the total rentable square footage of such properties and principal nature of business of such tenant, and the principal provisions of the leases with those tenants including, but not limited to: rental per annum, expiration date, and renewal options.

(x) The average effective annual rental per square foot or unit for each of the last three years prior to the date of filing.

(xi) Schedule of the lease expirations for each of the ten years starting with the year in which the registration statement is filed, stating:

(A) The number of tenants whose leases will expire.

(B) The total area in square feet covered by such leases.

(C) The annual rental represented by such leases.

(D) The percentage of gross annual rental represented by such leases.

Instruction to Item 1110(b)(9). What is required is information material to an investor's understanding of the asset-backed securities. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required.

(10) Whether the pool asset is secured or unsecured, and if secured, the type(s) of collateral.

(11) Ranges of standardized credit scores of obligors and other information regarding obligor credit quality.

(12) Billing and payment procedures, including frequency of payment, payment options, fees, charges and origination or payment incentives.

(13) Information about the origination channel and origination process for the pool assets, such as originator information (and how acquired) and the level of origination documentation required, as applicable.

(14) Geographic distribution, such as by state or other material geographic region. If 10% or more of the pool assets are or will be located in any one state or other geographic region, provide the following information:

(i) Any economic or other factors specific to such state or region that may

materially impact the pool assets or pool asset cash flows.

(ii) If material, statistical data referred to in this Item 1110(b) for each such geographic concentration.

Instruction to Item 1110(b)(14). For most assets, such as credit card accounts, automobile leases, trade receivables and student loans, the location of the asset is the underlying obligor's billing address. For assets involving real estate, such as mortgages, the location of the asset is where the physical property underlying the asset is located.

(15) Other concentrations material to the asset type (*e.g.*, school type for student loans). If material, provide information required by paragraph (b)(14) of this section regarding such concentrations, as applicable.

(c) *Delinquency and loss information.* Provide delinquency and loss information for the asset pool, including statistical information regarding delinquencies and losses. Also, present delinquency and loss data to the extent material about the asset pool on a static pool basis, such as by discrete origination periods (*e.g.*, monthly or quarterly) or other factors listed in paragraph (b) of this section, such as by asset term, asset type, yield, payment rates, geography or ranges of credit scores or other applicable measures of obligor credit quality. Selection of factors should result in disclosure of material information. Present statistical information in tabular or graphical format, such as by loss curves, if such presentation will aid understanding.

(d) *Sources of pool cash flow.* If the cash flows from the pool assets that are to be used to support the asset-backed securities are to come from more than one source (such as separate cash flows from lease payments and from the sale of the residual asset at the termination of the lease), provide the following information:

(1) Disclose the specific sources of funds that will be used to make the payments and distributions on the asset-backed securities, and, if applicable, provide information on the relative amount and percentage of funds that are to be derived from each source, including a description of any assumptions, data, models and methodology used to derive such amounts. If payments on different classes or different categories of payments on or related to the asset-backed securities (*e.g.*, principal, interest or expenses) are to come from different or segregated cash flows from the pool assets or other sources, disclose the source of funds that will be used for such payments.

(2) *Residual value information.* If the asset pool includes leases or other assets where a portion of the cash flow is anticipated to come from the residual value of an underlying physical asset, disclose the following:

(i) How the residual values used to structure the transaction were estimated, including an explanation of any material discount rates, models or assumptions used and who selected such rates, models or assumptions.

(ii) Any material procedures or requirements incorporated to preserve residual values during the term of the lease, such as lessee responsibilities, prohibitions on subletting, indemnification or required insurance or guarantees.

(iii) The procedures by which the residual values will be realized and by whom those procedures will be carried out, including information on the experience of such party, any affiliations with a party described in Item 1117(a) of this Regulation AB and the compensation arrangements with such party.

(iv) Whether the pool assets are open-end leases (*e.g.*, where the lessee is required to cover the shortfall between the residual value of the leased property and the sale proceeds) or closed-end leases (*e.g.*, where the lessor is responsible for such shortfalls), and where both types of leases are included in the asset pool, the percentage of each.

(v) Any lessor obligations that are required under the leases, and the effect or potential effect on the asset-backed securities from failure by the lessor to perform its obligations.

(vi) Statistical information regarding estimated residual values for the pool assets.

(vii) Summary historical statistics on turn-in rates, if applicable, and residual value realization rates by the party responsible for such process over the past three years, or such longer period as is material to an evaluation of the pool assets.

(viii) The effect on security holders if not enough cash flow is received from the realization of the residual values, whether there are any provisions to address this contingency, and how any cash flow greater than that necessary to pay security holders will be allocated.

(e) *Representations and warranties and repurchase obligations regarding pool assets.* Summarize any representations and warranties made concerning the pool assets by the sponsor, transferor, originator or other party to the transaction, and describe briefly the remedies available if those representations and warranties are breached, such as repurchase obligations.

(f) *Claims on pool assets.* Describe any material direct or contingent claim that parties other than the holders of the asset-backed securities have on any pool assets. Also, describe any material cross-collateralization or cross-default provisions relating to the pool assets.

(g) *Revolving periods, prefunding accounts and other changes to the asset pool.* If the transaction contemplates a prefunding or revolving period, provide the following information. Provide similar information regarding any other circumstances where pool assets may be added, substituted or removed from the asset pool, such as in the event of additional issuances of asset-backed securities in a master trust:

(1) The term or duration of any prefunding or revolving period.

(2) For prefunding periods, the amount of proceeds to be deposited in the prefunding account.

(3) For revolving periods, the maximum amount of additional assets that may be acquired during the revolving period.

(4) The percentage of the asset pool and any class or series of the asset-backed securities represented by the prefunding account or the revolving account.

(5) Triggers or events that would trigger limits on or terminate the prefunding or revolving period and the effects of such triggers. In particular for a revolving period, describe the operation of the revolving period and the amortization period.

(6) When and how new pool assets may be acquired during the prefunding or revolving period, and if, when and how pool assets can be removed or substituted. Describe any limits on the amount, type or speed with which pool assets may be acquired, substituted or removed.

(7) The acquisition or underwriting criteria for additional pool assets to be acquired during the prefunding or revolving period, including a description of any differences from the criteria used to select the current asset pool.

(8) Which party has the authority to add, remove or substitute assets from the asset pool or determine if such pool assets meet the acquisition or underwriting criteria for additional pool assets. In addition, disclose if there will be any independent verification of such person's exercise of authority or determinations.

(9) Any requirements to add or remove minimum amounts of pool assets and any effects of not meeting those requirements.

(10) If applicable, the procedures and standards for the temporary investment of funds in a prefunding or revolving account pending use (including the disposition of gains and losses on pending funds) and a description of the financial products or instruments eligible for such accounts.

(11) The circumstances under which funds in a prefunding or revolving account will be returned to investors or otherwise disposed of.

(12) A statement of how investors will be notified of changes to the asset pool.

§ 229.1111 (Item 1111) Significant obligors of pool assets.

(a) *Descriptive information.* Provide the following information for each significant obligor:

(1) The name of the obligor.

(2) The organizational form and general character of the business of the obligor.

(3) The nature of the concentration of the pool assets with the obligor.

(4) The material terms of the pool assets or the agreements with the obligor involving the pool assets.

(b) *Financial information.* (1) If the pool assets relating to a significant obligor represent 10% or more, but less than 20%, of the asset pool, provide selected financial data required by Item 301 of Regulation S–K (§ 229.301) for the significant obligor.

(2) If pool assets relating to a significant obligor represent 20% or more of the asset pool, provide financial statements meeting the requirements of Regulation S–X (§§ 210.1–01 through 210.12–29 of this chapter), except § 210.3–05 of this chapter and Article 11 of Regulation S–X (§§ 210.11–01 through 210.11–03 of this chapter), of the significant obligor. Financial statements of such obligor and its subsidiaries consolidated (as required by § 240.14a–3(b) of this chapter) shall be filed under this item.

Instructions to Item 1111(b).

1. No information need be provided pursuant to paragraph (b) of this section if the obligations of the significant obligor as they relate to the pool assets are backed by the full faith and credit of the United States.

2. No information need be provided pursuant to paragraph (b) of this section if the obligations of the significant obligor as they relate to the pool assets are backed by the full faith and credit of a foreign government (as defined in § 240.3b–4(a) of this chapter) if the pool assets are investment grade securities as defined in Item I.B.2 of Form S–3 (§ 239.13 of this chapter). If the pool assets are not investment grade securities, information required by paragraph (5) of Schedule B of the Securities Act (15 U.S.C. 77aa) regarding the foreign government may be incorporated by reference in lieu of providing the financial information required pursuant to paragraph (b) of this section.

3. If the significant obligor is an asset-backed issuer and the pool assets relating to the significant obligor are asset-backed securities, provide the information required by Items 1104 through 1113 and Item 1117 of this Regulation AB regarding such asset-backed securities in lieu of the information required by paragraph (b) of this section.

§ 229.1112 (Item 1112) Structure of the transaction.

(a) *Description of the securities and transaction structure.* In providing the information required by Item 202 of Regulation S–K (§ 229.202), address the following specific factors relating to the asset-backed securities, as applicable:

(1) The types or categories of securities that may be offered, such as interest-weighted or principal-weighted classes (including IO (interest only) or PO (principal only) securities), planned amortization or companion classes or residual or subordinated interests.

(2) The flow of funds for the transaction, including the payment allocations, rights and distribution priorities among all classes of the issuing entity's securities, and within each class, with respect to cash flows, credit enhancement or other support and any other structural features designed to enhance credit, facilitate the timely payment of monies due on the pool assets or owing to security holders, adjust the rate of return on the asset-backed securities, or preserve monies that will or might be distributed to security holders. In addition to an appropriate narrative discussion of the allocation and priority structure of pool cash flows, present the flow of funds graphically if doing so will aid understanding. In the flow of funds discussion, provide information regarding any requirements directing cash flows from the pool assets (such as to reserve accounts, cash collateral accounts or expenses) and the purpose and operation of such requirements.

(3) In describing the interest rate or rate of return on the asset-backed securities and how such amounts are payable, explain how the rate is determined and how frequently it will be determined. If the rate to be paid can be a combination of two or more rates (such as the lesser of a variable rate or the actual weighted average net coupon on the pool assets), provide sufficiently clear information regarding each rate and when each rate applies.

(4) How principal, if any, will be paid on the asset-backed securities, including maturity dates, amortization or principal distribution schedules, principal distribution dates, formulas for calculating principal distributions from the cash flows and other factors that will affect the timing or amount of principal payments for each class of securities.

(5) The denominations in which the asset-backed securities may be issued.

(6) Any specified changes to the transaction structure that would be triggered upon a default or event of default (such as a change in distribution priority among classes).

(7) Any liquidation, amortization, performance or similar triggers or events, and the rights of investors or changes to the transaction structure or flow of funds if such events were to occur.

(8) Whether the servicer or other party is required to provide periodic evidence of the absence of a default or of compliance with the terms of the transaction agreements.

(9) If applicable, the extent, expressed as a percentage, the transaction is overcollateralized or undercollateralized as measured by comparing the principal balance of the asset-backed securities to the original asset pool.

(10) Any provisions contained in other securities that could result in a cross-default or cross-collateralization.

(11) Any minimum standards, restrictions or suitability requirements regarding potential investors in purchasing the securities or any restrictions on ownership or transfer of the securities.

(12) Security holder vote required to amend the transaction documents and allocation of voting rights among security holders.

(b) *Distribution frequency and cash maintenance.* (1) Disclose the frequency of distribution dates for the asset-backed securities and the collection periods for the pool assets.

(2) Describe how cash held pending distribution or other uses is held and invested. Also describe the length of time cash will be held pending distributions to security holders. Identify the party or parties with access to cash balances and the authority to invest cash balances. Specify who determines any decisions regarding the deposit, transfer or disbursement of pool asset cash flows and whether there will be any independent verification of the transaction accounts or account activity.

(c) *Fees and expenses.* Provide in a separate table an itemized list of all fees

and expenses to be paid or payable out of the cash flows from the pool assets. In itemizing the fees and expenses, also indicate their general purpose, the party receiving such fees or expenses, the source of funds for such fees or expenses (if different from other fees or expenses or if such fees or expenses are to be paid from a specified portion of the cash flows) and the distribution priority of such expenses. If the amount of such fees or expenses is not fixed, provide the formula used to determine such fees or expenses. The tabular presentation may be accompanied by footnotes or other accompanying narrative disclosure to the extent necessary for an understanding of the timing or amount of such fees or expenses. In addition, through footnote or other accompanying narrative disclosure, describe if any, and if so how, such fees or expenses can be changed without notice to, or approval by, security holders.

(d) *Excess cash flow.* (1) Disclose who owns any residual or retained interests to the cash flows and the disposition of excess cash flow.

(2) Disclose any requirements in the transaction agreements to maintain a minimum amount of excess cash flow or spread from, or retained interest in, the transaction and any actions that would be required or changes to the transaction structure that would occur if such requirements were not met.

(3) To the extent material to an understanding of the asset-backed securities, disclose any features or arrangements to facilitate a securitization of the excess cash flow or retained interest from the transaction, including whether any material changes to the transaction structure may be made without the consent of asset-backed security holders in connection with these securitizations.

(e) *Master trusts.* If one or more additional series or classes have been or may be issued by the issuing entity that are backed by the same asset pool, provide information regarding the additional securities to the extent material to an understanding of their effect on the securities being offered, including the following:

(1) Relative priority of such additional securities to the securities being offered and rights to the underlying pool assets and their cash flows.

(2) Allocation of cash flow from the asset pool and any expenses or losses among the various series or classes.

(3) Terms under which such additional series or classes may be issued and pool assets increased or changed.

(4) The terms of any security holder approval or notification of such additional securities.

(f) *Optional or mandatory redemption or termination.* (1) If any class of the asset-backed securities includes an optional or mandatory redemption or termination feature, provide the following information:

(i) Terms for triggering the redemption or termination.

(ii) The source of funds and amount of the redemption or repurchase price or formula for determining such amount.

(iii) The procedures for redemption or termination, including any notices to security holders.

(iv) If the amount allocated to security holders is reduced by losses, the policy regarding any amounts recovered after redemption or termination.

