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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH13

List of Approved Spent Fuel Storage Casks: FuelSolutions™ Cask System Revision; Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of May 7, 2003, for the direct final rule that appeared in the **Federal Register** of February 21, 2003 (68 FR 8445). This direct final rule amended the NRC's regulations by revising the BNFL Fuel Solutions Corporation (FuelSolutions™) Spent Fuel Management System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 3 to Certificate of Compliance No. 1026. This document confirms the effective date.

DATES: The effective date of May 7, 2003, is confirmed for this direct final rule.

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

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; (301) 415–6219; e-mail *jmm2@nrc.gov*.

SUPPLEMENTARY INFORMATION: On February 21, 2003 (68 FR 8445), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR part 72 to include Amendment No. 3 to Certificate of Compliance Number 1026. Amendment No. 3 modifies the present cask system design to change the W–21 canister Technical Specifications and bases to provide an alternative to returning the canister to the spent fuel building by returning it to the transfer cask. Specifically, Technical Specifications 3.3.2 and 3.3.3 have been modified to allow the W–21 canister to be returned to the transfer cask while restoring normal storage conditions. The amendment also includes several editorial changes to Technical Specifications 3.1.1, 3.3.2, and 3.3.3.

In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on the date noted above. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 24th day of April, 2003.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

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

[FR Doc. 03–10729 Filed 4–30–03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–170–AD; Amendment 39–13136; AD 2003–09–07]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; and DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas transport category airplanes listed above, that requires a check of the slant pressure panels of the wheel wells of the left and right main landing gear (MLG) for water leakage, and repair of any leak found. This action is necessary to prevent the accumulation of water in the wheel wells of the MLG during flight, which could freeze on the lateral control mixer and control cables, resulting in restricted lateral control and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective June 5, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 5, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; and DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; was published in the **Federal Register** on November 18, 2002 (67 FR 69494). That action proposed to require a check of the slant pressure

panels of the wheel wells of the left and right main landing gear (MLG) for water leakage, and repair of any leak found.

Explanation of New Relevant Service Information

Since the issuance of the proposed AD, the FAA has reviewed and approved Boeing Alert Service Bulletin DC9–53A295, Revision 02, including Appendix and Evaluation Form, dated January 6, 2003. (The proposed AD refers to Boeing Alert Service Bulletin DC9–53A295, Revision 01, dated February 28, 2002, as an acceptable source of service information for accomplishment of the proposed actions.) Revision 02 of the service bulletin adds no new procedures, though it adds two airplanes to the effectivity listing. This change does not affect the applicability of this AD because, as proposed, this AD applies to all McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; and DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. Therefore, we have revised paragraph (a) of this final rule to refer to Revision 02 of the service bulletin as the appropriate source of service information for the actions in that paragraph. Also, we have revised paragraph (c) of this final rule (which was included as paragraph (b) in the proposed AD) to give credit for accomplishing the required actions before the effective date of this AD per the original issue or Revision 01 of the service bulletin.

Comments

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

Request To Revise Leak Check Procedures

One commenter requests that the FAA revise certain leak check procedures. Specifically, the commenter asks that we allow leak checks to be performed at 4 pound-per-square-inch gage (psig) (rather than 1 and 3 psig), allow operators to apply sealant around the entire seal before accomplishing the leak check, and allow operators to trim migrated seals within certain limits. The commenter states that the leak check at 1 psig is impractical because it is difficult to maintain differential pressure of 1 psig, and it is unreasonable to expect an operator to do this check consistently and repeatedly. The commenter states that the slant pressure panel is a ''plug''-type opening that seals with increasing pressure, and most plug-type openings, such as doors, leak at 1 psig but are sealed at 3.5 to 4 psig. The commenter also states that the seals migrate over time due to flexing of the structure, and it has not noted any appreciable effect on the sealing capabilities of the slant pressure panel due to such seal migration. The commenter suggests that the referenced service bulletin be revised to incorporate the requested changes.

We partially concur with the commenter's request. We do not concur to raise the pressure threshold for the leak checks to 4 psig. We disagree that the slant pressure panel is a plug-type opening similar to a door; the slant pressure panel is intended to be pressure-tight at all times. This AD addresses an unsafe condition, the accumulation of water in the wheel wells of the MLG, that occurs due to leakage of water into the MLG wheel well when the slant pressure panel is not pressure-tight. We have determined that a leak check at 1 psig (and repairing any leak found during that check) is necessary to ensure safety and will ensure that leaks will not occur when the airplane is in service. No change to the final rule is needed in this regard.

We concur with the commenter's request to allow operators the option of applying PR–1422 sealant to the fillet seal prior to doing the leak check or trimming migrated seals within certain limits. If these actions are accomplished, they must be accomplished per a method approved by the FAA. We have added a new paragraph (b) to this final rule (and reidentified subsequent paragraphs accordingly) to include these provisions. We have also added Note 2 to this final rule (and reidentified subsequent notes accordingly) to state that application of sealant within the limits and per the procedures specified in Boeing Service Drawing 5956065 is an approved means of complying with the sealant application specified in paragraph (b) of this AD.

Request for Alternative Method of Compliance

One commenter, an operator, states that, on several of its airplanes, it has had cases of water accumulation in the wheel wells of the left and right MLG due to pressurization leaks from the slant pressure panels. Repairs of such leaks were successful on a limited and temporary basis only. Based on its experience with such leaks, the commenter developed a program to refurbish slant pressure panels that involves replacing the left and right slant pressure panels, gaskets, and covers, and resealing the area. The commenter states that it will pursue an alternative method of compliance (AMOC) with the proposed AD.

The commenter makes no specific request for a change to the proposed AD. We infer that the commenter is requesting approval of an AMOC for the requirements of this AD. The commenter provides no technical data to support its request. As provided by paragraph (d) of this AD, we may approve a request for an AMOC if data are submitted to justify that the commenter's refurbishment process would provide an acceptable level of safety. No change to the final rule is needed in this regard.

Clarification of Compliance Time

Paragraph (a) of the proposed AD specifies a compliance threshold of ''Prior to the accumulation of 40,000 flight hours since date of manufacture.'' We find that it is necessary to clarify this compliance threshold in this final rule. This decision is based on our determination that ''date of manufacture'' may be interpreted differently by different operators. Therefore, we have revised the compliance threshold for paragraph (a) of this final rule to ''Prior to the accumulation of 40,000 flight hours since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever occurs first.'' We find that this terminology is generally understood within the industry and records will always exist that establish these dates with certainty. As a result of these changes, we have moved the compliance threshold and grace period for the actions required by paragraph (a) to subparagraphs (a)(1) and (a)(2) of this final rule.

Explanation of Editorial Change

We have changed the service bulletin citation throughout this final rule to exclude the Evaluation Form attached to the service bulletin. The form is intended to be completed by operators and submitted to the airplane manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.

Also, the service bulletin citation throughout the proposed AD states ''including Appendix A.'' First, we note that the citation should have referred to ''Appendix,'' not ''Appendix A,'' and we have revised all citations in this final rule accordingly. Second, the appendix of the service bulletin contains a form for reporting leak check results. As we explained in the preamble of the proposed AD, this AD does not require

such reporting. Therefore, we have changed the service bulletin citation throughout this final rule to exclude the appendix.

Conclusion

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

Cost Impact

There are approximately 1,919 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,159 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required leak check, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $278,160, or $240 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–09–07 **McDonnell Douglas:** Amendment 39–13136. Docket 2001–NM–170–AD.

Applicability: All Model DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, DC–9–51, DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the accumulation of water in the wheel wells of the left and right main landing gear (MLG) during flight, which could freeze on the lateral control mixer and control cables, resulting in restricted lateral control and consequent reduced controllability of the airplane, accomplish the following:

Leak Check/Repair

(a) At the later of the compliance times specified in paragraphs (a)(1) and (a)(2) of this AD, do a check of the slant pressure panels of the wheel wells of the left and right MLG for water leakage (including pressurizing the airplane and checking the panels for leaks, depressurizing the airplane to repair leaks, and pressurizing the airplane again to verify that all leaks are repaired), per the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–53A295, Revision 02, excluding Appendix and Evaluation Form, dated January 6, 2003. If any leak is found, before further flight, repair per the service bulletin. If no leak is found, no further action is required by this AD.

(1) Prior to the accumulation of 40,000 flight hours since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever occurs first.

(2) Within 18 months after the effective date of this AD.

Optional Application of Sealant or Trimming of Migrated Seals

(b) Prior to performing the check for water leakage specified in paragraph (a) of this AD, operators, at their option, may apply PR–1422 sealant to the fillet seal or trim migrated seals, within limits specified by and per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

Note 2: Application of PR–1422 sealant per the procedures specified in Boeing Service Drawing 5956065 is an approved means of complying with the sealant application provision specified in paragraph (b) of this AD.

Credit for Actions Done per Previous Issue of Service Bulletin

(c) Accomplishment of the check for water leakage and repair of leaks found, before the effective date of this AD, per Boeing Alert Service Bulletin DC9–53A295, excluding Appendix and Evaluation Form, dated May 8, 2001; or Revision 01, dated February 28, 2002; is acceptable for compliance with paragraph (a) of this AD.

Note 3: Although Boeing Alert Service Bulletins DC9–53A295, dated May 8, 2001; Revision 01, dated February 28, 2002; and Revision 02, dated January 6, 2003; recommend that operators report findings to the manufacturer after doing the initial leak check, this AD does not contain such a reporting requirement.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the

Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Unless otherwise provided by this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin DC9–53A295, Revision 02, excluding Appendix and Evaluation Form, dated January 6, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on June 5, 2003.

Issued in Renton, Washington, on April 23, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–10512 Filed 4–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–18–AD; Amendment 39–13138; AD 2003–09–09]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 441 and F406 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 2002–09–13, which currently requires a one-time inspection of the fuel boost pump wiring inside and outside the boost pump reservoir and repair or replacement of the wiring as necessary on certain Cessna Aircraft Company (Cessna) Model 441 airplanes. AD 2002–09–13 resulted from several reports of chafing and/or arcing of the fuel boost pump wiring inside and outside the fuel pump reservoir. This AD retains the actions required in AD 2002–09–13, makes the one-time inspection repetitive, requires the inspection and possible replacement of the wire harness, lead wires and fuel boost pump on Model F406 airplanes, and requires eventual installation of an improved design wire harness and fuel boost pump as terminating action for the repetitive inspections. The actions specified by this AD are intended to detect, correct, and prevent chafing and/or arcing fuel boost pump wiring, which could result in arcing within the wing fuel storage system. Such a condition could lead to ignition of explosive vapor within the fuel storage system.

DATES: This AD becomes effective on June 24, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of June 24, 2003.

ADDRESSES: You may get the service information referenced in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–18–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Adamson, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4145; facsimile: 316–946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? Reports of chafing and/or arcing of the fuel boost pump wiring inside the fuel pump reservoir that supplies fuel to each engine on Cessna Model 441 airplanes caused us to issue AD 2002–09–13, Amendment 39–12746 (67 FR 31117, May 9, 2002). AD 2002–09–13 requires you to: (1) do a one-time inspection of the electrical wiring going to the fuel boost pump reservoir and the boost pump wiring inside the reservoir for chafing or damage, and (2) repair or replace the wiring as necessary.

These actions are required in accordance with Cessna Conquest Service Bulletin No.: CQB02–1R1, Revision 1, dated April 22, 2002.

What has happened since AD 2002–09–13 to initiate this action? Further analysis of this situation reveals that:

—The actions required by AD 2002–09–13 should also apply to Model F406 airplanes;

—The inspection should be repetitive; and

—Improved design wire harnesses and fuel boost pumps should eventually be installed as terminating action for the repetitive inspections.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna Models 441 and F406 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 21, 2002 (67 FR 64568). The NPRM proposed to supersede AD 2002–09–13 with a new AD that would require repetitive inspections of the Models 441 and F406 airplanes fuel boost pump wiring inside and outside the boost pump reservoir for chafing or damage and replacement of the wiring and fuel boost pump, as necessary, and require eventual installation of an improved design wire harness and fuel boost pump as terminating action for the repetitive inspections.

How will this action relate to the FAA's aging commuter-class aircraft policy? The FAA's aging commuter aircraft policy briefly states that when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on the FAA's determination that reliance on critical repetitive inspections on airplanes utilized in commuter service carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection.

What is the potential impact if FAA took no action? This condition, if not detected and corrected, could result in arcing within the wing fuel storage system. Such a condition could lead to ignition of explosive vapor within the fuel storage system.

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

Comment Issue No. 1: Remove Warnings Following Compliance to the Proposed AD

What is the commenter's concern? The commenter, for clarity and completeness, requests that the AD call out removing the warning placards after compliance with Cessna Conquest Service Bulletin No.: CQB02–1, Revision 2, dated October 7, 2002.

What is FAA's response to the concern? We concur with the commenter and for clarity and completeness will change the final rule AD action to incorporate this change.

Comment Issue No. 2: Validity of the 200-Hour Time-in-Service (TIS) Recurrent Inspection Requirement

What is the commenter's concern? The commenter states that the 200-hour TIS recurrent inspection is not necessary because the commenter's specific aircraft is 24 years old and has more than 7,900 hours TIS and inspection finds only minor chafing of one wire. Further, the commenter states that the 200-hour TIS recurrent inspection increases the likelihood of creating fuel leaks because of the constant reopening and resealing of the fuel boost pump panels. The commenter disagrees with the 200-hour TIS recurrent inspection requirement. Because the commenter did not request an alternative time, we infer that the commenter wants the repetitive inspection deleted from the AD.

What is FAA's response to the concern? We do not concur. Initial investigation revealed harnesses and fuel boost pump leads with virtually no chafing, some with minor chafing, and several with excessive chafing that appeared to have been arcing. Additionally, all of the above conditions were found on aircraft with relatively low TIS to high TIS. The 200-hour TIS recurrent inspection is necessary to assure continued airworthiness of repaired wire harnesses.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 3: Allow the Aircraft To Be Operated With Greater Than 80 Pounds or 12 Gallons of Fuel in Either Wing Tank Instead of Replacing the Wire Harnesses and Fuel Boost Pumps

What is the commenter's concern? The commenter states that the wire harness is submerged in fuel when 80 pounds or 12 gallons of fuel remain in each wing tank. The commenter requests that the proposed AD allow the aircraft to be flown with greater than 80 pounds or 12 gallons of fuel remaining in either wing tank instead of replacing the wire harnesses and fuel boost pumps that exhibit chafing of the wire harness.

What is FAA's response to the concern? We do not concur. There are two wire harnesses in each wing tank, each with the potential for chafing and subsequent arcing if not corrected. The potential for arcing within the fuel tank continues to exist until replacing or repairing both sources of possible arcing. The request to allow operation with 80 pounds of fuel remaining in either tank only assures the fuel boost pump lead wires to remain covered with fuel. Engineering evaluation has determined that safe operation without repaired or replaced wire harnesses requires approximately 300 pounds to assure both wire harnesses are submerged in fuel.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 4: Replace the Fuel Boost Pumps

What is the commenter's concern? The commenter states that the fuel boost pump wire harness is the reason for the AD action and the fuel boost pumps remain in an acceptable operating condition. The commenter disagrees with replacing the fuel boost pumps. The commenter states that the problem is with the fuel boost pump wire harnesses and replacement of the fuel pumps is an undue and unnecessary burden on the operators.

What is FAA's response to the concern? We do not concur. Chafing has been found to occur on both the fuel boost pump lead wires and the wire harness extending from the fuel boost pump housing to wing structure on several aircraft with varying times-in-service.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 5: Correct Cost Estimate for Replacing the Wire Harnesses and Fuel Boost Pumps

What is the commenter's concern? The commenter disagrees with the estimated cost of replacing the wire harnesses and fuel boost pumps. The commenter justifies disagreement with cost data from one service center.

What is FAA's response to the concern? We do not concur. The cost estimate associated with the cost impact with the proposed AD has been coordinated with Cessna, and found to be valid.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 6: Adequacy of the 1,200-Hour TIS Phase 11 Inspection

What is the commenter's concern? The commenter requests that, once the wire harnesses have been replaced and the fuel boost pumps have been replaced or repaired, the inspection criteria on the 1,200-hour TIS Phase 11 inspection include specific instructions to inspect the wire harnesses and fuel boost pump leads for chafing and security. The commenter further states that including specific instructions to inspect the wire harnesses and fuel boost pump leads would assure continued airworthiness of the harnesses and boost pump leads.

What is FAA's response to the concern? We do not concur. The Model 441 Maintenance Manual was revised on July 1, 2002, with specific instructions to visually inspect all wire bundles/electrical components in the fuel storage area. Cessna and FAA agreed that inspection of these areas would occur every 600 hours TIS or 24 calendar months, whichever occurs first, to coincide with the general electrical wiring and component inspection interval. The FAA will monitor the service history and take further rulemaking action if it shows that normal maintenance practices are not eliminating the problem.

We are not changing the final rule AD action as a result of this comment.

FAA's Determination

What is FAA's final determination on this issue? We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above and minor editorial questions. We have determined that these changes and minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

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

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 370 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 workhours × $60 per hour = $480	None	$480	$480 × 370 = $177,600

For Model 441 airplanes, we estimate the following costs to accomplish the replacements:

Labor cost	Parts cost	Total cost per airplane
8 workhours × $60 per hour = $480	$13,101	$480 + $13,101 = $13,581

For Model F406 airplanes, we estimate the following costs to accomplish the replacements:

Labor cost	Parts cost	Total cost per airplane
8 workhours × $60 per hour = $480	$7,558	$480 + $7,558 = $8,038

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–09–09 Cessna Aircraft Company: Amendment 39–13138; Docket No. 2002–CE–18–AD; Supersedes AD 2002–09–13, Amendment 39–12746.

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

Model	Serial numbers
441	0001 through 0362 and 698.
F406	0001 through 0089.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect, correct, and prevent chafing and/or arcing fuel boost pump wiring, which could result in arcing within the wing fuel system. Such a condition could lead to ignition of explosive vapor within the fuel storage system.

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

Actions	Compliance	Procedures
(1) For Model 441 airplanes: Inspect the part number (P/N) 5718106–1 wire harness and fuel boost pump lead wires for chafing or damage.	Initially at whichever occurs first, unless already accomplished: Within the next 25 hours time-in-service (TIS) or 60 days after May 31, 2002 (the effective date of AD 2002–09–13): Repetitively thereafter at intervals not to exceed 200 hours TIS.	In accordance with Cessna Conquest Service Bulletin No.: CQB02–1, Revision 2, dated October 7, 2002.
(2) For Model F406 airplanes: Inspect the P/N 5718106–4 wire harness and fuel boost pump lead wires for chafing or damage.	Initially at whichever occurs first, unless already accomplished: Within the next 25 hours TIS after June 24, 2003 (the effective date of this AD) or 60 days after June 24, 2003 (the effective date of this AD): Repetitively thereafter at intervals not to exceed 200 hours TIS.	In accordance with Reims/Cessna Caravan Service Bulletin No.: CAB02–8, dated June 3, 2002.

Actions	Compliance	Procedures
(3) If chafing or damage is found during any inspection required in paragraph (d)(1) or (d)(2) of this AD: (i) For the Model 441 airplanes, replace the wire harnesses, repair fuel boost pump lead wires, or replace the fuel boost pump, as applicable. (ii) For the Model F406 airplanes, repair or replace the wire harnesses or lead wires, or fuel boost pump, as applicable.	Before further flight after any inspection required in paragraphs (d)(1) and (d)(2) of this AD in which damage is found. If improved design wire harnesses and fuel boost pumps are not installed, continue to inspect as specified in paragraph (d)(1) or (d)(2) of this AD until these improved design parts are installed.	For the Model 441 airplanes: In accordance with Cessna Conquest Service Bulletin No.: CQB02–1, Revision 2, dated October 7, 2002. For the Model F406 airplanes: In accordance with Reims/Cessna Caravan Service Bulletin No.: CAB02–8, dated June 3, 2002.
(4) Perform the following installations: (i) For the Model 441 airplanes: Install improved design fuel boost pump (P/N 1C12–17 or FAA-approved equivalent P/N) and improved design wire harness (P/N 5718106–6 or FAA-approved equivalent P/N). Installing both improved part numbers in each wing tank terminates the repetitive inspection requirements of paragraph (d)(1) of this AD. (ii) For the Model F406 airplanes: Install improved design fuel boost pump (P/N 1C12–17 or FAA-approved equivalent P/N) and improved design wire harness (P/N 406 28 01 or FAA-approved equivalent P/N). Installing both improved part numbers in each wing tank terminates the repetitive inspection requirements of paragraph (d)(2) of this AD.	Within the next 400 hours TIS after June 24, 2003 (the effective date of this AD), unless already accomplished.	For the Model 441 airplanes: In accordance with Cessna Conquest Service Bulletin No.: CQB02–1, Revision 2, dated October 7, 2002. For the Model F406 airplanes: In accordance with Reims/Cessna Caravan Service Bulletin No.: CAB02–8, dated June 3, 2002.
(5) Remove the following warnings for the Model 441 airplanes after compliance with Cessna Conquest Service Bulletin No.: CQB02–1, Revision 2, dated October 7, 2002: (i) ''PRIOR TO THE INITIAL INSPECTION: THE AIRPLANE SHOULD NOT BE OPERATED WITH LESS THAN 300 POUNDS OF FUEL IN EACH WING.'' (ii) ''AFTER THE INITIAL INSPECTION: THE AIRPLANE SHOULD NOT BE OPERATED WHENEVER THE LEFT OR RIGHT LOW FUEL ANNUNCIATOR IS ILLUMINATED.''	As of June 24, 2003 (the effective date of this AD).	Not applicable.
(6) Only install improved design wire harnesses and fuel boost pumps as specified in paragraphs (d)(4)(i) and (d)(4)(ii) of this AD.	As of June 24, 2003 (the effective date of this AD).	Not applicable.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

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

(2) Alternative methods of compliance approved in accordance with AD 2002–09–13, which is superseded by this AD, are approved as alternative methods of compliance for all inspection requirements of this AD. Regardless, you still must comply with the replacement requirements of this AD.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Robert Adamson, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4145; facsimile: 316–946–4107.

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

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Cessna Conquest Service Bulletin No.: CQB02–1, Revision 2, dated October 7, 2002; and Reims/Cessna Caravan Service Bulletin No.: CAB02–8, dated June 3, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2002–09–13, Amendment 39–12746.

(j) *When does this amendment become effective?* This amendment becomes effective on June 24, 2003.

Issued in Kansas City, Missouri, on April 22, 2003.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–10509 Filed 4–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–57–AD; Amendment 39–13134; AD 2003–09–05]

RIN 2120–AA64

Airworthiness Directives; Schweizer Aircraft Corporation Model 269D Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Schweizer Aircraft Corporation (Schweizer) Model 269D helicopters. This action requires inspecting each aluminum horizontal stabilizer endplate (endplate) and the attach angles for cracks, fretting, and endplate bending. If fretting is found, as indicated by a powder residue adjacent to a rivet head, installing an inspection hole in the horizontal stabilizer and inspecting the internal structure is required. Replacing unairworthy parts is required before further flight. Finally, reporting any cracked or bent endplate, any cracked attach angles, or fretting to the FAA is required. This amendment is prompted by reports of loose endplates, and one report of an endplate separating from the helicopter during flight. The actions specified in this AD are intended to prevent loss of an endplate during flight, which could strike the tail rotor and result in loss of control of the helicopter.

DATES: Effective May 16, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 16, 2003.

Comments for inclusion in the Rules Docket must be received on or before June 30, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–57–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*.

The service information referenced in this AD may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: George Duckett, Aviation Safety Engineer, FAA, New York Aircraft Certification Office, Airframe and Propulsion Branch, 10 Fifth Street, 3rd Floor, Valley Stream, New York, telephone (516) 256–7525, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for Schweizer Model 269D helicopters. This action requires inspecting each aluminum endplate and the attach angles for cracks, fretting, and endplate bending before further flight, and thereafter at each 100-hour inspection. Installing an inspection hole in the horizontal stabilizer and inspecting the internal structure is required before further flight if fretting is found, as indicated by a powder residue adjacent to a rivet head. If no powder residue is found, then installing an inspection hole is required at the next 100-hour inspection. Replacing unairworthy parts is required before further flight. Schweizer Basic Handbook of Maintenance Instructions (HMI), dated December 9, 2002, pertains to the subject of this AD. Section 11 of the HMI describes the inspection and replacement procedures. Reporting any cracked or bent endplate, any cracked attach angles, or fretting to the FAA is required within one day of the inspection. The report must include the helicopter model, configuration, and serial number; description of the damage; the TIS of the damaged part; and the TIS since the last 100-hour TIS inspection. This amendment is prompted by reports of loose endplates, and one report of an endplate separating from the helicopter during flight. There are two types of endplates currently in service: an aluminum honeycomb endplate, part number (P/N) 269D3413–11, and a fiberglass honeycomb endplate, P/N 269D3413–13. The reports of difficulties have been limited to the aluminum endplates. The actions specified in this AD are intended to prevent loss of an endplate during flight, which could strike the tail rotor and result in loss of control of the helicopter.

The FAA has reviewed Schweizer Service Bulletin No. DB–011.1, dated March 20, 2003, which describes procedures for inspecting the horizontal stabilizer, endplate, and attach angles, and installing an inspection hole in the horizontal stabilizer.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, this AD is being issued to prevent loss of an endplate during flight, which could strike the tail rotor and result in loss of control of the helicopter. This AD requires inspecting each aluminum endplate for a crack or bending, and inspecting each attach angle for cracks or fretting. If fretting is found, as indicated by a powder residue adjacent to a rivet head, installing an inspection hole in the horizontal stabilizer and inspecting the internal structure is required. Replacing unairworthy parts is required before further flight. Finally, reporting any cracked or bent endplate, any cracked attach angles, or fretting to the FAA is required within one day of the inspection. The report must include the helicopter model, configuration, and serial number; the TIS of the damaged part; and the TIS since the last 100-hour TIS inspection. The actions must be accomplished in accordance with the service bulletin described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, inspecting the horizontal stabilizer, endplate and attach angles and replacing parts, if necessary, is required before further flight and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 22 helicopters will be affected by this AD, that it will take approximately: 0.5 work hour to inspect the exterior of the horizontal stabilizer and endplate; 0.5 work hour to inspect the interior of the horizontal stabilizer; 1.5 work hours to cut an inspection hole and make a cover plate; and 4.5 work hours to replace a rib, two angles, a doubler, and an endplate. The average labor rate is $60 per work hour. Required parts will cost approximately $20 for the access cover and $1,380 per side for the rib, two angles, doubler, endplate, and fasteners, per helicopter. Based on these figures, and assuming 7 helicopters (approximately one-third of the inspected helicopters) will require one endplate replacement on one side, the total cost impact of the AD on U.S. operators is estimated to be $15,290.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All comments received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2002–SW–57–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–09–05 Schweizer Aircraft Corporation: Amendment 39–13134. Docket No. 2002–SW–57–AD.

Applicability: Model 269D helicopters, serial numbers 0001 through 0022, with an aluminum horizontal stabilizer endplate (endplate), part number (P/N) 269D3413–11, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Note 2: There are two types of endplates currently in service: an aluminum honeycomb endplate, part number (P/N) 269D3413–11, that is approximately 0.2 inches thick, and a fiberglass honeycomb endplate, P/N 269D3413–13, that is approximately 0.3 inches thick.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of an endplate during flight, which could strike the tail rotor and result in loss of control of the helicopter, accomplish the following:

(a) Before further flight, and thereafter at each 100-hour inspection, inspect each endplate and the attach angles in accordance with the Procedure, Part I, of Schweizer Service Bulletin No. DB–011.1, dated March 20, 2003 (SB).

(1) If an endplate is bent or a crack is found in an endplate or an attach angle, before further flight, replace the attach angles and tip rib with new, airworthy parts and replace the endplate with a new, airworthy endplate, P/N 269D3413–13.

(2) If fretting is found, as indicated by a powder residue adjacent to a rivet head in an attach angle, before further flight:

(i) Install an inspection hole in the bottom of the horizontal stabilizer in accordance with the Procedure, Part II, of the SB,

(ii) Inspect the internal structure of the horizontal stabilizer, and

(iii) Replace all unairworthy parts.

Note 3: Schweizer Basic Handbook of Maintenance Instruction (HMI), dated December 9, 2002, pertains to the subject of this AD.

(b) If no powder residue is found, install an inspection hole in the bottom of the horizontal stabilizer in accordance with the Procedure, Part II, of the SB at the next 100-hour inspection.

(c) If a cracked or bent endplate, any cracked attach angles, or fretting is found, report that damage to the FAA, ATTN: George Duckett, within one day. Reports may be faxed to (516) 568–2716, or emailed to *george.duckett@faa.gov.* Report the helicopter model, configuration, serial number, description of the damage, the TIS of the damaged part, and the TIS since the last 100-hour TIS inspection.

(d) Information collection requirements contained in this AD 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.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (NYACO), FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, NYACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the NYACO.

(f) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) The inspections and modifications, if necessary, shall be done in accordance with Schweizer Service Bulletin No. DB–011.1, dated March 20, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal

Register, 800 North Capitol Street, NW., suite 1700, Washington, DC.

(h) This amendment becomes effective on May 16, 2003.

Issued in Fort Worth, Texas, on April 22, 2003.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–10507 Filed 4–30–03; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960–AF79

Claimant Identification Pilot Projects

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are revising our regulations that pertain to the processing of initial claims for disability benefits under title II (Social Security Disability Insurance) and title XVI (Supplemental Security Income) of the Social Security Act (the Act). We will be conducting pilot projects wherein we will request photographic identification from individuals filing for title II and title XVI disability and blindness benefits in specified geographic areas covered by the pilot projects. In addition, we will require individuals to allow us to take their photograph and we will make these photographs a part of the claims folder. We will permit an exception to the photograph requirement when an individual has a sincere religious objection. This process will strengthen the integrity of the disability claims process by helping to ensure that the individual filing the application is the same individual examined by the consultative examination (CE) physician.

DATES: These regulations are effective May 31, 2003.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.access.gpo.gov/su_docs/aces/aces140.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at *ssa.gov.*

FOR FURTHER INFORMATION CONTACT: Martin Sussman, Regulations Officer, Office of Regulations, 100 Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, *regulations@ssa.gov,* 410–965–1767 or TTY 410–966–5609 for information about these rules. For information on eligibility or filing for benefits: call our national toll-free numbers, 1–800–772–1213 or TTY 1–800–325–0778 or visit our Internet web site, Social Security Online, at *ssa.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Pilot Projects

The purpose of the claimant identification pilots is to test and gather information in the use of photographic identification to address the issue of complicit impersonation in the disability claims process. Complicit impersonation is accomplished when an individual, posing as the intended claimant, and with the consent of the claimant, responds to a consultative examination appointment in order to misrepresent the claimant's true medical condition or provides false or misleading information that affects eligibility during interviews with SSA field office employees. SSA and the Office of the Inspector General (OIG) have noticed an upward trend in the number of such instances. It has become apparent that we need to strengthen our procedures for identity verification. We believe that the technology for the photographic identification process is currently available and could be implemented over a short time frame. The photographic identification process should give SSA an economical yet effective means of providing improved identity documents to CE physicians. We anticipate that it will be readily accepted by the public. We will evaluate the results of the pilot and expand or modify the procedures accordingly.

How We Will Conduct the Pilot Projects

We propose to conduct the pilots in the following designated geographic areas:

(1) All SSA field offices in the State of South Carolina.

(2) The Augusta, Georgia SSA field office.

(3) All SSA field offices in the State of Kansas.

(4) Selected SSA field offices located in New York City.

The pilots will be in effect for a six-month period of time and will begin no earlier than the first day of the month following the month that the rules become effective.

Who Will Be Affected

Individuals filing for title II and/or title XVI disability or blindness benefits at a Social Security office in the designated areas noted above will be required to participate in the claimant identification pilots. Individuals filing via the Internet or by telephone will also be included. We will be monitoring any possible impact that the pilot procedures might have on SSA's initiative to encourage the filing of applications online via the Internet.

Providing Photographic Identification

While not part of the regulatory requirement, each individual will be asked to provide some form of photographic identification. This identification will be photocopied and the copy made a part of the SSA claims folder. SSA personnel will continue to follow regular identification procedures by asking the individuals questions based on information in the SSA database to ensure that the individuals are who they hold themselves out to be. SSA personnel will obtain additional identifying information if there is a doubt about the identity of the individual. If the individual does not have photographic identification available or does not wish to provide it to us, SSA personnel will not require it but will still follow regular identification procedures as before the pilots went into effect.

Photographs Taken by SSA

Also as part of the claimant identification pilots, each individual filing for disability or blindness benefits at a location participating in the pilot program will be required to have a photograph taken by SSA personnel, regardless of whether the individual provides the photographic identification discussed above. A copy will be made of this image and placed in the SSA claims folder. Images will also be stored electronically and accessed by authorized SSA and Disability Determination Service (DDS) personnel.

If We Request a Consultative Examination

If DDS personnel request a consultative examination for the individual, a hard copy image of the photograph will be made available to the person conducting the CE. This will help to determine whether the individual presenting himself or herself for examination is the same individual who presented himself or herself as the individual filing for disability or blindness benefits. We will ask the CE physician to copy the individual's own photographic identification when the physician was not provided with a photo or a copy of a photographic identification previously taken by SSA personnel.

Other Situations

This same procedure will be used to verify the identity of pilot participants in the following situations:

- If the claim is allowed, subsequent interviews for payment purposes.
- Continuing Disability Reviews.
- SSI redeterminations.
- If the claim is denied, appeals and any associated CE.

Explanation of Proposed Changes

Section 404.617 *Pilot program for photographic identification of disability benefit applicants in designated geographic areas.* In this new section, individuals filing for title II disability benefits will be required to have their photograph taken by the Social Security Administration. We will permit an exception to the photograph requirement when an individual has a sincere religious objection.

Section 416.327 *Pilot program for photographic identification of disability benefit applicants in designated geographic areas.* In this new section, individuals filing for title XVI disability or blindness benefits will be required to have their photograph taken by the Social Security Administration. We will permit an exception to the photograph requirement when an individual has a sincere religious objection.

Proposed Rules

On November 15, 2002, we published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (67 FR 69161—69164) that led to these final rules. We have made one minor change from what we published. We have added the words ''and blindness'' in § 416.327 to clarify that we intended to include all such cases in the pilot.

Public Comments

During the comment period that began on November 15, 2002, and ended on January 14, 2003, we received seven comments on the proposed rules. All of them were generally supportive of the proposed rules and six of the comments included suggestions. They came from interested persons, a State agency, and professional associations. We carefully considered all of the comments relevant to the Claimant Identification Pilot Projects and provide our responses to those comments below. While we have condensed, summarized or paraphrased the comments, we have tried to present all views adequately and to respond to all the relevant issues raised by the commenters.

Comments That SSA Should Not Permit an Exception to the Photograph Requirement Based on a Sincere Religious Objection

Comment: Two commenters believed that the rules should not allow for any exception to the photograph requirement, even on religious grounds.

Response: We are providing for an exception in order to accommodate those persons who have a sincere religious objection to having their picture taken. We note that the Supreme Court upheld a decision by a court of appeals that a person with a sincere religious objection against having her picture taken could not be denied a driver's license. See *Quaring* v. *Peterson,* 728 F.2d 1121 (8th Cir. 1984), *aff'd by an equally divided Court sub nom. Jensen* v. *Quaring,* 472 U.S. 478 (1985). An objection based on personal beliefs that are as sincere as a religious objection also may be accommodated, as the government may not distinguish among religions or between those who hold traditional religious beliefs and those who have sincere beliefs not based on a traditional religion. The Supreme Court has recognized as a valid objection to a government requirement those beliefs that occupy the same place in a person's life as belief in a traditional deity, noting that there is a vast diversity of religious beliefs in our country. See *United States* v. *Seeger,* 380 U.S. 163 (1965), cited in *Quaring* v. *Peterson.* As part of the pilot study, we will learn how many people might object for this reason to our taking their picture and how our accommodating their objection may affect our program.

Comments About Including Additional Exceptions to the Photograph Requirement

Comment: Three commenters thought the exception to the photograph requirement should be broadened to include other ''good cause'' exceptions, such as individuals who would have difficulty traveling to an office to have a picture taken and individuals with medical conditions or behavioral problems that might be affected by having to visit an office and have a photograph taken. More specifically, one commenter believed that the need to bring individuals into an office for the photograph could present a problem if they were under the care of government agencies, public or private institutions, or other types of organizations. It could possibly disrupt the ongoing treatment and/or routine of individuals with certain types of impairments.

Response: We believe that in order for the photograph requirement to be a deterrent for complicit impersonation, the provision must be as inclusive as possible. It is also important to strike a balance between the degree of burden imposed and the overall effectiveness of the process. While we acknowledge that government agencies and other organizations might experience additional responsibilities because of the photographs, we believe that it is a prudent requirement. Since the number of individuals filing and/or receiving disability benefits increases substantially every year, it becomes even more essential for SSA to be cautious and vigilant in the verification of claimants' identities. It is important to note that the pilot regulations will be in effect for only a six month period of time in a limited geographic area. We will be gathering information on the acceptability of the photograph requirement and exploring possible changes that might be needed to the exceptions if the procedures are later implemented on a nationwide basis.

Comments About the Fact That Many Individuals Do Not Have Photographic Identification Readily Available

Comment: Two commenters believed that the procedures should not result in adverse actions against individuals who cannot produce photographic identification. They point out that many individuals will not have acceptable photographic identification readily available.

Response: The pilot regulations state that providing some form of photographic identification for SSA to copy is not a mandatory requirement. No adverse actions will result if an individual does not provide a photographic identification. The purpose of including this request as part of the pilot is to gather information on the general availability and usability of photographic identifications among the individuals we serve.

Comments About the Fact That the Photographs Taken by SSA During the Pilot Should be Subject to Privacy Act Protections

Comment: Two commenters stated that SSA should state that the photographs taken by SSA during the pilot will be subject to the provisions of the Privacy Act.

Response: We are preparing a **Federal Register** notice amend the *Claims Folders System* that is maintained by SSA in order to permit the storage of photographs of individuals taken during the pilot. This will explain that the photographs are covered by the Privacy

Act. We will also provide each claimant with a Private Act notice handout.

Comments Suggesting That the Photographs Taken by SSA Be Used as Evidence of Disability

Comment: One commenter suggested that the photographs taken by SSA should be used for evidence of disability for the individuals that file applications.

Response: The intent of the pilot regulations is to address the problem of complicit impersonation and to improve our ability to detect and prevent identity fraud in SSA applications and programs. We want to limit the use of photographs to the purpose stated in the pilot at this time.

Federal Register Notice for Modifying Privacy Act System of Records

A formal notice that will modify the Privacy Act system of records for the Claims Folder Systemf will be published in the **Federal Register** to reflect the new information to be collected during the pilot projects.

Regulatory Procedures

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed these final rules in accordance with Executive Order 12866, as amended by Executive Order 13258. Because of the pilot's short time duration and limited geographic coverage, we expect any costs or savings to be negligible (*i.e.*, less than $2.5 million).

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

As part of the claimant identification pilot project SSA is requesting clearance of two associated public use forms that will collect pilot performance and tracking data. Listed below is the title and summary of the 2 proposed forms:

The Claimant ID Pilot Flag

The claimant ID Pilot Flag will be used by SSA to track and identify case disposition of disability claims filed at the pilot offices. Respondents are Disability Determination Service (DDS) personnel.

Consultative Examination Evaluation Form

The Consultative Examination Evaluation Form is designed to elicit feedback data about the photographic identification process from physicians that conduct consultative examinations within the designated pilot areas. Respondents to the collection are consultative examination providers participating in the pilot.

Both the Claimant ID Pilot Flag and the Consultative Examination Evaluation Form will be used by SSA to provide evaluation data and measure the effectiveness of the pilots. Burden information concerning the use of these forms is shown in the following table.

Form	Annual number of responses	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Claimant ID Pilot Flag	27,990	1	1	467
Consultative Examination Evaluation Form	11,196	1	2	373
Total	39,186	.....	.....	840

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments can be mailed or faxed to the Office of Management and Budget and the Social Security Administration at the following addresses/fax numbers:

Office of Management and Budget, Attn: OMB Desk Officer, Rm. 10235, New Executive Office Building, 725 17th St., NW., Washington, DC 20503. Fax No. 202–395–6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. Fax No. 410–965–6400.

Comments can be received up to 30 days after publication of this notice.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security Disability Insurance and 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Aged, Blind, Disability benefits, Old-age, Survivors and disability insurance, Reporting and record keeping requirements, Social security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: March 12, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending part 404, subpart G and part 416, subpart C of chapter III, title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

■ 1. The authority citation for subpart G of part 404 continues to read as follows:

Authority: Secs. 202(i), (j), (o), (p), and (r), 205(a), 216(i)(2), 223(b), 228(a), and 702(a)(5) of the Social Security Act (42 U.S.C. 402(i), (j), (o), (p), and (r), 405(a), 416(i)(2), 423(b), 428(a), and 902(a)(5)).

■ 2. Add new § 404.617 under the existing heading, **Applications**, to read as follows:

Applications

* * * * *

§ 404.617 Pilot program for photographic identification of disability benefit applicants in designated geographic areas.

(a) To be eligible for Social Security disability insurance benefits in the designated pilot geographic areas during the time period of the pilot, you or a person acting on your behalf must give SSA permission to take your photograph and make this photograph a part of the claims folder. You must give us this permission when you apply for benefits

and/or when we ask for it at a later time. Failure to cooperate will result in denial of benefits. We will permit an exception to the photograph requirement when an individual has a sincere religious objection. This pilot will be in effect for a six-month period after these final rules become effective.

(b) *Designated pilot geographic areas means:*

(1) All SSA field offices in the State of South Carolina.

(2) The Augusta, Georgia SSA field office.

(3) All SSA field offices in the State of Kansas.

(4) Selected SSA field offices located in New York City.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

■ 3. The authority citation for subpart C of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, and 1631(a), (d), and (e) of the Social Security Act (42 U.S.C. 902(a)(5), 1382, and 1383(a), (d), and (e)).

■ 4. Add new § 416.327 under the existing heading, **Applications**, to read as follows:

Applications

* * * * *

§ 416.327 Pilot program for photographic identification of disability benefit applicants in designated geographic areas.

(a) To be eligible for SSI disability or blindness benefits in the designated pilot geographic areas during the time period of the pilot, you or a person acting on your behalf must give SSA permission to take your photograph and make this photograph a part of the claims folder. You must give us this permission when you apply for benefits and/or when we ask for it at a later time. Failure to cooperate will result in denial of benefits. We will permit an exception to the photograph requirement when an individual has a sincere religious objection. This pilot will be in effect for a six-month period after these final rules become effective.

(b) *Designated pilot geographic areas means:*

(1) All SSA field offices in the State of South Carolina.

(2) The Augusta, Georgia SSA field office.

(3) All SSA field offices in the State of Kansas.

(4) Selected SSA field offices located in New York City.

[FR Doc. 03–10627 Filed 4–30–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300 and 1310

[Docket No. DEA–137F1]

RIN 1117–AA31

Exemption of Chemical Mixtures Containing the List I Chemicals Ephedrine, N-Methylephedrine, N-Methylpseudoephedrine, Norpseudoephedrine, Phenylpropanolamine, and Pseudoephedrine

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: On September 16, 1998, the Drug Enforcement Administration (DEA) published a Notice of Proposed Rulemaking (NPRM) to implement provisions of the Controlled Substances Act (CSA) pertaining to the regulation of chemical mixtures which contain any of 34 listed chemicals. The NPRM was published to implement CSA requirements that only those chemical mixtures identified by regulation be exempt from applicable regulatory controls.

The NPRM proposed criteria for the determination of whether a chemical mixture shall qualify for automatic exemption from CSA regulatory controls. Additionally, the NPRM defined an application process by which manufacturers may apply for an exemption for chemical mixtures that do not qualify for automatic exemption.

Due to concerns regarding the potential illicit use of chemical mixtures which contain ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, and/or pseudoephedrine (as precursor material for the production of methamphetamine and related amphetamines), DEA is hereby finalizing the portion of the NPRM pertaining to these six chemicals. Final regulations for all remaining listed chemicals will be published under separate rulemaking, upon completion of a thorough review of applicable comments.

DATES: Effective June 2, 2003. Persons seeking registration must apply on or before June 30, 2003 in order to continue their business pending final action by DEA on their application.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug & Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule addresses the List I chemicals ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, and pseudoephedrine as they occur in chemical mixtures. The rule establishes a concentration limit for each of these six listed chemicals. If the concentration of the listed chemical is at or below the limit, in a chemical mixture, then the mixture will be automatically exempted from the registration, reporting, recordkeeping and security requirements of the Controlled Substances Act. All chemical mixtures containing any of these six List I chemicals above the established concentration levels are subject to the requirements of the CSA. This final rule primarily addresses these chemicals as encountered in dietary and nutritional supplements. Actions taken in this final rule will not adversely impact the public's access to these products.

DEA originally proposed a concentration level of two percent for chemical mixtures containing ephedrine and/or pseudoephedrine. However, based on the comments received from the NPRM (63 FR 49506, Sept. 16, 1998), DEA has determined that a two percent concentration level would create significant regulatory burdens for the affected industry. Therefore, based on comments received, DEA has determined that a five percent concentration level will permit access to these products, while ensuring that these products are unlikely to be subject to diversion for the illegal manufacture of methamphetamine.

This final rule also establishes an exemption for the category of products consisting of unaltered harvested plant material, which DEA believes are not subject to diversion regardless of the concentration of the List I chemical in the product. Finally, this rule provides for a process whereby a manufacturer of a product which would otherwise be subject to regulation may request an exemption for that specific product. This process will allow chemical mixtures not automatically exempt by the concentration limit to be considered for exempt status under the CSA.

Background

What Chemical Controls Have Been Established in the United States?

The Chemical Diversion and Trafficking Act of 1988 (Pub. L. 100–690)(CDTA) was passed by Congress to curtail the diversion of specific chemicals used in the illicit manufacture of controlled substances. The CDTA established recordkeeping and reporting requirements necessary for DEA to identify and track chemical diversion. While the CDTA achieved initial success in curtailing the diversion of chemicals, traffickers soon found and took advantage of certain shortcomings in the law. In the United States (U.S.), traffickers were able to obtain needed supplies by purchasing products that were exempted from regulation under the CDTA. Such products include chemical mixtures.

What Are Chemical Mixtures?

The Chemical Diversion and Trafficking Act of 1988 (CDTA) created a definition of ''chemical mixture'' (21 U.S.C. 802(40)), and exempted chemical mixtures from regulatory coverage. The Domestic Chemical Diversion Control Act of 1993 (DCDCA), enacted in April of 1994, created a provision dealing with the exemption of chemical mixtures. Chemical mixtures are defined as ''a combination of two or more chemical substances, at least one of which is not a list I chemical or a list II chemical, except that such term does not include any combination of a list I chemical or a list II chemical with another chemical that is present solely as an impurity.''

How Are Ephedrine, N-methylephedrine, N-methylpseudoephedrine, Norpseudoephedrine, Phenylpropanolamine, and Pseudoephedrine Used in Chemical Mixtures and What Are the Regulatory Consequences?

Ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, and pseudoephedrine are List I chemicals. The only chemical mixtures containing these List I chemicals, of which DEA is aware, are dietary and nutritional supplements. Dietary and nutritional supplements are readily available, being commonly sold to the public in drug and grocery stores, health and nutrition stores, and through direct marketing campaigns. These dietary and nutritional supplements contain material from the ephedra plant, or extract from the ephedra plant. If these dietary and nutritional supplements meet certain criteria under the Federal Food, Drug, and Cosmetic Act (FDCA), they are not recognized as drugs under the FDCA, but are nonetheless considered to be chemical mixtures governed by DEA law and regulations. In contrast, over-the-counter (OTC) and prescription drug products containing these listed chemicals are not considered chemical mixtures and instead are specifically addressed in 21 U.S.C. 802(39)(A)(iv). *Also see 21 CFR 1300.02(b)(28)(i).* Therefore, this final rulemaking has no impact upon OTC and prescription drug products lawfully marketed under the FDCA.

How Have Chemical Mixtures Been Regulated Until Now?

Prior to the enactment of the DCDCA, the term ''regulated transaction'' was defined to exclude ''any transaction in a chemical mixture'' (21 U.S.C. 802(39)(A)(v)). Therefore, transactions involving all chemical mixtures (including dietary supplements) were exempt from recordkeeping, registration and other chemical regulatory control requirements of the CSA.

How Did the DCDCA Affect Regulation of Chemical Mixtures?

With passage of the DCDCA, all chemical mixtures became subject to regulatory requirements for listed chemicals under the law, unless specifically exempted by DEA. These requirements included registration for certain handlers of List I chemicals, recordkeeping, reporting, and security. Thus, all dietary and nutritional supplements containing listed chemicals became subject to DEA regulation. However, pending promulgation of final regulations governing exemption, dietary supplements containing ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, and pseudoephedrine remained exempt from the requirements of the CSA.

What Changes in the Law Did the DCDCA Make With Respect to Chemical Mixtures?

The DCDCA amended the CSA (21 U.S.C. 802(39)(A)(v)) to limit the application of the above stated exemption and provided the Attorney General with the authority to exempt a chemical mixture containing a listed chemical if it is ''formulated in such a way that it cannot be easily used in the illicit production of a controlled substance'' and ''the listed chemical or chemicals contained in the mixture cannot be readily recovered.'' Until regulations which delineate criteria and procedures for exempting specific chemical mixtures are finalized, DEA has treated all chemical mixtures as being exempt from the chemical regulatory requirements of the CSA. (Note that OTC and prescription drug products are not considered chemical mixtures and are addressed separately under 21 U.S.C. 802(39)(A)(iv)).

Why Is DEA Concerned About Chemical Mixtures?

Some chemical mixtures can be and have been used by traffickers in the illicit manufacture of controlled substances. This exemption provided traffickers with an unregulated source for obtaining these chemicals. To address these problems, the DCDCA amended the exemption to provide that only those chemical mixtures specified by regulation would be exempt from the definition of ''regulated transaction'.

What Regulatory Controls Has DEA Previously Proposed for the Control of Chemical Mixtures?

Regulations regarding the exemption of chemical mixtures were initially proposed by DEA on October 13, 1994 (59 FR 51888). In response to industry concerns, the proposed regulations were withdrawn on December 9, 1994 (59 FR 63738). After consulting with the private sector and carefully considering industry and other concerns, new regulations regarding chemical mixtures were proposed on September 16, 1998 (63 FR 49506). The comment period, which was twice extended, closed on April 16, 1999.

There are thousands of chemical mixtures in legitimate commerce, the majority of which are not useful to the illicit laboratory operator. The NPRM proposed criteria for the determination of whether a chemical mixture would be automatically exempt from CSA regulatory controls. Additionally, the NPRM defined an application process by which manufacturers may apply for an exemption for chemical mixtures that do not qualify for automatic exemption.

The DEA proposed that each chemical be assigned a concentration limit that, if found at or below the limit, will cause the mixture to be treated as a nonregulated chemical. This quantitative approach to identifying regulated mixtures is considered necessary due to the complexity of chemical-based commodities and the huge variety of products. These criteria are expected to exempt the vast majority of chemical mixtures containing listed chemicals. The NPRM included the proposed creation of a ''Table of

Concentration Limits,'' in 21 CFR 1310.12. This table lists the concentration limits for each listed chemical.

While the concentration limits will be sufficient for many chemical mixtures, there are certain categories of mixtures that fall outside the limits provided, but are not considered to be likely sources of diversion. Therefore the DEA also proposed the exemption of three categories of chemical mixtures. The NPRM proposed that (1) waste materials regulated by the Environmental Protection Agency (EPA); (2) completely formulated paints and coatings; and (3) harvested plant material containing listed chemicals, shall remain exempt regardless of concentration.

In recognition that not all mixtures that qualify for exemption can be identified by concentration or category, the DEA also proposed an application process to exempt additional mixtures which are not likely to be diverted for use in the illicit production of controlled substances.

How Will This Rulemaking Affect Access to the Products?

As noted previously, the only products affected by this rulemaking include dietary and nutritional supplements. These products are readily available to the general public through a variety of commercial outlets, including grocery and health stores, and direct marketing campaigns. These products are available to the public without a prescription.

To permit access to these products, while their diversion for the illicit manufacture of controlled substances is limited, DEA worked with members of the dietary and nutritional supplements manufacturing industry to determine an appropriate concentration level for each of these listed chemicals. DEA was assured by members of the affected industry, through discussions between the Administration and manufacturers, that the concentration levels discussed in this rulemaking would allow manufacturers to continue their manufacturing processes without harm to the product. Indeed, as discussed below, DEA received and incorporated comments from the affected industry suggesting these concentration levels rather than those originally proposed by DEA. At the same time, these levels are sufficient to prevent the diversion of these products for the illicit manufacture of controlled substances. This rulemaking will not affect the public's access to these products, nor, according to members of the industry, will these concentration levels have an adverse impact on the manufacturers of dietary and nutritional supplements.

The U.S. Department of Health and Human Services (HHS) and Food and Drug Administration (FDA) Recently Expressed Concerns Regarding the Safety of Dietary Supplements Containing Ephedra (i.e. Ephedrine and Pseudoephedrine). Does This DEA Regulation Mean That DEA Has Determined That Dietary Supplements Containing Less Than 5 Percent Ephedrine and Pseudoephedrine Are Safe for Human Consumption?

No, this regulation does not attempt to address the issue of safety or human consumption of any products containing these listed chemicals. This regulation only deals with the issue of the potential illicit use of dietary supplements (and other chemical mixtures) containing ephedrine/pseudoephedrine as precursor material for the production of methamphetamine.

On February 28, 2003 the U.S. Department of Health and Human Services (HHS) and Food and Drug Administration (FDA) announced a series of actions designed to protect the public from potentially serious risks from the use of dietary supplement products containing ephedra. The announcement cites new evidence in the medical literature and in adverse event reports, of heightened concerns that dietary supplements containing ephedra may represent a ''significant and unreasonable risk of illness and injury.'' DEA recognizes that determinations regarding the safety of such dietary supplement products are the purview of HHS/FDA. This rule does not address the issue of safety or human consumption of such products.

DEA has met with HHS/FDA staff on numerous occasions to discuss DEA's chemical mixture rule. HHS/FDA staff have been extremely supportive of DEA efforts to implement regulations which will subject materials containing greater than 5 percent ephedrine/pseudoephedrine to CSA regulatory controls in order to prevent their use in the illicit production of methamphetamine. Any future action directed at dietary supplements by HHS/FDA will be separate from (and in addition to) the regulatory requirements implemented in this final rule.

What Action Is DEA Taking in This Final Rule?

1. Establishment of Chemical Mixture Regulations for Six Listed Chemicals

While the September 16, 1998 Notice of Proposed Rulemaking ''Exemption of Chemical Mixtures'' (63 FR 49506) pertained to the regulation of chemical mixtures which contained any of 34 listed chemicals, this rulemaking finalizes only those portions of the NPRM pertaining to six specific chemicals: ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, and pseudoephedrine. These chemicals are precursors to methamphetamine and related substances.

a. Establishment of Concentration Limits

This final rule establishes a concentration limit for each of these six listed chemicals. If the concentration of the listed chemical is at or below the limit, then the mixture will be automatically exempted and therefore treated as a nonregulated chemical mixture. These concentration limits are provided in the ''Table of Concentration Limits,'' in 21 CFR 1310.12. The weight of the free base will be used to determine the concentration of a listed chemical if it is a salt. A mixture is exempt if the concentration of the listed chemical or chemicals is less than or equal to the percentages and other conditions described in the ''Table of Concentration Limits.''

Therefore (1) a chemical mixture having a total concentration of ephedrine and/or pseudoephedrine of less than or equal to five percent by weight will be automatically exempt; (2) a chemical mixture having a total concentration of N-methylephedrine and/or N-methylpseudoephedrine of less than or equal to 0.1 percent by weight will be automatically exempt; and (3) a chemical mixture having a total concentration of phenylpropanolamine and/or norpseudoephedrine of less than or equal to 0.6 percent by weight, will be automatically exempt.

b. Exemption of Harvested Plant Material Containing These Six Listed Chemicals

This final rulemaking also establishes an exemption for a category of chemical mixtures which contain ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, and/or pseudoephedrine. While these mixtures may have higher concentration limits than provided above, the DEA believes they are not a likely source of diversion due to their inherent composition. Therefore, this rule also establishes an

exemption for the category of products consisting of harvested plant material.

Harvested plant material that contains ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, and/or pseudoephedrine, while meeting the definition of chemical mixture, will be exempt provided the plant material is unaltered from its natural state. Changes in the physical state that preserve the natural composition of the material, such as grinding, chopping, mulching or cutting, do not affect the exemption status. However, changes that alter the natural composition of the material, such as that resulting from chemical or physical extraction, concentrating, enhancement or by chemical reaction, or any other treatment will disqualify the mixture from exemption.

c. Establishment of an Application Procedure for Chemical Mixtures Which Do Not Qualify for Automatic Exemption

In recognition that not all mixtures that warrant exemption can be identified solely by concentration or category criteria, this Final Rule also sets forth an application process to exempt additional mixtures. Mixtures that are not automatically exempted by virtue of their concentration or category may still qualify for exemption based upon a review of the mixture composition by DEA. However, DEA will only grant an exemption to those chemical mixtures (1) formulated in such a way that they cannot be easily used in the illicit production of a controlled substance; and (2) from which the listed chemical or chemicals contained in the chemical mixture cannot be readily recovered.

An application process is set forth in 21 CFR 1310.13 to allow possible exemption of chemical mixtures based on the formulation, even if the listed chemical exceeds the concentration limit.

How Does This Final Rulemaking Affect Chemical Mixtures Containing Listed Chemicals Other Than the Six Chemicals Specified in This Rulemaking?

Because this Final Rule pertains to only six listed chemicals, applications will only be accepted for chemical mixtures containing ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, and/or pseudoephedrine. Final regulations for all remaining listed chemicals will be published under separate rulemaking upon completion of a thorough review of applicable comments. Until publication of such a rulemaking, DEA will treat all transactions involving chemical mixtures containing these other listed chemicals as exempt from the definition of regulated transaction under the CSA.

Why Is DEA Finalizing Provisions for Only Certain Listed Chemicals in This Rulemaking?

Methamphetamine is the most prevalent controlled substance illicitly synthesized in the United States. The clandestine manufacture, distribution and abuse of methamphetamine are serious public health problems. Nationally, the Drug Abuse Warning Network (DAWN) has documented approximately 2,900 methamphetamine/speed related deaths in the United States between January 1992 and December 1996. The number of DAWN reported methamphetamine associated deaths for 1997 was 825 and 641 for 1998. For the years 1998 and 1999, the number of emergency room events associated with methamphetamine/speed were 11,490 and 10,447, respectively.

During calendar years 1994 through 1997, DEA was involved in the domestic seizure of 2,900 clandestine methamphetamine laboratories. Despite considerable efforts by Federal, state and local law enforcement, the illicit production, distribution and abuse of methamphetamine continue. Recent DEA seizure statistics indicate that the number of methamphetamine laboratory seizures has increased dramatically from 1996 through 2000. During 1998, DEA participated in the seizure of 1,623 methamphetamine laboratories. In 1999, the number rose to 2,127. These numbers do not include the thousands of laboratory seizures conducted independently by state and local law enforcement agencies. The chemicals ephedrine and/or pseudoephedrine were utilized as the precursor material at the vast majority of these laboratories.