(2) The title of any class of securities with an optional or mandatory redemption or termination feature that may be exercised when 25% or more of the original principal balance of the pool assets is still outstanding must include the word ''callable.''

(g) *Prepayment, maturity and yield considerations.* (1) Describe any models, including the related material assumptions and limitations, used as a means to identify cash flow patterns with respect to the pool assets.

(2) Describe to the extent material the degree to which each class of securities is sensitive to changes in the rate of payment on the pool assets (*e.g.*, prepayment or interest rate sensitivity), and describe the specific consequences of such changing rate of payment. Provide statistical information of such effects, such as the effect of prepayments on yield and weighted average life.

(3) Describe any special allocations of prepayment risks among the classes of securities, and whether any class protects other classes from the effects of the uncertain timing of cash flow.

§ 229.1113 (Item 1113) Credit enhancement and other support.

(a) *Descriptive information.* To the extent material, describe the following, including a clear discussion of the manner in which each potential item is designed to affect or ensure timely payment of the asset-backed securities:

(1) Any external credit enhancement designed to ensure that the asset-backed securities or pool assets will pay in accordance with their terms, such as bond insurance, letters of credit or guarantees.

(2) Any mechanisms to ensure that payments on the asset-backed securities are timely, such as liquidity facilities, lending facilities, guaranteed investment contracts and minimum principal payment agreements.

(3) Any derivatives that are used to reduce or alter risk resulting from financial assets in the asset pool and that provide payments in return for payments on such assets, such as interest rate or currency swaps, or that are used to provide credit enhancement related to assets in the pool.

(4) Any internal credit enhancement as a result of the structure of the transaction that increases the likelihood that payments will be made on one or more classes of the asset-backed securities in accordance with their terms, such as subordination provisions, overcollateralization, reserve accounts, cash collateral accounts or spread accounts.

Instruction to Item 1113(a). Include a description of the material terms of any enhancement described, including any limits on the timing or amount of the enhancement or any conditions that must be met before the enhancement can be accessed. Any agreement is to be filed as an exhibit. Also describe any provisions permitting the substitution of enhancement.

(b) *Information regarding significant enhancement providers.*

(1) *Descriptive information.* If an entity or group of affiliated entities providing enhancement or other support for the asset-backed securities is liable or contingently liable to provide payments representing 10% or more of the cash flow supporting any offered class of asset-backed securities, provide the following information:

(i) The name of such enhancement provider.

(ii) The organizational form of enhancement provider.

(iii) The general character of the business of such enhancement provider.

(2) *Financial information.* (i) If any entity or group of affiliated entities providing enhancement or other support for the asset-backed securities is liable or contingently liable to provide payments representing 10% or more, but less than 20%, of the cash flow supporting any class of the asset-backed securities, provide financial data required by Item 301 of Regulation S–K (§ 229.301) for such entity or group of affiliated entities.

(ii) If any entity or group of affiliated entities providing enhancement or other support for the asset-backed securities is liable or contingently liable to provide payments representing 20% or more of the cash flow supporting any class of the asset-backed securities, provide financial statements meeting the requirements of Regulation S–X (§§ 210.1–01 through 210.12–29 of this

chapter), except § 210.3–05 of this chapter and Article 11 of Regulation S–X (§§ 210.11–01 through 210.11–03 of this chapter), of each such entity or group of affiliated entities. Financial statements of such enhancement provider and its subsidiaries consolidated (as required by § 240.14a–3(b) of this chapter) shall be filed under this item.

Instructions to Item 1113.

1. The requirements in paragraph (b) of this section apply to all providers of external credit or liquidity enhancement, insurance or guarantees, counterparties to swap or hedging arrangements, interest rate exchange arrangements, interest rate cap or floor arrangements, currency exchange arrangements or similar arrangements, and any other parties providing external credit enhancement or other support for payments on the asset-backed securities. Enhancement may support payment on the pool assets or payments on the asset-backed securities themselves.

2. No information need be provided pursuant to paragraph (b)(2) of this section if the obligations of the enhancement provider are backed by the full faith and credit of the United States.

3. No information need be provided pursuant to paragraph (b)(2) of this section if the obligations of the enhancement provider are backed by the full faith and credit of a foreign government (as defined in § 240.3b–4(a) of this chapter) if the enhancement provider has an investment grade credit rating, as the term investment grade is used in Item I.B.2 of Form S–3 (§ 239.13 of this chapter). If the enhancement provider does not have an investment grade credit rating, information required by paragraph (5) of Schedule B of the Securities Act (15 U.S.C. 77aa) regarding the foreign government may be incorporated by reference in lieu of providing the financial information required pursuant to paragraph (b)(2) of this section.

§ 229.1114 (Item 1114) Tax matters.

Provide a brief, clear and understandable summary of:

(a) The tax treatment of the asset-backed securities transaction under federal income tax laws.

(b) The material federal income tax consequences of purchasing, owning and selling the asset-backed securities. If any of the material federal income tax consequences are not expected to be the same for investors in all classes offered by the registration statement, describe the material differences.

(c) The substance of counsel's tax opinion, including identification of the material consequences upon which counsel has not been asked, or is unable, to opine.

§ 229.1115 (Item 1115) Legal proceedings.

Describe briefly any legal proceedings pending or known to be threatened against the sponsor, depositor, trustee, issuing entity, servicer, enhancement provider, originator identified pursuant to Item 1109 of this Regulation AB, or other party identified pursuant to Item 1100(d)(1) of this Regulation AB, or of which any property of the foregoing is the subject, that is material to security holders. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

§ 229.1116 (Item 1116) Reports and additional information.

(a) *Reports required under the transaction documents.* Describe the reports or other documents to security holders required under the transaction agreements, including information included, schedule and manner of distribution or other availability, and the entity or entities that will prepare and provide the reports.

(b) *Reports to be filed with the Commission.* (1) Specify the names, and if available, the Commission file numbers of the entity or entities that will be filing reports with the Securities and Exchange Commission. Identify the reports and other information filed with the Commission.

(2) State that the public may read and copy any materials filed with the Commission at the Commission's Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the Securities and Exchange Commission at 1–800–SEC–0330. State that the Commission maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the Commission and state the address of that site (*http://www.sec.gov*).

(c) *Web site access to Commission reports.* (1) State whether the issuing entity's annual reports on Form 10–K (§ 249.310 of this chapter), distribution reports on Form 10–D (§ 249.312 of this chapter), current reports on Form 8–K (§ 249.308 of this chapter), and amendments to those reports filed or furnished pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) will be made available on the Web site of a specified transaction party (*e.g.*, the sponsor, depositor, servicer, issuing entity or trustee) as soon as reasonably practicable after such material is electronically filed with, or furnished to, the Commission.

(2) Disclose whether other reports to security holders or information about the asset-backed securities will be made available in this manner.

(3) If filings will be made available in this manner, disclose the Web site address where such filings may be found.

(4) If filings and other reports will not be made available in this manner, describe the reasons why they will not and whether an identified transaction party voluntarily will provide electronic or paper copies of those filings free of charge upon request.

§ 229.1117 (Item 1117) Affiliations and certain relationships and related transactions.

(a) Describe if so, and how, the sponsor, depositor or issuing entity is an affiliate (as defined in § 240.405 of this chapter) of any of the following parties as well as, to the extent material, if so, and how, any of the following parties are affiliates of any of the other following parties:

(1) Servicer.

(2) Trustee.

(3) Originator identified pursuant to Item 1109 of this Regulation AB.

(4) Significant obligor identified pursuant to Item 1111 of this Regulation AB.

(5) Enhancement provider identified pursuant to Item 1113 of this Regulation AB.

(6) Underwriter or promoter for the asset-backed securities.

(7) Any other material parties related to the asset-backed securities described in Item 1101(d)(1) of this Regulation AB.

(b) Describe whether there is, and if so the general character of, any business relationship, agreement, arrangement, transaction or understanding that is entered into outside the ordinary course of business or is on terms other than would be obtained in an arm's length transaction with an unrelated third party, apart from the asset-backed securities transaction, between the sponsor, depositor or issuing entity and any of the parties in paragraphs (a)(1) through (a)(7) of this section, or any affiliates of such parties, that currently exists or that existed during the past two years and that is material to an investor's understanding of the asset-backed securities.

Instruction to Item 1117(b). What is required is information material to an investor's understanding of the asset-backed securities. A detailed description or itemized listing of all commercial relationships among the

parties is not required. Instead, the disclosure should indicate whether any relationships outside of the asset-backed securities transaction do exist that are outside the normal course and the general character of those relationships. Disclosure of specific relationships involving or relating to the asset-backed securities transaction and the pool assets, including the material terms and approximate dollar amount involved, is required to the extent material. For example, regarding relationships with an underwriter or promoter for the asset-backed securities, material credit arrangements relating to the pool assets, such as providing a warehouse line of credit to fund originations or acquisitions pending securitizations, are to be described.

§ 229.1118 (Item 1118) Ratings.

Disclose whether the issuance or sale of any class of offered securities is conditioned on the assignment of a rating by one or more rating agencies, whether or not NRSROs. If so, identify each rating agency and the minimum rating that must be assigned. Describe any arrangements to have such rating monitored while the asset-backed securities are outstanding.

§ 229.1119 (Item 1119) Distribution and pool performance information.

Describe the distribution for the related distribution period and the performance of the asset pool during the distribution period. Provide appropriate introductory and explanatory information to introduce any material terms, parties or abbreviations used. Present statistical information in tabular or graphical format, if such presentation will aid understanding. While the material information regarding the related distribution and pool performance will vary depending on the nature of the transaction, examples of material characteristics that may be common for many asset-backed securities transactions include:

(a) Any applicable record dates, accrual dates, determination dates for calculating distributions and actual distribution dates for the distribution period.

(b) Cash flows received and the sources thereof for distributions, fees and expenses (including portfolio yield, if applicable).

(c) Calculated amounts and distribution of the flow of funds for the period itemized by type and priority of payment, including:

(1) Fees or expenses accrued and paid, with an identification of the general purpose of such fees and the party receiving such fees or expenses.

(2) Payments accrued or paid with respect to enhancement or other support identified in Item 1113 of this Regulation AB (such as for outgoing swap payments, insurance premiums or other enhancement maintenance fees), with an identification of the general purpose of such payments and the party receiving such payments.

(3) Principal, interest and other distributions accrued and paid on the asset-backed securities by type and by class or series and any principal or interest shortfalls or carryovers.

(4) The amount of excess cash flow or excess spread and the disposition of excess cash flow.

(d) Beginning and ending principal balances of the asset backed securities.

(e) Interest rates applicable to the pool assets and the asset-backed securities, if variable.

(f) Beginning and ending balances of transaction accounts, such as reserve accounts, and account activity during the period.

(g) Any amounts drawn on any credit enhancement or other support identified in Item 1113 of this Regulation AB, the purpose, method of calculation and use of such draws, and the amount of coverage remaining under any such enhancement.

(h) Number and amount of pool assets at the beginning and ending of each period, and updated pool composition information, such as weighted average coupon, weighted average life, weighted average remaining term, pool factors, prepayment amounts, current payment/prepayment speeds and other prepayment or interest rate sensitivity information. For asset-backed securities backed by leases where a portion of the cash flow to repay the asset-backed securities is anticipated to come from the residual value of the physical property underlying the leases, this information also would include turn-in rates and residual value realization rates.

(i) Delinquency and loss information for the period (See, *e.g.*, Items 1100(b) and 1110(c) of this Regulation AB).

(j) Information on the amount, terms and purpose of any advances made or reimbursed during the period, including the use of funds advanced and the source of funds for reimbursements.

(k) Any material modifications, extensions or waivers to pool asset terms, fees, penalties or payments.

(l) Breaches of material pool asset representations or warranties or transaction covenants.

(m) Information on ratio, coverage or other tests used for determining any early amortization, liquidation or other performance trigger and whether the trigger was met.

(n) Information regarding any new issuance of asset-backed securities backed by the same asset pool, any pool asset additions, removals, substitutions and repurchases (and purchase rates, if applicable), such as through a prefunding or revolving period, and cash flows available for future purchases, such as the balances of any prefunding or revolving accounts, including:

(1) Any material changes in the solicitation, credit-granting, underwriting, origination, acquisition or pool selection procedures, as applicable, used to originate, acquire or select the new pool assets.

(2) If the addition, removal or substitution of pool assets has materially changed the composition of the asset pool taken as a whole, provide the information required by Items 1104, 1107, 1109, 1110 and 1111 of this Regulation AB applied taking the revised pool composition into account. However, no disclosure need be provided by this paragraph if substantially the same information was provided in an effective registration statement under the Securities Act or a prospectus timely filed pursuant to § 230.424 of this chapter under the same Central Index Key (CIK) code regarding a subsequent issuance of asset-backed securities backed by a pool of assets that includes the pool assets that are the subject of this paragraph.

§ 229.1120 (Item 1120) Compliance with applicable servicing criteria.

(a) *Report on compliance with servicing criteria.* Provide as an exhibit to the filing a report of the responsible party, as defined in §§ 240.13a–18 or 240.15d–18 of this chapter, on compliance with the servicing criteria set forth in paragraph (d) of this section that contains the following:

(1) A statement of the responsible party's responsibility for assessing compliance with the servicing criteria;

(2) A statement that the responsible party used the criteria in paragraph (d) of this section to assess compliance with the servicing criteria;

(3) The responsible party's assessment of compliance with the servicing criteria. This discussion must include disclosure of any material instance of noncompliance identified by the responsible party; and

(4) A statement that a registered public accounting firm has issued an attestation report on the responsible party's assessment of compliance with the servicing criteria in accordance with paragraph (d) of Rule 13a–18 or Rule

15d–18 under the Exchange Act (§§ 240.13a–18 or 240.15d–18 of this chapter).

(b) *Attestation report of the registered public accounting firm.* Provide the registered public accounting firm's attestation report required by paragraph (d) of Rule 13a–18 or Rule 15d–18 under the Exchange Act on the responsible party's assessment of compliance with the servicing criteria as an exhibit to the asset-backed issuer's report on Form 10–K containing the disclosure required by this item.