What Form of the Six Subject Chemicals Is Being Encountered at Illicit Laboratories?

At most of these laboratories, the precursor material was obtained via the diversion of over-the-counter (OTC) products marketed in tablet and capsule form, not through the diversion of bulk powder. While the vast majority of products seized at illicit methamphetamine laboratories were OTC drug products, ephedra and ma huang extracts containing ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, and pseudoephedrine, and dietary supplement products (containing ephedra and ma huang extracts) have been seized at clandestine methamphetamine laboratories. At this time, the frequency with which these dietary supplement products and extracts are encountered is small. However, DEA studies confirm that the ephedrine contained in such extracts and some dietary supplement products can be readily recovered and can be easily used in the production of methamphetamine. Ephedra (in the form of dietary supplements or bulk ephedra extract), therefore, can and is being used as the source of precursor material for the illicit production of methamphetamine.

Recently, DEA has noted large increases in the number of ephedra dietary supplements being introduced into the marketplace. These products have a high level of ephedrine and are distributed by some companies whose OTC products have previously been identified at clandestine methamphetamine manufacturing laboratories. Several companies' advertisements tout that these new products are considered chemical mixtures and therefore are not subject to CSA regulatory controls. The introduction of some of these products may be creating an unregulated source of ephedrine (and related List I chemicals) for illicit use.

Therefore, due to (1) the growing methamphetamine clandestine laboratory problem; (2) the illicit use of extracts and dietary supplements (containing ephedrine and related List I chemicals) as precursor material for the clandestine production of methamphetamine and (3) the growth of new product introductions of dietary supplement products containing these chemicals, DEA has decided to finalize these provisions for the chemicals ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, and pseudoephedrine.

What Information Had DEA Collected Before Proposing Regulations on Chemical Mixtures?

Prior to publication of the notice of proposed rulemaking ''Exemption of Chemical Mixtures'' (63 FR 49506) on September 16, 1998, the DEA attempted to learn as much as possible about the affected industry. The DEA first established contact with industry shortly after withdrawal of the regulations regarding the exemption of

chemical mixtures proposed by DEA on October 13, 1994 (59 FR 51888). That portion of the proposal was withdrawn on December 9, 1994 (59 FR 63738) in response to industry concerns. DEA met with representatives from associations (and affiliated members) representing chemical manufacturers, the paints and coating industry, flavor and fragrance manufacturers, chemical distributors, the dietary supplements industry and others. These different groups expressed unique concerns that the DEA attempted to address within the notice of proposed rulemaking (63 FR 49506).

How and at What Concentration Did the NPRM Propose to Regulate Dietary Supplements?

List I chemicals comprise 24 of the 35 chemicals regulated by DEA, but only a few have been identified to be routinely used in chemical mixtures. This contrasts with the situation for List II chemicals which exist in a multitude of chemical mixtures used in a vast variety of industries.

The few list I chemicals that are used in chemical mixtures are utilized by a small number of industries. The dietary supplement industry is the primary industry having chemical mixtures containing these six listed chemicals. Natural ephedrine is obtained from the ephedra plant. The ephedrine is extracted and sold as bulk ephedra extract and used to formulate dietary supplements.

Prior to proposing the concentration limit for ephedrine, DEA gathered information from representatives of several dietary supplement manufacturers and distributors within the nutritional supplement industry. Information from industry, law enforcement and other sources indicated that a two percent concentration limit for ephedrine/pseudoephedrine would be adequate to prevent diversion and not unduly burden industry. The NPRM therefore proposed a two percent concentration limit.

In the NPRM, the DEA specifically solicited information from the dietary supplement and other industries regarding this matter and subsequently obtained new information suggesting that a higher concentration limit may be warranted.

Who Is Affected by This Final Rule?

This Rulemaking will affect only persons who manufacture, distribute, import, or export chemical formulations containing the List I chemicals ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, and/or pseudoephedrine. End users, including those who manufacture a regulated mixture and convert it to a nonregulated form in an on-site manufacturing process, are not affected. Of those persons whose mixtures are regulated, only those distributions above the established threshold quantity for the listed chemical(s) are regarded as regulated transactions (as specified in 21 CFR 1310.04). Since no threshold has been established for ephedrine, all transactions in regulated chemical mixtures containing ephedrine will be regulated transactions. The threshold for regulated chemical mixtures containing N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, and pseudoephedrine are found in 21 CFR 1310.04(f)(1). This Final Rule will not affect the regulatory status for chemical mixtures containing the remaining listed chemicals.

This is an appropriate decision at this time, for most dietary supplements are not formulated in such a way to be easily used in the illicit manufacture of a controlled substance and are therefore not likely to be diverted. This will exempt the majority of these chemical mixtures from regulatory controls. Taking this information into account, DEA is implementing a concentration limit of five percent (total ephedrine/pseudoephedrine). This should exempt those dietary supplements which are not likely to be sources of precursor material for clandestine laboratories. By taking this action, DEA is endeavoring to permit public access to these chemical mixtures while ensuring that they are not subject to diversion. Based on the comments DEA received, as well as discussions with members of the affected industry, DEA believes that dietary and nutritional supplements will not be adversely affected by this rulemaking, and that the public will continue to have full access to these products.

II. Comments Received in Response to the NPRM for These Six Chemicals

DEA proposed new regulations regarding the exemption of chemical mixtures by publishing an NPRM on September 16, 1998, entitled ''Exemption of Chemical Mixtures'' (63 FR 49506). The comment period, which was twice extended, closed on April 16, 1999. Comments discussed in this Final Rule will be limited to those related to the listed chemicals being addressed in this Final Rule. Two comments addressed ephedrine and pseudoephedrine only in relation to dietary supplement products. There were no comments on N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

Three comments addressed the application process as being limited and suggested a means to exempt a group or family of mixtures and allow for variation, without having to reapply for exemption. Two comments requested that once a mixture is granted exemption it should apply to all manufacturers of the same mixture. Three persons suggested a 21-day time limit to determine if a mixture is exempt by the application process. One person suggested a five-day period for approval of an application. Below is a discussion on the specific comments.

Comments Pertaining to Dietary Supplements

Request for Exemption of Multiple Ingredient Dietary Supplements or Products With Less Than Five Percent Total Ephedrine/Pseudoephedrine

One comment requested that DEA automatically exempt multiple ingredient dietary supplement products containing ephedrine alkaloids or, alternatively, increase the concentration limit for ephedrine from two to five percent. The comment also requested that the capsule weight be considered in determining automatic exemption.

DEA attempted to obtain information on pertinent formulations and was provided, by the interested parties requesting a five percent concentration limit, formulations representing the dietary supplements in question. Labeling information for six products containing ephedra extract were provided to DEA. Five of the six labels provided sufficient information to determine that they contain more than two percent but less than five percent ephedrine alkaloids.

The total weight was not included in the label information for one of the examples. Therefore, the exact concentration could not be calculated. DEA estimates that the concentration of ephedrine alkaloids for this product is also less than five percent from available label information. This label stated that the ephedra was standardized to supply 24 mg of ephedrine alkaloids. This quantity of ephedrine is approximately that found in over-the-counter (OTC) drug products.

Some formulators add additional ephedrine to standardize a product. This practice is used to assure uniformity between batches of raw

material obtained from natural sources. However, this method may also be used to formulate supplements that have an unnaturally high level of ephedrine or other alkaloid. This is sometimes referred to as ''spiking.'' Both standardization and spiking imply that the product is not ''all natural'' and contains pharmaceutical grade ephedrine, or ephedrine hydrochloride. Ephedrine hydrochloride is the most common form of ephedrine used by clandestine laboratory operators to make methamphetamine.

The comment requested that if the five percent limit is unacceptable to DEA then multiple component dietary supplements should be exempt as a category. DEA agrees that the multiple ingredient dietary supplements, represented by the labels submitted by this commentor, would not be likely sources for diversion due to the added difficulty in extracting the listed chemicals. However, DEA realizes that these formulations do not represent all possibilities for dietary supplements containing ephedrine/pseudoephedrine. Without a concentration limit, formulations could be sold that have a high percentage of ephedrine.

DEA had been informed that persons represented in this comment sell only products with a maximum amount of 25 mg of ephedrine alkaloids per dosage unit. That amount is common in OTC drug products containing ephedrine. Ephedrine products containing 25 mg are commonly seized at clandestine laboratories. Therefore, DEA concludes that a maximum amount of ephedrine that is based on weight is not a deterrent for using a product as a source of precursor material.

DEA carefully considered exempting these dietary supplements by category but decided against this for the following reasons. Manufacturers can formulate multiple component dietary supplements rich in ephedrine that are legally marketed as dietary supplements. DEA has experienced multiple component OTC products being diverted upon control of single entity ephedrine OTC products. Further, the manufacturer may include innocuous substances within an ephedrine-rich formulation. The overall result is a legitimately marketed dietary supplement useful to traffickers. Permitting unlimited trade in such chemical mixtures would defeat previous efforts by Congress and DEA to curtail the illicit production of methamphetamine.

As stated on one of the labels provided to DEA, the ephedra supplement may be standardized to obtain an amount of ephedrine at least equal to that found in OTC drug products. As noted above, standardization is achieved by using a synthetic form of ephedrine, ephedrine hydrochloride, which may be useful to traffickers. That form is more easily separated from other ingredients due to its affinity for water. DEA determined that exempting dietary supplements or ''multiple ingredient'' dietary supplements would create a loophole for the diversion of methamphetamine precursor. A supplement can be ''standardized'' to contain up to 25 mg of ephedrine with minimal additional ingredients that results in a high weight ratio of ephedrine and be legally marketed as a dietary supplement. Therefore, DEA has decided not to exempt dietary supplements as a category.

One commentor stated that methamphetamine cannot be produced from their dietary supplement products. The commentor sponsored an experiment to prove this assertion. The dietary supplement used in the experiment was calculated to contain one percent ephedrine by laboratory analysis. The laboratory report refers to a common ''street method'' for manufacturing methamphetamine. However, the sponsored experiment using this supplement was not successful in producing methamphetamine.

The comment concludes that the products described are representative of the formulations marketed by the dietary supplement industry, each containing less than five percent (by weight) ephedrine/pseudoephedrine. DEA agrees that those products containing less than five percent ephedrine, as represented by the label information provided to DEA, are not likely to be used in illicit laboratory operations. Therefore DEA has decided to raise the concentration limit for ephedrine/pseudoephedrine to five percent. For encapsulated products, the weight of the capsule is included in making this calculation.

Request for Increase in the Ephedrine Concentration Limit

One commentor requested that the concentration limit be raised to six percent for ephedrine, so that most of the existing ephedrine containing dietary supplement products would be exempt. Additionally the commentor recommended that DEA automatically exempt ephedra dietary supplements that contain multiple ingredients.

The commentor acknowledged that significant problems existed with some manufacturers ''spiking'' products with synthetically produced ephedrine. Although the commentor states that they believe this practice has been mostly corrected, DEA must consider the likelihood of such practices. Voluntary compliance with standards of an organization or any special interest group can not prevent unscrupulous persons from distributing mixtures desired by traffickers. Without a concentration limit, products can be marketed as dietary supplements that are ''spiked'' to contain high levels of ephedrine with minimal additional ingredients. These formulations can be legally marketed as dietary supplements and be desirable to traffickers.

In another comment, a request was made to set the concentration limit to five percent. That comment states that multiple component dietary supplements containing ephedra alkaloids should be exempt at the five percent concentration limit for ephedrine and pseudoephedrine.

DEA is aware that bulk ephedra extract contains from six to eight percent ephedrine alkaloids. Raising the concentration limit to six percent for ephedrine would cause only those bulk mixtures that contain ephedrine alkaloids above six percent to be regulated.

DEA is aware that methamphetamine can be produced from ephedrine/pseudoephedrine when extracted directly from the raw plant material. A concentrate of this material would act as a more practical source for methamphetamine precursor. Therefore, DEA decided to regulate chemical mixtures consisting of bulk ephedra extract as a listed chemical. The ephedra extract typically has a concentration of ephedrine alkaloids of 6 percent or more. Therefore, DEA will exempt up to five percent ephedrine/pseudoephedrine contained in mixtures. That concentration limit is expected to exempt the vast majority of dietary supplements containing ephedrine/pseudoephedrine while allowing bulk ephedra extract to be treated as a regulated chemical.

Comments Pertaining to the Application Process

Single Application for Group Exemption

Three persons commented on the application process as being limited because it requires a separate application for each mixture. They suggest that the application process should account for a group or family of mixtures and allow for variation, sometimes necessary to meet customer needs, without having to reapply for exemption.

DEA intended to allow group exemption by application. A group is defined as those formulations having identical function and containing the same listed chemical(s). The Notice of Proposed Rulemaking states (63 FR 49511) ''The application may be submitted for a single mixture or a group of mixtures containing the same listed chemical at equal concentration with variations in the concentration of the other non-listed chemicals in the mixture. Consideration will also be given to applications for mixtures in which the concentration of the listed chemical varies without regard to the specific concentrations of the other non-listed chemicals in the mixture. In either group, variation of the concentration of any chemical within the mixture that will result in a change in the function of the mixture will disqualify the mixture from the group.''

DEA will address below the shortcoming in the proposed § 1310.13 that does not clearly establish group exemption. In addition, DEA shall establish that a single formulation may be granted an exemption while allowing variation in the formulation without the need to reapply. This is in anticipation that reformulation may be necessary to meet a customer's needs. Variation may be for listed and non-listed chemicals.

A group of mixtures may be exempted within a single application. However, not all formulations are required to have the same non-listed chemicals to be included in a group. A group application may be submitted to include several formulations being marketed simultaneously or for a single product that is reformulated within specified concentration ranges. The latter may be for a custom application that requires adjusting the properties for optimum performance. Therefore, reapplication will not be necessary for new formulations that fall within a stated concentration range. The Administrator may determine that a specific mixture does not qualify as part of a group, and that one or more mixtures submitted as part of a group does not qualify for exemption.

The usefulness of a mixture in clandestine operations depends on the number, type and concentrations of chemicals in the mixture. Therefore, an application for group exemption will identify both listed and non-listed components as well as their concentrations. A new application will not be necessary if a formulation is added to the group that contains the listed and non-listed chemicals within the concentration range specified in the original application. DEA must be notified in writing if the manufacturer adds a new mixture to the group.

DEA must be informed if a qualitative change, not indicated on the original application, removes non-listed chemical(s) from a formulation exempt under a group. This is necessary to prevent mixtures being altered from an unusable state, as evaluated in the application, to a mixture that can be used by traffickers. If such a change (*i.e.*, removal of non-listed chemical(s) from the formulation) renders the mixture valuable to traffickers, DEA can remove the exemption for that member of the group. DEA must be informed of such a change; however, a new application will not be necessary. DEA will either add the new formulation to the group or deny exempt status for that particular formulation. Section 1310.13 will be modified to reflect this and other conditions mentioned above.

Applicability of Exemption to Manufacturers

Two comments requested that once a mixture is granted an exemption it should apply to all manufacturers of the same mixture. DEA proposed that all manufacturers apply separately. This requirement was proposed for several different reasons.

DEA requires that a manufacturer submit the exact formulation when applying for an exemption. That is necessary to properly evaluate the mixture. Manufacturers of a similar product could not know if their formulation is the same as an exempted mixture unless the formulation is made public. Since some formulations are assumed to be trade secrets, DEA cannot reveal those formulations.

Exempt chemical mixtures will be made public by publication in the **Federal Register**. Exempt formulations will be maintained in a Table in the Code of Federal Regulations. DEA, however, will only publish those formulations that the manufacturer allows to be made public. Due to the complexity of multiple ingredient formulations, such a Table may become unreasonably large.

DEA will therefore require that each manufacturer apply for exemption by the application process. However, manufacturers may submit a joint application where each manufacturer listed in the application formulates the same mixture. All manufacturers listed in the application will obtain a decision from DEA regarding the regulatory status of the mixture. Also, a manufacturer that suspects that they formulate a mixture similar to one granted exemption status may inform DEA that a similar formulation has already been evaluated by DEA.

Once a mixture is exempted, all downstream distributions for that formulation are exempt from regulation. Persons will not be regulated if they repackage and distribute a mixture exempted by the application process.

Time Period for Application Processing

Three commentors suggested that a 21-day deadline be established to determine whether a mixture is exempt by the application process. One person suggested that a 5-day deadline be imposed for approval of the application. A time frame was requested so manufacturers could establish internal compliance procedures before shipments are made.

While DEA will attempt to expedite the review of each application, it is not practical to establish a time limit for determining whether a mixture or a mixture group is exempt. The time to determine the status of an individual application is dependent on several variables that can not be controlled. Factors include the number of applications received, the number of mixtures contained in an application, the possible need to obtain additional technical information from the applicant, the possible need to obtain additional internal technical information on chemicals in the mixture and to analyze all factors. These and other factors make a time limit impractical.

III. Final Rule Provisions

Upon Publication of the Final Notice, What Specific Requirements Will Apply to Regulated Chemical Mixtures Containing the 6 Chemicals?

A chemical mixture (other than the category of products consisting of unaltered harvested plant material) that contains ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, or pseudoephedrine above the concentration limit as defined in the ''Table of Concentration Limits'' will be treated as a List I chemical. Transactions that meet or exceed the cumulative monthly threshold for the listed chemical shall be regulated transactions. Persons interested in handling a regulated mixture must comply with the following:

Registration. Any person who distributes, imports or exports a regulated mixture, or proposes to engage in such activities, or is a broker or trader in an international transaction (as defined in 21 U.S.C. 802(42)), with

respect to a regulated mixture containing a List I chemical, shall obtain a registration pursuant to the CSA (21 U.S.C. 822). Regulations describing registration for list I handlers are set forth in 21 CFR part 1309.

Separate registration is required for retail distribution, non-retail distribution, importing, and exporting. A separate registration is required for each principal place of business at one general physical location where list I chemicals are distributed, imported, or exported by a person (21 CFR 1309.23). Effective June 30, 2003, any person distributing, importing, exporting or serving as a broker or trader in an international transaction involving any amount of a regulated mixture will become subject to the registration requirement under the CSA. DEA recognizes, however, that it is not possible for persons who are subject to the registration requirement to immediately complete and submit an application for registration and for DEA to immediately issue registrations for those activities. Therefore, in order to allow continued legitimate commerce in regulated mixtures, DEA is establishing in 21 CFR 1310.09 a temporary exemption from the registration requirement for persons desiring to engage in activities with regulated mixtures that are subject to registration requirements, provided that DEA receives a properly completed application for registration on or before June 30, 2003. The temporary exemption for such persons will remain in effect until DEA takes final action on their application for registration.

Any person whose application for exemption is subsequently denied by DEA must obtain a registration with DEA. A temporary exemption from the registration requirement will also be provided for these persons, provided that DEA receives a properly completed application for registration on or before 30 days following the date of official DEA notification that the application for exemption has not been approved. The temporary exemption for such persons will remain in effect until DEA takes final action on their registration application.

The temporary exemption applies solely to the registration requirement; all other chemical control requirements, including recordkeeping and reporting, are effective on June 2, 2003. Therefore, all transactions of the chemical mixture will be regulated, if at or above threshold, while an application for registration or exemption is pending. This is necessary because not regulating these transactions could result in increased diversion of chemicals desirable to drug traffickers.

Additionally, the temporary exemption does not suspend applicable federal criminal laws relating to the regulated mixture, nor does it supersede state or local laws or regulations. All handlers of a regulated mixture must comply with applicable state and local requirements in addition to the CSA regulatory controls.

Records and Reports. The CSA (21 U.S.C. 830) requires certain records to be kept and reports to be made involving listed chemicals. Regulations describing recordkeeping and reporting requirements are set forth in 21 CFR part 1310. A record must be made and maintained for two years after the date of a regulated transaction involving a list I chemical. Only a distribution, receipt, sale, importation, exportation, brokerage or trade of a regulated mixture above the established threshold is a regulated transaction (21 CFR 1300.02(b)(28)).

Each regulated bulk manufacturer of a regulated mixture shall submit manufacturing, inventory and use data on an annual basis (21 CFR 1310.05(d)). Bulk manufacturers producing the mixture solely for internal consumption, *e.g.* formulating a nonregulated mixture, are not required to submit this information. Existing standard industry reports containing the required information are acceptable, provided the information is readily retrievable from the report.

21 CFR 1310.05 requires that each regulated person shall report to DEA any regulated transaction involving an extraordinary quantity, an uncommon method of payment or delivery, or any other circumstance that causes the regulated person to believe that the listed chemical will be used in violation of the CSA.

Imports/Exports. All import/exports and brokered transactions of regulated mixtures shall comply with the CSA (21 U.S.C. 957 and 971). Regulations for importation and exportation of list I chemicals are described in 21 CFR part 1313. Separate registration is necessary for each activity (21 CFR part 1309.22).

Administrative Inspection. Places, including factories, warehouses, or other establishments and conveyances, where regulated persons may lawfully hold, manufacture, or distribute, dispense, administer, or otherwise dispose of a regulated mixture or where records relating to those activities are maintained, are controlled premises as defined in 21 CFR 1316.02(c). The CSA (21 U.S.C. 880) allows for administrative inspections of these controlled premises as provided in 21 CFR part 1316 subpart A.

Regulatory Certifications

Regulatory Flexibility Act

DEA, pursuant to 21 U.S.C. 802(39)(A)(v), is defining criteria for the exemption of chemical mixtures containing one or more of the List I chemicals ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, and pseudoephedrine from regulatory control. To implement an exemption, a concentration limit is placed on each chemical, or combination of chemicals, which defines its regulatory status. In addition, an application process is established to exempt chemical mixtures, not automatically exempt by these provisions, from the regulatory process.

DEA has determined that dietary supplements, including bulk material used to formulate these supplements, are the principle chemical mixtures that utilize ephedrine and pseudoephedrine. While DEA is aware that some dietary supplements are sources for methamphetamine precursors, DEA is also aware that most of these supplements are not viable sources for diversion of precursor chemicals.

DEA sought information from the affected industry prior to publishing the Proposed Rule to exempt chemical mixtures. Information gathered prior to drafting a proposed rule indicated that the majority of chemical mixtures most likely to be affected contain not more than 1.2 percent ephedrine. To ensure that most legitimately marketed dietary supplements are not regulated, DEA proposed a two percent concentration limit on ephedrine/pseudoephedrine. This amount was greater than the highest concentration of ephedrine/pseudoephedrine in the final product, as related to DEA by the industry.

However, a comment received in response to the NPRM suggested that the percent concentration of ephedrine and pseudoephedrine be raised from two percent to five percent. The commentor states that it represents individual member companies with hundreds of thousands of independent distributors. One member company alone is said to have over 100,000 distributors. The commentor suspects that its members will be regulated if a two percent concentration limit is finalized. Registration costs for this number of new registrants would result in a significant regulatory action.

This industry is comprised mainly of small businesses, as defined by U.S. Small Business Administration (SBA) regulations (13 CFR 121.201). However, DEA is finalizing the concentration limit at a level suggested by the commentor, which will not require registration by these hundreds of thousands of businesses and distributors. In addition, other industry representatives have informed DEA that the alkaloid concentration of most dietary supplements is less than two percent. Therefore, DEA concludes that the majority of dietary supplements will be exempt from regulatory provisions of the CSA if a five percent concentration limit for ephedrine/pseudoephedrine is established.

The commentor informed DEA that there are approximately 12 importers and approximately six manufacturers of bulk ephedra. A bulk manufacturing process may involve taking the natural ephedra extract and spiking it with ephedrine hydrochloride. Therefore, DEA will assume that all six manufacturers will need to register, although some may qualify as end-users and not need to register.

DEA is also finalizing in this Rulemaking a process by which manufacturers may request exemption from DEA for specific products. This process will allow chemical mixtures not automatically exempt by the concentration limit to be considered for exempt status under the CSA. This will ensure that certain chemical mixtures, including dietary supplements having formulations useless to traffickers, but not automatically exempt by provision, can be granted exempt status.

Therefore, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Acting Administrator has reviewed this Final Rule and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. DEA has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects

21 CFR Part 1300

Controlled substances, Definitions, Drug traffic control, List I and List II chemicals.

21 CFR Part 1310

Drug traffic control, List I and List II chemicals, Reporting and recordkeeping requirements.

■ For the reasons set out above, 21 CFR parts 1300 and 1310 are amended as follows:

PART 1300—[AMENDED]

■ 1. The authority citation for part 1300 continues to read as follows:

Authority: 21 U.S.C. 802, 871(b), 951, 958(f).

2. Section 1300.02 is amended by revising paragraph (b)(28)(i)(E) to read as follows:

§ 1300.02 Definitions relating to listed chemicals.

* * * * *

(b) * * *

(28) * * *

(i) * * *

(E) Any transaction in a chemical mixture designated in § 1310.12 and § 1310.13 that the Administrator has exempted from regulation.

* * * * *

PART 1310—[AMENDED]

■ 1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

■ 2. Section 1310.04 is amended by adding a new paragraph (h) to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(h) The thresholds and conditions in paragraphs (f) and (g) of this section will apply to transactions involving regulated chemical mixtures. All regulated chemical mixtures containing List I chemicals will have the threshold determined by taking the weight of the listed chemical in the regulated mixture.

■ 3. Section 1310.09 is amended by adding a new paragraph (e) to read as follows:

§ 1310.09 Temporary exemption from registration.

* * * * *

(e) Each person required by section 302 of the Act (21 U.S.C. 822) to obtain a registration to distribute, import, or export regulated chemical mixtures which contain ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, and/or pseudoephedrine, pursuant to §§ 1310.12 and 1310.13, is temporarily exempted from the registration requirement, provided that DEA receives a proper application for registration or application for exemption on or before June 30, 2003. The exemption will remain in effect for each person who has made such application until the Administration has approved or denied that application. This exemption applies only to registration; all other chemical control requirements set forth in parts 1309, 1310, and 1313 of this chapter remain in full force and effect. Any person who distributes, imports or exports a chemical mixture whose application for exemption is subsequently denied by DEA must obtain a registration with DEA. A temporary exemption from the registration requirement will also be provided for these persons, provided that DEA receives a properly completed application for registration on or before 30 days following the date of official DEA notification that the application for

exemption has not been approved. The temporary exemption for such persons will remain in effect until DEA takes final action on their registration application.

■ 4. A new section 1310.12 is added to read as follows:

§ 1310.12 Exempt chemical mixtures.

(a) The chemical mixtures meeting the criteria in paragraphs (c) or (d) of this section are exempted by the Administrator from application of sections 302, 303, 310, 1007, and 1008 of the Act (21 U.S.C. 822, 823, 830, 957 and 958) to the extent described in paragraphs (b) and (c) of this section.

(b) No exemption granted pursuant to this § 1310.12 or § 1310.13 affects the criminal liability for illegal possession, distribution, exportation, or importation of listed chemicals contained in the exempt chemical mixture or the civil liability for unlawful acts related to exempt chemical mixtures, including distribution in violation of 21 U.S.C. 842(a)(11).

(c) Mixtures containing a listed chemical in concentrations equal to or less than those specified in the ''Table of Concentration Limits'' are designated as exempt chemical mixtures for the purpose set forth in this section. The concentration is determined for liquid-liquid mixtures by using the volume or weight and for mixtures containing solids or gasses by using the unit of weight.

TABLE OF CONCENTRATION LIMITS

List I chemicals	DEA chemical code No.	Concentration (percent)	Special conditions
Ephedrine, its salts, optical isomers, and salts of optical isomers.	8113	5% by Weight, (weight includes capsule, if any).	Concentration based on any combination of ephedrine, pseudoephedrine, and their salts, optical isomers and salts of optical isomers
N-Methylephedrine, its salts, optical isomers, and salts of optical isomers.	8115	0.1% by Weight, (weight includes capsule, if any).	Concentration based on any combination of N-methylephedrine, N-methylpseudoephedrine and their salts, optical isomers and salts of optical isomers
N-methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers.	8119	0.1% by Weight (weight includes capsule, if any).	Concentration based on any combination of N-methylpseudoephedrine, N-methylephedrine, and their salts, optical isomers and salts of optical isomers
Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers.	8317	0.6% by Weight (weight includes capsule, if any).	Concentration based on any combination of norpseudoephedrine, phenylpropanolamine and their salts, optical isomers and salts of optical isomers
Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers.	1225	0.6% by Weight (weight includes capsule, if any).	Concentration based on any combination of phenylpropanolamine, norpseudoephedrine and their salts, optical isomers and salts of optical isomers
Pseudoephedrine, its salts, optical isomers, and salts of optical isomers.	8112	5% by Weight, (weight includes capsule, if any).	Concentration based on any combination of pseudoephedrine, ephedrine, and their salts, optical isomers and salts of optical isomers

(d) The following categories of chemical mixtures are automatically exempt from the provisions of the Controlled Substances Act as described in paragraph (a) of this section:

(1) Harvested plant material that contains ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, and/or pseudoephedrine, that is in its natural state or has been processed in a way (such as grinding, chopping, mulching or cutting) that preserves the natural constituents in the ratios that are found in the plant's natural state. Plant material subjected to chemical or physical extraction, concentration, chemical reaction, or other treatment that alters the plant's natural constituents or the ratios of the plant constituents are not exempt.

(2) [Reserved]

(e) The Administrator may, at any time, terminate or modify the exemption for any chemical mixture which has been granted an exemption pursuant to the concentration limits as specified in paragraph (c) of this section or pursuant to the category exemption as specified in paragraph (d) of this section. In terminating or modifying an exemption, the Administrator shall issue, and publish in the **Federal Register**, notification of the removal of an exemption for a product or group of products for which evidence of diversion has been found, as well as the date on which the termination of exemption shall take effect. The Administrator shall permit any interested party to file written comments on or objections to the order within 60 days of the date of publication of the order in the **Federal Register**. If any such comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which the order is based, the Administrator shall immediately suspend the effectiveness of the order until he may reconsider the order in light of comments and objections filed. Thereafter, the Administrator shall reinstate, terminate, or amend the original order as determined appropriate.

(f) The Administrator may modify any part of the criteria for exemption as specified in paragraphs (c) and (d) of this section upon evidence of diversion or attempted diversion. In doing so, the Administrator shall issue and publish a Notice of Proposed Rulemaking in the **Federal Register**. The Administrator shall permit any interested persons to file written comments on or objections to the proposal. After considering any comments or objections filed, the Administrator shall publish in the **Federal Register** a final order.

■ 5. A new § 1310.13 is added to read as follows:

§ 1310.13 Exemption of chemical mixtures; application.

(a) The Administrator may, by publication of a Final Rule in the **Federal Register**, exempt from the application of all or any part of the Act a chemical mixture consisting of two or more chemical components, at least one of which is not a List I or List II chemical, if:

(1) The mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance; and

(2) The listed chemical or chemicals contained in the chemical mixture cannot be readily recovered.

(b) Any manufacturer seeking an exemption for a chemical mixture, not exempt under § 1310.12, from the application of all or any part of the Act, may apply to the Administrator, Drug Enforcement Administration, Department of Justice, Washington, DC 20537.

(c) An application for exemption under this section shall contain the following information:

(1) The name, address, and registration number, if any, of the applicant;

(2) The date of the application;

(3) The exact trade name(s) of the applicant's chemical mixture and:

(i) If the applicant formulates or manufactures the chemical mixture for other entities, the exact trade names of the chemical mixtures and the names of the entities for which the chemical mixtures were prepared; and

(ii) If a group of mixtures (*e.g.* formulations having identical function and containing the same listed chemical(s)), the information required in paragraph (c)(3)(i) of this section and a brief narrative of their use.

(4) (i) The complete qualitative and quantitative composition of the chemical mixture (including all listed and all non-listed chemicals); or

(ii) If a group of mixtures, the concentration range for the listed chemical and a listing of all non-listed chemicals with respective concentration ranges.

(5) (i) The chemical and physical properties of the mixture and how they differ from the properties of the listed chemical or chemicals; and

(ii) If a group of mixtures, how the group's properties differ from the properties of the listed chemical.

(6) A statement that the applicant believes justifies an exemption for the chemical mixture or group of mixtures. The statement must explain how the chemical mixture(s) meets the exemption criteria set forth in paragraph (a) of this section.

(7) A statement that the applicant accepts the right of the Administrator to terminate exemption from regulation for the chemical mixture(s) granted exemption under this section.

(8) The identification of any information on the application that is considered by the applicant to be a trade secret or confidential and entitled to protection under U.S. laws restricting the public disclosure of such information.

(d) The Administrator may require the applicant to submit such additional documents or written statements of fact relevant to the application that he deems necessary for determining if the application should be granted.

(e) Within 30 days after the receipt of an application for an exemption under this section, the Administrator will notify the applicant of acceptance or rejection of the application. If the application is not accepted, an explanation will be provided. The Administrator is not required to accept an application if any information required pursuant to paragraph (c) of this section or requested pursuant to paragraph (d) of this section is lacking or not readily understood. The applicant may, however, amend the application to meet the requirements of paragraphs (c) and (d) of this section. If the exemption is granted, the applicant shall be notified in writing and the Administrator shall issue, and publish in the **Federal Register**, an order on the application. This order shall specify the date on which it shall take effect. The Administrator shall permit any interested person to file written comments on or objections to the order. If any comments or objections raise significant issues regarding any findings of fact or conclusions of law upon which the order is based, the Administrator may suspend the effectiveness of the order until he has reconsidered the application in light of the comments and objections filed. Thereafter, the Administrator shall reinstate, terminate, or amend the original order as deemed appropriate.

(f) The Administrator may, at any time, terminate or modify an exemption for any product pursuant to paragraph (e) of this section. In terminating or modifying an exemption, the Administrator shall issue, and publish in the **Federal Register**, notification of the removal of an exempt product or group of exempt products for which evidence of diversion has been found. This order shall specify the date on which the termination of exemption shall take effect. The Administrator shall permit any interested party to file written comments on or objections to the order within 60 days of the date of publication of the order in the **Federal Register**. If any such comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which the order is based, the Administrator may suspend the effectiveness of the order until he has reconsidered the order in light of comments and objections filed. Thereafter, the Administrator shall reinstate, terminate, or amend the original order as determined appropriate.

(g) A manufacturer of an exempted chemical mixture shall notify DEA in writing, of any change in the quantitative or qualitative composition of a chemical mixture that has been granted an exemption by application. Changes include those greater than the range of concentration given in the application or that remove non-listed chemical(s) given in the application as part of the formulation. A new application will be required only if reformulation results in a new product having a different commercial application or can no longer be defined as part of a group of exempted chemicals. DEA must be notified of reformulation at least 30 days in advance of marketing the reformulated mixture. For a change in name or other designation, code, or any identifier, a written notification is required. DEA must be notified of any changes at least 60 days in advance of the effective date for the change.

(h) Each manufacturer seeking exemption must apply for such an exemption. A formulation granted exemption by publication in the **Federal Register** will not be exempted for all manufacturers.

(i) The following chemical mixtures, in the form and quantity listed in the application submitted (indicated as the ''date'') are designated as exempt chemical mixtures for the purposes set forth in this section and are exempted by the Administrator from application of sections 302, 303, 310, 1007, and 1008 of the Act (21 U.S.C. 822, 823, 830, 957 and 958):

EXEMPT CHEMICAL MIXTURES

Manufacturer	Product name [1]	Form	Date
[RESERVED]			

[1] Designate product line if a group.

Dated: March 7, 2003.

John B. Brown III,

Acting Administrator.

[FR Doc. 03–10565 Filed 4–30–03; 8:45 am]

BILLING CODE 4410–09–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD139–3098a; FRL–7478–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revisions to Regulation for Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The revisions amend provisions of Maryland's regulation for Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on June 30, 2003 without further notice, unless EPA receives adverse written comment by June 2, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Makeba Morris, Acting Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 6, 2002, the Maryland Department of the Environment (MDE) submitted a formal revision to its State Implementation Plan (SIP). The SIP revision (#02–06) consists of administrative and clarifying amendments to regulation 26.11.09 for Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations, and includes the establishment of an alternative NO_X emission standard for a specific subcategory of sources subject to this regulation.

II. Summary of SIP Revision

Code of Maryland Administrative Regulation (COMAR) 26.11.09 establishes emission standards for fuel burning equipment, including standards for visible emissions, particulate matter emissions and NO_X emissions. The amendments to COMAR 26.11.09 effect the following changes to the regulation:

1. Visible emissions requirements in Regulations .05 were revised to remove references to the Ringlemann Smoke Chart, and in lieu of the Ringlemann number, the percent opacity corresponding to that number is now required, resulting in no change to the standard.

2. Particulate matter standards in Regulation .06 and .09 were revised to remove emission limit applicability for fuel burning equipment which burn only gas or distillate fuel. The definitions in Regulation .01 were revised to clarify the definition for gas fuels. The particulate matter standards will now apply only to residual fuel-fired equipment as defined in Regulation .01. Since the uncontrolled emissions from gas or distillate fuel-fired equipment do not exceed the particulate matter emission standards in the regulation, this revision is approvable.

3. The requirement for observation of visible emissions by a Bacharach Smoke Test in Regulation .09 was removed. Visible emissions observations in accordance with EPA-approved methods are addressed by and required under a separate regulation under COMAR.

4. Regulation .08 was amended to revise the emission standard for coal-fired units having a capacity between 100 MMBtu and 250 MMBtu. Low NO_X burners were installed on three coal-fired boilers to meet requirements for Reasonably Available Control Technology for NO_X (NO_X RACT). NO_X RACT was completed at considerable cost, however, the emission standard of 0.5 pounds NO_X per MMBtu per hour could not be achieved under normal operating conditions. Continuous emissions monitoring (CEM) data showed that NO_X RACT achieves the emission standard only when operating at maximum capacity, and that during normal operations NO_X is reduced to 0.65 pounds per MMBTU. Installation of additional controls would result in NO_X RACT which would be well above reasonable cost effectiveness. This revision will not negatively impact Maryland's Rate of Progress plan nor its attainment demonstration for the ozone national ambient air quality standards previously submitted by the state of Maryland, and is thus approvable.

III. Final Action

EPA is approving Maryland's SIP Revision to its regulation under COMAR 26.11.09 as submitted. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on June 30, 2003 without further notice unless EPA receives adverse comment by June 2, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

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 June 30, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to revise the provisions to COMAR 26.11.09 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 31, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

■ 2. Section 52.1070 is amended by adding paragraphs (c)(183) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(183) Revisions to the Maryland Regulations pertaining to Control of Fuel Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel Burning Installations, submitted on November 6, 2002 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter dated November 6, 2002 from the Maryland Department of the Environment transmitting revisions to the Maryland State Implementation Plan pertaining to amendments to COMAR 26.11.09.

(B) Revisions to COMAR 26.11.09, Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations, effective November 11, 2002.

(*1*) Addition of COMAR 26.11.09.01B(3–1)—definition of ''gas''. Existing paragraph .01B(3–1) is renumbered as .01B(3–2).

(*2*) Revisions to COMAR 26.11.09.05A(3), .05B(2), and .05B(3).

(*3*) Revisions to COMAR 26.11.09.06A(1), .06A(2), and .06B(4); addition of .06A(3)(c).

(*4*) Revision to COMAR 26.11.09.08D (introductory paragraph) and .08D(1)(a).

(*5*) Revision to COMAR 26.11.09.09 by removing existing Table 1 and adding both a new Table 1 and footnotes (a), (b), and (c).

(ii) Additional Material.—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(183)(i) of this section.

[FR Doc. 03–10657 Filed 4–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–93–200318 (a); FRL–7491–5]

Approval and Promulgation of Implementation Plans, Florida: Martin Gas Sales, Inc., Variance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the Florida State Implementation Plan (SIP) submitted on

January 17, 2003, by the State of Florida through the Florida Department of Environmental Protection. This source specific revision amends the SIP to include a variance granted to Martin Gas Sales, Inc., in Hillsborough County, Florida. The variance allows Martin Gas Sales, Inc., to forgo the postconstruction air quality and deposition monitoring for sulfur particulate emissions from the facility.

DATES: This direct final rule is effective June 30, 2003, without further notice, unless EPA receives adverse comment by June 2, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Heidi LeSane at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Heidi LeSane, 404/562–9035.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Heidi LeSane, 404/562–9035 *lesane.heidi@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Florida Administrative Code (F.A.C.) rule 62–212.600(2)(c), requires any new or modified sulfur storage and handling facility, with a throughput of elemental sulfur in all forms (solid or molten) equal to or greater than 5,000 tons per year, to conduct postconstruction air quality and deposition monitoring of sulfur particulate matter for two years from the date of issuance of the initial air operation permit for the facility, and, through the permitting process, to establish the period of time, if any, such monitoring must be continued after the initial two year period. The purpose of the postconstruction monitoring requirement in rule 62–212.600(2)(c), F.A.C., is to determine the impact of the facility on sulfur handling and storage operations.

Under section 120.542, of the Florida Statutes, the department may grant a variance when the person subject to a rule demonstrates that purpose of the underlying statute will be or has been achieved by other means, or when application of a rule would create a substantial hardship or violate principles of fairness.

On August 14, 2002, Martin Gas Sales Inc., submitted a petition for variance from the requirements of rule 62–12.600(2)(c), F.A.C., for a proposed expansion of its sulfur storage and handling facility in Tampa, Florida. The petitioner estimated the potential sulfur particulate emissions from the facility to be only 1.7 tons per year. Further, the company estimated the cost of compliance with the postconstruction monitoring requirement to be between $3,000 and $10,000 per year. Given the low estimated annual emissions and the high cost of complying with rule 62–212.600(2)(c), F.A.C., the department has determined that postconstruction air quality and deposition monitoring of sulfur particulate emissions would not be cost effective in this case and that the purpose of the underlying statute would be met without it. Therefore, the department has issued an Order Granting Variance to Martin Gas Sales, Inc., relieving the company from the requirements of rule 62–212.600(2)(c), F.A.C. Since this rule has previously been approved into Florida's State Implementation Plan (SIP), the department is requesting approval of this variance as a revision to the SIP.

II. Analysis of State's Submittal

On January 17, 2003, the State of Florida Department of Environmental Protection submitted revisions to the Florida SIP. This SIP revision (DEP number 2003–01) consists of a department order granting a variance from Rule 62–212.600(2)(c), F.A.C., to Martin Gas Sales, Inc., in Hillsborough County, Florida.

III. Final Action

EPA is approving the aforementioned changes to the State of Florida SIP because it is consistent with the Clean Air Act and Environmental Protection Agency's policy. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 30, 2003, without further notice unless the Agency receives adverse comments by June 2, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 30, 2003, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 30, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 18, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Part 52 of chapter I, title 40, 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 K—Florida

■ 2. Section 52.520 is amended by adding a new entry at the end of the table in paragraph (d) for ''Martin Gas Sales, Inc.'' to read as follows:

§ 52.520 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED FLORIDA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
*	*	*	*	*
Martin Gas Sales, Inc	0570477–007–AC	January 17, 2003	May 1, 2003 [Insert citation of publication].	

* * * * *

[FR Doc. 03–10755 Filed 4–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[ME–062–7011a; A–1–FRL–7491–7]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Total Reduced Sulfur From Kraft Paper Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to Maine's plan for controlling air pollution according to section 111(d) of the Clean Air Act (*i.e.*, a ''111(d) plan''). The revision changes state regulations controlling the emission of total reduced sulfur (TRS) from existing kraft paper mills. This action is being taken in accordance with section 111(d) of the Clean Air Act (CAA).

DATES: This direct final rule is effective on June 30, 2003 without further notice, unless EPA receives adverse comment by June 2, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Steve Rapp, Unit Manager, Air Permits, Toxics, and Indoor Programs Unit, Office of Ecosystem Protection (mail code CAP), U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th floor, Boston, MA 02114, the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017.

FOR FURTHER INFORMATION CONTACT: Ian D. Cohen, (617) 918–1655.

SUPPLEMENTARY INFORMATION: On March 29, 2000, the State of Maine submitted a formal revision to its 111(d) plan to control emissions of total reduced sulfur (TRS) from existing kraft paper mills. The revision consists of changes to Maine's regulations at Chapter 124,

entitled ''Total Reduced Sulfur Control from Kraft Pulp Mills'' (Chapter 124). New mills are not covered under Chapter 124 because they are subject to New Source Performance Standards (NSPS) in 40 CFR part 60, subpart BB. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

I. Summary of 111(d) Plan Revision

What are Total Reduced Sulfur (TRS) Compounds?

The term ''total reduced sulfur'' (TRS) refers to a mixture of four compounds: hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide. These compounds usually represent the total reduced sulfur released by a pulp and paper mill which uses the kraft process. TRS compounds are released when wood chips are dissolved during the papermaking process at certain mills. They have not been proven to cause serious human health problems in the concentrations normally found around paper mills, but they can cause some discomfort. TRS compounds have a strong, unpleasant odor.

Which Paper Mills are Affected by This Rule?

These changes to Chapter 124 will only affect existing paper mills that use the kraft process. The kraft process involves using sulfur compounds to dissolve wood chips, allowing the fiber to be made into paper. TRS compounds are formed during this process and, if not controlled, can be released into the atmosphere. Maine's 111(d) plan for TRS emissions applies to six kraft pulp mills in Maine.

This rule does not apply to new paper mills.

How Will New Mills be Regulated?

New mills will be covered by federal New Source Performance Standards (40 CFR part 60, subpart BB).

What is the History of Chapter 124?

Maine DEP originally submitted Chapter 124 to EPA on February 15, 1990. On September 19, 1990, EPA approved this rule under section 111(d) of the CAA (55 FR 38545). Section 111(d) allows us to approve state plans to regulate emissions from existing sources of pollutants not otherwise covered in the CAA.

On April 27, 1994, Maine DEP submitted a request to revise Chapter 124. EPA approved the state's revisions on October 4, 1994 (59 FR 50506). The changes to Chapter 124 extended the compliance date for brownstock washer systems from January 1, 1994 to September 30, 1998. Brownstock washer systems rinse the pulp after sulfur bearing chemicals are added. If emissions from these systems are not controlled, they can release TRS into the atmosphere. Maine changed the compliance date to give mills more time to comply with the federal Maximum Available Control Technology (MACT) standard for hazardous air pollutants (HAPs) from the pulp and paper industry, which was in preparation at the time. This MACT standard became effective in 1998.

Why is Maine Asking to Change Chapter 124 Again?

EPA published the MACT standard for the pulp and paper industry on April 15, 1998 (63 FR 18617). Maine then revised Chapter 124 to apply certain control provisions of that MACT standard to TRS compounds. Some of Maine's new requirements are even more stringent than the MACT standard for HAPs. For example, the compliance date for existing brownstock washer systems is April 17, 2005, which is one year earlier than the compliance date in EPA's MACT standard. Maine's revised regulations also add requirements independent of the MACT standard for HAPs. For example, the regulations call for inventories of TRS sources which emit more than 0.5 lbs/hr, limit unintentional releases (venting) from Low Volume High Concentration (LVHC) and some High Volume Low Concentration (HVLC) sources, and require detailed reports that explain TRS ventings from LVHC sources which exceed 0.5% of quarterly operating time.

Chapter 124 allows ME DEP and EPA to consider alternative compliance methods for monitoring TRS emissions. It is EPA's understanding that the state will implement these regulations to require that both agencies approve any such alternative compliance methods.

What Actions Did the State Take to Satisfy the Federal Public Hearing Requirement?

Maine certified that a public hearing on the revisions to Chapter 124 was held in Augusta, ME on May 26, 1999 in accordance with the requirements of 40 CFR 60.23(d)

II. Final Action

EPA is approving the revised 111(d) plan controlling TRS emissions from existing kraft pulp mills as submitted by ME DEP on March 29, 2000. The revised plan, which consists of the revised regulation entitled ''Chapter 124: Total Reduced Sulfur from Kraft Pulp Mills,'' affects six existing kraft pulp mills in the State of Maine.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the 111(d) plan revision should relevant adverse comments be filed. This rule will be effective June 30, 2003 without further notice unless the Agency receives relevant adverse comments by June 2, 2003.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 30, 2003 and no further action will be taken on the proposed rule.

III. Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d) plan revisions, 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 revision for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a revision, to use VCS in place of a revision 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. 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).

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 21, 2003.

Robert W. Varney,

Regional Administrator, EPA—New England.

■ Part 62 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7411(d).

Subpart U—Maine

■ 2. Section 62.4845 is amended by adding paragraph (b)(5) to read as follows:

§ 62.4845 Identification of plan.

* * * * *

(b) * * *

(5) A revision to the plan controlling TRS from existing kraft pulp mills to incorporate the pulp and paper maximum achievable control technology (MACT) requirements that impact TRS emission sources such as brownstock washer systems, low volume high concentration (LVHC) systems, steam strippers, and waste water treatment plants. Changes have also been made to clarify venting allowances and recordkeeping and reporting requirements.

* * * * *

[FR Doc. 03–10757 Filed 4–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7489–6]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of a portion of the South Indian Bend Wash Site from the National Priorities List

SUMMARY: The Environmental Protection Agency (EPA) Region IX is issuing a Notice of Deletion of a portion of the South Indian Bend Wash Site (Site) located in Tempe, Arizona, from the National Priorities List (NPL). The NPL is appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The EPA and the State of Arizona, through the Arizona Department of Environmental Quality, have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

EFFECTIVE DATE: May 1, 2003.

FOR FURTHER INFORMATION CONTACT: Sean Hogan, Project Manager, U.S. EPA, Region IX, SFD–8–2, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 972–3261 or (800) 231–3075.

SUPPLEMENTARY INFORMATION: The area to be deleted from the NPL is a portion of the South Indian Bend Wash Superfund Site, in Tempe, Arizona. The exact area being deleted was defined in the Notice of Intent for Partial Deletion of a portion of the South Indian Bend Wash Site from the National Priorities List published in the **Federal Register** on February 28, 2003 (67 FR 51528).

The closing date for comments on the Notice of Intent to Delete was March 31, 2003. One comment was received in support of the partial deletion; this comment also requested consideration for deletion of another parcel at the Site. EPA will respond separately to this request and has not prepared a Responsiveness Summary. 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. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at these sites warrant such actions. Deletion of a site from the NPL does not affect responsible party liability or impede EPA's efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous

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

Dated: April 14, 2003.

Keith Takata,

Acting Regional Administrator, Region IX.

■ For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

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

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; 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. In Table 1 of Appendix B to part 300, for Arizona, the entry for ''Indian Bend Wash Area'' is amended by adding ''P'' in the Notes column.

[FR Doc. 03–10547 Filed 4–30–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1309

RIN 0970—AB54

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF).

ACTION: Final rule.

SUMMARY: The Administration on Children, Youth and Families is amending a Final Rule which applies to the purchase of Head Start facilities in order to include in the Rule provisions implementing a statutory provision that authorizes the Agency to permit Head Start grantees to use grant funds to finance the construction and major renovation of Head Start facilities and to make other necessary changes.

EFFECTIVE DATE: June 2, 2003.

FOR FURTHER INFORMATION CONTACT: Windy M. Hill, Associate Commissioner, Head Start Bureau, Administration on Children, Youth and Families, 330 C St., SW., Washington, DC 20447; (202) 205–8572.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is authorized under the Head Start Act (42 U.S.C. 9801 *et seq.*). It is a national program providing comprehensive developmental services to low-income preschool children, primarily age three to the age of compulsory school attendance, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, section 645A of the Head Start Act provides authority to fund programs serving infants and toddlers. Programs receiving funds under the authority of this section are referred to as Early Head Start programs.

Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. Parents also receive training and education to foster their understanding of and involvement in the development of their children. In fiscal year 2001, Head Start served 905,235 children through a network of over 2,000 grantees and delegate agencies.

While Head Start is intended to serve primarily children whose families have income at or below the poverty line, or who receive public assistance, Head Start policy permits up to 10 percent of the children in local programs to be from families who do not meet these low-income criteria. Tribal grantees can exceed this limit under certain conditions. The Act also requires that a minimum of 10 percent of the enrollment opportunities in each program be made available to children with disabilities. Such children are expected to participate in the full range of Head Start services and activities with their non-disabled peers and to receive needed special education and related services.

II. Purpose of the Rule

The Administration for Children and Families is establishing a final rule governing construction and renovation of Head Start facilities. The purpose of the Rule is to implement the statutory authority to permit Head Start grantees (including Early Head Start grantees) to use grant funds to construct or undertake major renovations of Head Start facilities. The authority for this Rule is section 644 (c), (f), and (g) and 645A (b)(9) of the Head Start Act (42 U.S.C. 9801 *et seq.*). Paragraph (g) of section 644 was added by Pub. L. 103–252, Title I of the Human Services Amendments of 1994. Section 644(g)(1) requires that the Secretary establish uniform procedures for Head Start programs to request approval for payments of capital expenditures related to the construction and major renovations of facilities.

III. Summary of the Major Provisions of the Final Rule

- Defines major renovation to mean ''a structural change to the foundation, roof, floor, or exterior or load-bearing walls of a facility, or extension of an existing facility to increase its floor area. Major renovation also means extensive alteration of an existing facility, such as to significantly change its function and purpose, even if such renovation does not include any structural change to the facility. Major renovation also includes a renovation of any kind which has a cost exceeding the lesser of $200,000, adjusted annually to reflect the percentage change in the Consumer Price Index for All Urban Consumers (issued by the Bureau of Labor Statistics) beginning one year after the effective date of the amendments to these regulations, or 25 percent of the total annual direct costs approved for the grantee by ACF for the budget period in which the application is made.''
- Defines construction to mean new building, excludes renovations, alterations, additions or work of any kind to existing buildings.
- Specifies what information the grantee must provide to establish eligibility to be awarded grant funds for the construction or major renovation of a Head Start facility.
- Specifies the provisions of subordination of interest agreements between the Department and lenders.
- Requires that all construction and major renovation contracts be on a lump sum fixed-price basis.

IV. Rulemaking History

On December 1, 1994, the Department published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (59 FR 61575) proposing to establish a Rule to implement the statutory provision authorizing the use of Head Start grant funds to purchase facilities. The Final Rule on Purchase of Head Start Facilities was published on February 8, 1999 and became effective on March 10, 1999, with certain provisions involving information collection becoming effective when approved by the Office of Management and Budget. The Final Rule on purchase does not address construction or major renovation since the statutory change concerning construction and major renovation occurred too close to publication of the NPRM published in connection with the purchase of Head Start facilities. We recognized, however, that procedures covering the purchase,

construction and major renovation of facilities using Head Start funds should be consistent with procedures for the purchase of facilities and both should be brought together in one Rule. Therefore the Department issued a NPRM on February 9, 1999, which proposed to amend the Final Rule for Purchase of Head Start Facilities by incorporating the provisions governing construction and renovation of facilities.

V. Section-by-Section Discussion of the Comments Received

Seven parties submitted twenty-one comments. Only those sections on which comments were made, or to which changes were made are discussed below. The discussion of the sections follows the order of the table of contents of the Final Rule for the purchase of Head Start facilities and a notation is made wherever the section designations have been changed or deleted in the Final Rule.

Section 1309.1—Purpose and Application

This provision is being changed to make it clear that Early Head Start grantees are eligible to apply for facility funding, that the regulation implements the authority in section 644 (f) and (g), and to add the appropriate statutory citations covering the Early Head Start program. Early Head Start grantees are included as eligible for purchase funding under the definition of ''grantee'' under the existing regulations.

Section 1309.2—Approval of the Use of Head Start Funds To Continue Purchase of Facilities

The title and wording of this provision are being changed to make it clear that Early Head Start grantees may apply for funding to pay facility purchase costs for facilities purchased after December 31, 1986. This provision is also being changed to emphasize that applications are for the future use of funds for the continuing process of purchasing the facility rather than for approval of an earlier decision by the grantee to purchase the facility. The change is necessary to make the provision applicable to Early Head Start grantees which entered the program after 1994 and to clearly describe the activity for which funds are available. As with the current regulation, the amended regulation authorizes funds to pay facility purchase costs incurred after the responsible HHS official has approved the use of funds. The Head Start program wishes to emphasize that grant funds are available under this provision of the regulations for use in paying off existing purchase mortgages or new mortgages which are being sought to refinance the existing debt incurred to purchase the facility. Funds are not available for payment of a new mortgage on a facility when the grantee had previously completed the purchase of the facility. The changes to this provision are being made without opportunity for public comment as permitted by 5 U.S.C. 553(b), when such opportunity is unnecessary. In this case, public comment is unnecessary because the individual changes either do not alter the substance of the provision, or are required to ensure the application of section 644(f)(1), authorizing the use of funds for continuing purchases of facilities, to Early Head Start grantees, along with the other provisions of section 644(f) and (g).

Section 1309.3—Definitions—Construction

Comment

We received one comment suggesting that a more precise definition of construction be established in this section. As defined in the NPRM, construction means, ''new building and excludes alterations, renovations, additions, or work of any kind to an existing building.'' The respondent noted that by this definition, projects which include attaching substantial additions to insignificant structures are classified as renovation projects. The respondent stated that these projects should more reasonably be defined as construction activities. The respondent also noted that projects which include the finishing of partly constructed buildings could reasonably be defined as construction projects rather than as renovation projects.

Response

The Head Start Act at section 644(g)(2) authorizes the Secretary, once a determination has been made that suitable facilities are not otherwise available, to authorize the use of financial assistance for ''construction of facilities that are not in existence on the date of that determination.'' We believe that the proposed definition of ''construction'' as ''new building'' is consistent with the statute and sufficiently clear to allow a responsible HHS official charged with making a determination about the funding of a project to make a common sense determination about the appropriate classification of a proposed project as either construction or major renovation. We are hesitant to adopt a more detailed definition because any such definition may create more uncertainty than the proposed definition. Accordingly, we have decided not to modify the definition of ''construction'' in the final regulations.

Grantee

The definition of Grantee is being revised to specifically state that the definition includes agencies receiving funding to conduct Early Head Start programs.

Incidental Alterations and Renovations and Major Renovations

Comment

We received a comment about the distinctions provided in the proposed definitions between ''incidental alteration and renovations'' and ''major renovations.'' Incidental alterations are defined in the proposed Rule as alterations costing the lesser of $150,000 or 25 percent of total direct costs approved for a budget period. The respondent stated that from time to time the costs of incidental alterations can exceed this dollar limit but still not meet the conditions as defined for major renovations in this section, making it difficult to classify the activity. The respondent suggests that the definition be modified to state that renovations are considered incidental if they do not meet the definition of major renovations as defined in the proposal Rule.

Response

By classifying incidental alterations and renovations we meant to differentiate these activities from major renovations so that grantees could move easily and with speed to improve the quality and safety of Head Start child care facilities. Further, our intention was to differentiate incidental renovations from major renovation activities which would ordinarily require greater technical consultation and would require more time and funding to accomplish.

We agree with the respondent that some incidental alteration and renovation projects could exceed the $150,000 limit presently established in the definition. The $150,000 limit on costs has been established in grants policy for approximately 10 years. During this time there has been a steady growth of Head Start enrollment, and a corresponding increase in the number and size of centers operated by grantees. We recognize that the costs for carrying out center improvements have increased. We are therefore amending the definition of ''incidental alterations and renovations'' to read ''improvements to a facility which do not meet the definition of major

renovation.'' In order to help clarify the difference between incidental alteration and major renovations and to reflect the increase in the costs of incidental alteration and renovations we are amending the definition of ''major renovation.'' This definition is amended to read ''Major renovations means a structural change to the foundation, roof, floor, or exterior or load-bearing walls of a facility, or extension of an existing facility to increase its floor area. Major renovation also means extensive alteration of an existing facility, such as to significantly change its function and purpose, even if such renovation does not include any structural change to the facility. Major renovation also includes a renovation of any kind which has a cost exceeding the lesser of $200,000, adjusted annually to reflect the percentage change in the Consumer Price Index for All Urban Consumers (issued by the Bureau of Labor Statistics) beginning one year after the effective date of the amendments to these regulations, or 25 percent of the total annual direct costs approved for the grantee by ACF for the budget period in which the application is made.''