(c) *Additional disclosure for the Form 10–K report.* If the responsible party's report on compliance with servicing criteria required by paragraph (a) of this section identifies any material instance of noncompliance with the servicing criteria, describe in the report on Form 10–K any material impacts or effects that have affected or that may reasonably be likely to affect pool asset performance, servicing of the pool assets or payments or expected payments on the asset-backed securities.

(d) *Servicing criteria.*—(1) *General servicing considerations.*

(i) Policies and procedures are instituted to monitor any performance or other triggers and events of default in accordance with the transaction agreements.

(ii) If any material servicing activities are outsourced to third parties, policies and procedures are instituted to monitor the third party's performance and compliance with such servicing activities.

(iii) Any requirements in the transaction agreements to maintain a back-up servicer for the pool assets are maintained.

(iv) A fidelity bond and errors and omissions policy is in effect on the servicer throughout the reporting period in the amount of coverage required by and otherwise in accordance with the terms of the transaction agreements.

(2) *Cash collection and administration.*

(i) Payments on pool assets are deposited into the appropriate custodial bank accounts and related bank clearing accounts no more than two business days of receipt.

(ii) Disbursements made via wire transfer on behalf of an obligor or investor are made only by authorized personnel.

(iii) Advances of funds or guarantees regarding collections, cash flows or distributions, and any interest or other fees charged for such advances, are made, reviewed and approved as specified in the transaction agreements.

(iv) The related accounts for the transaction, such as cash reserve accounts or accounts established as a form of overcollateralization, are separately maintained (*e.g.*, with respect to commingling of cash) as set forth in the transaction agreements.

(v) Each custodial account is maintained at a federally insured depository institution as set forth in the transaction agreements. For purposes of this criterion, ''federally insured'' with respect to a foreign financial institution would mean that the laws or regulations of the foreign financial institution's home jurisdiction require the institution to insure its deposits.

(vi) Unissued checks are safeguarded so as to prevent unauthorized access.

(vii) Reconciliations are prepared on a monthly basis for all asset-backed securities related bank accounts, including custodial accounts and related bank clearing accounts. These reconciliations:

(A) Are mathematically accurate;

(B) Are prepared within 30 calendar days after the bank statement cutoff date;

(C) Are reviewed and approved by someone other than the person who prepared the reconciliation; and

(D) Contain explanations for reconciling items. These reconciling items are resolved within 90 calendar days of their original identification.

(3) *Investor remittances and reporting.*

(i) Reports to investors, including those to be filed with the Commission, are maintained in accordance with the transaction agreements and applicable Commission requirements. Specifically, such reports are:

(A) Prepared in accordance with timeframes and other terms set forth in the transaction agreements;

(B) Provide information calculated in accordance with the terms specified in the transaction agreements;

(C) Filed with the Commission as required by its rules and regulations; and

(D) Agree with investors' and/or the trustee's records as to the total unpaid principal balance and number of pool assets serviced by the servicer.

(ii) Amounts due to investors are allocated and remitted in accordance with timeframes, distribution priority and other terms set forth in the transaction agreements.

(iii) Disbursements made to an investor are posted within two business days to the investor's records maintained by the servicer.

(iv) Amounts remitted to investors per the investor reports agree with cancelled checks, or other form of payment, or custodial bank statements.

(4) *Pool asset administration.*

(i) Collateral or security on pool assets is maintained as required by the transaction agreements or related pool asset documents.

(ii) Pool assets and related documents are safeguarded as required by the transaction agreements.

(iii) Any additions, removals or substitutions to the asset pool are made, reviewed and approved in accordance with any conditions or requirements in the transaction agreements.

(iv) Payments on pool assets, including any payoffs, made in accordance with the related pool asset documents are posted to the applicable obligor's records no more than two business days after receipt and allocated to principal, interest or other items (*e.g.*, escrow) in accordance with the related pool asset documents.

(v) The servicer's records regarding the pool assets agree with the obligor's records with respect to the unpaid principal balance.

(vi) Changes with respect to the terms or status of an obligor's pool asset (*e.g.*, loan modifications or re-agings) are made, reviewed and approved by authorized personnel in accordance with the transaction agreements and related pool asset documents.

(vii) Loss mitigation or recovery actions (*e.g.*, foreclosures or repossessions) are initiated, conducted and concluded in accordance with the timeframes or other requirements established by the transaction agreements. Such programs include a hierarchy of workout procedures (*e.g.*, forbearance plans, modifications and deeds in lieu of foreclosure, as applicable).

(viii) Records documenting collection efforts are maintained during the period a pool asset is delinquent in accordance with the transaction agreements. Such records are maintained on at least a monthly basis and describe the entity's activities in monitoring delinquent pool assets including, for example, phone calls, letters and payment rescheduling plans in cases where delinquency is deemed temporary (*e.g.*, illness or unemployment).

(ix) Adjustments to interest rates or rates of return for pool assets with variable rates are computed based on the related pool asset documents.

(x) Regarding any funds held in trust for an obligor (such as escrow accounts):

(A) Such funds are analyzed, in accordance with the obligor's pool asset documents, on at least an annual basis;

(B) Interest on such funds is paid, or credited, to obligors in accordance with applicable pool asset documents and state laws; and

(C) Such funds are returned to the obligor within 30 calendar days of full repayment of the related pool asset.

(xi) Payments made on behalf of an obligor (such as tax or insurance payments) are made on or before the related penalty or expiration dates, as indicated on the appropriate bills or notices for such payments, provided that such support has been received by the servicer at least 30 calendar days prior to these dates.

(xii) Any late payment penalties in connection with any payment to be made on behalf of an obligor are paid from the servicer's funds and not charged to the obligor, unless the late payment was due to the obligor's error or omission.

(xiii) Disbursements made on behalf of an obligor are posted within two business days to the obligor's records maintained by the servicer.

(xiv) Delinquencies, charge-offs and uncollectable accounts are recognized and recorded in accordance with the transaction agreements.

(xv) Any external enhancement or other support, identified in Item 1113(a)(1) through (3) of this Regulation AB, is maintained as set forth in the transaction agreements.

Instructions to Item 1120.

1. If certain servicing criteria are not applicable in the context of the asset class backing the asset-backed securities, the inapplicability of the criteria should be disclosed in the responsible party's and the registered public accounting firm's reports.

2. If the asset pool backing the asset-backed securities includes a pool asset representing an interest in or the right to the payments or cash flows of another asset pool and both the issuing entity for the asset-backed securities and the entity issuing the asset to be included in the issuing entity's asset pool were established under the direction of the same sponsor or depositor, see also Item 1100(d)(2) of this Regulation AB.

§ 229.1121 (Item 1121) Servicer compliance statement.

Provide as a separate exhibit to the filing a statement of compliance from the servicer, signed by an authorized officer of such servicer, to the effect that:

(a) A review of the servicer's activities during the reporting period and of its performance under the applicable servicing agreement has been made under such officer's supervision.

(b) To the best of such officer's knowledge, based on such review, the servicer has fulfilled all of its obligations under the agreement in all material respects throughout the reporting period or, if there has been a default in the fulfillment of any such obligation in any material respect, specifying each such default known to such officer and the nature and status thereof.

Instructions to Item 1121.

1. If multiple servicers are involved in servicing the pool assets, a separate servicer compliance statement is required from each servicer that meets the criteria in Item 1107(a) of this Regulation AB.

2. The filing must include a statement of compliance even if the issuing entity has not existed for a full twelve months.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

22. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78ll(o), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

23. Add § 230.139a to read as follows:

§ 230.139a Publications by brokers or dealers distributing asset-backed securities.

The publication or distribution by a broker or dealer of information, an opinion or a recommendation with respect to asset-backed securities meeting the criteria of General Instruction I.B.5 of Form S–3 (§ 239.13 of this chapter)) (''S–3 ABS'') shall not be deemed to constitute an offer for sale or offer to sell S–3 ABS registered or proposed to be registered for purposes of sections 2(a)(10) and 5(c) of the Act (15 U.S.C. 77b(a)(10) and 77e(c)) (the ''registered securities''), even though such broker or dealer is or will be a participant in the distribution of the registered securities, if the following conditions are met:

(a) The broker or dealer must have previously published or distributed with reasonable regularity information, opinions or recommendations relating to S–3 ABS backed directly (or, with respect to securitizations of other securities, indirectly) by substantially similar collateral as that directly or indirectly backing S–3 ABS that is the subject of the information, opinion or recommendation that is proposed to be published or distributed.

(b) If the registered securities are proposed to be offered, offered or part of an unsold allotment or subscription, the information, opinion or recommendation must not:

(1) Identify the registered securities;

(2) Give greater prominence to specific structural or collateral-related attributes of the registered securities than it gives to the same attributes of other asset-backed securities that it mentions; and

(3) Contain any *ABS informational and computational material* (as defined in § 229.1101 of this chapter) relating to the registered securities.

(c) If the material published by the broker or dealer identifies a specific asset-backed security of a specific issuer and specifically recommends that such asset-backed security be purchased, sold or held by persons receiving such material, then a recommendation as favorable or more favorable as to such asset-backed security must have been published by the broker or dealer in the last publication of such broker or dealer addressing such asset-backed security prior to the commencement of its participation in the distribution of the registered securities.

(d) Sufficient information is available from one or more public sources to provide a reasonable basis for the view expressed by the broker or dealer with respect to the asset-backed securities that are the subject of the information, opinion or recommendation.

(e) If the material published by the broker or dealer identifies asset-backed securities backed directly or indirectly by substantially similar collateral as that directly or indirectly backing the registered securities and specifically recommends that such asset-backed securities be preferred over other asset-backed securities backed by different types of collateral, then the material must explain in reasonable detail the reasons for such preference.

24. Add § 230.167 to read as follows:

§ 230.167 Communications in connection with certain registered offerings of asset-backed securities.

Preliminary Note: This section is available only to communications in connection with certain offerings of asset-backed securities. The exemption does not apply to communications that may be in technical compliance with this section, but have the primary purpose or effect of conditioning the market for another transaction or are part of a plan or scheme to evade the requirements of section 5 of the Act (15 U.S.C. 77e).

(a) In an offering of asset-backed securities meeting the requirements of General Instruction I.B.5 of Form S–3 (§ 239.13 of this chapter) and registered under the Act on Form S–3 pursuant to § 230.415, *ABS informational and computational material* regarding such securities used after the effective date of the registration statement and before the sending or giving to investors of a final prospectus that meets the requirements of section 10(a) of the Act (15 U.S.C.

77j(a)) regarding such offering is exempt from section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)), if the conditions in paragraph (b) of this section are met.

(b) *Conditions.* To rely on paragraph (a) of this section:

(1) The communications must be filed to the extent required pursuant to § 230.426.

(2) Every communication used pursuant to this section must include prominently on the cover page or otherwise at the beginning of such communication:

(i) The issuing entity's name and the depositor's name, if applicable;

(ii) The Commission file number for the related registration statement;

(iii) A statement that such communication is *ABS informational and computational material* used in reliance on Securities Act Rule 167 (§ 230.167); and

(iv) A legend that urges investors to read the relevant documents filed or to be filed with the Commission because they contain important information. The legend also must explain to investors that they can get the documents for free at the Commission's Web site and describe which documents are available free from the issuer or an underwriter.

(c) This section is applicable not only to the offeror of the asset-backed securities, but also to any other participant that may need to rely on and complies with this section in communicating about the transaction. A participant for purposes of this section is any person or entity that is a party to the asset-backed securities transaction and any persons authorized to act on their behalf.

(d) Terms used in this section have the same meaning as in Item 1101 of Regulation AB (§ 229.1101 of this chapter).

25. Add §§ 230.190 and 230.191 to read as follows:

§ 230.190 Registration of underlying securities in asset-backed securities transactions.

(a) In an offering of asset-backed securities where the asset pool includes securities of another issuer (''underlying securities''), unless the underlying securities are themselves exempt from registration under section 3 of the Act (15 U.S.C. 77c), the offering of the relevant underlying securities itself must be registered as a primary offering of such securities in accordance with paragraph (b) of this section unless all of the following are true. Terms used in this section have the same meaning as in Item 1101 of Regulation AB (§ 229.1101 of this chapter).

(1) Neither the issuer of the underlying securities nor any of its affiliates has a direct or indirect agreement, arrangement, relationship or understanding, written or otherwise, relating to the underlying securities and the asset-backed securities transaction;

(2) Neither the issuer of the underlying securities nor any of its affiliates is an affiliate of the sponsor, depositor, issuing entity or underwriter of the asset-backed securities transaction; and

(3) The depositor would be free to publicly resell the underlying securities without registration under the Act. For example:

(i) If the underlying securities are restricted securities, as defined in § 230.144(a)(3), the underlying securities must meet the conditions set forth in § 230.144(k) for the sale of restricted securities; and

(ii) The offering of the asset-backed security does not constitute part of a distribution of the underlying securities. An offering of asset-backed securities with an asset pool containing underlying securities that at the time of the purchase for the asset pool are part of a subscription or unsold allotment would be a distribution of the underlying securities. For purposes of this section, in an offering of asset-backed securities involving a sponsor, depositor or underwriter that was an underwriter or an affiliate of an underwriter in a registered offering of the underlying securities, the distribution of the asset-backed securities will not constitute part of a distribution of the underlying securities if the underlying securities were purchased at arm's length in the secondary market at least three months after the last sale of any unsold allotment or subscription by the affiliated underwriter that participated in the registered offering of the underlying securities.

(b) If all of the conditions in paragraph (a) of this section are not met, the offering of the relevant underlying securities itself must be registered as a primary offering of such securities in accordance with the following:

(1) If the offering of asset-backed securities is registered on Form S–3 (§ 239.13 of this chapter), the offering of the underlying securities itself must be eligible to be registered under Form S–3 or F–3 (§ 239.33 of this chapter) as a primary offering of such securities;

(2) The plan of distribution in the registration statement for the offering of the underlying securities contemplates this type of distribution at the time of the commencement of the offering of the asset-backed securities;

(3) The prospectus for the asset-backed securities offering describes the plan of distribution for both the underlying securities and the asset-backed securities;

(4) The prospectus relating to the offering of the underlying securities is delivered simultaneously with the delivery of the prospectus relating to the offering of the asset-backed securities, and the prospectus for the asset-backed securities includes disclosure that the prospectus for the offering of the underlying securities will be delivered along with, or is combined with, the prospectus for the offering of the asset-backed securities;

(5) The prospectus for the asset-backed securities offering identifies the issuing entity, depositor, sponsor and each underwriter for the offering of the asset-backed securities as an underwriter for the offering of the underlying securities;

(6) Neither prospectus disclaims or limits responsibility by the issuing entity, sponsor, depositor, trustee or any underwriter for information regarding the underlying securities; and

(7) If the offering of the asset-backed securities and the underlying securities is not made on a firm commitment basis, the issuing entity or the underwriters for the offering of the asset-backed securities must distribute a preliminary prospectus for both the underlying securities offering and the asset-backed securities offering that identifies the issuer of the underlying securities and the expected amount of the issuer's underlying securities that is to be included in the asset pool to any person who is expected to receive a confirmation of sale of the asset-backed securities at least 48 hours prior to sending such confirmation.

(c) Notwithstanding paragraphs (a) and (b) of this section, if the asset pool for the asset-backed securities includes a pool asset representing an interest in or the right to the payments or cash flows of another asset pool, then that pool asset is not considered an ''underlying security'' for purposes of this section (although its distribution in connection with the asset-backed securities transaction may need to be separately registered) if the following conditions are met:

(1) Both the issuing entity for the asset-backed securities and the entity issuing the pool asset were established under the direction of the same sponsor or depositor;

(2) The pool asset is created solely to satisfy legal requirements or otherwise facilitate the structuring of the asset-backed securities transaction;

(3) The pool asset is not part of a scheme to avoid registration or the requirements of this section; and

(4) The pool asset is held by the issuing entity and is a part of the asset pool for the asset-backed securities.

§ 230.191 Definition of ''issuer'' in section 2(a)(4) of the Act in relation to asset-backed securities.

The following applies with respect to asset-backed securities under the Act. Terms used in this section have the same meaning as in Item 1101 of Regulation AB (§ 229.1101 of this chapter).

(a) The depositor for the asset-backed securities acting solely in its capacity as depositor to the issuing entity is the ''issuer'' for purposes of the asset-backed securities of that issuing entity.

(b) The person acting in the capacity as the depositor specified in paragraph (a) of this section is a different ''issuer'' from that same person acting as a depositor for another issuing entity or for purposes of that person's own securities.

26. Amend § 230.411 by:

a. Removing the authority citation following the section; and

b. Revising the first sentence of paragraph (a).

The revision reads as follows:

§ 230.411 Incorporation by reference.

(a) *Prospectuses.* Except as provided by this section, Item 1100(c) of Regulation AB (§ 229.1100(c) of this chapter) for registered offerings of asset-backed securities, or unless otherwise provided in the appropriate form, information shall not be incorporated by reference in a prospectus. * * *

* * * * *

27. Add § 230.426 to read as follows:

§ 230.426 Filing of certain prospectuses under § 230.167 in connection with certain offerings of asset-backed securities.

(a) All written communications made in reliance on § 230.167 are prospectuses that must be filed with the Commission in accordance with paragraphs (b) and (c) of this section on Form 8–K (§ 249.308 of this chapter) and incorporated by reference to the related registration statement for the offering of asset-backed securities. Each prospectus filed under this section must identify the Commission file number of the related registration statement on the cover page of the related Form 8–K in addition to any other information required by that form. The information contained in any such prospectus shall be deemed to be a part of the registration statement as of the earlier of the time of filing of such information or the time of the filing of the final prospectus that meets the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) relating to such offering pursuant to § 230.424(b).

(b) Except as specified in paragraph (c) of this section, *ABS informational and computational material* made in reliance on § 230.167 that meet the conditions in paragraph (b)(1) of this section must be filed within the time frame specified in paragraph (b)(2) of this section.

(1) *Conditions for which materials must be filed.* The materials are provided to prospective investors under the following conditions:

(i) For each prospective investor that has indicated to the underwriter that it will purchase all or a portion of the class of asset-backed securities to which such materials relate, all materials relating to such class that are provided to such prospective investor; and

(ii) For any other prospective investor, all materials that are provided to such prospective investor after the final terms have been established for all classes of the offering.

(2) *Time frame to file the materials.* The materials must be filed by the later of:

(i) The due date for filing the final prospectus relating to such offering that meets the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) pursuant to § 230.424(b); or

(ii) Two business days of first use.

(c) Notwithstanding paragraphs (a) and (b) of this section, the following need not be filed under this section:

(1) *ABS informational and computational material* that relate to abandoned structures or that are furnished to a prospective investor prior to the time the final terms have been established for all classes of the offering where such prospective investor has not indicated to the underwriter its intention to purchase the asset-backed securities.

(2) Any *ABS informational and computational material* if a prospectus that meets the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) relating to the offering of such asset-backed securities accompanies or precedes the use of such material.

(3) Any *ABS informational and computational material* that does not contain new or different information from that which was previously disclosed and filed under this section.

(4) Any written communication that is limited to the information specified in § 230.134, 230.135 or 230.135c.

(5) Any research report used in reliance on § 230.137, 230.138, 230.139 or 230.139a.

(6) Any confirmation described in § 240.10b–10 of this chapter.

(7) Any prospectus filed under § 230.424.

(d) Terms used in this section have the same meaning as in Item 1101 of Regulation AB (§ 229.1101 of this chapter).

Instruction to § 230.426.

The issuer may aggregate data presented in *ABS informational and computational material* that are to be filed and file such data in consolidated form. Any such aggregation, however, must not result in either the omission of any information contained in such material otherwise to be filed, or a presentation that makes the information misleading.

28. Amend § 230.434 by removing the phrase ''General Instruction I.B.5. of Form S–3 (§ 239.13 of this chapter)'' in paragraph (f) and adding, in its place, the phrase ''§ 229.1101 of this chapter''.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

29. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

* * * * *

30. Amend § 232.311 by removing paragraph (j).

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

31. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

32. Amend Form S–1 (referenced in § 239.11) by adding General Instruction VI. to read as follows:

Note: The text of Form S–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–1

* * * * *

GENERAL INSTRUCTIONS

* * * * *

VI. Offerings of Asset-Backed Securities

The following applies if a registration statement on this Form S–1 is being used to register an offering of asset-backed securities. Terms used in this General Instruction VI. have the same meaning as in Item 1101 of Regulation AB (17 CFR 229.1101).

A. *Items that May be Omitted.*

Such registrants may omit the information called for by the following otherwise required items:

1. Paragraphs (a), (b), (c), (e), (f), (g), (h), (i) and (j) of Item 11, Information with Respect to the Registrant.

2. If the issuing entity does not have any executive officers or directors, paragraphs (k), (*l*) and (n) of Item 11, Information with Respect to the Registrant.

3. Paragraph (m) of Item 11, Information with Respect to the Registrant, except for the information required by Item 403(a) of Regulation S–K (17 CFR 229.403(a)) and if the issuing entity does not have any executive officers or directors.

B. *Substitute Information to be Included.* In addition to the Items that are otherwise required by this Form, the registrant must furnish in the prospectus the information required by Items 1102 through 1118 of Regulation AB (17 CFR 229.1102 through 229.1118).

C. *Signatures.* The registration statement must be signed by the depositor, the depositor's principal executive officer or officers, principal financial officer and controller or principal accounting officer, and by at least a majority of the depositor's board of directors or persons performing similar functions.

* * * * *

33. Amend § 239.12 by adding paragraph (i) to read as follows:

§ 239.12 Form S–2, for registration under the Securities Act of 1933 of securities of certain issuers.

* * * * *

(i) *Asset-backed securities.* This form shall not be used for an offering of asset-backed securities, as defined in § 229.1101 of this chapter.

34. Amend Form S–2 (referenced in § 239.12) by adding paragraph I. to General Instruction I to read as follows:

Note: The text of Form S–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–2

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form S–2

* * * * *

I. *Asset-backed securities.* This form shall not be used for an offering of asset-backed securities, as defined in § 229.1101 of this chapter.

* * * * *

35. Amend § 239.13 by:

a. Revising the phrase ''2.06 or 4.02(a) of Form 8–K'' in paragraph (a)(3)(ii) to read ''2.06, 4.02(a) or 6.03 of Form 8–K''; and

b. Revising paragraphs (a)(4) and (b)(5).

The revisions read as follows.

§ 239.13 Form S–3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *

(a) * * *

(4) The provisions of paragraphs (a)(2) and (a)(3)(i) of this section do not apply to any registered offerings of asset-backed securities described in paragraph (b)(5) of this section. However, for such offerings, to the extent the depositor or any issuing entity previously established, directly or indirectly, by the sponsor or the depositor (as those terms are defined in § 229.1101 of this chapter) are or were subject to the requirements of section 12 or 15(d) of the Exchange Act (15 U.S.C. 78*l* or 78o(d)) with respect to a class of asset-backed securities at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form, such depositor and each such issuing entity must have filed all material required to be filed regarding such asset-backed securities pursuant to section 13, 14 or 15(d) of the Exchange Act (15 U.S.C. 78m, 78n or 78o(d)) for such period (or such shorter period that each such entity was required to file such materials). In addition, such material must have been filed in a timely manner, other than a report that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a) or 6.03 of Form 8–K (§ 249.308 of this chapter). If § 240.12b–25(b) of this chapter was used during such period with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that section.

* * * * *

(b) * * *

(5) *Offerings of investment grade asset-backed securities.* Asset-backed securities (as defined in § 229.1101 of this chapter) to be offered for cash that meet the conditions in General Instruction I.B.5 of Form S–3.

* * * * *

36. Amend Form S–3 (referenced in § 239.13) by:

a. Revising the phrase ''2.06 or 4.02(a) of Form 8–K'' in General Instruction I.A.3.(b) to read ''2.06, 4.02(a) or 6.03 of Form 8–K'';

b. Revising General Instructions I.A.4. and I.B.5.; and

c. Adding General Instruction V.

The revisions and addition reads as follows.

Note: The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–3

* * * * *

GENERAL INSTRUCTIONS

* * * * *

I. Eligibility Requirements for Use of Form S–3

* * * * *

A. *Registrant Requirements.* * * *

4. The provisions in paragraphs A.2. and A.3.(a) above do not apply to any registered offerings of asset-backed securities described in I.B.5 below. However, for such offerings, to the extent the depositor or any issuing entity previously established, directly or indirectly, by the sponsor or the depositor (as those terms are defined in § 229.1101 of this chapter) are or were subject to the requirements of section 12 or 15(d) of the Exchange Act (15 U.S.C. 78*l* or 78o(d)) with respect to a class of asset-backed securities at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form, such depositor and each such issuing entity must have filed all material required to be filed regarding such asset-backed securities pursuant to section 13, 14 or 15(d) of the Exchange Act (15 U.S.C. 78m, 78n or 78o(d)) for such period (or such shorter period that each such entity was required to file such materials). In addition, such material must have been filed in a timely manner, other than a report that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a) or 6.03 of Form 8–K (§ 249.308 of this chapter). If Rule 12b–25(b) (17 CFR 240.12b–25(b)) under the Exchange Act was used during such period with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that rule.

* * * * *

B. *Transaction Requirements.* * * *

5. *Offerings of Investment grade Asset-backed Securities.* Asset-backed securities (as defined in 17 CFR 229.1101) to be offered for cash, provided:

(a) The securities are ''investment grade securities,'' as defined in I.B.2 above (Primary Offerings of Non-convertible Investment Grade Securities);

(b) Delinquent assets do not constitute 20% or more, as measured by dollar volume, of the original asset pool at the time of issuance of the asset-backed securities;

(c) With respect to securities that are backed by leases other than automobile leases, the portion of the cash flow to repay the securities anticipated to come from the residual value of the physical property underlying the leases does not constitute 20% or more, as measured by dollar volume, of the original asset pool at the time of issuance of the asset-backed securities;

(d) The offering related to the securities does not contemplate a prefunding period that involves in excess of 25% of the proceeds of the offering and the duration of the prefunding period does not extend for more than one year from the initial date of issuance of securities backed by the asset pool.

(e) With respect to securities that are backed by fixed receivables or other financial assets that do not revolve, the offering related to the securities does not contemplate a revolving period where the amount of additional receivables or financial assets to be acquired in the revolving period exceeds 25% of the proceeds of the offering and the duration of the revolving period does not extend for more than one year from the initial date of issuance of securities backed by the asset pool.

* * * * *

V. Offerings of Asset-Backed Securities

The following applies if a registration statement on this Form S–3 is being used to register an offering of asset-backed securities. Terms used in this General Instruction V. have the same meaning as in Item 1101 of Regulation AB (17 CFR 229.1101).

A. *Disclosure.* For a registration statement on this Form S–3 relating to an offering of asset-backed securities, in addition to the Items that are otherwise required by this Form, the registrant must furnish in the prospectus the information required by Items 1102 through 1118 of Regulation AB (17 CFR 229.1102 through 229.1118). For registered offerings pursuant to Securities Act Rule 415(a)(1)(x) (17 CFR 230.415(a)(1)(x)) that include a base prospectus and form of prospectus supplement, a separate base prospectus and form of prospectus supplement must be presented for each asset class that may be securitized in a discrete pool in a takedown of asset-backed securities under the registration statement. A separate base prospectus and form of prospectus supplement also must be presented for each country of origin or country of property securing pool assets that may be securitized in a discrete pool in a takedown of asset-backed securities under the registration statement.

B. *Signatures.* The registration statement must be signed by the depositor, the depositor's principal executive officer or officers, principal financial officer and controller or principal accounting officer, and by at least a majority of the depositor's board of directors or persons performing similar functions.

* * * * *

37. Amend § 239.18 by adding a sentence to the end of the section to read as follows:

§ 239.18 Form S–11, for registration under the Securities Act of 1933 of securities of certain real estate companies.

* * * In addition, this form shall not be used for an offering of asset-backed securities, as defined in § 229.1101 of this chapter.

38. Amend Form S–11 (referenced in § 239.18) by adding a sentence to the end of General Instruction A to read as follows:

Note: The text of Form S–11 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–11

* * * * *

GENERAL INSTRUCTIONS

A. Rules as to Use of Form S–11

* * * In addition, this form shall not be used for an offering of asset-backed securities, as defined in 17 CFR 229.1101.