Suitable Facility

Comment

A ''suitable facility'' as defined in the NPRM is one that ''is owned by a grantee or available for lease or purchase, which is usable as a Head Start facility and is not more expensive to purchase, own or lease than other comparable facilities in the grantee's service area.'' One respondent commented that the meaning of ''suitable'' could reasonably be conformed with what is later defined in the NPRM as a ''useable'' facility.

Response

We agree with the respondent and are revising the definition of a ''suitable facility'' to mean ''a facility which is large enough to meet the foreseeable needs of the Head Start program and which complies with local licensing and code requirements, the access requirements of the Americans with Disabilities Act (ADA), if applicable, and section 504 of the Rehabilitation Act of 1973.''

Purchase

The definition of this term is being changed to make it consistent with the revised wording of section 1309.2.

Useable Facility

This definition will be deleted from the Final Rule and the word ''suitable'' will be substituted.

1309.4—Eligibility—Construction

This section describes how a grantee establishes eligibility for funding of the construction of Head Start facilities.

Paragraph (b)

We are making a change in this paragraph to make it more consistent with the wording of the statute. The proposed Rule at section 1309.49 would have required that a grantee establish eligibility to construct a facility by demonstrating that no facility is available for purchase in the grantee's service area. We are amending paragraph (b) to read ''There is a lack of suitable facilities (including public school facilities) in the grantee's service area which will inhibit the operation of the program, as demonstrated by a statement that neither the grantee's current facility nor any facility available for lease in the service area is suitable for use by a Head Start program. This statement must explain the factors considered, how it was determined that there is a lack of suitable facilities and be supported whenever possible by a written statement from a licensed real estate professional in the grantee's service area.''

Section 1309.10—Application for the Purchase, Construction and Major Renovation of Facilities

Section 1309.10(b), (d), (f), (i), (l) and (m)

This section describes the information that an applicant must provide when requesting funding for the purchase, construction and major renovation of facilities.

Comment

Paragraph (b) requires that applicants provide a certification from a licensed engineer or architect as to the cost and technical appropriateness of the proposed renovation. One respondent stated that this requirement is vague because it does not specify which costs should be considered. This respondent stated further that the section does not indicate the form in which certification should be submitted. The respondent also stated that a technical review by an architect or engineer of the proposed project is required later at section 1309.51 of the rule and this requirement should not be duplicated in this paragraph.

Response

The respondent is correct in saying that section 1309.51 requires that applicants submit working drawings and specifications which have been reviewed by an architect or engineer as to the technical appropriateness of the proposed construction or renovation project. We agree that the requirement for a technical review should be deleted from this paragraph.

Our intention when including a requirement for a certification of the project cost by an architect or engineer was to ensure that applicants had a sound basis for requesting funds for all costs associated with a renovation project and that sufficient funding could be made available upon approval of the working drawings and specifications. We realize that these costs are estimates. It is sufficient for the applicant to have a written estimate of all costs associated with the project prepared by an architect or engineer. We are making a change to this paragraph to include a cost estimate for proposed construction projects as well. Paragraph (b) has been revised to read, ''In the case of a proposed major renovation or construction project, the applicant must submit a written estimate of all costs associated with the project. An architect or engineer must prepare the written estimate.''

We have dropped the requirement in section 1309.10(d) that facilities for which funding is provided must be used principally for Head Start purposes, as it would apply to new purchases, construction and major renovations of facilities. Applying this requirement to such projects would frustrate the intent of Congress expressed in section 644(g) that Head Start facilities be collocated with other programs serving low-income families whenever possible. In the case of continuing purchases of facilities, the grantee will still be required to demonstrate that the facility will be used principally as a Head Start center or a direct support facility for a Head Start program, as required by section 644(f)(2)(D) of the Head Start Act. Whenever funds are provided to purchase, construct, or make major renovation to a facility to be used in part for Head Start purposes, the proportion of the cost of the facility project will be limited to its proportional benefit to the Head Start program.

We have decided to include in the final regulations at 45 CFR 1309.10(l) a requirement that a grantee applying for funding to make major renovations to a facility it does not own must include with its application the written permission from the owner of the building for the grantee to make the planned renovation and a copy of the lease or proposed lease on the facility. The requirement for written permission is necessary to ensure that the landlord has given permission for the grantee to make the proposed major renovations

and to avoid any question of the landlord's rights having been violated by the grantee's performing the major renovation. It is necessary for the responsible HHS official to see the lease to ensure that it includes the provisions required by 45 CFR 1309.21(d)(4) and any other terms the official considers necessary. Under 45 CFR 1309.21(d), the lease on a facility to receive major renovations must be long enough to permit the Head Start program to receive the full value of the grant-supported improvements.

We are changing 45 CFR 1309.10(l) to address situations where grantees propose using grant funds to acquire a facility that is or will be sited on land not owned by the grantee. A grantee proposing to acquire a facility without also purchasing the land on which the facility is or will be situated must include in its application a copy of the existing or proposed land lease or other document ensuring the grantee's right to occupy the facility. The lease or other document, which protects the Federal interest in the facility, must ensure undisturbed use and possession of the facility by the grantee for the purpose of operating a Head Start program or other program designated by ACF. We are also adding language to 45 CFR 1309.10(l) to ensure that the term of the land lease or other similar interest in the underlying land, which is owned by a party other than the grantee and upon which the facility to be acquired or renovated is located, is long enough to allow the Head Start program to receive the full value of that improvement.

We have also included in § 1309.10(l) a requirement that a grantee seeking funding for acquisition or major renovation of a facility sited on land not owned by the grantee must establish that there is no feasible alternative to the proposed project. A feasible alternative may exist whenever there is an opportunity for the grantee to purchase or construct an appropriate facility on land available for purchase in the grantee's service area. (A grantee applying for major renovation funding for a leased facility will be providing information on facilities available for purchase in its service area under §§ 1309.4 and 1309.11.) Where such an alternative site exists, the responsible HHS official should have the grantee provide information on the cost of purchasing or constructing a facility at the alternative site as part of the cost comparison under § 1309.11. Where the cost of the alternative project is less than the proposed project and will result in the purchase or construction of a suitable facility appropriate to the needs of the grantee, the alternative project will be considered feasible.

The intent of the new wording is that the responsible HHS official shall not approve funding for acquisition of a facility which will be sited on property not owned by a grantee unless the land lease or other document ensures the Federal interest in the facility and the undisturbed use and possession of the facility by the grantee for ACF approved purposes. This goal can be accomplished, depending on the circumstances, by including appropriate terms in the lease or other document. The necessary terms will vary from one situation to another. The term of the lease or other arrangement should in most cases be for a period of years that is at least equal to the estimated useful life of the facility. The responsible HHS official should also consider whether it is necessary for the lease or other document to provide for the lessor's compensation of the grantee for any residual value of the facility at the time the grantee ceases to occupy the facility. Such a provision would be appropriate where the lease or other document provides that the grantee's occupancy would end before the term of the facility's projected useful life. In most cases, ACF should also have the right to intervene within a period of sixty days after default under the lease to have the grantee or some other organization cure the default and prevent termination of the lease. The Head Start program will be providing responsible HHS officials with additional guidance on the terms that should be considered for inclusion in the lease or other document in order to fully protect the Federal interest and the grantee's use and occupancy of the facility. It is also the intent of HHS to ensure that the purchase, construction, and major renovation of facilities sited on land not owned by the grantee only be undertaken when there is no feasible alternative available for providing a suitable facility for conduct of the program.

We have decided to change the wording of paragraph (m) of 45 CFR 1309.10 to indicate that all requests for funding to acquire or make major renovation to a facility must be accompanied by an assessment of the environmental impact of the proposed project. The current regulation makes this requirement applicable to certain facilities proposed for purchase. The change is necessary to ensure that all projects, which may result in significant environmental impacts, are identified in the application process. The responsible HHS official already has the authority to make requests for additional information about proposed facility purchases. The existing regulations at 45 CFR 1309.10(r) (and the amended regulations at 45 CFR 1309.10(q)) require the grantee applying for facility funding to provide ''[s]uch additional information as the responsible HHS official may require.'' This provision authorizes the official to request the grantee to provide any additional information on the proposed facility purchase including information regarding environmental impacts of the facility proposed for purchase. In most cases, we expect that the assessment requirement can be met through completion of a questionnaire on the project.

Paragraph (f) and (i) of § 1309.10 have been revised to refer to continuing purchases rather than previous purchases to make them consistent with the revised wording of § 1309.2.

Section 1309.11—Cost Comparison

We are adding wording to § 1309.11(a) to make it clear that the responsible HHS official has authority to require a grantee to provide additional cost information, such as when the grantee is proposing to acquire or make major renovations to a facility sited on land not owned by the grantee.

We have changed the wording in § 1309.11(c)(2) to require that the grantee compare the costs of the proposed construction project to the costs of purchasing a suitable alternate facility or owning, purchasing or leasing an alternate facility which can be made suitable for use through incidental alterations and renovations or major renovations. The change is being made to make the regulations consistent with the requirements of section 644(g)(1) regarding cost comparisons for construction projects.

We have also changed the wording in § 1309.11(c)(3). That provision will read in the final regulations ''A grantee proposing to undertake a major renovation of a facility must compare the cost of the proposed renovation (including the cost of purchasing the facility to be renovated if the grantee is proposing to purchase the facility) to the cost of constructing a facility of comparable size. In place of the cost comparison required in the preceding sentence, a grantee proposing to make renovations to a leased facility must show that the monthly or annual occupancy costs for the term of the lease, including the cost of the renovation, is less than, or comparable to, the cost of purchasing or leasing any other facility in the grantee's service area which can be made suitable through major renovations, if such a facility is available.''

The new wording of § 1309.11(c)(3) does not require that Head Start grantees seeking funding to make major renovation to a leased facility compare the cost of constructing a facility of comparable size. We have decided to adopt this approach because it seems likely that a grantee for which construction is the cheaper alternative will apply for construction funding rather than for funding to make major renovations to a leased facility. However, a responsible HHS official will have the authority to require comparison with the costs of constructing an equivalent facility under 45 CFR 1309.10(q) when the official questions whether the proposed project is the lowest cost alternative for providing the Head Start program with a suitable facility. Section 1309.21(d)(2) is being revised to make it consistent with the revised wording of section 1309.2.

Section 1309.21—Recording of the Federal Interest and Other Protection of the Federal Interest

We are revising paragraph (d) of 45 CFR 1309.21 to protect the federal interest in facilities not owned by the grantee that will be undergoing major renovations paid for with Head Start funds and facilities acquired by grantees that are or will be sited on land not owned by the grantee, and to address the issue of when the Notice of Federal Interest must be filed under various circumstances. Our decision to include these provisions in the final regulations is based on the experience of the Head Start program in funding facility projects. The new wording in paragraph (d)(1) makes it clear that all facilities not owned by the grantee receiving a major renovation paid for with Head Start funds must be leased by the grantee. The lease must protect the right of the grantee, or some other organization designated by ACF in the event of the grantee's termination or withdrawal from the Head Start program, to occupy the facility for the term of the lease. The new wording of paragraph (d)(1) also imposes these requirements on projects involving the acquisition of a facility on land not owned by the grantee. We are also adding language to the same provision to ensure that the term of the land lease or other similar interest in the underlying land, which is owned by a party other than the grantee, and upon which the facility to be acquired or renovated is located, is long enough to allow the Head Start program to receive the full value of the grant supported improvements.

The final wording of paragraph (d)(2) now provides new requirements concerning when the Notice of Federal Interest is filed. The changes are being made to cover the different circumstances under which a facility or land on which a facility is to be constructed is purchased with grants funds. The revised wording of paragraph (d)(2) also provides that in the case of a leased facility undergoing major renovations, the Notice of Federal Interest shall be a copy of the executed lease and all amendments or an affidavit describing the terms of the lease. The revised paragraph (d)(2) also establishes new requirements for facilities now sited or to be constructed on land not owned by a grantee. In such cases, the Notice of Federal Interest shall be the land lease or other document protecting the Federal interest and ensuring the right of the grantee to have undisturbed use and possession of the facility. New wording in paragraph (d)(4) establishes requirements for the contents of leases, affidavits, and other documents serving as the Notice of Federal Interest for leased facilities undergoing major renovations and facilities sited on property not owned by the grantee.

In addition to including the provision on required terms of the lease in the final regulations, we will be issuing guidance to responsible HHS officials on additional terms which are desirable to include in leases of facilities receiving major renovations and facilities sited on land not owned by the grantee.

Section 1309.22—Rights and Responsibilities in the Event of Grantee's Default on Mortgage, or Withdrawal or Termination

Section 1309.22(a)

This section describes actions, which may be taken by ACF and lenders in the event a grantee defaults on the mortgage, or is terminated or withdraws from the Head Start program.

Comment

Some states use an instrument called a trust deed, which is a form of mortgage. A lender commented that the words ''trust deeds'' should be included along with the words ''mortgage'' and ''chattel mortgages'' in this section to make it clear that this is an acceptable instrument in states where it is used.

Response

In using the word ''mortgage'' ACF intends to mean also ''trust deed'' if that term is recognized by the state in question as a substitute for the word ''mortgage.'' The wording of this provision is also being changed to encompass 45 CFR 1309.2, Approval of the Use of Head Start Funds to Continue Purchase of Facilities.

Sections 1309.23—Insurance, Bonding and Maintenance, 1309.30—General, 1309.31—Site Description, and § 1309.33—Inspection

We are making a change in each of these provisions to make their wording consistent with the changes in the wording of 45 CFR 1309.2.

Section 1309.44—Independent Analysis

This provision is being amended by the final regulation to establish that a responsible HHS official may also direct the grantee to obtain an independent analysis of its cost comparison for a construction or major renovation project and that the cost of such analysis will be an allowable expense. The responsible HHS official will have the authority to require an independent analysis under the amended regulations. The extension of coverage of this provision to construction and major renovation projects makes explicit the responsible HHS official's authority under the amended § 1309.10(q), to require such information as part of the application process for construction and major renovation projects.

Section 1309.49—Eligibility—Construction

Section 1309.50—Eligibility—Major Renovation

These sections in the proposed regulations contained conditions grantees must meet in order to be eligible to receive funding to construct or conduct major renovations of a facility.

Comment

One respondent commented that the rules should be better organized. The respondent suggested that since an applicant must first establish that it is eligible to receive funding for construction or renovation of a facility, the criteria to establish eligibility for funding of these activities would logically precede all other provision of the Rule.

Response

We agree with this suggestion and § 1309.49 is re-designated as § 1309.4 and § 1309.50 is re-designated as § 1309.5.

Section 1309.50—Eligibility—Major Renovations

Paragraph (b)

This paragraph states that when a grantee requests funds to conduct major renovations of a leased facility the lease

must provide a term of occupancy of at least five years.

Comment

We received two comments in which the respondents stated that a minimum lease term of five years was not sufficient to protect the Federal interest in the case of high cost major renovations and that this provision should be more stringent. We agree that, depending on the cost of the renovation, it would be a prudent business practice to require that grantees negotiate lease terms in excess of five years. As provided in the policies of the Department of Health and Human Services, the responsible HHS official will only agree to expenditure of Head Start funds for major renovation of a leased facility when the lease is long enough for the full value of the grant-supported improvements to benefit the grant activity. We have shifted the statement on the requirement for the length of the lease to § 1309.21(d)(1).

Section 1309.51—Approval of Drawings and Specifications

Paragraph (a)

This paragraph requires that grantees submit final working drawings and specifications to the responsible HHS official for approval before advertising for bids and contracting for construction or major renovation work.

Comment

One respondent commented that requiring HHS approval of final drawings would add a delay in the construction or renovation process. The respondent added that since technical drawings had to be approved by local officials it should not be necessary for HHS to also approve final drawings. The respondent suggested that the Rule be written to state that HHS should require a written statement by an architect or engineer that final drawings meet all Head Start and local licensing requirements.

Response

By reserving the right to approve final construction and renovation working drawings, HHS is reserving the right to determine that the final plans remain within the scope and costs of the project for which funding has been or will be made available. In order to make our intention clear on this point we have revised the wording of § 1309.51 to read:

(a) The grantee may not advertise for bids or award a contract for any part of the construction or major renovation funded by grant funds until the grantee has submitted to the responsible HHS official final working drawings and written specifications for the project, a written certification by a licensed engineer or architect as to the technical appropriateness of the proposed construction or renovation and the conformity of the project as shown in the final working drawings and specifications with Head Start programmatic requirements, and a written estimate of the costs of the project by a licensed architect or engineer.

(b) The responsible HHS official may authorize the grantee to advertise bids or award a contract after receiving the information provided under paragraph (a) and determining that sufficient funding is, or will be, available to cover the costs of the project as estimated by the architect or engineer, and that the scope of the project as described in the drawings and specifications is appropriate to the needs of the grantee.

The revised wording of the regulation clarifies what the grantee must provide before the responsible HHS official can authorize the issuance of bids or the signing of a contract. Paragraph (b) clarifies the role of the responsible HHS official as being concerned with whether the scope of the project is appropriate to the grantee's needs and whether Head Start funding is available to meet the estimated costs of the project.

Section 1309.52—Procurement Procedures

Paragraph (b)

This paragraph requires that the HHS official approve contracts for construction and renovation of acquired facilities.

Comment

In reviewing this requirement a respondent stated that this provision did not require the approval of contracts for all construction and major renovation including those in leased facilities or facilities not owned or acquired by the grantee.

Response

It was our intention to require written approval by the HHS official for any use of Head Start funds for renovation and construction activities whether or not the Head Start grantee owns the property to be improved. We are making a change in this provision and paragraph (b) is being amended to read ''All contracts for construction or major renovation of a facility to be paid for in whole or in part with Head Start funds require the prior, written approval of the responsible HHS official and shall be on a lump-sum fixed-price basis.''

Paragraph (c)

This paragraph requires grantees to obtain written approval for unsolicited modifications that would materially alter the costs of a project or increase the amount of grant funds needed to complete a project.

Comment

We received one comment from a respondent who stated that this paragraph was not clear. The respondent was concerned that the Rule implies that routine ''change orders'' which are normally encountered when conducting renovation and construction projects would need to be approved which would cause delays in the implementation of projects.

Response

Our intention in this provision is to ensure that funds would be available to complete projects and that the responsible HHS officials would be notified of significant changes which could result in project cost increases. It is not our intention to require grantees to submit routine change orders to the responsible HHS official for prior approval. In order to make this intention clear we are rewording section (c) to state that ''Prior written approval of the responsible HHS official is required for modifications that would change the scope or objective of the project or would materially alter the costs of the project by increasing the amount of grant funds needed to complete the project.''

Section 1309.54—Davis-Bacon Act

This section conforms with the statute in requiring that all laborers and mechanics employed by contractors and subcontractors in the construction or renovation of Head Start facilities be paid wages as determined by the Secretary of Labor in accordance with 40 U.S.C. 276a (*et seq.*), commonly referred to as the Davis-Bacon Act.

Comment

We received two comments from two respondents suggesting that wages paid for incidental alterations and renovations should be excluded from the requirements of the Davis-Bacon Act.

Response

We cannot adopt this recommendation because the statute provides no authority for exempting from the Davis-Bacon Act any class of construction or renovation activities.

VI. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this Rule is consistent with these priorities and principles. This Rule implements the statutory authority for Head Start grantees to apply to use grant funds to construct or make major renovations to facilities.

This Rule was determined to be significant and was reviewed by the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as ''regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, on the distribution of power and responsibilities among the various levels of government.'' This rule does not have federalism implications as defined in the Executive Order.

Family Well-Being Impact

As required by section 654 of the Treasury and General Government Appropriations Act of 1999, we have assessed the impact of this final Rule on family well being. By allowing Head Start grantees to purchase, renovate or construct facilities our assessment is that this Rule will have a positive impact on child and family well being by improving the quality and availability of Head Start child care facilities in low income communities.

Compliance With the National Environmental Policy Act (NEPA)

Pursuant to regulations of the Council on Environmental Quality (40 CFR 1500–1508), ACF published an environmental assessment of these regulations, and placed a Notice in the **Federal Register** on November 9, 2000 (65 FR 67377) which invited public comment on the assessment. ACF received no comments and published a Preliminary Finding of No Significant Impact on January 25, 2001 (66 FR 7768). After receiving no comments on this preliminary finding, ACF published a Final Finding of No Significant Impact on March 26, 2001 (66 FR 16478). ACF found that these rules will not have a significant impact on the quality of the human environment and that the preparation of an Environmental Impact Statement would not be necessary.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. Chapter 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a ''significant economic impact on a substantial number of small entities'' an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. While these regulations would affect small entities, they would not affect a substantial number. Furthermore, the cost of the application process and other activities undertaken as a result of these regulations will not have a significant economic impact because the Head Start program covers 80 percent of the allowable costs of grantees under the program. The remaining costs associated with compliance are part of the share of cost grantees agree to meet from their own resources when they enter the Head Start program. For these reasons, the Secretary certifies that this rule will not have a significant impact on substantial numbers of small entities.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (Pub. L. 104–4) requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation). This rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an annual expenditure of $100,000,000 or more.

Congressional Review

This rule is not a major rule as defined in 5 U.S.C., Chapter 8.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (Pub. L. 104–13), all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirement inherent in a proposed or final rule. This Rule contains information collection and record-keeping requirements in section 1309.10 (Application), 1309.4 as re-designated (Eligibility—construction), and 1309.5 as re-designated, (Eligibility—major renovation) which will be submitted to OMB for review and approval in accordance with the Paperwork Reduction Act.

The respondents to the information collection requirements in the Rule are Head Start grantees. Forty percent of these grantees include local non-profit or for profit agencies, thirty-three percent are Community Action Agencies and sixteen percent are school districts. The balance represents Tribes and municipal entities. The Department needs to require this collection of information in order to assure that grantees that apply for approval to construct or make major renovations to a facility with Head Start funds have followed certain necessary legal and administrative procedures. Also, the requirement for this collection of information is necessary for monitoring purposes.

The grantees who will be affected by these requirements will be those who request approval and are approved to construct or make major renovations to a facility for the purpose of operating a Head Start program. More than half of grantee agencies (sixty-one percent) enroll less than 300 children and are relatively small entities. Less than twenty-five percent of all programs enroll more than 500 children and would be expected to engage in relatively large scale facility development projects if they qualified for funding of such projects. In total, the estimated annual number of grantees that will be affected is 200, based on the average number of grantees who requested approval from the Department since the statutory authority became effective.

The actual submittal of an application under section 1309.10 from a grantee to construct or make a major renovation to a facility is a one-time activity, which is preceded by a number of preparatory activities. We estimate the time it will take to prepare the application in accordance with the requirements of this Rule is 40 hours per grantee, calculated over a period of time. On an annual basis, the total estimate for the preparation of applications by grantees is 8,000 hours. Based upon the Head Start program manager's average annual salary, we estimate the cost of the preparation of an application to be approximately $960.00. Eighty percent of these costs are borne directly through the provision of federal funds. In addition, all other costs related to the development of projects affected by this Rule are provided directly by grant funds or through required non-federal match as provided for by this Rule. No impacts are expected on either employees or clients of the Head Start program or its operation.

The Administration for Children and Families (ACF) will consider comments by the public on these proposed collections of information in:

- Evaluating whether the proposed collections are necessary for proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of ACF's estimate of the burden of the proposed collections of information;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond.

OMB is required to make a decision concerning the collection of information contained in this Final Rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having all its full effect if OMB receives it within 30 days of publication. Written comments to OMB for the proposed information collection should be sent to: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Brenda Aguilar.

List of Subjects in 45 CFR Part 1309

Education of disadvantaged, Grant programs-social programs, Head Start, Real property acquisition.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: December 24, 2002.

Wade F. Horn,

Assistant Secretary for Children and Families.

Approved: January 21, 2003.

Tommy G. Thompson,

Secretary.

■ For the reasons set forth in the Preamble, 45 CFR part 1309 is amended as follows:

■ 1. The authority citation for part 1309 continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

■ 2. The heading of Part 1309 is revised to read as follows:

PART 1309—HEAD START FACILITIES PURCHASE, MAJOR RENOVATION AND CONSTRUCTION

■ 3. Section 1309.1 is revised to read as follows:

§ 1309.1 Purpose and application.

This part prescribes regulations implementing sections 644(c), (f) and (g) and 645A(b)(9) of the Head Start Act, 42 U.S.C. 9801 *et seq.*, as they apply to grantees operating Head Start programs (including Early Head Start grantees) under the Act. It prescribes the procedures for applying for Head Start grant funds to purchase, construct, or make major renovations to facilities in which to operate Head Start programs. It also details the measures which must be taken to protect the Federal interest in such facilities purchased, constructed or renovated with Head Start grant funds.

■ 4. Section 1309.2 is revised to read as follows:

§ 1309.2 Approval of the use of Head Start funds to continue purchase of facilities.

Head Start grantees (including Early Head Start grantees) which purchased facilities after December 31, 1986, and which are continuing to pay costs of purchasing those facilities, may apply to receive Head Start funds to meet those costs by submitting applications which conform to the requirements of this part and the Act. A grantee may only use grant funds to pay facility purchase costs incurred after the responsible HHS official approves its application.

■ 5. Section 1309.3 is amended by revising the definitions ''acquire,'' ''grant funds,'' ''grantee,'' and ''purchase'' and adding four new definitions to read as follows:

§ 1309.3 Definitions.

* * * * *

Acquire means to purchase or construct in whole or in part with Head Start grant funds through payments made in satisfaction of a mortgage agreement (both principal and interest), as a down payment, and for professional fees, closing costs and any other costs associated with the purchase or construction of the property that are usual and customary for the locality.

* * * * *

Construction means new buildings, and excludes renovations, alterations, additions, or work of any kind to existing buildings.

* * * * *

Grant funds means Federal financial assistance received by a grantee from ACF to administer a Head Start or Early Head Start program pursuant to the Head Start Act.

Grantee means any agency designated to operate a Head Start program (including an agency designated to operate an Early Head Start program) pursuant to section 641 or 645A of the Head Start Act.

Incidental alterations and renovations means improvements to facility which do not meet the definition of major renovation.

* * * * *

Major renovation means a structural change to the foundation, roof, floor, or exterior or load-bearing walls of a facility, or extension of an existing facility to increase its floor area. Major renovation also means extensive alteration of an existing facility, such as to significantly change its function and purpose, even if such renovation does not include any structural change to the facility. Major renovation also includes a renovation of any kind which has a cost exceeding the lesser of $200,000, adjusted annually to reflect the percentage change in the Consumer Price Index for All Urban Consumers (issued by the Bureau of Labor Statistics) beginning one year after June 2, 2003, or 25 percent of the total annual direct costs approved for the grantee by ACF for the budget period in which the application is made.

* * * * *

Purchase means to buy an existing facility, either outright or through a mortgage. Purchase also refers to an approved use of Head Start funds to continue paying the cost of purchasing facilities begun after December 31, 1986 as permitted by the Head Start Act and by § 1309.2.

* * * * *

Suitable facility means a facility which is large enough to meet the foreseeable needs of the Head Start program and which complies with local licensing and code requirements and the access requirements of the Americans with Disabilities Act (ADA), if applicable, and section 504 of the Rehabilitation Act of 1973.

■ 6. Section 1309.4 is added to read as follows:

§ 1309.4 Eligibility—Construction.

Before submitting an application under § 1309.10 for construction of a facility, the grantee must establish that:

(a) The Head Start program serves an Indian Tribe; or is located in a rural or other low-income community; and

(b) There is a lack of suitable facilities (including public school facilities) in the grantee's service area which will inhibit the operation of the program, as demonstrated by a statement that neither the grantee's current facility nor any facility available for lease in the service area is suitable for use by the Head Start program. This statement must explain the factors considered, how it was determined that there is a lack of suitable facilities and be supported whenever possible by a written statement from a licensed real

estate professional in the grantee's service area.

■ 7. Section 1309.5 is added to read as follows:

§ 1309.5 Eligibility—Major Renovations.

Before submitting an application under § 1309.10, the grantee must establish that:

(a) The Head Start program serves an Indian Tribe, or is located in a rural or other low-income community; and

(b) There is a lack of suitable facilities (including public school facilities) in the grantee's service area which will inhibit or prevent the operation of the program, as demonstrated by a statement that neither the grantee's current facility nor any facility available for lease or purchase in the service area is suitable or could be made suitable without major renovation. This statement must explain the factors considered, how it was determined that there is a lack of suitable facilities and be supported, whenever possible, by written statement from a licensed real estate professional in the grantee's service area.

■ 8. Section 1309.10 is removed and a new §1309.10 is added to read as follows:

§ 1309.10 Applications for the purchase, construction and major renovation of facilities.

A grantee which proposes to use grant funds to purchase a facility, or a grantee found eligible under § 1309.4 to apply for funds to construct a facility, or § 1309.5 to undertake major renovation of a facility, including facilities purchased for that purpose, must submit a written application to the responsible HHS official. The application must include the following information:

(a) A legal description of the site of the facility, and an explanation of the appropriateness of the location to the grantee's service area, including a statement of the effect that acquisition or major renovation of the facility has had or will have on the transportation of children to the program, on the grantee's ability to collaborate with other child care, early education programs, social services and health providers, and on all other program activities and services.