* * * * *

39. Amend § 239.31 by adding a sentence to the end of paragraph (a) to read as follows:

§ 239.31 Form F–1, registration statement under the Securities Act of 1933 for securities of certain foreign private issuers.

(a) * * * In addition, this form shall not be used for an offering of asset-backed securities, as defined in § 229.1101 of this chapter.

* * * * *

40. Amend Form F–1 (referenced in § 239.31) by adding a sentence to the end of General Instruction I.A to read as follows:

Note: The text of Form F–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form F–1

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form F–1

A. * * * In addition, this form shall not be used for an offering of asset-backed securities, as defined in 17 CFR 229.1101.

* * * * *

41. Amend § 239.32 by adding paragraph (i) to read as follows:

§ 239.32 Form F–2, for registration under the Securities Act of 1933 for securities of certain foreign private issuers.

* * * * *

(i) *Asset-backed securities.* This form shall not be used for an offering of asset-backed securities, as defined in § 229.1101 of this chapter.

42. Amend Form F–2 (referenced in § 239.32) by adding paragraph I. to General Instruction I to read as follows:

Note: The text of Form F–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form F–2

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form F–2

* * * * *

I. *Asset-backed securities:* This form shall not be used for an offering of asset-backed securities, as defined in § 229.1101 of this chapter.

* * * * *

43. Add a sentence to the end of the introductory text of § 239.33 to read as follows:

§ 239.33 Form F–3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

* * * In addition, this Form shall not be used for an offering of asset-backed securities, as defined in § 229.1101 of this chapter.

* * * * *

44. Amend Form F–3 (referenced in § 239.33) by adding a sentence to the end of the introductory text of General Instruction I to read as follows:

Note: The text of Form F–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form F–3

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form F–3

* * * In addition, this Form shall not be used for an offering of asset-backed

securities, as defined in 17 CFR 229.1101.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

45. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

46. Add § 240.3a12–12 to read as follows:

§ 240.3a12–12 Exemption from certain provisions of section 16 of the Act for asset-backed securities.

Asset-backed securities, as defined in § 229.1101 of this chapter, are exempt from section 16 of the Act (15 U.S.C. 78p).

47. Add § 240.3b–19 to read as follows:

§ 240.3b–19 Definition of ''issuer'' in section 3(a)(8) of the Act in relation to asset-backed securities.

The following applies with respect to asset-backed securities under the Act. Terms used in this section have the same meaning as in Item 1101 of Regulation AB (§ 229.1101 of this chapter).

(a) The depositor for the asset-backed securities acting solely in its capacity as depositor to the issuing entity is the ''issuer'' for purposes of the asset-backed securities of that issuing entity.

(b) The person acting in the capacity as the depositor specified in paragraph (a) of this section is a different ''issuer'' from that same person acting as a depositor for another issuing entity or for purposes of that person's own securities.

§ 240.10A–3 [Amended]

48. Amend § 240.10A–3 by removing the phrase ''(as defined in § 240.13a–14(g) and § 240.15d–14(g))'' from paragraph (c)(6)(i) and adding, in its place, the phrase ''(as defined in § 229.1101 of this chapter)''.

49. Amend § 240.12b–2 by revising paragraph (3) of the definition of *Small Business Issuer* to read as follows:

§ 240.12b-2 Definitions.

* * * * *

Small Business Issuer. * * *

(3) Is not an investment company and is not an asset-backed issuer (as defined in § 229.1101 of this chapter); and

* * * * *

50. Amend § 240.12b–15 by adding a sentence after the sixth sentence to read as follows:

§ 240.12b–15 Amendments.

* * * An amendment to any report required to include the certifications as specified in § 240.13a–14(d) or § 240.15d–14(d) must include a new certification by an individual specified in § 240.13a–14(e) or § 240.15d–14(e), as applicable. * * *

51. Amend § 240.13a–10 by adding paragraph (k) before the *Notes* to read as follows:

§ 240.13a–10 Transition reports.

* * * * *

(k)(1) Paragraphs (a) through (g) of this section shall not apply to asset-backed issuers.

(2) Every asset-backed issuer that changes its fiscal closing date shall file a report covering the resulting transition period between the closing date of its most recent fiscal year and the opening date of its new fiscal year. In no event shall a transition report cover a period longer than 12 months.

(3) The report for the transition period shall be filed on Form 10–K (§ 249.310 of this chapter) responding to all items to which such asset-backed issuer is required to respond pursuant to General Instruction J. of Form 10–K. Such report shall be filed within 90 days after the latter of either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date.

(4) Notwithstanding the foregoing in paragraphs (k)(2) and (k)(3) of this section, if the transition period covers a period of one month or less, an asset-backed issuer need not file a separate transition report if the first annual report for the newly adopted fiscal year covers the transition period as well as the fiscal year.

(5) Any obligation of the asset-backed issuer to file distribution reports pursuant to § 240.13a–17 will continue to apply regardless of a change in the asset-backed issuer's fiscal closing date.

* * * * *

§ 240.13a–11 [Amended]

52. Amend § 240.13a–11 by revising the phrase ''2.06 or 4.02(a) of Form 8–K'' in paragraph (c) to read ''2.06, 4.02(a) or 6.03 of Form 8–K''.

53. Amend § 240.13a–13 by:

a. Removing the authority citation following § 240.13a–13;

b. Removing the period at the end of paragraph (b)(2) and adding, in its place, ''; and''; and

c. Adding paragraph (b)(3).

The addition reads as follows.

§ 240.13a–13 Quarterly reports on Form 10–Q and Form 10–QSB (§ 249.308a and § 249.308b of this chapter).

* * * * *

(b) * * *

(3) Asset-backed issuers required to file reports pursuant to § 240.13a–17.

* * * * *

54. Amend § 240.13a–14 by:

a. Removing the phrase ''(as defined in paragraph (g) of this section)'' in the first sentence of paragraph (a) and adding, in its place, the phrase ''(as defined in § 229.1101 of this chapter)'';

b. Revising the reference to ''paragraph (a) or (b)'' in paragraph (c) to read ''paragraph (a), (b) or (d)'';

c. Revising paragraphs (d) and (e); and

d. Removing paragraphs (f) and (g).

The revisions read as follows:

§ 240.13a–14 Certification of disclosure in annual and quarterly reports.

* * * * *

(d) Each annual report and transition report filed on Form 10–K (§ 249.310 of this chapter) by an asset-backed issuer (as defined in § 229.1101 of this chapter) under section 13(a) of the Act (15 U.S.C. 78m(a)) must include a certification in the form specified in the applicable exhibit filing requirements of such report and such certification must be filed as an exhibit to such report.

(e) With respect to asset-backed issuers, the certification required by paragraph (d) of this section must be signed by either:

(1) The senior officer in charge of securitization of the depositor if the depositor is signing the report; or

(2) The senior officer in charge of the servicing function of the servicer if the servicer is signing the report on behalf of the issuing entity. If multiple servicers are involved in servicing the pool assets, the senior officer in charge of the servicing function of the master servicer (or entity performing the equivalent functions) must sign if a representative of the servicer is to sign the report on behalf of the issuing entity.

§ 240.13a–15 [Amended]

55. Amend § 240.13a–15 by removing the phrase ''(as defined in § 240.13a–14(g))'' and adding, in its place, the phrase ''(as defined in § 229.1101 of this chapter)'' in paragraph (a).

56. Amend § 240.13a–16 by:

a. Removing the word ''or'' at the end of paragraph (a)(2);

b. Removing the period at the end of paragraph (a)(3) and adding, in its place, ''; or''; and

c. Adding paragraph (a)(4).

The addition reads as follows.

§ 240.13a–16 Reports of foreign private issuers on Form 6–K (17 CFR 249.306).

(a) * * *

(4) Asset-backed issuers, as defined in § 229.1101 of this chapter.

* * * * *

57. Add §§ 240.13a–17 and 240.13a–18 to read as follows:

§ 240.13a–17 Reports of asset-backed issuers on Form 10–D (§ 249.312 of this chapter).

Every asset-backed issuer subject to § 240.13a–1 shall make reports on Form 10–D (§ 249.312 of this chapter). Such reports shall be filed within the period specified in Form 10–D.

§ 240.13a–18 Compliance with servicing criteria for asset-backed securities.

(a) This section applies to every class of asset-backed securities subject to the reporting requirements of section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)). Terms used in this section have the same meaning as in Item 1101 of Regulation AB (§ 229.1101 of this chapter).

(b) *Assessment required.* With regard to a class of asset-backed securities subject to the reporting requirements of section 13(a) or 15(d) of the Act, the following person (the ''responsible party'') must assess compliance with the servicing criteria specified in paragraph (d) of Item 1120 of Regulation AB (§ 229.1120(d) of this chapter), as of and for the period ending the end of each fiscal year, with respect to asset-backed securities transactions taken as a whole involving the responsible party and that are backed by the same asset type backing the class of asset-backed securities (including the asset-backed securities transaction that is to be the subject of the report on Form 10–K for that fiscal year):

(1) The depositor if the depositor signs the report on Form 10–K with respect to that fiscal year; or

(2) The servicer if the servicer signs the report on Form 10–K on behalf of the issuing entity with respect to that fiscal year. If multiple servicers are involved in servicing the pool assets, the master servicer (or entity performing the equivalent functions) is the ''responsible party'' if a representative of the servicer is to sign the report on behalf of the issuing entity.

(c) *Unaffiliated parties that perform the servicing criteria.* (1) The responsible party must use reasonable means to assess whether the parties performing the servicing functions that are material to the servicing function as a whole (*e.g.*, servicers, master servicer, trustee, paying agent) are complying with the servicing criteria in all material respects.

(2) Because the responsible party must rely in certain circumstances on information provided by unaffiliated parties outside of the responsible party's control, the responsible party may reasonably rely on information provided to the responsible party by unaffiliated parties in making its assessment.

(d) *Attestation on assessment required.* With respect to the responsible party's compliance assessment required by paragraph (b) and (c) of this section, a registered public accounting firm must attest to, and report on, the assessment made by the responsible party. An attestation made under this paragraph must be made in accordance with standards for attestation engagements issued or adopted by the Public Company Accounting Oversight Board.

58. Amend § 240.15c2–8 by adding a sentence to the end of paragraph (b) to read as follows.

§ 240.15c2–8 Delivery of prospectus.

* * * * *

(b) * * * This paragraph (b) does not apply with respect to asset-backed securities (as defined in § 229.1101 of this chapter) that meet the requirements of General Instruction I.B.5 of Form S–3 (§ 239.13 of this chapter).

* * * * *

59. Amend § 240.15d–10 by adding paragraph (k) before the *Notes* to read as follows:

§ 240.15d–10 Transition reports.

* * * * *

(k)(1) Paragraphs (a) through (g) of this section shall not apply to asset-backed issuers.

(2) Every asset-backed issuer that changes its fiscal closing date shall file a report covering the resulting transition period between the closing date of its most recent fiscal year and the opening date of its new fiscal year. In no event shall a transition report cover a period longer than 12 months.

(3) The report for the transition period shall be filed on Form 10–K (§ 249.310 of this chapter) responding to all items to which such asset-backed issuer is required to respond pursuant to General Instruction J. of Form 10–K. Such report shall be filed within 90 days after the later of either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date.

(4) Notwithstanding the foregoing in paragraphs (k)(2) and (k)(3) of this section, if the transition period covers a period of one month or less, an asset-backed issuer need not file a separate transition report if the first annual report for the newly adopted fiscal year covers the transition period as well as the fiscal year.

(5) Any obligation of the asset-backed issuer to file distribution reports pursuant to § 240.15d–17 will continue to apply regardless of a change in the asset-backed issuer's fiscal closing date.

* * * * *

§ 240.15d–11 [Amended]

60. Amend § 240.15d–11 by revising the phrase ''2.06 or 4.02(a) of Form 8–K'' in paragraph (c) to read ''2.06, 4.02(a) or 6.03 of Form 8–K''.

61. Amend § 240.15d–13 by:

a. Removing the authority citation following § 240.15d–13;

b. Removing the period at the end of paragraph (b)(2) and adding, in its place, ''; and''; and

c. Adding paragraph (b)(3).

The addition reads as follows.

§ 240.15d–13 Quarterly reports on Form 10–Q and Form 10–QSB (§ 249.308a and § 249.308b of this chapter).

* * * * *

(b) * * *

(3) Asset-backed issuers required to file reports pursuant to § 240.15d–17.

* * * * *

62. Amend § 240.15d–14 by:

a. Removing the phrase ''(as defined in paragraph (g) of this section)'' in the first sentence of paragraph (a) and adding, in its place, the phrase ''(as defined in § 229.1101 of this chapter)'';

b. Revising the reference to ''paragraph (a) or (b)'' in paragraph (c) to read ''paragraph (a), (b) or (d)'';

c. Revising paragraphs (d) and (e); and

d. Removing paragraphs (f) and (g).

The revisions read as follows:

§ 240.15d–14 Certification of disclosure in annual and quarterly reports.

* * * * *

(d) Each annual report and transition report filed on Form 10–K (§ 249.310 of this chapter) by an asset-backed issuer (as defined in § 229.1101 of this chapter) under section 15(d) of the Act (15 U.S.C. 78o(d)) must include a certification in the form specified in the applicable exhibit filing requirements of such report and such certification must be filed as an exhibit to such report.

(e) With respect to asset-backed issuers, the certification required by paragraph (d) of this section must be signed by either:

(1) The senior officer in charge of securitization of the depositor if the depositor is signing the report; or

(2) The senior officer in charge of the servicing function of the servicer if the servicer is signing the report on behalf of the issuing entity. If multiple servicers are involved in servicing the pool assets, the senior officer in charge of the servicing function of the master servicer (or entity performing the equivalent functions) must sign if a representative of the servicer is to sign the report on behalf of the issuing entity.

§ 240.15d–15 [Amended]

63. Amend § 240.15d–15 by removing the phrase ''(as defined in § 240.15d–14(g)'' and adding, in its place, the phrase ''(as defined in § 229.1101'' in paragraph (a).

64. Amend § 240.15d–16 by:

a. Removing the period at the end of paragraph (a)(2) and adding, in its place, ''; or''; and

c. Adding paragraph (a)(3).

The addition reads as follows.

§ 240.15d–16 Reports of foreign private issuers on Form 6–K [17 CFR 249.306].

(a) * * *

(3) Asset-backed issuers, as defined in § 229.1101 of this chapter.

* * * * *

65. Add § 240.15d–17 to read as follows:

§ 240.15d–17 Reports of asset-backed issuers on Form 10–D (§ 249.312 of this chapter).

Every asset-backed issuer subject to § 240.15d–1 shall make reports on Form 10–D (§ 249.312 of this chapter). Such reports shall be filed within the period specified in Form 10–D.

66. Add § 240.15d–18 before the undesignated center heading to read as follows:

§ 240.15d–18 Compliance with servicing criteria for asset-backed securities.

(a) This section applies to every class of asset-backed securities subject to the reporting requirements of section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)). Terms used in this section have the same meaning as in Item 1101 of Regulation AB (§ 229.1101 of this chapter).

(b) *Assessment required.* With regard to a class of asset-backed securities subject to the reporting requirements of section 13(a) or 15(d) of the Act, the following person (the ''responsible party'') must assess compliance with the servicing criteria specified in paragraph (d) of Item 1120 of Regulation AB (§ 229.1120(d) of this chapter), as of and for the period ending the end of each fiscal year, with respect to asset-backed securities transactions taken as a whole involving the responsible party and that are backed by the same asset type backing the class of asset-backed securities (including the asset-backed securities transaction that is to be the subject of the report on Form 10–K for that fiscal year):

(1) The depositor if the depositor signs the report on Form 10–K with respect to that fiscal year; or

(2) The servicer if the servicer signs the report on Form 10–K on behalf of the issuing entity with respect to that fiscal year. If multiple servicers are involved in servicing the pool assets, the master servicer (or entity performing the equivalent functions) is the ''responsible party'' if a representative of the servicer is to sign the report on behalf of the issuing entity.

(c) *Unaffiliated parties that perform the servicing criteria.*(1) The responsible party must use reasonable means to assess whether the parties performing the servicing functions that are material to the servicing function as a whole (*e.g.*, servicers, master servicer, trustee, paying agent) are complying with the servicing criteria in all material respects.

(2) Because the responsible party must rely in certain circumstances on information provided by unaffiliated parties outside of the responsible party's control, the responsible party may reasonably rely on information provided to the responsible party by unaffiliated parties in making its assessment.

(d) *Attestation on assessment required.* With respect to the responsible party's compliance assessment required by paragraph (b) and (c) of this section, a registered public accounting firm must attest to, and report on, the assessment made by the responsible party. An attestation made under this paragraph must be made in accordance with standards for attestation engagements issued or adopted by the Public Company Accounting Oversight Board.

67. Add §§ 240.15d–22 and 240.15d–23 to read as follows:

§ 240.15d–22 Reporting regarding asset-backed securities under section 15(d) of the Act.

(a) With respect to an offering of asset-backed securities registered pursuant to § 230.415(a)(1)(x) of this chapter, annual and other reports need not be filed pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)) regarding any class of securities to which such registration statement relates until the first bona fide sale in a takedown of securities under the registration statement.

(b) Regarding any class of asset-backed securities in a takedown off of a registration statement pursuant to § 230.415(a)(1)(x) of this chapter, no annual and other reports need be filed pursuant to section 15(d) of the Act regarding such class of securities as to any fiscal year, other than the fiscal year within which the takedown occurred, if at the beginning of such fiscal year the securities of each class in the takedown are held of record by less than three hundred persons.

(c) Paragraphs (a) or (b) of this section do not affect any other reporting obligation applicable with respect to any classes of securities from additional takedowns under the same or different registration statements or any reporting obligation that may be applicable pursuant to section 12 of the Act (15 U.S.C. 78*l*).

§ 240.15d–23 Reporting regarding certain securities underlying asset-backed securities under section 15(d) of the Act.

(a) Regarding a class of asset-backed securities, if the asset pool for the asset-backed securities includes a pool asset representing an interest in or the right to the payments or cash flows of another asset pool, then no separate annual and other reports need be filed pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)) because of the separate registration of the distribution of the pool asset under the Securities Act (15 U.S.C. 77a *et seq.*), if the following conditions are met:

(1) Both the issuing entity for the asset-backed securities and the entity that issued the pool asset were established under the direction of the same sponsor or depositor;

(2) The pool asset was created solely to satisfy legal requirements or otherwise facilitate the structuring of the asset-backed securities transaction;

(3) The pool asset is not part of a scheme to avoid the registration or reporting requirements of the Act;

(4) The pool asset is held by the issuing entity and is a part of the asset pool for the asset-backed securities; and

(5) The offering of the asset-backed securities and the offering of the pool asset were both registered under the Securities Act (15 U.S.C. 77a *et seq.*).

(b) Paragraph (a) of this section does not affect any reporting obligation applicable with respect to the asset-backed securities or any other reporting obligation that may be applicable with respect to the pool asset or any other securities by the issuer of that pool asset pursuant to section 12 or 15(d) of the Act (15 U.S.C. 78*l* or 78o(d)).

(c) This section does not affect any obligation to provide information

regarding the pool asset or the asset pool underlying the pool asset in a filing with respect to the asset-backed securities. See Item 1100(d) of Regulation AB (§ 229.1100(d) of this chapter).

(d) Terms used in this section have the same meaning as in Item 1101 of Regulation AB (§ 229.1101 of this chapter).

PART 242—REGULATIONS M, ATS, AND AC AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

68. The authority citation for part 242 is revised to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78l, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

69. Amend § 242.100 by revising the definition of *Asset-backed security* in paragraph (b) to read as follows:

§ 242.100 Preliminary note; definitions.

* * * * *

(b) * * *

Asset-backed security has the meaning contained in § 229.1101 of this chapter.

* * * * *

PART 245—REGULATION BLACKOUT TRADING RESTRICTION

70. The authority citation for part 245 continues to read in part as follows:

Authority: 15 U.S.C. 78w(a), unless otherwise noted.

* * * * *

71. Amend § 245.101 by:

a. Removing the period at the end of paragraph (c)(2) and in its place adding a semicolon;

b. Removing ''and'' at the end of paragraph (c)(9);

c. Removing the period at the end of paragraph (c)(10) and in its place adding ''; and''; and

d. Adding paragraph (c)(11).

The addition reads as follows:

§ 245.101 Prohibition of insider trading during pension fund blackout periods.

* * * * *

(c) * * *

(11) Any acquisition or disposition of an asset-backed security, as defined in § 229.1101 of this chapter.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

72. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

73. Amend Form 8–K (referenced in § 249.308) by:

a. Adding General Instruction G.;

b. Adding Instruction 3 to Item 1.01;

c. Adding Instruction 3 to Item 1.02;

d. Revising the phrase ''*Instruction*'' in Item 1.03 to read ''*Instructions*'', redesignating the existing Instruction as Instruction 1, and adding Instruction 2;

e. Revising Instruction 4 to Item 2.02;

f. Adding Instruction 5 to Item 2.04;

g. Revising the phrase ''Instruction'' in Item 4.01 to read ''Instructions'', redesignating the existing Instruction as Instruction 1, and adding Instruction 2;

h. Revising the phrase ''Instruction to Item 5.03'' in Item 5.03 to read ''Instructions'', redesignating the existing Instruction as Instruction 1, and adding Instruction 2; and

i. Adding Section 6.

The revisions and addition read as follows:

Note: The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 8–k

* * * * *

GENERAL INSTRUCTIONS

* * * * *

G. Use of this Form by Asset-Backed Issuers

The following applies to registrants that are asset-backed issuers. Terms used in this General Instruction G. have the same meaning as in Item 1101 of Regulation AB (17 CFR 229.1101).

1. *Reportable Events That May Be Omitted.*

The registrant need not file a report on this Form upon the occurrence of any one or more of the events specified in the following:

(a) Item 2.01, Completion of Acquisition or Disposition of Assets;

(b) Item 2.03, Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant;

(c) Item 2.05, Costs Associated with Exit or Disposal Activities;

(d) Item 2.06, Material Impairments;

(e) Item 3.01, Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing;

(f) Item 3.02, Unregistered Sales of Equity Securities;

(g) Item 4.02, Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review;

(h) Item 5.01, Changes in Control of Registrant;

(i) Item 5.02, Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers;

(j) Item 5.04, Temporary Suspension of Trading Under Registrant's Employee Benefit Plans; and

(k) Item 5.05, Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics.

2. *Additional Disclosure for the Form 8–K Cover Page.*

Immediately after the name of the issuing entity on the cover page of the Form 8–K, as separate line items, identify the exact name of the depositor as specified in its charter and the exact name of the sponsor as specified in its charter.

3. *Signatures.*

The Form 8–K must be signed by the depositor. In the alternative, the Form 8–K may be signed on behalf of the issuing entity by a duly authorized representative of the servicer. If multiple servicers are involved in servicing the pool assets, a duly authorized representative of the master servicer (or entity performing the equivalent functions) must sign if a representative of the servicer is to sign the report on behalf of the issuing entity.

Information To Be Included in the Report

Item 1.01 Entry Into a Material Definitive Agreement

Instructions. * * *

3. With respect to asset-backed securities, as defined in Item 1101 of Regulation AB (17 CFR 229.1101), disclosure is required under this Item 1.01 regarding the entry into or an amendment to a definitive agreement that is material to the asset-backed securities transaction, even if the registrant is not a party to such agreement (*e.g.*, a servicing agreement with a servicer contemplated by Item 1107(a) of Regulation AB (17 CFR 229.1107(a)).

Item 1.02 Termination of a Material Definitive Agreement

Instructions. * * *

3. With respect to asset-backed securities, as defined in Item 1101 of Regulation AB (17 CFR 229.1101), disclosure is required under this Item 1.02 regarding the termination of a definitive agreement that is material to the asset-backed securities transaction (otherwise than by expiration of the agreement on its stated termination date or as a result of all parties completing their obligations under such agreement), even if the registrant is not a party to such agreement (*e.g.*, a servicing

agreement with a servicer contemplated by Item 1107(a) of Regulation AB (17 CFR 229.1107(a)).

Item 1.03 Bankruptcy or Receivership

Instructions. * * *

2. With respect to asset-backed securities, disclosure also is required under this Item 1.03 if the depositor (or servicer if the servicer signs the report on Form 10–K (17 CFR 249.310) of the issuing entity) becomes aware that a receiver, fiscal agent or similar officer has been appointed for the sponsor, depositor, servicer, trustee, significant obligor, enhancement provider contemplated by Item 1113(b) of Regulation AB (17 CFR 229.1113(b)) or other material party contemplated by Item 1101(d)(1) of Regulation AB (17 CFR 1101(d)(1)) in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under State or Federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of such party, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental authority. Terms used in this Instruction 2 have the same meaning as in Item 1101 of Regulation AB (17 CFR 229.1101).

* * * * *

Item 2.02 Results of Operations and Financial Condition

* * * * *

Instructions. * * *

4. This Item 2.02 does not apply in the case of a disclosure that is made in a quarterly report filed with the Commission on Form 10–Q (17 CFR 249.308a) (or Form 10–QSB (17 CFR 249.308b)), a distribution report filed with the Commission on Form 10–D (17 CFR 249.312) with respect to asset-backed securities, or an annual report filed with the Commission on Form 10–K (17 CFR 249.310) (or Form 10–KSB (17 CFR 249.310b)).

* * * * *

Item 2.04 Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation Under an Off-Balance-Sheet Arrangement

* * * * *

Instructions. * * *

5. With respect to asset-backed securities, as defined in 17 CFR 229.1101, disclosure also is required under this Item 2.04 if an early amortization, performance trigger or other event, including an event of default, has occurred under the transaction agreements for the asset-backed securities that would materially alter the payment priority or distribution of cash flows regarding the asset-backed securities or the amortization schedule for the asset-backed securities. In providing the disclosure required by this Item, identify the changes to the payment priorities, flow of funds or asset-backed securities as a result. Disclosure is required under this Item whether or not the registrant is a party to the transaction agreement that results in the occurrence identified.

* * * * *

Item 4.01 Changes in Registrant's Certifying Accountant

* * * * *

Instructions. * * *

2. With respect to asset-backed securities, as defined in 17 CFR 229.1101, the applicable accountant to which this Item 4.01 should relate is the accountant engaged to provide the attestation report on assessment of compliance with servicing criteria for asset-backed securities, as defined in 17 CFR 210.1–02(a)(3).

* * * * *

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

* * * * *

Instructions. * * *

2. With respect to asset-backed securities, as defined in 17 CFR 229.1101, disclosure is required under this Item 5.03 regarding any amendment to the governing documents of the issuing entity, regardless of whether the class of asset-backed securities is reporting under Section 13 or 15(d) of the Exchange Act.

* * * * *

Section 6—Asset-Backed Securities

The Items in this Section 6 apply only to asset-backed securities. Terms used in this Section 6 have the same meaning as in Item 1101 of Regulation AB (17 CFR 229.1101).

Item 6.01 ABS Informational and Computational Material

Report under this Item any ABS informational and computational material filed in, or as an exhibit to, this report.

Item 6.02 Change of Servicer or Trustee

If a servicer contemplated by Item 1107(a) of Regulation AB (17 CFR 229.1107(a)) or the trustee has resigned or has been removed, replaced or substituted, or if a new servicer contemplated by Item 1107(a) of Regulation AB or trustee has been appointed, state the date the event occurred and the circumstances surrounding the change. In addition, provide the disclosure required by Item 1107(c) of Regulation AB (17 CFR 229.1107(c)), as applicable, regarding the servicer or trustee change. If a new servicer contemplated by Item 1107(a) of this Regulation AB or a new trustee has been appointed, provide the information required by Item 1107 of Regulation AB regarding such servicer or Item 1108 of Regulation AB (17 CFR 229.1108) regarding such trustee, as applicable.

Item 6.03 Change in Credit Enhancement or Other External Support

(a) *Loss of existing enhancement.* If the depositor (or servicer if the servicer signs the report on Form 10–K (17 CFR 249.310) of the issuing entity) becomes aware that any material enhancement specified in Item 1113(a)(1) through (3) of Regulation AB (17 CFR 229.1113(a)(1) through (3)) that was previously applicable regarding one or more classes of the asset-backed securities has terminated other than by expiration of the contract on its stated termination date or as a result of all parties completing their obligations under such agreement, then disclose:

(1) the date of the termination of the enhancement;

(2) the identity of the parties to the agreement relating to the enhancement;

(3) a brief description of the terms and conditions of the enhancement that are material to security holders;

(4) a brief description of the material circumstances surrounding the termination; and

(5) any material early termination penalties paid or to be paid out of the cash flows backing the asset-backed securities.