(b) Plans and specifications of the facility to be acquired, including information on the size and type of structure, the number and a description of the rooms, and the lot on which the building is located or will be located (including the space available for a playground and for parking). If incidental alterations and renovations or major renovations are being proposed to make a facility suitable to carry out the Head Start program, a description of the renovations, and the plans and specifications submitted, must also describe the facility as it will be after renovations are complete. In the case of a proposed major renovation or construction project, the applicant must submit a written estimate of all costs associated with the project. An architect or engineer must prepare the written estimate.

(c) The cost comparison described in § 1309.11.

(d) The intended use of the facility proposed for acquisition or major renovation, including information showing the percentage of floor space that will be used as a Head Start center or a direct support facility for a Head Start program. As provided under section 644(f)(2)(D) of the Act, in the case of a request regarding funding for the continuing purchase of a facility, the application must include information demonstrating that the facility will be used principally as a Head Start center, or a direct support facility for a Head Start program.

(e) An assurance that the facility complies (or will comply when constructed or after completion of the renovations described in paragraph (b) of this section) with local licensing and code requirements, the access requirements of the Americans with Disabilities Act (ADA), if applicable, and section 504 of the Rehabilitation Act of 1973. The grantee will also assure that it has met the requirements of the Flood Disaster Protection Act of 1973, if applicable.

(f) If the grantee proposing to purchase a facility without undertaking major renovations is claiming that the lack of alternative facilities will prevent or would have prevented operation of the program, a statement of how it was determined that there is or was a lack of alternative facilities. This statement must be supported, whenever possible, by a written statement from a licensed real estate professional in the grantee's service area. If a grantee requesting approval of the use of Head Start funds to continue purchase of a facility is unable to provide such statements based on circumstances which existed at the time the purchase began, the grantee and the licensed real estate professional may use present conditions as a basis for making the determination.

(g) The terms of any proposed or existing loan(s) related to acquisition or major renovation of facility and the repayment plans (detailing balloon payments or other unconventional terms, if any), and information on all other sources of funding of the acquisition or major renovations, including any restrictions or conditions imposed by other funding sources.

(h) A statement of the effect that the acquisition or major renovation of the facility would have on the grantee's meeting the non-Federal share requirement of section 640(b) of the Head Start Act, including whether the grantee is seeking a waiver of its non-Federal share obligation under that section of the Act.

(i) Certification by a licensed engineer or architect that the building proposed to be purchased or for which Head Start funds will be used to continue to purchase is structurally sound and safe for use as a Head Start facility. The applicant must certify that, upon completion of major renovation to a facility or construction of a facility, that an inspection by a licensed engineer or architect will be conducted to determine that the facility is structurally sound and safe for use as a Head Start facility.

(j) A statement of the effect that the acquisition or major renovation of a facility would have on the grantee's ability to meet the limitation on development and administrative costs in section 644(b) of the Head Start Act. One-time fees and expenses necessary to the acquisition or major renovation, such as the down payment, the cost of necessary renovation, loan fees and related expenses, and fees paid to attorneys, engineers, and appraisers, are not considered to be administrative costs.

(k) A proposed schedule for acquisition, renovation and occupancy of the facility.

(l) Reasonable assurance that the applicant will obtain, or has obtained, a fee simple or such other estate or interest in the site of the facility to assure undisturbed use and possession for the purpose of operating a Head Start program. A grantee seeking funding for acquisition or *major renovation* of a facility that is sited on land not owned by the grantee must establish in its application that there is no other feasible alternative to acquisition or *leasing* of the facility for providing a suitable facility appropriate to the needs of the Head Start program. If the grantee proposes to acquire a facility without also purchasing the land on which the facility is or will be situated, the application must include a copy of the existing or proposed land lease or other document which protects the Federal interest in the facility and ensures undisturbed use and possession of the facility by the grantee, or other organization designated by ACF, for the purpose of operating a Head Start program or other program designated by

ACF. A grantee applying for funding to make major renovations to a facility it does not own must include with its application written permission from the owner of the building projected to undergo major renovation and a copy of the lease or proposed lease for the facility. A grantee receiving funds for acquisition or the major renovation of a facility, on land belonging to another party, must have a land lease or other similar interest in the underlying land which is long enough to allow the Head Start program to receive the full value of those permanent grant-supported improvements.

(m) An assessment of the impact of the proposed project on the human environment pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) and its implementing regulations (40 CFR parts 1500 through 1508), as well as a report showing the results of tests for environmental hazards present in the facility, ground water, and soil (or justification why such testing is not necessary). In addition, such information as may be necessary to comply with the National Historic Preservation Act of 1966 (16 U.S.C. 470f) must be included.

(n) Assurance that the grantee will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.* and 49 CFR part 24), and information about the costs that may be incurred due to compliance with this Act.

(o) A statement of the share of the cost of acquisition or major renovation that will be paid with grant funds.

(p) For a grantee seeking approval of the use of Head Start funds to continue purchase of a facility, a statement of the extent to which it has attempted to comply and will be able to comply with the provision of § 1309.22.

(q) Such additional information as the responsible HHS official may require.

■ 9. Section 1309.11 is revised to read as follows:

§ 1309.11 Cost comparison for purchase, construction and major renovation of facilities.

(a) A grantee proposing to acquire or undertake a major renovation of a facility must submit a detailed estimate of the costs of the proposed activity and compare the costs of the proposed activity as provided under paragraph (c) of this section and provide any additional information requested by the responsible HHS official.

(b) All costs of acquisition, renovation and ownership must be identified, including, but not limited to, professional fees, purchase of the facility to be renovated, renovation costs, moving expenses, additional transportation costs, maintenance, taxes, insurance, and easements, rights of way or land rentals. An independent appraisal of the current value of the facility proposed to be purchased, or which the grantee will continue to purchase with Head Start funds or to receive major renovation, made by a professional appraiser, must be included.

(c)(1) Grantees proposing to purchase a facility, without requesting funds for major renovations to the facility, must compare costs of the proposed facility to the cost of the facility currently used by the grantee, unless the grantee has no current facility, will lose the use of its current facility, intends to continue to use its current facility after it purchases the new facility, or has shown to the satisfaction of the responsible HHS official that its existing facility is inadequate. Where the grantee's current facility is not used as the alternate facility, the grantee must use for comparison a facility (or facilities) available for lease in the grantee's service area and suitable for use as a Head Start facility or which can be made suitable through incidental alteration or renovations, the cost of which shall be included in the cost comparison. In the case of an application for approval of the use of Head Start funds to continue purchase of a facility, the cost of the present facility must be compared to the cost of the facility used by the grantee before purchase of its current facility. If the facility used by the grantee before the purchase of its present facility was deemed inadequate by the responsible HHS official, or the grantee had no previous facility, the alternative facility shall be an available, appropriate facility (or facilities) of comparable size that was available for rent in the grantee's service are at the time of its purchase of the current facility. Grantees which have established under § 1309.10(f) that there is a lack of alternative facilities that will prevent or would have prevented operation of the program are not required to provide a cost comparison under this paragraph.

(2) Grantees proposing to construct a facility must compare the costs of constructing the proposed facility to the costs of purchasing a suitable alternate facility or owning, purchasing or leasing an alternative facility which can be made suitable for use through incidental alterations and renovations or major renovations. The alternative facility is one now owned by the grantee or available for lease or purchase in the grantee's service area. If no such facility is available, this statement must explain how this fact was determined and the claim must be supported, whenever possible, by a written statement from a licensed real estate professional in the grantee's service area.

(3) A grantee proposing to undertake a major renovation of a facility must compare the cost of the proposed renovation (including the cost of purchasing the facility to be renovated, if the grantee is proposing to purchase the facility) to the costs of constructing a facility of comparable size. In place of the cost comparison required in the preceding sentence, a grantee proposing to make major renovations to a leased facility must show that the monthly or annual occupancy costs for the term of the lease, including the cost of the major renovations, is less than, or comparable to, the costs of purchasing or leasing any other facility in the grantee's service area which can be made suitable through major renovations, if such a facility is available.

(d) The grantee must separately delineate the following expenses in the application:

(1) One-time costs, including but not limited to, costs of purchasing the facility to be renovated, the down payment, professional fees, moving expenses, the cost of site preparation; and

(2) Ongoing costs, including, but not limited to, mortgage payments, insurance premiums, maintenance costs, and property taxes. If the grantee is exempt from the payment of property taxes, this fact must be stated.

(e) The period of comparison for purchase, construction or major renovation of a facility is twenty years, except that for the purchase of a modular unit the period of comparison is ten years and the period of comparison for major renovation of a leased facility is the period of the lease remaining after the renovations are completed. For approvals of the use of Head Start funds to continue purchase of the facility the period of comparison begins on the date the purchase began.

(f) If the facility is to be used for other purposes in addition to the operation of the Head Start program, the cost of use of that part of the facility used for such other purposes must be allocated in accordance with applicable Office of Management and Budget cost principles.

■ 10. Section 1309.21 is amended by revising paragraphs (a), (d) and (f) introductory text to read as follows:

§ 1309.21 Recording of Federal interest and other protection of Federal interest.

(a) The Federal government has an interest in all real property and equipment acquired or upon which major renovations have been undertaken with grant funds for use as a Head Start facility. The responsible HHS official may subordinate the Federal interest in such property to that of a lender, which financed the acquisition or major renovation costs subject to the conditions set forth in paragraph (f) of this section.

* * * * *

(d)(1) A grantee receiving funds to acquire or make major renovations to a facility that is or will be sited on land not owned by the grantee must have a lease or other arrangement which protects the Federal interest in the facility and ensures the grantee's undisturbed use and possession of the facility. The lease or document evidencing another arrangement shall include provisions to protect the right of the grantee, or some other organization designated by ACF in the place of the grantee, to occupy the facility for the term of the lease or other arrangement and such other terms required by the responsible HHS official. The designation of an alternate tenant or occupant of the facility by ACF shall be subject to approval by the Lessor, which will not be withheld except for good reason, not including the willingness of another party to pay a higher rent. A grantee receiving funds for the major renovation or acquisition of a facility, on land belonging to another party, must have a land lease or other similar interest in the underlying land which is long enough to allow the Head Start program to receive the full value of those permanent grant-supported improvements.

(2) Except as required under § 1309.31 for certain modular units, the grantee must record the Notice of Federal Interest in the appropriate official records for the jurisdiction where a facility is or will be located immediately upon: purchasing a facility or land on which a facility is to be constructed; receiving permission to use funds to continue purchase of a facility; commencing major renovation of a facility or construction of a facility. In the case of a leased facility undergoing major renovations, the Notice of Federal Interest shall be a copy of the executed lease and all amendments. In the case of a facility now sited or to be constructed on land not owned by the grantee, the Notice of Federal Interest shall be the land lease or other document protecting the Federal interest. The lease or other document must ensure the right of the grantee to have undisturbed use and possession of the facility. In the event that filing of a lease is prohibited by State law, the grantee shall file an affidavit signed by the representatives of the grantee and the Lessor stating that the lease includes terms which protect the right of the grantee, or some other organization designated by ACF in the place of the grantee, to occupy the facility for the term of the lease.

(3) The Notice of Federal Interest for property sited on land not owned by the grantee shall include the following information:

(i) The date of the award of grant funds for the acquisition or major renovation of the property to be used as a Head Start facility, and the address and legal description of the property to be acquired or renovated;

(ii) That the grant incorporated conditions which included restrictions on the use of the property and provide for a Federal interest in the property;

(iii) That the property may not be used for any purpose inconsistent with that authorized by the Head Start Act and applicable regulations;

(iv) That the property may not be mortgaged or used as collateral, sold or otherwise transferred to another party, without the written permission of the responsible HHS official;

(v) That these grant conditions and requirements cannot be altered or nullified through a transfer of ownership; and

(vi) The name (including signature) and title of the person who completed the Notice for the grantee agency, and the date of the Notice.

(4) A lease, serving as a Notice of Federal Interest, an affidavit filed in the land records as a substitute for the lease, or other document protecting the Federal interest in a facility acquired with grant funds and sited on land not owned by the grantee, shall include the following information:

(i) The address and legal description of the property;

(ii) That the grant incorporated conditions which include restrictions on the use of the property and provide for a Federal interest in the property for the term of the lease or other arrangement; and

(iii) That the property may not be used for any purpose during the lease or other arrangement that is inconsistent with that authorized by the Head Start Act and applicable regulations.

* * * * *

(f) In subordinating its interest in a facility acquired or upon which major renovations have been undertaken with grant funds, the responsible HHS officials does not waive application of paragraph (d) of this section and § 1309.22. A written agreement by the responsible HHS official to subordinate the Federal interest must provide:

* * * * *

■ 11. Section 1309.22(a) is revised to read as follows:

§ 1309.22 Rights and responsibilities in the event of grantee's default on mortgage, or withdrawal or termination.

(a) The mortgage agreement, or security agreement in the case of a modular unit which is proposed to be purchased under a chattel mortgage, shall provide in the case of default by the grantee or the withdrawal or termination of the grantee from the Head Start program that ACF may intervene. In the case of a default, the mortgage agreement or security agreement must provide that ACF may intervene to ensure that the default is cured by the grantee or another agency designated by ACF and that the lender shall accept the payment of money or performance of any other obligation by ACF's designee, for the grantee, as if such payment of money of performance had been made by the grantee. The agreement shall also provide that ACF will have a period of 60 days after notification by the grantee of default in which to intervene to attempt to cure the default. The agreement shall further provide that in the event of a default, or the withdrawal or termination of the grantee the mortgage may be assumed by an organization designated by ACF. The mortgage or creditor will have the right to approve the organization designated to assume the mortgage, but such approval will not be withheld except for good reason. The required provisions must be included in the mortgages of facilities funded as continuing purchases pursuant to §1309.2 unless a convincing justification for not doing so is shown by the Head Start grantee.

* * * * *

■ 12. Section 1309.23 is amended by revising paragraph (a) introductory text to read as follows:

§ 1309.23 Insurance, bonding and maintenance.

(a) At the time of acquiring or undertaking a major renovation of a facility or receiving approval for the use of Head Start funds to continue purchase the grantee shall obtain insurance coverage for the facility which is not lower in value than coverage it has obtained for other real property it owns, and which at least meets the requirements of the coverage

specified in paragraphs (a)(1) and (2) of this section. For facilities, which have been constructed or renovated, insurance coverage must begin at the commencement of the expenditure of costs in fulfillment of construction or renovation work.

* * * * *

■ 13. Introductory language and paragraph (a) of § 1309.30 are revised to read as follows:

§ 1309.30 General.

In addition to the special requirements of §§ 1309.31 through 1309.34, the proposed purchase or request for approval of continuing purchase of a modular unit is subject to all of the requirements of this part with the following exceptions:

(a) The requirements of §1309.33 apply rather than the requirement of §1309.10(i); and

* * * * *

■ 14. Section 1309.31 is amended by revising paragraph (a) to read as follows:

§ 1309.31 Site description.

(a) An application for the purchase or approval of a continuing purchase of a modular unit pursuant to § 1309.2 must state specifically where the modular unit is or will be installed, and whether the land on which the modular unit will be installed will be purchased by the grantee. If the grantee does not propose to purchase the land on which to install the modular unit or if the modular unit the grantee is continuing to purchase with Head Start funds is located on land not owned by the grantee, the application must state who owns the land on which the modular unit is or will be situated and describe the easement, right-of-way or land rental it will obtain or has obtained to allow it sufficient access to the modular unit.

* * * * *

■ 15. Section 1309.32 is amended by revising paragraph (b) to read as follows:

§ 1309.32 Statement of procurement procedure for modular units.

* * * * *

(b) This statement must include a copy of the specifications for the unit which is proposed to be purchased and assurance that the grantee will comply with procurement procedures in 45 CFR parts 74 and 92, including assurance that all transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. A grantee requesting approval for the use of Head Start funds for continued purchase of a modular unit must also include a copy of the specifications for the unit.

■ 16. Section 1309.33 is revised to read as follows:

§ 1309.33 Inspection.

A grantee which purchases a modular unit with grant funds or receives approval of a continuing purchase must have the modular unit inspected by a licensed engineer or architect within 15 calendar days of its installation or approval of a continuing purchase, and must submit to the responsible HHS official the engineer's or architect's inspection report within 30 calendar days of the inspection.

■ 17. Section 1309.40 is removed and a new §1309.40 is added to read as follows:

§ 1309.40 Copies of documents.

Certified copies of the deed, lease, loan instrument, mortgage, and any other legal documents related to the acquisition or major renovation of the facility or the discharge of any debt secured by the facility must be submitted to the responsible HHS official within ten days of their execution.

■ 18. Section 1309.41 is removed and a new §1309.41 is added to read as follows:

§ 1309.41 Record retention.

All records pertinent to the acquisition or major renovation of a facility must be retained by the grantee for a period equal to the period of the grantee's ownership (or occupancy, in the case of leased facilities) of the facility plus three years.

■ 19. Section 1309.42 is revised to read as follows:

§ 1309.42 Audit of mortgage.

Any audit of a grantee, which has acquired or made major renovations to a facility with grant funds, shall include an audit of any mortgage or encumbrance on the facility. Reasonable and necessary fees for this audit and appraisal are payable with grant funds.

■ 20. Section 1309.43 is revised to read as follows:

§ 1309.43 Use of grant funds to pay fees.

Consistent with the cost principles referred to in 45 CFR part 74 and 45 CFR part 92, reasonable fees and costs associated with and necessary to the acquisition or major renovation of a facility (including reasonable and necessary fees and costs incurred to establish preliminary eligibility under §§ 1309.4 and 1309.5, or otherwise prior to the submission of an application under § 1309.10 or acquisition of the facility) are payable with grant funds, and require prior, written approval of the responsible HHS official.

■ 21. Section 1309.44 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1309.44 Independent analysis.

(a) The responsible HHS official may direct the grantee applying for funds to acquire or make major renovations to a facility to obtain an independent analysis of the cost comparison submitted by the grantee pursuant to § 1309.11, or the statement under 1309.10(f) of this part, or both, if, in the judgment of the official, such an analysis is necessary to adequately review a proposal submitted under this part.

(b) The analysis shall be in writing and shall be made by a qualified, disinterested real estate professional in the community in which the property to be purchased or renovated is situated.

* * * * *

■ 22. A new Subpart F is added to read as follows:

Subpart F—Construction and Major Renovation

Sec.
1309.51 Submission of drawings and specifications.
1309.52 Procurement procedures.
1309.53 Inspection of work.
1309.54 Davis-Bacon Act.

Subpart F—Construction and Major Renovation

§ 1309.51 Submission of drawings and specifications.

(a) The grantee may not advertise for bids or award a contract for any part of construction or major renovation funded by grant funds until the grantee has submitted to the responsible HHS official final working drawings and written specifications for the project, a written certification by a licensed engineer or architect as to technical appropriateness of the proposed construction or renovation and the conformity of the project as shown in the final working drawings and specifications with Head Start programmatic requirements, and a written estimate of the costs of the project by a licensed architect or engineer.

(b) The responsible HHS official may authorize the grantee to advertise bids or award a contract after receiving the information provided under paragraph (a) of this section and determining that sufficient funding is, or will be, available to cover the costs of the project as estimated by the architect or engineer, and that the scope of the project as described in the drawings and

specifications is appropriate to the needs of the grantee.

§ 1309.52 Procurement procedures.

(a) All facility construction and major renovation transactions must comply with the procurement procedure in 45 CFR parts 74 or 92, and must be conducted in a manner to provide, to the maximum extent practical, open and free competition.

(b) All contracts for construction or major renovation of a facility to be paid for in whole or in part with Head Start funds require the prior, written approval of the responsible HHS official and shall be on a lump sum fixed-price basis.

(c) Prior written approval of the responsible HHS official is required for unsolicited modifications that would change the scope or objective of the project or would materially alter the costs of the project by increasing the amount of grant funds needed to complete the project.

(d) All construction and major renovation contracts for facilities acquired with grant funds shall contain a clause stating that the responsible HHS official or his or her designee shall have access at all reasonable times to the work being performed pursuant to the contract, at any stage of preparation or progress, and require that the contractor shall facilitate such access and inspection.

§ 1309.53 Inspection of work.

(a) The grantee must provide and maintain competent and adequate architectural or engineering inspection at the work site to insure that the completed work conforms to the approved plans and specifications.

(b) The grantee must submit a final architectural or engineering inspection report of the facility to the responsible HHS official within 30 calendar days of substantial completion of the construction or renovation.

§ 1309.54 Davis-Bacon Act.

Construction and renovation projects and subcontracts financed with funds awarded under the Head Start program are subject to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) and the Regulations of the Department of Labor, 29 CFR part 5. The grantee must provide an assurance that all laborers and mechanics employed by contractors or subcontractors in the construction or renovation of affected Head Start facilities shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 021016236–3089–02; I.D. 082002A]

RIN 0648–AP74

Antarctic Marine Living Resources; CCAMLR Ecosystem Monitoring Permits; Vessel Monitoring System; Catch Documentation Scheme; Fishing Season; Registered Agent; and Disposition of Seized AMLR

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to: lengthen the duration of the permit required to enter a Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) Ecosystem Monitoring Program (CEMP) site from 1 year to up to 5 years; define the CCAMLR fishing season and require the use of an automated satellite-linked vessel monitoring system (VMS) for U.S. vessels harvesting Antarctic marine living resources (AMLR) in the area of the Convention on the Conservation of Antarctic Marine Living Resources (Convention); require foreign entities to designate and maintain a registered agent within the United States; prohibit the import of *Dissostichus* species (toothfish) identified as originating from certain high seas areas outside the Convention Area; incorporate into the Code of Federal Regulations the prohibition on the import of toothfish issued a Specially Validated Dissostichus Catch Document (SVDCD); and institute a preapproval system for U.S. receivers and importers of *Dissostichus eleginoides* (Patagonian toothfish) and *Dissostichus mawsoni* (Antarctic toothfish). This final rule is intended to implement U.S. obligations as a Member of CCAMLR and to conserve Antarctic and Patagonian toothfish by preventing and discouraging unlawful harvest and trade in these species and streamlining the administration of the Dissostichus Catch Document (DCD) scheme.

DATES: This final rule is effective June 2, 2003, except that amendments to §§ 300.107 and 300.113 are effective June 16, 2003.

ADDRESSES: Copies of the Environmental Assessment and Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA and RIR/FRFA) supporting this action may be obtained from Dean Swanson, International Fisheries Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule to Dean Swanson at the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Dean Swanson at 301–713–2276, fax 301–713–2313.

SUPPLEMENTARY INFORMATION: Antarctic fisheries are managed under the authority of the Antarctic Marine Living Resources Convention Act of 1984 (Act) codified at 16 U.S.C. 2431 *et seq.* NMFS implements conservation measures developed by CCAMLR and adopted by the United States, through regulations at 50 CFR part 300, subparts A and G. Background information about the need for revisions to the Antarctic fisheries regulations was provided in the preamble to the proposed rule (67 FR 64853, October 22, 2002) and is not repeated here.

Fees will be charged for reviewing and processing preapproval DCDs. A system of calculating fees and billing for fees was discussed in the proposed rule. NMFS will use a much simpler procedure already in use by an unrelated permitting system by specifying the application fee in the instructions accompanying each application form for DCD preapproval. The methodology for calculating the fee is in accordance with procedures specified in the NOAA Finance Handbook for determining administrative costs of special products and services. ''Instructions for Completing the NOAA Product/Service Cost Computation Form'' from Chapter 9, Section 10 of the NOAA Finance Handbook, may be obtained by contacting NMFS (see **ADDRESSES**). This action will simplify the DCD application process for applicants and DCD program personnel without affecting the amount of the fee.

Comments and Responses

NMFS received written comments during the 30–day comment period on the proposed rule. When drafting the final regulations and the final EA and RIR/FRFA, NMFS considered all comments received. Comments were received on the proposed rule from

several importers of toothfish or their representatives and several environmental organizations. All commenters supported the need for the proposed regulations in general. Some had specific concerns.

Comment 1: One commenter said that the proposed change regarding registered agents was unnecessary because any foreign-based importer of record must, under Customs Service regulations, appoint a registered agent in the United States authorized to accept service of process.

Response: NMFS disagrees that requiring a registered agent is unnecessary. The registered agent required in Customs Service regulations is not necessarily authorized to facilitate the implementation of NMFS regulations. However, it would be acceptable to NMFS for any foreign-based importer of record to appoint the same registered agent to NMFS and to the Customs Service.

Comment 2: One commenter strongly supported the proposal to prohibit the importation of *Dissostichus* ssp. identified as being harvested from Food and Agriculture Organization (FAO) Statistical Areas 51 and 57. Other commenters opposed the proposal, believing that NMFS lacks sufficient evidence that these areas cannot sustain a healthy fishery. One of these latter commenters argued that: the proposed action is based on speculation and inconsistent data; that action should not be taken until a stock assessment is completed; that NMFS does not have information that the DCDs from these areas are fraudulent; and that NMFS and CCAMLR should examine other alternatives.

Response: As the preamble to the proposed rule states, in October 2001, the Chair of the Scientific Committee advised CCAMLR that the catches reported in Area 51 were not credible. This same advice was ardently concurred in by the Scientific Committee in October 2002. In 2002, CCAMLR noted the following advice from the Scientific Committee:

-The catches attributed by catch documentation scheme (CDS) reports outside the Convention Area in Areas 51 and 57 were unlikely to have come from those areas (as explained in the preamble to the proposed rule) and most likely came from within the Indian Ocean sector of the Convention Area;

-Illegal, unregulated, and unreported (IUU) catches within the Indian Ocean sector of the Convention Area were most likely to be underestimated;

-The current levels of IUU fishing reported from Areas 51 and 57 would have seriously depleted whatever stocks might have been present in those areas;

-Current levels of IUU fishing have depleted stocks in Division 58.4.4, and Subareas 58.6 and 58.7, while the catch rates in Division 58.5.1 have declined substantially.

CCAMLR noted with great concern that the information presented by the Scientific Committee indicated continued high levels of IUU fishing in the Convention Area. The majority of Members of CCAMLR agreed that catches reported from Areas 51 and 57 were not credible. They also expressed concern that the information reported in catch documents did not match available knowledge of toothfish distribution and potential biomass for waters in these two adjacent areas, outside the Convention Area.

After extensive discussion at CCAMLR XXI concerning the use of VMS to confirm areas of harvest for vessels fishing outside the Convention Area and specifically on the high seas, it was concluded that most flag states whose vessels had reported large catches from high seas areas had not, in fact, implemented the required VMS in accordance with the applicable CCAMLR conservation measure. Although some states reported compliance with this requirement, it came to light during the discussions that there were serious flaws in the types of systems being used including, but not limited to, the use of manual systems that could be easily manipulated, systems that could simply be turned on and off at will, systems not inspected at port for proper operation, and even the complete absence of any operational VMS on some vessels. Therefore, verification of catch dates and locations of harvest on the high seas by landing or importing states via VMS reports is not a viable option. The view of the United States, in light of these shortcomings and without the reliability of verification procedures, is that there is no alternative to the implementation of a ban on all imports whose catch is reported as having been harvested from FAO Areas 51 and 57.

CCAMLR requested all Members fishing for toothfish on the high seas outside the Convention Area to again submit verifiable documentation next year on VMS and other catch verification procedures. In particular, the reports should include verification procedures, specifications of the VMS equipment installed on board each fishing vessel, and details of software used to monitor the position and movement of vessels. Australia tabled a proposal for a centralized VMS, or a dual reporting VMS system that would provide CCAMLR with real-time VMS information on all fishing vessels. Although most Members supported the idea that CCAMLR should receive VMS data, some took the view that this information should be provided to CCAMLR from the fishing monitoring center of the vessel's flag state. The United States, along with Australia, viewed this support as progress but believes that it does not provide the level of integrity to the VMS data that would give importing states a well-documented instrument to supply solid verification of catch.

The combination of the lack of confidence that catches are being reported accurately from vessels claiming to fish on the high seas, specifically FAO Areas 51 and 57, and the failure of CCAMLR Members to either adopt a centralized VMS system or to fully comply with the current VMS requirements convinces NMFS that a ban on the importation of toothfish originating in Areas 51 or 57 is the only solution.

Comment 3: One commenter strongly supported the proposal to require VMS transponders on all U.S. fishing vessels authorized to fish for AMLRs.

Response: NMFS agrees.

Comment 4: One commenter supported the proposal to prohibit the importation of toothfish harvested in violation of CCAMLR's conservation measures even if accompanied by a SVDCD.

Response: NMFS agrees.

Comment 5: One commenter did not want seized AMLRs to be allowed to re-enter trade, but also did not want them destroyed.

Response: NMFS has not resolved all issues associated with the disposition of AMLRs denied entry and has decided to continue to reserve § 300.116(d), ''Disposition of resources denied entry'' as a place-holder for future regulations governing this issue.

Comment 6: One commenter supports requiring preapproval as proposed for § 300.113.

Response: NMFS agrees.

Changes From the Proposed Rule

Section 300.107(c)(1)(iii) was clarified to say that fish taken from either Statistical Area 51 or Statistical Area 57 would not be issued a preapproval.

Section 300.107(c)(7) and the reference to it in § 300.107(c)(1)(ii) have been removed because they created a 60–day exception to a requirement for a DCD which expired in 2000.

The paragraphs in § 300.113 have been redesignated to include a new paragraph (c) regarding the simplified means to be used for collecting fees for

DCDs, and to reflect that the final two paragraphs under § 300.113 (i.e., (j) and (k)) are not subsets of the ''Exception'' paragraph as set forth in the proposed rule.

Section 300.113(a) was revised to make it clear that dealers intending to import or re-export AMLR must obtain an AMLR dealer permit and that preapproval is required for each shipment of *Dissostichus* species.

Provisions governing changes to applications under § 300.113(g)(1) have been modified to make the extension period for applications discretionary with NMFS. This modification has been made to give NMFS the flexibility to avoid frivolous extensions.

Section 300.113(i)(2) was modified to make it easier for a foreign-based importer of record to identify its resident agent to NMFS.

Section 300.118 has been eliminated to reduce the complexity of collecting fees for DCDs.