(b) *Addition of new enhancement.* If the depositor (or servicer if the servicer signs the report on Form 10–K (17 CFR 249.310) of the issuing entity) becomes aware that any material enhancement specified in Item 1113(a)(1) through (3) of Regulation AB (17 CFR 229.1113(a)(1) through (3)) has been added with respect to one or more classes of the asset-backed securities, then provide the date of addition of the new enhancement and the disclosure required by Item 1113 of Regulation AB with respect to such new enhancement.

(c) *Material change to enhancement.* If the depositor (or servicer if the servicer signs the report on Form 10–K (17 CFR 249.310) of the issuing entity) becomes aware that any existing material enhancement specified in Item

1113(a)(1) through (3) of Regulation AB (17 CFR 229.1113(a)(1) through (3)) with respect to one or more classes of the asset-backed securities has been materially amended or modified, disclose:

(1) the date on which the agreement or agreements relating to the enhancement was amended or modified;

(2) the identity of the parties to the agreement or agreements relating to the amendment or modification; and

(3) a brief description of the material terms and conditions of the amendment or modification.

Instructions. 1. Disclosure is required under this Item whether or not the registrant is a party to any agreement regarding the enhancement if the loss, addition or modification of such enhancement materially affects, directly or indirectly, the asset-backed securities, the pool assets or the cash flow underlying the asset-backed securities.

2. The instructions to Items 1.01 and 1.02 of this Form apply to this Item.

3. Notwithstanding Items 1.01 and 1.02 of this Form, disclosure regarding changes to material enhancements are to be reported under this Item 6.03 in lieu of those Items.

Item 6.04 Failure To Make a Required Distribution

If a required distribution to holders of the asset-backed securities is not made as of the required distribution date under the transaction documents, identify the failure and state the nature of the failure to make the timely distribution.

Item 6.05 Sales of Additional Securities

If additional securities that are either backed by the same asset pool or are otherwise issued by the issuing entity are sold, whether or not registered under the Securities Act, provide the applicable information set forth in paragraphs (a) through (e) of Item 701 of Regulation S–K (17 CFR 229.701(a) through (e)) and paragraph (e) of Item 1112 of Regulation AB (17 CFR 229.1112(e)). For purposes of determining the filing date for the Form 8–K under this Item 6.05, the registrant has no obligation to disclose information under this Item 6.05 until an enforceable agreement, whether or not subject to conditions, has been entered into under which the securities are to be sold. If there is no such agreement, the registrant must provide disclosure within four business days after the occurrence of the closing or settlement of the transaction or arrangement under which the securities are to be sold.

Instruction. No information is required by this Item if substantially the same information has been provided previously in an effective registration statement under the Securities Act or a prospectus timely filed pursuant to Securities Act Rule 424 (17 CFR 230.424) under the same CIK code regarding a subsequent issuance of asset-backed securities backed by the same pool.

Item 6.06 Securities Act Updating Disclosure

Regarding an offering of asset-backed securities registered on Form S–3 (17 CFR 239.13), if the actual asset pool at the time of issuance of the asset-backed securities differs by 5% or more from the description of the asset pool in the prospectus filed for the offering pursuant to Securities Act Rule 424 (17 CFR 230.424), disclose the information required by Items 1110 and 1111 of Regulation AB (17 CFR 229.1110 and 17 CFR 229.1111) regarding the characteristics of the actual asset pool. If applicable, also provide information required by Items 1107 and 1109 of Regulation AB (17 CFR 229.1107 and 17 CFR 229.1109) regarding any new servicers or originators that would be required to be disclosed under those items regarding the pool assets.

Instruction. No report is required under this Item if substantially the same information is provided in a post-effective amendment to the Securities Act registration statement or in a subsequent prospectus filed pursuant to 17 CFR 230.424.

* * * * *

74. Amend § 249.220f by revising paragraph (a) and (b) to read as follows:

§ 249.220f Form 20–F, registration of securities of foreign private issuers pursuant to section 12(b) or (g) and annual and transition reports pursuant to sections 13 and 15(d).

(a) Any foreign private issuer, other than an asset-backed issuer (as defined in § 229.1101 of this chapter), may use this form as a registration statement under section 12 of the Securities Exchange Act of 1934 (the ''Exchange Act'') or as an annual or transition report filed under section 13(a) or 15(d) of the Exchange Act.

(b) Except with respect to an asset-backed issuer, an annual report on this form shall be filed within six months after the end of the fiscal year covered by such report.

* * * * *

75. Amend Form 20–F (referenced in § 249.220f) by:

a. Adding the phrase '', other than an asset-backed issuer (as defined in 17 CFR 229.1101),'' after the phrase ''foreign private issuer'' in paragraphs (a) and (b) of General Instruction A;

b. Revising the heading ''Instructions to Item 15'' to read ''Instruction to Item 15'';

c. Removing Instruction 2 to Item 15;

d. Removing Instruction 4 to Item 16A;

e. Removing Instruction 4 to Item 16B;

f. Redesignating Instructions 5, 6 and 7 to Item 16B as Instructions 4, 5 and 6 to Item 16B;

g. Revising the heading ''Instructions to Item 16C'' to read ''Instruction to Item 16C''; and

h. Removing Instruction 2 to Item 16C.

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

76. Amend Form 10–K (referenced in § 249.310) by:

a. Removing ''and'' at the end of General Instruction I.(1)(b);

b. Removing the period at the end of General Instruction I.(1)(c) and in its place adding ''; and'';

c. Adding paragraph (d) to General Instruction I.(1);

b. Adding General Instruction J.;

c. Adding an Instruction to Item 9B; and

d. Removing the Instruction to Item 14.

The revisions read as follows.

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K

* * * * *

GENERAL INSTRUCTIONS

* * * * *

I. Omission of Information by Certain Wholly-Owned Subsidiaries.

* * * * *

(1) * * *

(d) The registrant is not an asset-backed issuer, as defined in Item 1101 of Regulation AB (17 CFR 229.1101).

* * * * *

J. Use of This Form by Asset-Backed Issuers

The following applies to registrants that are asset-backed issuers. Terms used in this General Instruction J. have the same meaning as in Item 1101 of Regulation AB (17 CFR 229.1101).

(1) *Items that May be Omitted.* Such registrants may omit the information called for by the following otherwise required Items:

(a) Item 1, Business;
(b) Item 2, Properties;
(c) Item 3, Legal Proceedings;
(d) Item 6, Selected Financial Data;
(e) Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations;
(f) Item 7A, Quantitative and Qualitative Disclosures About Market Risk;
(g) Item 8, Financial Statements and Supplementary Data;
(h) Item 9A, Controls and Procedures;
(i) Item 10, Directors and Executive Officers of the Registrant, Item 11, Executive Compensation, and Item 13, Certain Relationships and Related Transactions, if the issuing entity does not have any officers or directors;
(j) Item 12, Security Ownership of Certain Beneficial Owners and Management, except for the information required by Item 403(a) of Regulation S–K (17 CFR 229.403(a)) and if the issuing entity does not have any executive officers or directors; and
(k) Item 14, Principal Accountant Fees and Services.

(2) *Substitute Information to be Included.* In addition to the Items that are otherwise required by this Form, the registrant must furnish in the Form 10–K the following information:
(a) Immediately after the name of the issuing entity on the cover page of the Form 10–K, as separate line items, the exact name of the depositor as specified in its charter and the exact name of the sponsor as specified in its charter.
(b) Item 1111(b) of Regulation AB;
(c) Item 1113(b)(2) of Regulation AB;
(d) Item 1115 of Regulation AB;
(e) Item 1117 of Regulation AB;
(f) Item 1120 of Regulation AB; and
(g) Item 1121 of Regulation AB.

(3) *Signatures.*
The Form 10–K must be signed either:
(a) On behalf of the depositor by the senior officer in charge of securitization of the depositor; or
(b) On behalf of the issuing entity by the senior officer in charge of the servicing function of the servicer. If multiple servicers are involved in servicing the pool assets, the senior officer in charge of the servicing function of the master servicer (or entity performing the equivalent functions) must sign if a representative of the servicer is to sign the report on behalf of the issuing entity.

* * * * *

FORM 10–K

* * * * *

Item 9B. Other Information

* * * * *

Instruction. With respect to a report on this Form regarding a class of asset-backed securities, the relevant period where disclosure is required is the period since the last required distribution report on Form 10–D (17 CFR 249.312).

* * * * *

77. Amend Form 10–KSB (referenced in § 249.310b) by removing the Instruction to Item 14.

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

78. Amend Form 40–F (referenced in § 249.240f) by:
a. Revising the heading ''Instructions to paragraphs (b), (c), (d) and (e) of General Instruction B.6.'' to read ''Instruction to paragraphs (b), (c), (d) and (e) of General Instruction B.(6).'' and removing Instruction 2;
b. Removing Note 4 of the Notes to Paragraph (8) of General Instruction B;
c. Removing Note 4 of the Notes to Paragraph (9) of General Instruction B;
d. Redesignating Notes 5, 6 and 7 of the Notes to Paragraph (9) of General Instruction B as Notes 4, 5 and 6 of the Notes to Paragraph (9) of General Instruction B; and
e. Revising ''Notes to Instruction B.(10)'' to read ''Note to Instruction B.(10)'' and removing Note 2.

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

79. Add § 249.312 and Form 10–D to read as follows:

§ 249.312 Form 10–D, periodic distribution reports by asset-backed issuers.

This form shall be used by asset-backed issuers to file periodic distribution reports pursuant to § 240.13a–17 or § 240.15d–17 of this chapter. A distribution report on this form pursuant to § 240.13a–17 or § 240.15d–17 of this chapter shall be filed within 15 days after each required distribution date on the asset-backed securities.

Note: The text of Form 10–D does not, and this addition will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10–D

ASSET-BACKED ISSUER DISTRIBUTION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

GENERAL INSTRUCTIONS

A. Rule as to Use of Form 10–D

(1) This Form shall be used for distribution reports by asset-backed issuers pursuant to Rule 13a–17 or Rule 15d–17 (17 CFR 240.13a–17 or 17 CFR 240.15d–17) of the Securities Exchange Act of 1934 (the ''Act''). Such a report is required to be filed even though the sponsor or depositor also files reports pursuant to Section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)) with respect to classes of securities other than the asset-backed securities. See Rule 3b–19 (17 CFR 240.3b–19). Terms used in this Form have the same meaning as in Item 1101 of Regulation AB (17 CFR 229.1101).

(2) Reports on this Form shall be filed within 15 days after each required distribution date on the asset-backed securities, as specified in the governing documents for such securities.

B. Application of General Rules and Regulations

(1) The General Rules and Regulations under the Act contain certain general requirements which are applicable to reports on any form under the Act. These general requirements should be carefully read and observed in the preparation and filing of reports on this Form, except that any provision in this Form or in these instructions is controlling.

(2) Particular attention is directed to Regulation 12B (17 CFR 240.12b–1 *et seq.*), which contains general requirements regarding filing reports under the Act. The definitions contained in Rule 12b–2 should be especially noted. See also Regulations 13A (17 CFR 240.13a–1 *et seq.*) and 15D (17 CFR 240.15d–1 *et seq.*).

C. Preparation of Report.

(1) This Form is not to be used as a blank form to be filled in, but only as a guide in preparing the report in accordance with Rules 12b–11 (17 CFR 240.12b–11), 12b–12 (17 CFR 240.12b–12) and 12b–13 (17 CFR 240.12b–13). The Commission does not furnish blank copies of this Form to be filled in for filing.

(2) These general instructions are not to be filed with the report. The instructions to the various captions of the Form are also to be omitted from the report as filed.

(3) Any item which is inapplicable or to which the answer is negative may be omitted and no reference need be made in the report. If substantially the same information has been previously reported by the asset-backed issuer, an additional report of the information on this Form need not be made. The term ''previously reported'' is defined in Rule 12b–2 (17 CFR 240.12b–2).

(4) Attention is directed to Rule 12b–20 (17 CFR 240.12b–20), which states:

''In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading.''

D. Incorporation by Reference

(1) If the asset-backed issuer makes available to the holders of its securities or otherwise publishes, within the period prescribed for filing the report on this Form, a press release or other document or statement containing information meeting some or all of the requirements of this Form, the information called for may be incorporated by reference to such published document or statement, in answer or partial answer to any item or items of this Form, provided copies thereof are filed as an exhibit to the report on this Form.

(2) All information incorporated by reference must comply with the requirements of this Form and the following rules on incorporation by reference:

(a) Item 10(d) of Regulation S–K (17 CFR 229.10(d)) (general rules on incorporation by reference, which, among other things, prohibit, unless specifically required by this Form, incorporating by reference a document that includes incorporation by reference to another document);

(b) Item 1100(c) of Regulation AB (17 CFR 229.1100(c)) (additional requirements for incorporating information by reference in filings by asset-backed issuers);

(c) Rule 303 of Regulation S–T (17 CFR 232.303) (specific requirements for electronically filed documents); and

(d) Exchange Act Rules 12b–23 and 12b–32 (17 CFR 240.12b–23 and 240.12b–32) (additional rules on incorporation by reference for reports filed pursuant to Sections 13 and 15(d) of the Act).

E. Signature and Filing of Report

(1) The report on this Form must be signed by the depositor. In the alternative, the report on this Form may be signed on behalf of the issuing entity by a duly authorized representative of the servicer. If multiple servicers are involved in servicing the pool assets, a duly authorized representative of the master servicer (or entity performing the equivalent functions) must sign if a representative of the servicer is to sign the report on behalf of the issuing entity.

(2) The name and title of each person who signs the report shall be typed or printed beneath his or her signature. Attention is directed to Rule 12b–11 (17 CFR 240.12b–11) concerning manual signatures.