Classification

This final rule is published under the authority of the Antarctic Marine Living Resources Convention Act of 1984, codified at 16 U.S.C. 2431 *et seq.* This final rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA), NMFS prepared an ''Initial Regulatory Flexibility Analysis for the Proposed Rule to Institute Various Measures Pertaining to United States Obligations Regarding Antarctica and Antarctic Living Marine Resources, Including Implementation of Preapproval Procedure for *Dissostichus* spp. Catch Documentation Scheme.'' No comments from the public were received on this document. That analysis has been finalized and incorporated with the Environmental Assessment and Regulatory Impact Review as the EA and RIR/FRFA. It describes the effects of the various measures in this final rule, as well as alternatives where appropriate, as follows:

1. The measure to *lengthen the duration of the permit* required to enter a CEMP site from 1 year to up to 5 years would apply to parties currently holding, or who obtain in the future, a CEMP permit. To date, the only entity to hold a CEMP permit has been the NMFS Antarctic Research Group, which is not a small entity. The effect of this action would be to ease a restriction by allowing permits to last for a longer period of time. As such, there is no significant economic impact that NMFS must consider minimizing.

2. The measure to *define the CCAMLR fishing season as December 1—November 30* would apply to U.S. vessels that fish for AMLR. There are currently three U.S. vessels permitted to fish for AMLR (1 for crab and 2 for krill) all of which NMFS believes to be small entities. The establishment of the fishing season is intended to improve administration of CCAMLR's annual conservation measures. It would not affect the amount of quota available for fishermen, nor would it affect when fishing could occur. Therefore, the measure would not result in any significant economic impacts that NMFS must consider minimizing. It is an administrative change that would not be expected to affect the practices of the fishermen.

3. The measure to *require the use of an automated satellite–linked VMS* for all U.S. vessels harvesting AMLR in the area of the Convention would apply to the three vessels permitted to participate in such fisheries (the 1 crab vessel and the 2 krill vessels), all of which NMFS believes to be small entities. Currently, the vessel permitted for crab does not participate in the fisheries. NMFS estimates the cost of purchasing and installing the VMS units at about $3,250 per unit. The cost of operating the unit while in Convention waters is estimated to be no more than $1,000 per year.

NMFS considered the alternative of excluding vessels fishing exclusively for krill from the requirement. CCAMLR did not explicitly require Parties to implement a VMS program in the krill fishery. However, for reasons articulated in the preamble to the proposed rule, NMFS believes that applying the VMS requirement to the krill fishery will further its compliance with its obligations with respect to the Antarctic and AMLR. Therefore, this alternative is not the preferred alternative.

4. The measure to *require foreign entities to designate and maintain a registered agent within the United States* would not apply to any ''small entities'' as defined pursuant to the RFA. This measure would not apply to any small government jurisdictions or small organizations. While it would apply to businesses, some of which may be considered small, the Small Business Administration has defined ''small business concern'' to apply only to businesses operating primarily within the United States (13 CFR 121.105). NMFS is not aware of an alternative approach that would accomplish its objectives with regard to this provision.

5. The measure to *define SVDCD* currently has no regulatory requirements attached to it. It is informational only and as such has no effect on any small entities. No alternatives have been identified.

6. The measure to *institute a preapproval system for U.S. receivers and importers of Patagonian toothfish and Antarctic toothfish* would apply to dealers, importers, and, as applicable, re-exporters. It is estimated that about 60 dealers/importers are involved in the permitted trade and that 80 firms would apply for dealer permits and preapproval. The estimated costs to importers of toothfish are approximately $4,134 per firm per year, and $330,750 industry-wide per year. These costs include the burden-hour costs of submitting an annual permit, per-shipment preapproval permits, catch documentation, and NMFS's fees. It is estimated that there are about 50 re-exporters. The estimated costs to re-exporters of toothfish are about $11 per firm per year and $550 industry-wide per year. These costs include the burden hours associated with annual permit applications and catch documentation requirements, and NMFS's fees.

U.S. imports of toothfish in 2001 had an estimated value of $97 million. Compliance costs (industry and agency) would likely not exceed $600,000 per year during the next 3 years. Currently, no U.S. fishing entity participates in the harvesting of toothfish. It is not possible to determine the number of firms that would qualify as small entities. The final rule would impose annual burden costs of $330,750 and $550 on importing and re-exporting firms, respectively.

NMFS considered two alternatives to the final preapproval system: maintaining the status quo, and implementing a total ban on imports of toothfish. Maintaining the current system may not have a short-term economic or social impact on importers or other dealers of toothfish in trade networks, but could have harmful long-term economic implications if further steps are not taken to discourage and prevent IUU fishing of toothfish.

Overfishing, which eventually leads to reduced supply, and the associated price increases will, in all likelihood, dampen this trade. Price increases would likely result in some substitution by consumers. Toothfish products may also be diverted to alternate markets in East Asia where consumers are willing to pay higher prices for species deemed to be luxury items. As a consequence, toothfish could become increasingly rare in the U.S. marketplace.

Similarly, the ''status quo'' alternative would have little short-term economic or social impacts on the U.S. consumer, but, in the long-term, would jeopardize the availability of toothfish to

consumers at prices they are willing to pay or, in the extreme, at any price.

Alternatively, the total ban measure would address concerns over the overharvesting of toothfish by denying the U.S. market (estimated at 15–20 percent of the world market) to IUU harvested toothfish. (Note: in this document, non-IUU harvested toothfish means toothfish harvested in the CCAMLR Convention Area in conformity with CCAMLR rules, toothfish harvested in high seas areas outside of the CCAMLR Convention Area, or toothfish harvested in areas of national jurisdiction in conformity with the rules applicable in those national jurisdictions. Harvesting in high seas areas where no regional fishery management organization's rules apply is often unreported and unregulated, and thus may pose an obstacle to achieving a sustainable fishery. In the case of such toothfish fisheries, this assumption is almost certainly correct.) However, it would also prohibit importation of toothfish legally harvested within the CCAMLR Convention Area or in exclusive economic zones and impose an unreasonable and unfair burden on U.S. importers and consumers. Given the U.S. portion of the global market, there is a very real possibility that the market would simply shift to other locations, thereby contributing nothing toward bringing IUU fishing for toothfish under control. This alternative also could be incompatible with U.S. obligations under international trade law and pending obligations under the CCAMLR Convention. As a result, this alternative is not preferred.

7. The measure to *prohibit imports of toothfish identified as being harvested in FAO Areas 51 or 57* would apply to the U.S. dealers and importers described above (up to 60 of unknown size). The economic impacts of this prohibition are difficult to quantify. Because the rule is intended to address fraudulent trade in toothfish, the availability of toothfish on the world market could be reduced. This could result in the price of toothfish rising. However, to the extent that the permitted entities experience an increase in the cost of purchasing toothfish, they would most likely pass that cost on to consumers. On the other hand, it is likely that illegally harvested toothfish can be harvested and marketed more cheaply than toothfish harvested pursuant to the applicable CCAMLR conservation rules. To the extent that this rule would remove the market for illegally harvested toothfish, the rule might make it easier for dealers in legitimately harvested toothfish to make a profit (in that they would no longer have to compete with unregulated fishermen).

As an alternative to the ban on imports identified as having been harvested in Areas 51 or 57, NMFS considered allowing importers to provide independent VMS data to support claims of catches from these two areas. For the reasons explained in the preamble to the proposed rule, current problems with reliability and lack of international protocol, NMFS believes that this alternative is impracticable.

The reporting, recordkeeping, and compliance requirements associated with this final rule are described in the Paperwork Reduction Act(PRA) discussion in this preamble, which follows below. In summary, this final rule modifies existing reporting requirements pertaining to the import of toothfish. The new burdens associated with these requirements would apply to the approximately 60 dealers who import. In addition, the requirement to install and operate VMS units would apply to the 3 U.S. vessels permitted to participate in the AMLR fisheries for crab/krill. The associated burden is estimated as no more than $1,000 per year per vessel.

NMFS is not aware of any other Federal rules that would duplicate, overlap with, or conflict with the final rule.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under control number 0648–0194. The requirements and their estimated response times are: 3 minutes for a DCD, 60 minutes for a CCAMLR Ecosystem Monitoring Program permit, 30 minutes for a CCAMLR Ecosystem Monitoring Program report, 15 minutes for a dealer permit application, 4 hours to install a VMS unit, 2 hours for annual maintenance of a VMS unit, 0.033 seconds every 4 hours for an automated position report from a VMS, and 15 minutes for a preapproval application.

The response estimates above include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS, Office of Sustainable Fisheries, and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

The effective date for revisions to §§ 300.107 and 300.113 is 45 days instead of 30 days for the remaining sections in order to accommodate toothfish shipments in transit.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Fishing vessels, Foreign relations, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: April 25, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 300, subpart G is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart G—Antarctic Marine Living Resources

1. The authority citation for 50 CFR part 300, subpart G continues to read as follows:

Authority: 16 U.S.C. 2431 *et seq.*, 31 U.S.C. 9701 *et seq.*

■ 2. In § 300.101, new definitions for ''Specially Validated Dissostichus Catch Document'' and ''Vessel Monitoring System'' are added in alphabetical order to read as follows:

§ 300.101 Definitions.

* * * * *

Specially Validated Dissostichus Catch Document (SVDCD) means a *Dissostichus* catch document that has been specially issued by a State to accompany seized or confiscated catch of *Dissostichus* spp. offered for sale or otherwise disposed of by the State.

* * * * *

Vessel Monitoring System (VMS) means a system that allows a Flag State, through the installation of satellite-tracking devices on board its fishing vessels to receive automatic transmission of certain information.

■ 3. In § 300.103, paragraph (h) is revised to read as follows:

§ 300.103 Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites.

* * * * *

(h) *Duration.* Permits issued under this section are valid for a period of up to five years. Applicants requesting a permit to reenter a Protected Site must include the most recent report required

by the general condition in the previously issued CEMP permit describing the activities conducted under authority of that permit.

* * * * *

■ 4. In § 300.107, paragraphs (a), (c)(1), and (c)(5) are revised to read as follows and paragraph (c)(7) is removed:

§ 300.107 Reporting and recordkeeping requirements.

(a) *Vessels.* The operator of any vessel required to have a harvesting permit under this subpart must:

(1) Accurately maintain on board the vessel all CCAMLR reports and records required by its permit.

(2) Make such reports and records available for inspection upon the request of an authorized officer or CCAMLR inspector.

(3) Within the time specified in the permit, submit a copy of such reports and records to NMFS at an address designated by NMFS.

(4) Install a NMFS-approved VMS unit on board the vessel and operate the VMS unit whenever the vessel enters Convention waters.

* * * * *

(c) * * *

(1) *General.* (i) The CCAMLR DCD must accompany all shipments of *Dissostichus* species as required in this paragraph (c).

(ii) No shipment of *Dissostichus* species shall be released for entry into the United States unless accompanied by a complete and validated CCAMLR DCD.

(iii) No shipment of *Dissostichus* species identified as originating from a high seas area designated by the Food and Agriculture Organization of the United Nations as Statistical Area 51 or Statistical Area 57 in the eastern and western Indian Ocean outside and north of the Convention Area shall be issued a preapproval.

* * * * *

(5) *Import.* (i) Any dealer who imports *Dissostichus* species must:

(A) Obtain the DCD and stamp on the DCD showing that NMFS has certified that preapproval has been granted for importation (and *Dissostichus* re-export document if applicable) with a unique export reference number that accompanies the import shipment,

(B) Ensure that the quantity of toothfish listed on the DCD (or *Dissostichus* re-export document if product is to be re-exported) matches the quantity listed on the preapproval application within a variance of 10 percent,

(C) Express mail or fax the catch documentation described in paragraphs (c)(5)(i)(A) and (B) of this section to an address designated by NMFS so that NMFS receives the documentation at least 15 working days prior to import, and

(D) Retain a copy of the DCD for his/her records and provide copies to exporters as needed.

(ii) Dealers must retain at their place of business a copy of the DCD for a period of 2 years from the date on the DCD.

(iii) Exception. For shipments of *Dissostichus* species which are fresh and less than 2,000 kilograms in quantity, the application for approval of catch documents of toothfish must be submitted to NMFS within 24 hours of import.

* * * * *

■ 5. In § 300.111, a new paragraph (e) is added to read as follows:

§ 300.111 Framework for annual management measures.

* * * * *

(e) The fishing season for all Convention Area species isDecember 1 through November 30 of the following year, unless otherwise set in specific CCAMLR conservation measures.

■ 6. Section 300.113 is revised to read as follows:

§ 300.113 Dealer permits and preapproval.

(a) *General.* (1) A dealer intending to import or re-export AMLR must obtain an AMLR dealer permit valid for one year. Preapproval from NMFS is required for each shipment of *Dissostichus* species. Only those specific activities stipulated by the permit are authorized for the permit holder.

(2) An AMLR may be imported into the United States if its harvest has been authorized by a U.S.-issued individual permit issued under § 300.112 (a)(1) or its importation has been authorized by a NMFS-issued dealer permit and preapproval issued under paragraph (a) of this section. AMLRs may not be released for entry into the United States unless accompanied by the harvesting permit or the individual permit and the DCD for that shipment which has been stamped by NMFS certifying that preapproval has been granted to allow import.

(3) In no event may a marine mammal be imported into the United States unless authorized and accompanied by an import permit issued under the Marine Mammal Protection Act and/or the Endangered Species Act.

(4) A dealer permit or preapproval issued under this section does not authorize the harvest or transshipment of any AMLR by or to a vessel of the United States.

(b) *Application.* Application forms for AMLR dealer permits and preapproval are available from NMFS. A complete and accurate application must be received by NMFS for each preapproval at least 15 working days before the anticipated date of the first receipt, importation, or re-export.

(c) *Fees.* A fee to recover the administrative expenses associated with processing preapproval applications will be charged. The amount of the fee will be determined in accordance with procedures specified in the NOAA Finance Handbook for calculating administrative costs of special products and services. The fee is specified with the preapproval application form. The appropriate fee must accompany each application and be paid by check, draft, or money order.

(d) *Issuance.* NMFS may issue a dealer permit or preapproval if it determines that the activity proposed by the dealer meets the requirements of the Act and that the resources were not or will not be harvested in violation of any conservation measure in force with respect to the United States or in violation of any regulation in this subpart.

(e) *Duration.* A permit issued under this section is valid from its date of issuance to its date of expiration unless it is revoked or suspended. A preapproval is valid until the product is imported (and re-exported, if applicable).

(f) *Transfer.* A permit issued under this section is not transferable or assignable.

(g) *Changes in information*—(1) Pending applications. Applicants for permits and preapproval under this section must report in writing to NMFS any change in the information submitted in their permit and preapproval applications. The processing period for the application may be extended as necessary to review and consider the change.

(2) Issued permits and preapprovals. Any entity issued a permit or preapproval under this section must report in writing to NMFS any changes in previously submitted information. Any changes that would result in a change in the receipt or importation authorized by the preapproval, such as harvesting vessel or country of origin, type and quantity of the resource to be received or imported, and Convention statistical subarea from which the resource was harvested, must be proposed in writing to NMFS and may not be undertaken unless authorized by

NMFS through issuance of a revised or new preapproval.

(h) *Revision, suspension, or revocation.* A permit or preapproval issued under this section may be revised, suspended, or revoked, based upon a violation of the permit, the Act, or this subpart. Failure to report a change in the information contained in a permit or preapproval application voids the application, permit, or preapproval as applicable. Title 15 CFR part 904 governs permit sanctions under this subpart.

(i) *Exception.* For shipments of *Dissostichus* species which are fresh and less than 2,000 kilograms in quantity, the application for approval of catch documents of toothfish must be submitted to NMFS within 24 hours of import.

(j) *SVDCD.* Dealer permits will not be issued for *Dissostichus* spp. offered for sale or other disposition under a Specially Validated DCD.

(k) *Registered agent.* Foreign entities shall, as a condition of possessing a dealer permit, designate and maintain a registered agent within the United States that is authorized to accept service of process on behalf of that entity. Foreign based importers of record may identify to NMFS the registered agent identified for Customs Service purposes.

■ 7. In § 300.115, new paragraphs (s) and (t) are added to read as follows:

§ 300.115 Prohibitions.

* * * * *

(s) Import *Dissostichus* spp. with a Specially Validated DCD.

(t) Import shipments of fresh *Dissostichus* spp. in quantities of 2,000 kilograms or more, or frozen *Dissostichus* spp., without a preapproval issued under § 300.113.

[FR Doc. 03–10679 Filed 4–30–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 84
Thursday, May 1, 2003

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

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 1530

RIN 0551–AA65

Sugar Re-Export Program

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Foreign Agricultural Service (FAS) is soliciting comments and views on whether to amend and revise the regulation at 7 CFR 1530 for the purpose of improving and streamlining administration of the sugar re-export program and increasing the effectiveness of the program by implementing changes that would affect its scope and coverage.

DATES: Comments should be received on or before June 2, 2003, to be assured of consideration.

ADDRESSES: Comments should be sent to: Import Policies and Programs Division, Room 5531—Stop 1021, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250–1021. All written comments received will be available for public inspection at the above address during business hours from 8 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard J. Blabey, Director, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, (202) 720–2916; fax (202) 720–0876.

SUPPLEMENTARY INFORMATION:

Background

The current regulation, which became effective February 12, 1999, consolidated three previously separate programs—the Refined Sugar Re-export Program, the Sugar Containing Products Re-export Program, and the Polyhydric Alcohol Program. FAS now has sufficient experience with the consolidated regulation to propose further enhancements to the program. Basically, the regulation permits sugar refiners in the United States, who have licenses under the regulation, to enter raw sugar unrestricted by the tariff-rate quota provided for in chapter 17 of the Harmonized Tariff Schedule of the United States (HTS) and exempt from the requirement that imports be accompanied by a Certificate for Quota Eligibility (CQE) issued to the foreign exporter in accordance with 15 CFR part 2011. To be eligible for unrestricted entry, licensees must either export an equivalent quantity of refined sugar (as refined sugar or as an ingredient in sugar containing products), or use an equivalent quantity in the production of certain polyhydric alcohols under the terms and conditions of the regulation.

Issues for Public Comment

I. With respect to proposed administrative changes, certain practices now routinely authorized under the waiver provision of section 1530.113 of the regulation are being reviewed to determine if they should be incorporated into the regulation. Specifically, the following changes are under consideration, and comments on these specific issues are being requested:

(a) Allowing exports to be conducted by third parties who have been pre-registered on program participants' licenses. The current regulation requires licensees to hold title to goods at the time they leave the U.S. Customs Territory. This provision excludes unlicensed export brokers, consolidators, and trading companies from directly participating in the program and aggressively promoting exports.

(b) Permitting sugar containing product license holders to contract with refiners to toll refine program sugar. The current regulation does not allow a licensed manufacturer of a sugar-containing product to privately source raw cane sugar on the world market and then pay a licensed refiner a fee to enter it into the United States and refine it to the specifications desired by the manufacturer.

(c) Defining program sugar simply as sugar charged or credited to a license balance. The current regulation defines refined sugar as sugar refined from raw cane sugar. The proposed change would bring the regulation into compliance with the Farm Security and Rural Investment Act of 2002 which states that all refined sugars (whether derived from sugar beets or sugarcane) produced by cane sugar refineries and beet sugar processors shall be fully substitutable for the export of sugar and sugar-containing products under those programs.

II. With respect to amending and revising the scope and coverage of the regulation, FAS is soliciting comments regarding the feasibility of the changes proposed below and views regarding how they might be implemented.

(a) Prohibiting the use of stocks in the program that cannot be marketed domestically due to the imposition of domestic marketing allotments. The Department is concerned that the refined sugar re-export program could be used to circumvent the purpose of marketing allotments by the device of exporting blocked stocks for program credits and then using those same credits to supply additional imports of raw cane sugar to the U.S. market.

(b) Broadening the criteria for issuing refined sugar re-export licenses to allow beet sugar refiners to participate in the program. The number of refiners in the program has declined to just three at present because of industry consolidation. The Farm Security and Rural Investment Act of 2002 declared all refined sugars (whether derived from sugar beets or sugarcane) to be fully substitutable. Allowing beet processors to be licensed could extend the program's benefits to additional participants.

(c) Allowing the transfer of program sugar between holders of refined sugar re-export licenses. The current regulation does not allow a refiner having excess credits to sell those credits to a refiner that is short of credits but in need of raw cane sugar.

(d) Allowing polyhydric users to receive transfers of program sugar from refiners without regard to polarity. The current regulation only allows the transfer of fully refined sugar to a producer of a polyhydric alcohol. Because these alcohols can be produced from sugar of lower polarity, the current regulation results in needless costs for some polyhydric alcohol producers.

(e) Allowing holders of refined sugar re-export licenses to hold sugar containing product licenses. The current

regulation does not take account of trends leading toward increased vertical integration in the sweeteners industry.

(f) Expanding the license balance limits currently imposed on refiners. The current license limit of 50,000 metric tons was set when more refiners held licenses. With only three refiners currently in the program, an increase in the limit may be justified. On the other hand, large and rapid flows of program sugar into and out of the United States could make the administration of marketing allotments more difficult.

III. With respect to Mexico, FAS is soliciting comments on re-exports to Mexico and views for implementing the various options proposed below.

(a) Terminating re-exports.

(b) Restricting re-exports to manufacturers of specific products, such as retail goods.

(c) Allowing re-exports to continue unrestricted as long as exporters comply with the North American Free Trade Agreement (NAFTA) Annex 703.2, paragraph 21 provision, which requires that Mexico be notified whenever re-export sugar is shipped to Mexico.

(d) Establishing a separate program for importing raw cane sugar duty free from Mexico for refining and re-export duty free to Mexico, as provided for by NAFTA Annex 703.2, paragraph 22.

IV. With respect to raw cane sugar, FAS is soliciting comments on the feasibility of new rules to implement chapter 17 of the HTS, additional U.S. note 6, which authorizes the entry of raw cane sugar under subheading 1701.11.20 to be substituted for domestically produced raw cane sugar that has been or will be exported, and whether this should apply exclusively to Hawaii or nationwide. Such a program might offer sugar mills more options for marketing their raw cane sugar. On the other hand, large and rapid flows of program sugar into and out of the United States could make the administration of marketing allotments more difficult.

V. Furthermore, interested parties are also encouraged to comment on the costs and benefits of the above proposals, including effects on:

(a) U.S. sugarcane growers and processors.

(b) Domestic sugar refiners, users, and consumers.

(c) Foreign sugar producers and exporters.

(d) The Overall Allotment Quantity and marketing allotments.

(e) Demand for U.S.-flag vessels and barges.

(f) Sugar futures trading and markets.

(g) NAFTA.

VI. In addition, FAS requests comments on any other aspect of the program set forth at 7 CFR 1530 which commentors believe should be addressed in a subsequent rulemaking initiative.

Dated: April 28, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–10752 Filed 4–30–03; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–66–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, that currently requires repetitive pre-modification inspections to detect cracks in the forward support fitting of the number 1 and number 3 engines; and repair, if necessary. That AD also provides for an optional high frequency eddy current inspection, and, if possible, modification of the fastener holes; and various follow-on actions; which would terminate the repetitive pre-modification inspections. This action would expand the area to be inspected; require accomplishment of the previously optional (and subsequently revised) modification, which would terminate certain repetitive inspections; and add repetitive post-modification inspections to detect cracking of the fastener holes, and corrective actions if necessary. The actions specified by the proposed AD are intended to prevent fatigue cracking of the forward support fitting of the number 1 and number 3 engines, which could result in failure of the support fitting and consequent separation of the engine from the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 16, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–66–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–66–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On February 21, 1997, the FAA issued AD 97–05–08, amendment 39–9952 (62 FR 9359, March 3, 1997), applicable to all Boeing Model 727 series airplanes, to require repetitive pre-modification inspections to detect cracks in the forward support fitting of the number 1 and number 3 engines; and repair, if necessary. That AD also provides for an optional high frequency eddy current inspection, and, if possible, modification of the fastener holes; and various follow-on actions. Accomplishment of those optional actions would terminate the repetitive pre-modification inspections. That action was prompted by reports indicating that fatigue cracks were found in the forward support fitting of the number 1 and number 3 engines. The requirements of that AD are intended to detect and correct such fatigue cracking, which could result in failure of the support fitting and consequent separation of the engine from the airplane.

Actions Since Issuance of Previous AD

Since that AD was issued, the FAA has received reports of additional cracking found on the forward support fitting of the number 1 and number 3 engines on Boeing Model 727 series airplanes. Those cracks were found at new locations (not identified in AD 97–05–08) on airplanes that had accumulated between 18,200 and 44,200 total flight cycles. The cracking has been attributed to fatigue due to corrosion-pitting damage on the surface of fastener holes in the support fittings.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001, including an Evaluation Form. Revision 4 of the service bulletin was cited as the appropriate source of service information for accomplishment of the actions required by AD 97–05–08. Revision 5 was issued to divide the airplane effectivity into two groups, add more locations to be inspected, add inspections until the terminating action is accomplished, revise the instructions for the modification, and add post-modification repetitive inspections. Revision 6 was issued to change part numbers for certain fasteners and revise the repetitive intervals for inspection of the upper outboard flange. Accomplishment of the actions specified in Revision 6 is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 97–05–08 to continue to require repetitive inspections to detect cracking in the forward support fitting of the number 1 and number 3 engines. This proposed AD also would expand the area to be inspected; require accomplishment of the previously optional (and subsequently revised) modification, which would terminate certain repetitive inspections; and add repetitive post-modification inspections to detect cracking of the fastener holes, and corrective action if necessary. The actions would be required to be accomplished in accordance with Revision 6 of the service bulletin described previously.

Differences Between Proposed AD and Service Information

Although the service bulletin specifies that Boeing may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Although the service bulletin recommends that operators submit a completed Evaluation Form and a report of damage that exceeds certain limits, this proposed AD would not require such reports.

Explanation of Proposed Change to Existing Requirements

The FAA has changed all references to a ''detailed visual inspection'' in the existing AD to ''detailed inspection'' in this proposed AD. Note 2 has been added to this proposed AD to define this type of inspection.

Cost Impact

There are approximately 1,382 airplanes of the affected design in the worldwide fleet. The FAA estimates that 915 airplanes of U.S. registry would be affected by this proposed AD.

The FAA provides the following cost estimates for this proposed AD:

Action	Work hours	Average hourly labor rate	Parts cost	Cost per airplane	Number of U.S. airplanes	U.S. fleet cost
AD 97–05–08 inspections, per inspection cycle	2	$60	$0	$120	915	None.
Inspections before structural rework, per inspection cycle	14	60	0	840	915	768,600
Structural rework	7	60	7,875	8,295	915	7,589,925
Inspections after structural rework, per inspection cycle	12	60	0	720	915	658,800

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

planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9952 (62 FR 9359, March 3, 1997), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2002–NM–66–AD. Supersedes AD 97–05–08, Amendment 39–9952.

Applicability: All Model 727 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (s)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the forward support fitting of the number 1 and number 3 engines, which could result in failure of the support fitting and consequent separation of the engine from the airplane, accomplish the following:

Restatement of Requirements of AD 97–05–08

Inspections

(a) Within 100 days or 600 flight cycles after March 18, 1997 (the effective date of AD 97–05–08, amendment 39–9952), whichever occurs first, accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD, in accordance with Boeing Service Bulletin 727–54A0010, Revision 4, dated January 30, 1997.

(1) Perform a visual inspection to detect cracks of the upper and lower flanges, and the vertical web of the forward support fitting of the number 1 and number 3 engines, in accordance with Part 1—Pre-Modification Inspections of the Accomplishment Instructions of the service bulletin.

(2) Perform a high frequency eddy current (HFEC) inspection to detect cracks of the forward flange of the support fitting adjacent to the collars of two fasteners of the number 1 and number 3 engines, in accordance with Part 1—Pre-Modification Inspections of the Accomplishment Instructions of the service bulletin.

(3) Perform a detailed inspection to detect cracks of the upper and lower flanges adjacent to six fasteners of the fitting of the number 1 and number 3 engines, in accordance with Part 1—Pre-Modification Inspections of the Accomplishment Instructions of the service bulletin.

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

(b) If no crack is detected during the inspections required by paragraph (a) of this AD, repeat those inspections thereafter at intervals not to exceed 100 days or 600 flight cycles, whichever occurs first, until the initial inspections required by paragraph (d) of this AD have been accomplished.

(c) If any crack is detected during any inspection required by paragraph (a) of this AD, prior to further flight, repair the forward support fitting in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

New Requirements of This AD

Note 3: Where there are differences between the service bulletin and this AD, this AD prevails.

Inspections: All Airplanes

(d) For all airplanes: Within 600 flight cycles or 100 days after the effective date of this AD, whichever occurs first, inspect the forward support fitting of the number 1 and number 3 engines, as specified in paragraphs (d)(1), (d)(2), (d)(3), (d)(4), and (d)(5) of this AD, in accordance with Part I of the Accomplishment Instructions of Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001. Accomplishment of these initial inspections terminates the inspection requirements of paragraphs (a) and (b) of this AD.

(1) Perform a general visual inspection to detect corrosion and cracking of the fittings in areas inboard of the side of the body, in accordance with Figure 1 of the service bulletin. If any corrosion is found, before further flight, remove the corrosion in accordance with Figure 5 of the service bulletin, and then perform a general visual inspection to detect cracking of the area, in accordance with the service bulletin.

Note 4: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(2) Perform a HFEC inspection to detect cracking of the upper and lower horizontal flanges and post tangs of the fittings from inside the airplane, in accordance with Figure 1 of the service bulletin.

(3) Perform a general visual inspection to detect cracking and corrosion of the fittings in areas outboard of the side of the body, in accordance with Figure 1 of the service bulletin. If any corrosion is found, before further flight, remove the corrosion in accordance with Figure 5 of the service bulletin, and perform a general visual inspection to detect cracking of the area, in accordance with the service bulletin.