(3) An asset-backed issuer must submit the report on this Form in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232), except as discussed below. An issuer submitting the report in electronic format must provide the signatures required for the report in accordance with Regulation S–T Rule 302 (17 CFR 232.302). For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

(4) If the report is filed in paper pursuant to a hardship exemption from electronic filing provided by Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202), or as otherwise permitted by the Commission, eight copies of the report must be filed with the Commission. An issuer also must file at least one complete copy of the report with each national securities exchange on which any security of the issuer is listed and registered under Section 12(b) of the Exchange Act (15 U.S.C. 78*l*(b)). At least one complete copy of the report filed with the Commission and one such copy filed with each exchange must be manually signed. Copies not manually signed must bear typed or printed signatures. When submitting a report in paper under a hardship exemption, an issuer must provide the legend required by Regulation S–T Rule 201(a)(2) or 202(c) (17 CFR 232.201(a)(2) or 232.202(c)) on the cover page of the report. When submitting the report in electronic format to the Commission, an issuer may submit a paper copy containing typed signatures to each national securities exchange in accordance with Regulation S–T Rule 302(c) (17 CFR 232.302(c)).

BILLING CODE 8010–01–P

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-D

ASSET-BACKED ISSUER
DISTRIBUTION REPORT PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934

For the [identify distribution frequency (e.g., monthly/quarterly)] distribution period from
_____, 20__ to _____, 20__

Commission File Number of issuing entity: _____

_____
(Exact name of issuing entity as specified in its charter)

Commission File Number of depositor: _____

_____
(Exact name of depositor as specified in its charter)

_____
(Exact name of sponsor as specified in its charter)

_____	_____
(State or other jurisdiction of incorporation or organization of the issuing entity)	(I.R.S. Employer Identification No.)
_____	_____
(Address of principal executive offices of the issuing entity)	(Zip Code)

_____
(Telephone number, including area code)

_____
(Former name, former address, if changed since last report)

Title of class	Registered/reporting pursuant to (check one) Section 12(b)	Section 12(g)	Section 15(d)	Name of exchange (If Section 12(b))
_____	[___]	[___]	[___]	_____
_____	[___]	[___]	[___]	_____

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ..... No .....

BILLING CODE 8010–01–C

PART I—DISTRIBUTION INFORMATION

Item 1. Distribution and Pool Performance Information

Provide the information required by Item 1119 of Regulation AB (17 CFR 229.1119), and attach as an exhibit to this report the distribution report delivered to the trustee or security holders, as the case may be, pursuant to the transaction agreements for the distribution period covered by this report. Any information required by Item 1119 of Regulation AB that is provided in the attached distribution report need not be repeated in this report. However, taken together, the attached distribution report and the information provided under this Item must contain all of the information required by Item 1119 of Regulation AB.

PART II—OTHER INFORMATION

Item 2. Legal Proceedings

Provide the information required by Item 1115 of Regulation AB (17 CFR 229.1115). As to such proceedings which have been terminated during the period covered by the report, provide similar information, including the date of termination and a description of the disposition thereof.

Instruction. A legal proceeding need only be reported in the report on this Form filed for the distribution period in which it first became a reportable event and in subsequent reports on this Form in which there have been material developments. Subsequent filings on this Form in the same fiscal year in which a legal proceeding or a material development is reported should reference any previous reports in that year.

Item 3. Sales of Securities and Use of Proceeds

Provide the information required by Item 2 of Part II of Form 10–Q (17 CFR 249.308a) with respect to the period covered by this report. With respect to the information required by Item 2(a) of Part II of Form 10–Q, provide this information regarding any sale of securities that are either backed by the same asset pool or are otherwise issued by the issuing entity, regardless of whether the transaction was registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) during the period covered by the report. Also provide the information required by paragraph (e) of Item 1112 of Regulation AB (17 CFR 229.1112(e)) regarding such securities. No information need be furnished in response to this Item if it has previously been included in a Current Report on Form 8–K (17 CFR 249.308).

Item 4. Defaults Upon Senior Securities

Provide the information required by Item 3 of Part II of Form 10–Q with respect to the period covered by this report.

Item 5. Submission of Matters to a Vote of Security Holders

Provide the information required by Item 4 of Part II of Form 10–Q with respect to the period covered by this report.

Item 6. Significant Obligors of Pool Assets

Provide the information required by Item 1111(b) of Regulation AB (17 CFR 229.1111(b)).

Instruction. Such information need only be reported in the report on this Form filed for the distribution period in which updated information regarding the significant obligor is required pursuant to Item 1111(b) of Regulation AB. Filings on this Form for distribution periods in which updated information is not required should reference the previous report on this Form or other filing by the asset-backed issuer that includes the most recent information. See also Item 1100(c) of Regulation AB (17 CFR 229.1100(c)) regarding the presentation of such information in certain instances.

Item 7. Significant Enhancement Provider Information

Provide the information required by Item 1113(b)(2) of Regulation AB (17 CFR 229.1113(b)(2)).

Instruction. Such information need only be reported in the report on this Form filed for the distribution period in which updated information regarding the enhancement provider is required pursuant to Item 1113(b)(2) of Regulation AB. Filings on this Form for distribution periods in which updated information is not required should reference the previous report on this Form or other filing by the asset-backed issuer that includes the most recent information. See also Item 1100(c) of Regulation AB (17 CFR 229.1100(c)) regarding the presentation of such information in certain instances.

Item 8. Other Information

The registrant must disclose under this Item any information required to be disclosed in a report on Form 8–K during the period covered by the report on this Form, but not reported, whether or not otherwise required by this Form. If disclosure of such information is made under this Item, it need not be repeated in a report on Form 8–K which would otherwise be required to be filed with respect to such information or in a subsequent report on this Form.

Item 9. Exhibits

(a) List the documents filed as a part of the report.

(b) File, as exhibits to this report, the exhibits required by this Form and Item 601 of Regulation S–K (17 CFR 229.601).

SIGNATURES*

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

_____

Date:

_____

(Depositor)

_____

(Signature)**

[or]

_____

Date:

By:

_____

(Issuing entity)

_____

(Servicer)

_____

(Signature)**

*See General Instruction E to Form 10–D.

** Print the name and title of each signing officer under his or her signature.

Dated: May 3, 2004.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–10467 Filed 5–12–04; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Thursday,
May 13, 2004

Part III

The President

Executive Order 13338—Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria

Federal Register
Vol. 69, No. 93
Thursday, May 13, 2004

Presidential Documents

Title 3—

The President

Executive Order 13338 of May 11, 2004

Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003, Public Law 108–175 (SAA), and section 301 of title 3, United States Code,

I, GEORGE W. BUSH, President of the United States of America, hereby determine that the actions of the Government of Syria in supporting terrorism, continuing its occupation of Lebanon, pursuing weapons of mass destruction and missile programs, and undermining United States and international efforts with respect to the stabilization and reconstruction of Iraq constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States and hereby declare a national emergency to deal with that threat. To address that threat, and to implement the SAA, I hereby order the following:

Section 1. (a) The Secretary of State shall not permit the exportation or reexportation to Syria of any item on the United States Munitions List (22 C.F.R. part 121).

(b) Except to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to the provisions of this order in a manner consistent with the SAA, and notwithstanding any license, permit, or authorization granted prior to the effective date of this order, (i) the Secretary of Commerce shall not permit the exportation or reexportation to Syria of any item on the Commerce Control List (15 C.F.R. part 774); and (ii) with the exception of food and medicine, the Secretary of Commerce shall not permit the exportation or reexportation to Syria of any product of the United States not included in section 1(b)(i) of this order.

(c) No other agency of the United States Government shall permit the exportation or reexportation to Syria of any product of the United States, except to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to this order in a manner consistent with the SAA, and notwithstanding any license, permit, or authorization granted prior to the effective date of this order.

Sec. 2. The Secretary of Transportation shall not permit any air carrier owned or controlled by Syria to provide foreign air transportation as defined in 49 U.S.C. 40102(a)(23), except that he may, to the extent consistent with Department of Transportation regulations, permit such carriers to charter aircraft to the Government of Syria for the transport of Syrian government officials to and from the United States on official Syrian government business. In addition, the Secretary of Transportation shall prohibit all takeoffs and landings in the United States, other than those associated with an emergency, by any such air carrier when engaged in scheduled international air services.

Sec. 3. (a) Except to the extent provided in section 203(b)(1), (3), and (4) of the IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)), and the Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX, Public Law 106–387) (TSRA), or regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order,

all property and interests in property of the following persons, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: persons who are determined by the Secretary of the Treasury, in consultation with the Secretary of State,

(i) to be or to have been directing or otherwise significantly contributing to the Government of Syria's provision of safe haven to or other support for any person whose property or interests in property are blocked under United States law for terrorism-related reasons, including, but not limited to, Hamas, Hizballah, Palestinian Islamic Jihad, the Popular Front for the Liberation of Palestine, the Popular Front for the Liberation of Palestine-General Command, and any persons designated pursuant to Executive Order 13224 of September 23, 2001;

(ii) to be or to have been directing or otherwise significantly contributing to the Government of Syria's military or security presence in Lebanon;

(iii) to be or to have been directing or otherwise significantly contributing to the Government of Syria's pursuit of the development and production of chemical, biological, or nuclear weapons and medium- and long-range surface-to-surface missiles;

(iv) to be or to have been directing or otherwise significantly contributing to any steps taken by the Government of Syria to undermine United States and international efforts with respect to the stabilization and reconstruction of Iraq; or

(v) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property or interests in property are blocked pursuant to this order.

(b) The prohibitions in paragraph (a) of this section include, but are not limited to, (i) the making of any contribution of funds, goods, or services by, to, or for the benefit of any person whose property or interests in property are blocked pursuant to this order; and (ii) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 4. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate the prohibitions set forth in this order is prohibited.

Sec. 5. I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of the IEEPA (50 U.S.C. 1702(b)(2)) would seriously impair the ability to deal with the national emergency declared in this order, and hereby prohibit, (i) the exportation or reexportation of such donated articles to Syria as provided in section 1(b) of this order; and (ii) the making of such donations by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 3 of this order.

Sec. 6. For purposes of this order:

(a) the term "person'' means an individual or entity;

(b) the term "entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term "United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) the term "Government of Syria'' means the Government of the Syrian Arab Republic, its agencies, instrumentalities, and controlled entities; and

(e) the term "product of the United States'' means: for the purposes of subsection 1(b), any item subject to the Export Administration Regulations (15 C.F.R. parts 730–774); and for the purposes of subsection 1(c), any item subject to the export licensing jurisdiction of any other United States Government agency.

Sec. 7. With respect to the prohibitions contained in section 1 of this order, consistent with subsection 5(b) of the SAA, I hereby determine that it is in the national security interest of the United States to waive, and hereby waive application of subsection 5(a)(1) and subsection 5(a)(2)(A) of the SAA so as to permit the exportation or reexportation of certain items as specified in the Department of Commerce's General Order No. 2 to Supplement No. 1, 15 C.F.R. part 736, as issued consistent with this order and as may be amended pursuant to the provisions of this order and in a manner consistent with the SAA. This waiver is made pursuant to the SAA only to the extent that regulation of such exports or reexports would not otherwise fall within my constitutional authority to conduct the Nation's foreign affairs and protect national security.

Sec. 8. With respect to the prohibitions contained in section 2 of this order, consistent with subsection 5(b) of the SAA, I hereby determine that it is in the national security interest of the United States to waive, and hereby waive, application of subsection 5(a)(2)(D) of the SAA insofar as it pertains to: aircraft of any air carrier owned or controlled by Syria chartered by the Syrian government for the transport of Syrian government officials to and from the United States on official Syrian government business, to the extent consistent with Department of Transportation regulations; takeoffs or landings for non-traffic stops of aircraft of any such air carrier that is not engaged in scheduled international air services; takeoffs and landings associated with an emergency; and overflights of United States territory.

Sec. 9. I hereby direct the Secretary of State to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out subsection 1(a) of this order. I hereby direct the Secretary of Commerce, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out subsection 1(b) of this order. I direct the Secretary of Transportation, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out section 2 of this order. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by the IEEPA as may be necessary to carry out sections 3, 4, and 5 of this order. The Secretaries of State, Commerce, Transportation, and the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. The Secretary of State, in consultation with the Secretaries of Commerce, Transportation, and the Treasury, as appropriate, is authorized to exercise the functions and authorities conferred upon the President in subsection 5(b) of the SAA and to redelegate these functions and authorities consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order and, where appropriate, to advise the Secretaries of State, Commerce, Transportation, and the Treasury in a timely manner of the measures taken.

Sec. 10. This order is not intended to create, and does not create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

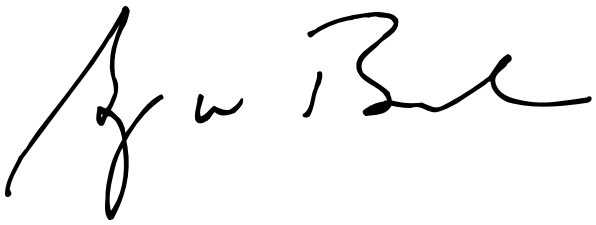
Sec. 11. For those persons whose property or interests in property are blocked pursuant to section 3 of this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or assets instantaneously, prior notice to such persons of measures

to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to this order.

Sec. 12. The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA, 50 U.S.C. 1641(c), and section 204(c) of the IEEPA, 50 U.S.C. 1703(c).

Sec. 13. (a) This order is effective at 12:01 eastern daylight time on May 12, 2004.

(b) This order shall be transmitted to the Congress and published in the **Federal Register**.



THE WHITE HOUSE,
May 11, 2004.

[FR Doc. 04–11058
Filed 5–12–04; 9:07 am]
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 1904/P.L. 108–225

To designate the United States courthouse located at 400 North Miami Avenue in Miami, Florida, as the "Wilkie D. Ferguson, Jr. United States Courthouse". (May 7, 2004; 118 Stat. 641)

S. 2022/P.L. 108–226

To designate the Federal building located at 250 West Cherry Street in Carbondale, Illinois the "Senator Paul Simon Federal Building". (May 7, 2004; 118 Stat. 642)

S. 2043/P.L. 108–227

To designate a Federal building in Harrisburg, Pennsylvania, as the "Ronald Reagan Federal Building". (May 7, 2004; 118 Stat. 643)

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