(4) Perform a detailed inspection to detect cracking and corrosion of the web in areas outboard of the side of the body, in accordance with Figure 1 of the service bulletin. If any corrosion is found, before further flight, remove the corrosion in accordance with Figure 5 of the service bulletin, and perform thickness measurements and detailed and HFEC inspections of the vertical web inboard and outboard of the side of the body to detect corrosion and cracking, in accordance with Figure 2 of the service bulletin.

(5) Perform detailed and HFEC inspections to detect cracking of the upper and lower

horizontal flanges at the side of the body, in accordance with Figure 1 of the service bulletin.

Additional Inspections: Group 2 Airplanes

(e) For Group 2 airplanes, as identified in Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001: Within 600 flight cycles or 100 days after the effective date of this AD, whichever occurs first, inspect the forward support fitting of the number 1 and number 3 engines at the firewall to detect cracking, as specified in paragraphs (e)(1), (e)(2), (e)(3), and (e)(4) of this AD, in accordance with Part I of the Accomplishment Instructions of the service bulletin.

(1) Perform a detailed inspection to detect cracking of the aft side of the upper horizontal flange, in accordance with Figure 1 of the service bulletin.

(2) Perform a low frequency eddy current (LFEC) or an open hole HFEC inspection to detect cracking of the aft side of the upper horizontal flange, in accordance with Figure 1 of the service bulletin.

(3) Perform a detailed inspection to detect cracking of the aft side of the lower horizontal flange, in accordance with Figure 1 of the service bulletin.

(4) Perform a HFEC inspection to detect cracking of the aft side of the lower horizontal flange, in accordance with Figure 1 of the service bulletin.

No Cracking Found: Follow-on Inspections, All Airplanes

(f) For all airplanes: If no cracking is found during any inspection required by paragraph (d) of this AD, repeat the applicable inspections within the applicable intervals specified in paragraph 1.E., Table 1, of Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001.

No Cracking Found: Additional Follow-on Inspections, Group 2 Airplanes

(g) For Group 2 airplanes only: If no cracking is found during the inspections required by paragraph (e) of this AD, repeat the inspections on the upper and lower outboard flange at the firewall within the applicable intervals specified in paragraph 1.E., Table 1, of Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001.

(1) Repeat the inspections of the UPPER outboard flange at the firewall until the modification required by paragraph (j) of this AD has been done.

(2) Repeat the inspections of the LOWER outboard flange at the firewall indefinitely. There is no terminating action for the inspections of this area.

Note 5: Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001, does not provide instructions for modifying the fastener holes of the lower outboard flange at the firewall.

Cracking Found: Any Airplane

(h) For any airplane: If any crack is found during any inspection required by paragraph (d), (e), (f), or (g) of this AD, before further flight, do the actions specified in either paragraph (h)(1) or (h)(2) of this AD.

(1) Replace or repair the fitting in accordance with a method approved by the Manager, Seattle ACO; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must refer specifically to this AD; or

(2) Do the modification specified in paragraph (j) of this AD.

Web Thickness Less Than 0.130 Inch: Any Airplane

(i) For any airplane: If the web thickness measured during accomplishment of paragraph (d)(4) of this AD is less than 0.130 inch, before further flight, replace or repair the fitting in accordance with a method approved by the Manager, Seattle ACO; or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must refer specifically to this AD.

Modification

(j) Except as required by paragraphs (h), (i), and (q) of this AD: Within 3,000 flight cycles or 24 months after the effective date of this AD, whichever occurs first, modify the fastener holes, in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001. Accomplishment of the modification terminates the repetitive inspections required by paragraphs (f) and (g)(1) of this AD.

Modification per Prior Service Bulletin Version

(k) For airplanes modified before the effective date of this AD in accordance with Boeing Service Bulletin 727–54A0010, Revision 4, dated January 30, 1997: Paragraph (j) of this AD requires accomplishment of additional procedures in accordance with Revision 6 of the service bulletin. To the extent that certain modification procedures were performed in accordance with Revision 4, those actions do not need to be repeated when performing the modification required in paragraph (j) above.

(l) A modification done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 727–54A0010, Revision 5, dated February 15, 2001, is acceptable for compliance with the requirements of paragraph (j) of this AD.

Post-Modification Inspections

(m) Inspect as specified in paragraphs (m)(1), (m)(2), and (n) of this AD, as applicable, to detect cracking and corrosion, in accordance with Part III of the Accomplishment Instructions of Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001. Inspections done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 727–54A0010, Revision 5, dated February 15, 2001, are acceptable for compliance with the corresponding inspection requirements of this paragraph.

(1) For all airplanes: Do an open hole HFEC inspection of the fastener holes in the forward support fitting of the number 1 and number 3 engines, at the locations shown in Figure 4 of the service bulletin.

(2) For Group 2 airplanes: Do an open hole HFEC inspection of the fastener holes in the forward support fitting of the number 1 and number 3 engines, at the locations shown in Figure 4 of the service bulletin.

(n) Perform the inspections specified in paragraph (m) of this AD at the later of the times specified in paragraphs (n)(1) and (n)(2) of this AD.

(1) Within 3,000 flight cycles or 24 months, whichever occurs first, after accomplishment of the modification required by paragraph (j) of this AD.

(2) Within 600 flight cycles or 100 days, whichever occurs first, after the effective date of this AD.

Follow-on/Corrective Actions

(o) If no cracking is found during any inspection required by paragraph (m) of this AD: Repeat the inspections specified in paragraph (m) of this AD thereafter within the applicable intervals specified in paragraph 1.E., Table 1, of Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001. Accomplishment of the modification specified in paragraph (j) of this AD does not terminate the requirement to repetitively perform the post-modification inspections specified in Part III of the service bulletin.

(p) If any cracking is detected during any inspection required by paragraph (m) of this AD: Before further flight, repair in accordance with Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001, excluding the Evaluation Form; except as required by paragraph (q) of this AD.

Exception to Corrective Actions

(q) Where Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001, specifies to contact Boeing for appropriate action: Before further flight, replace or repair the fitting per a method approved by the Manager, Seattle ACO; or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must refer specifically to this AD.

Note 6: Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001, recommends that operators report inspection results to the manufacturer; however, this AD does not contain such a reporting requirement.

Spare Parts

(r) As of the effective date of this AD, no person may install a forward support fitting on any airplane, unless it has been inspected and modified, as applicable, in accordance with the requirements of this AD.

Alternative Methods of Compliance

(s)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal

Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance previously approved according to AD 97–05–08 are acceptable for compliance with the corresponding requirements of this AD.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Issued in Renton, Washington, on April 25, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–10728 Filed 4–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–67–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747SP, 747SR, 747–100, 747–200, and 747–300 Series Airplanes; Equipped with Pratt & Whitney Model JT9D–3, –7, and –7Q Series Engines and Model JT9D–7R4G2 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 747SP, 747SR, 747–100, 747–200, and 747–300 series airplanes, that would have superseded an existing AD that currently requires repetitive operational tests of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, and correction of any discrepancy found. The proposed AD also would have required installation of a terminating modification, and repetitive functional tests of that installation to detect discrepancies, and repair if necessary. This new action revises the proposed rule by removing airplanes from the applicability and adding new requirements. The actions specified by this new proposed AD are intended to ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 27, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–67–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 99–NM–67–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Kinney, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6499; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–67–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–67–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 747SP, SR, –100, –200, and –300 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 26, 2000 (65 FR 4179). That NPRM proposed to supersede AD 95–16–02, amendment 39–9321 (60 FR 39631, August 3, 1995), which is applicable to certain Boeing Model 747SP, SR, –100, –200, and –300 series airplanes. That NPRM would have continued to require repetitive operational tests of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, and correction of any discrepancy found. That NPRM also would have added installation of a terminating modification, and repetitive functional tests of that installation to detect discrepancies, and repair, if necessary. That NPRM was prompted by the results of a safety review of the

thrust reverser systems on Model 747 series airplanes. The integrity of the fail-safe features of the thrust reverser system, if not maintained, could result in possible failure modes in the thrust reverser control system and inadvertent deployment of a thrust reverser during flight.

New Relevant Service Information

Since the issuance of that NPRM, the FAA has reviewed and approved Boeing Service Bulletins 747–78–2152, Revision 5, dated June 14, 2001; and Revision 6, dated October 24, 2002 (Boeing Service Bulletins 747–78–2152, Revision 1, dated December 12, 1996; Revision 2, dated December 18, 1997; and Revision 3, dated August 26, 1999; were referenced in the original NPRM as the appropriate sources of service information for the accomplishment of certain actions). Revision 4 of the service bulletin describes procedures for additional rework for airplanes that have a three-step clutch assembly pack located in the flight deck control stand. Those airplanes must be reworked to a two-step clutch in order for the microswitch pack, as specified in Revisions 1, 2, and 3 of the service bulletin, to function correctly. Revision 5 of the service bulletin describes further rework procedures for airplanes previously modified, and removes two airplanes from the effectivity. Revision 6 of the service bulletin describes additional procedures for modifying the sync lock by adding a new bolt, washer, and nut to the clamp-up. Accomplishment of the actions specified in Revision 5 or Revision 6 of the service bulletin is intended to adequately address the unsafe condition.

Comments

Due consideration has been given to the comments received in response to the NPRM. Certain comments have resulted in changes to the NPRM that are reflected in this supplemental NPRM. Certain other comments that are still relevant but have not resulted in any change to the NPRM will also be addressed in this supplemental NPRM.

Request To Delay Release of Final Rule

One commenter asks that the FAA delay the release of the final rule. The commenter states that it started doing the modification specified in the proposed AD but had some problems implementing the procedures specified in Revisions 1, 2, and 3 of Boeing Service Bulletin 747–78–2152. The commenter adds that airplanes having old microswitch packs and thrust lever clutch pack two-step cams cannot be modified per the procedures in these service bulletins.

The FAA delayed release of the final rule until the service bulletin was revised, reviewed, and approved, and we are now issuing this supplemental NPRM to require Revisions 5 and 6 of the service bulletin, which contain the correct procedures for airplanes having the old microswitch packs and thrust lever clutch pack two-step cams. Paragraph (c)(3) of this supplemental NPRM has been changed to require Revisions 5 and 6 for accomplishment of the installation of an additional locking system on each thrust reverser.

Request To Change Compliance Time

One commenter asks that the compliance time specified in paragraph (c) of the NPRM be extended from 36 to 48 months. The commenter states that previous accomplishment of AD 94–10–10, amendment 39–8917 (59 FR 26105, June 20, 1994), and AD 95–16–02 has provided interim protection against in-flight deployment of the thrust reversers. The commenter adds that, taking into account the accomplishment of those ADs and the ''increased controllability'' of the Model 747 airplane, the compliance time should be increased to 48 months to match the time that was required to accomplish similar ADs on Model 767 series airplanes.

We acknowledge that accomplishment of the actions required by AD 94–10–10 and AD 95–16–02 provides an added level of protection against in-flight deployment of the thrust reversers, and substantiating data from the manufacturer indicate that extending the compliance time from 36 to 48 months will have a minimal, but acceptable, impact on safety. Therefore, we agree that the compliance time for paragraph (c) of this supplemental NPRM may be extended to 48 months, to maintain an adequate level of safety in the fleet. We have revised paragraph (c) of this supplemental NPRM accordingly.

Request To Change Applicability

One commenter states that the applicability paragraph in the NPRM omits references to Pratt & Whitney JT9D–7A and –7J engine models, and asks if this is an oversight.

We infer that the commenter wants us to specifically identify JT9D–7A and –7J engine models in the applicability section of the NPRM. We do not agree that such a specification is necessary. The applicability statement of this supplemental NPRM refers to airplanes powered by Pratt & Whitney engines as specified in Boeing Service Bulletin 747–78–2152, and the service bulletin clearly identifies all affected airplanes, including those having JT9D–7A and –7J engines. We have, however, clarified the applicability section to show that the –7 and –7Q series engines encompass the engine series that includes the –7A and –7J engine models.

Request To Change Cost Impact Section

One commenter, the manufacturer, asks that the Cost Impact section in the NPRM be updated. The commenter states that this section specifies that required parts for the wiring modifications would be provided by the manufacturer at no cost to the operators, but this was valid only until December 31, 1999. As of January 1, 2000, there is a charge for the kits required to do the modifications. For the modification specified in Boeing Service Bulletin 747–78–2134, the kit cost is approximately $21,600 per airplane. For the modification specified in Boeing Service Bulletin 747–78–2152, the kit cost is approximately $166,000 per airplane. The commenter adds that these costs are approximate because the actual costs vary with engine model and airplane effectivity.

We agree with the commenter, and we have revised the Cost Impact section in this supplemental NPRM accordingly.

Request To Remove Certain Requirements

One commenter asks that the ''Restatement of Requirements of AD 95–16–02'' and paragraph (c)(2) of the NPRM be removed. The commenter states that paragraph (c)(2) is a restatement of the requirements in AD 94–10–10. The commenter notes that the NPRM would require work currently mandated by those ADs, and repeating those requirements is redundant. The commenter prefers that the NPRM simply reference that those ADs must be complied with. Additionally, the commenter suggests that, after those sections are removed, paragraph (c) of the NPRM be changed to state, ''Accomplishment of the actions required by paragraphs (c)(1) and (c)(3) of this AD, along with accomplishment of the actions required by AD 94–10–10, constitutes terminating action for AD 95–16–02.''

We partially agree with the commenter. Paragraphs (a) and (b) of the NPRM—the ''Restatement of Requirements of AD 95–16–02''—merely repeat the actions that were previously mandated by AD 95–16–02, which this supplemental NPRM proposes to supersede. The intent of including these paragraphs is to ensure

that the currently required repetitive tests continue to be done until the terminating modifications specified in paragraph (c) of this supplemental NPRM are installed. We have, however, added a new Note 2 to this supplemental NPRM for clarification.

Paragraph (c)(2) of the supplemental NPRM, to be done per Revision 5 of Boeing Service Bulletin 747–78–2152, does restate the requirements for the modification required by AD 94–10–10, which is to be done per Revision 3 of the service bulletin. However, as specified in the revised service information section above, airplanes having old microswitch packs and thrust lever clutch pack two-step cams cannot be modified per the procedures in Revision 3 of the service bulletin. If the modification has already been done on airplanes that do not have the old microswitch packs and thrust reverser clutch pack two-step cams, it does not have to be repeated.

New Dispatch Limitations

Paragraphs (e) and (f) have been added to this supplemental NPRM and would allow the option to dispatch an airplane with one thrust reverser deactivated and operate the airplane for up to 10 days with one thrust reverser deactivated. This option would be allowed in the event of unsuccessful accomplishment of the repetitive inspections and tests specified in paragraphs (a) and (b) of this AD or installation of a spare thrust reverser assembly with a different configuration than that installed on the other engines of the airplane.

Explanation of Requirements of Supplemental NPRM

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this supplemental NPRM would supersede AD 95–16–02 to continue to require repetitive operational tests of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, and correction of any discrepancy found. This supplemental NPRM also would add installation of a terminating modification, and repetitive functional tests of that installation to detect discrepancies, and repair, if necessary. The new action would require accomplishment of the installation of an additional locking system on each thrust reverser, as specified in the service bulletins described previously, except as discussed below.

Differences Between Supplemental NPRM and Boeing Service Bulletin 747–78–2152

The service bulletin recommends no specific compliance time for accomplishment of the additional locking system installation, but we have determined that an unspecified compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, the time necessary to perform the installation, and comments received. In light of all of these factors, we find a 48-month compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Although the service bulletin does not specify repetitive functional testing of the additional lock installation following accomplishment of that installation, we have determined that repetitive functional tests of the additional lock installation on each thrust reverser, at intervals not to exceed 3,000 flight hours, will support continued operational safety of thrust reversers with actuation system locks.

Conclusion

Since these changes expand the scope of the originally proposed rule, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 455 airplanes of the affected design in the worldwide fleet. The FAA estimates that 218 airplanes of U.S. registry would be affected by this proposed AD.

The operational tests that are currently required by AD 95–16–02, and retained in this AD, take approximately 16 work hours (4 per engine) per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $960 per airplane, per test cycle.

It would take approximately 544 work hours per airplane, to accomplish the proposed wiring modifications, at an average labor rate of $60 per work hour. Required parts would cost approximately $21,600 per airplane. Based on these figures, the cost impact of the wiring modifications proposed by this AD on U.S. operators is estimated to be $11,824,320, or $54,240 per airplane.

It would take approximately 104 work hours (26 per engine) per airplane to accomplish the proposed removal of the thrust reverser sequencing mechanism and installation of a solenoid-operated shutoff valve, at an average labor rate of $60 per work hour. The cost of required parts is minimal. Based on these figures, the cost impact of the removal and installation proposed by this AD on U.S. operators is estimated to be $1,360,320, or $6,240 per airplane.

It would take approximately 568 work hours per airplane to accomplish the proposed sync lock hardware installation, at an average labor rate of $60 per work hour. Required parts would cost approximately $166,000 per airplane. Based on these figures, the cost impact of the installation proposed by this AD on U.S. operators is estimated to be $43,617,440, or $200,080 per airplane.

It would take approximately 8 work hours (2 per engine) per airplane to accomplish the functional test, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the functional test proposed by this AD on U.S. operators is estimated to be $104,640, or $480 per airplane, per test cycle.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9321 (60 FR 39631, August 3, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 99–NM–67–AD. Supersedes AD 95–16–02, amendment 39–9321.

Applicability: Model 747SP, 747SR, 747–100, 747–200, and 747–300 series airplanes; equipped with Pratt & Whitney Model JT9D–3, –7, and –7Q series engines and Model JT9D–7R4G2 engines; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight, accomplish the following:

Restatement of Requirements of AD 95–16–02

Operational Test

(a) Within 90 days after September 5, 1995 (the effective date of AD 95–16–02, amendment 39–9321), perform an operational test of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, in accordance with Boeing Alert Service Bulletin 747–78A2131, dated September 15, 1994. Repeat the test thereafter at intervals not to exceed 2,000 flight hours until accomplishment of paragraph (c) of this AD.

Note 2: Paragraph (a) of this AD merely restates the requirements of paragraph (a) of AD 95–16–02. The intent of including this paragraph is to ensure that the currently required repetitive tests continue to be done until the terminating modifications specified in paragraph (c) of this AD are installed.

Corrective Action

(b) If any of the tests required by paragraph (a) of this AD cannot be successfully performed, or if any discrepancy is found during those tests, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Prior to further flight, correct any discrepancy found, in accordance with Boeing Alert Service Bulletin 747–78A2131, dated September 15, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in an operator's FAA-approved Minimum Equipment List (MEL), provided that no more than one thrust reverser on the airplane is inoperative.

New Requirements of This AD

Modifications

(c) Within 48 months after the effective date of this AD, accomplish the requirements of paragraphs (c)(1), (c)(2), and (c)(3) of this AD. Accomplishment of the actions required by this paragraph constitutes terminating action for the repetitive tests required by paragraph (a) of this AD.

(1) Install provisional wiring for the additional locking system on the thrust reversers, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2134, Revision 3, dated March 19, 1998.

(2) Remove the thrust reverser sequencing mechanism and install a solenoid-operated shutoff valve in accordance with Boeing Service Bulletin 747–78–2052, Revision 5, dated February 22, 1996.

(3) Install an additional locking system on each thrust reverser in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2152, Revision 5, dated June 14, 2001; or Revision 6, dated October 24, 2002.

Repetitive Tests

(d) Within 3,000 flight hours after accomplishment of paragraph (c) of this AD: Perform a functional test to detect discrepancies of the additional locking system on each thrust reverser in accordance with the procedures described in the Boeing 747 Airplane Maintenance Manual (AMM), Section 78–34–11, dated October 25, 1997. Prior to further flight, correct any discrepancy detected and repeat the functional test of that repair in accordance with the procedures described in the AMM. Repeat the functional tests thereafter at intervals not to exceed 3,000 flight hours.

Dispatch Limitations

(e) If, after incorporation of the modification required by paragraph (c)(3) of this AD on any airplane, it becomes necessary to install a thrust reverser assembly that does not have the additional locking system installed, dispatch of the airplane is allowed in accordance with the provisions and limitations specified in the operator's FAA-approved Master Minimum Equipment List, provided that the thrust reverser assembly that does not have the additional locking system installed is deactivated in accordance with Section 78–1 of Boeing Document D6–33391, ''Boeing 747–100/–200/–300/SP Dispatch Deviations Procedures Guide,'' Revision 25, dated July 26, 2002. No more than one thrust reverser on any airplane may be deactivated under the provisions of this paragraph. Within 10 days after deactivation of the thrust reverser, install a thrust reverser assembly that has the additional locking system installed and reactivate the thrust reverser.

(f) If, prior to incorporation of the modification required by paragraph (c)(3) of this AD on any airplane, it becomes necessary to install a thrust reverser assembly that has the additional locking system installed, dispatch of the airplane is allowed in accordance with the provisions and limitations specified in the operator's FAA-approved Master Minimum Equipment List, provided that the thrust reverser assembly that has the additional locking system installed is deactivated in accordance with Section 78–1 of Boeing Document D6–33391, ''Boeing 747–100/–200/–300/SP Dispatch Deviations Procedures Guide,'' Revision 25, dated July 26, 2002. No more than one thrust reverser on any airplane may be deactivated under the provisions of this paragraph. Within 10 days after deactivation of the thrust reverser, install a thrust reverser assembly that does not have the additional locking system installed and reactivate the thrust reverser.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with paragraphs (a) and (b) of AD 95–16–02, amendment 39–9321, are approved as alternative methods of compliance with the corresponding paragraphs in this AD.

Note 3: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Issued in Renton, Washington, on April 25, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–10727 Filed 4–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. FHWA–1997–2262; Formerly FHWA 95–10]

RIN 2125–AD59

Advance Construction of Federal-Aid Projects

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA is proposing to amend the regulation for advance construction of Federal-aid projects by removing the provisions that prescribe the policies and procedures for the execution of the project agreement for Federal-aid projects and for advancing the construction of Federal-aid highway projects without obligating Federal funds apportioned or allocated to the States. These provisions are no longer consistent with section 115 of title 23, United States Code (U.S.C.), due to technical amendments provided in the National Highway System Designation Act of 1995 (NHS Act) and the Transportation Equity Act for the 21st Century (TEA–21).

DATES: Comments must be received on or before June 30, 2003.

ADDRESSES: Mail or hand deliver comments for the docket number that appears in the heading of this document to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, or submit electronically at *http://dms.dot.gov/submit.* All comments should 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 acknowledgement page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the U.S. 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. Max Inman, Federal-aid Financial Management Division, (202) 366–2853, or Mr. Steve Rochlis, Office of the Chief Counsel, (202) 366–1395, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. 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

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

Background

The FHWA published an interim final rule on part 630, subpart G on July 19, 1995, at 60 FR 36991. Interested persons were invited to submit comments to FHWA Docket No. 95–10. (The FHWA rearranged its docket system to accord with the electronic system adopted by the Department of Transportation in 1997. The FHWA Docket No. 95–10 was transferred and scanned as FHWA Docket No. 1997–2262.)

Section 115 of title 23, U.S.C., provides for the authorization of advance construction projects. This statute allows States to advance the construction of Federal-aid highway projects without requiring that Federal funds be obligated at the time the FHWA approves the project. States may proceed with projects using only State funds and then request that Federal funds be made available at a later time. The State may request that a project be converted to a regular Federal-aid project at any time provided that sufficient Federal-aid funds and obligation authority are available. The State may request a partial conversion where only a portion of the Federal share of project costs is obligated and the remainder may be converted at a later time provided that funds are available. Only the amount converted is an obligation of the Federal Government.

Section 308 of the NHS Act (Pub. L. 104–59, 109 Stat. 568, November 28, 1995) replaced 23 U.S.C. 115(d), relating to the amount of advance construction that may be authorized. The previous limitation required that future year authorizations be in effect one year beyond the fiscal year for which an advance construction application was sought, thus limiting that States' flexibility to advance construct projects during the final year of an authorization act. The NHS Act replaced the limitation with a requirement that advance construction projects be on the approved Statewide Transportation Improvement Program (STIP). The STIP covers a period of at least three years and is a financially constrained program which is not limited to the period of the authorization act. This change provided the States with more flexibility in financing projects and developing financial plans which in turn allows more projects to begin construction earlier.

The FHWA regulation governing the pre-construction procedures is found at 23 CFR part 630. Currently, § 630.707 outlines the limitations are no longer in effect after the changes made to title 23, U.S.C., section 115(d) by the NHS Act. Therefore, the FHWA proposes to remove § 630.707.

Section 1226(a) of the TEA–21, Pub. L. 105–178, 112 Stat. 107 (1998), as amended by Pub. L. 105–206, 112 Stat. 838 (1998), revised 23 U.S.C. 115 by removing subsections (b)(2) and (b)(3) relating to payment of bond interest on certain Interstate construction projects because it is obsolete; removed subsection (c) relating to completion of projects; and redesignated subsection (d) as (c). Based on changes in the law, the FHWA proposes to remove § 630.705 (c), § 630.705 (d) and

§ 630.711 relating to the payment of bond interest.

Discussion of Comments

We received five comments, all from State transportation departments (California, Massachusetts, North Dakota, Virginia, and Washington). Each comment welcomed changes in giving the States flexibility to partially convert regular Federal-aid projects. One comment (North Dakota) recommended that the regulation clearly state that a project or partial project can be converted to a regular Federal-aid project. Two of the five comments (California and Massachusetts) proposed clearer language to the regulation in regard to limitation. These States recommended that the regulation read that an advance construction project is limited to a State's expected apportionment of authorized funds which are eligible to finance the project. While the FHWA agrees that these recommendations will help clarify, we believe by removing the sections we propose to remove that the regulation will be clearer and easier to understand.

Rulemaking Analyses and Notices

All comments received before 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 the late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

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

The FHWA has considered the impact of this proposal and has determined that it is not a significant rulemaking action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal; therefore, a full regulatory evaluation is not required. These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements or grants. This rulemaking proposes to amend current regulations governing the advance construction of Federal-aid projects based on changes in law. It is not anticipated that these proposed changes would affect the Federal funding allocated to the states. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act [5 U.S.C. 601–612], the FHWA has evaluated the effects of this proposed rule on small entities. The FHWA does not believe that this proposed action would not have a significant economic impact on a substantial number of small entities. States are not included in the definition of ''small entity'' set forth in 5 U.S.C. 601. Therefore, the FHWA hereby certifies that this proposal would not have a significant economic impact on a substantial number of small entities.

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 proposal would not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this proposal directly preempts any State law or regulation.

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.

Unfunded Mandates Reform Act of 1995

This proposed action would not impose a Federal mandate resulting in the expenditure by State, local, tribal governments, in the aggregate, or by the sector, of $100 million or more in any year. (2 U.S.C. 1531 *et seq.*)

Executive Order 12630 (Taking of Private Property)

This proposed action would not affect a taking of private property or otherwise have taking implications under Executive Order 12630. Governmental Actions and Interface with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This proposed 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)

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

Paperwork Reduction Act

This proposed action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The FHWA has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment. Therefore, an environmental impact statement is not required.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under Executive Order 13175, and believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each ear. The RIN number 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

Bonds, Government contracts, Grant programs; transportation, Highways and roads, Reporting and recordkeeping requirements.

Issued on: April 25, 2003.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, as set forth below:

PART 630—[REVISED]

1. The authority citation for part 630 continues to read as follows:

Authority: 23 U.S.C. 106, 109, 315, 320, and 402(a); 23 CFR 1.32; and 49 CFR1.48(b).

Subpart G—Advance Construction of Federal-Aid Projects [Revised]

§ 630.705 [Amended]

2. In § 630.705, remove paragraphs (c) and (d).

§ 630.707 [Removed and Reserved]

3. Remove and reserve § 630.707.

§ 630.711 [Removed]

4. Remove § 630.711.

[FR Doc. 03–10692 Filed 4–30–03; 8:45 am]

BILLING CODE 4910–22–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 262

[Docket Nos. 2002–1 CARP DTRA3 and 2001–2 CARP DTNSRA]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is requesting comment on proposed regulations that set rates and terms for the use of sound recordings in eligible nonsubscription transmissions for the 2003 and 2004 statutory licensing period, and for the use of sound recordings in transmissions made by new subscription services from 1998 through December 31, 2004, in addition to the making of ephemeral recordings necessary for the facilitation of such transmissions. The rates and terms do not pertain to the use of sound recordings in digital transmissions of simulcasts of AM and FM radio broadcast programming (including transmissions or retransmissions thereof by third parties), transmissions made by certain noncommercial entities, and small commercial webcasters who elect to operate under an agreement negotiated pursuant to the Small Webcasters Settlement Act of 2002.

DATE: Comments are due no later than June 2, 2003.

ADDRESSES: An original and five copies of any comment shall be delivered by hand to: Office of the General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE., Washington, DC 20559–6000; or mailed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024–0977.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380; Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: In 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 (''DPRA''), Pub. L. 104–39, which created an exclusive right for copyright owners of sound recordings, subject to certain limitations, to perform publicly the sound recordings by means of certain digital audio transmissions. Among the limitations on the performance right was the creation of a new compulsory license for nonexempt noninteractive digital subscription transmissions. 17 U.S.C. 114(f).

Section 114 was later amended with the passage of the Digital Millennium Copyright Act of 1998 (''DMCA'' or ''the Act''), Pub. L. 105–304, to cover additional digital audio transmissions. These include ''eligible nonsubscription transmissions'' and those transmissions made by ''new subscription services.''

For purposes of the section 114 license, an ''eligible nonsubscription transmission'' is a noninteractive digital audio transmission which, as the name implies, does not require a subscription for receiving the transmission. The transmission must also be made as part of a service that provides audio programming consisting in whole or in part of performances of sound recordings the purpose of which is to provide audio or entertainment programming, but not to sell, advertise, or promote particular goods or services. *See* 17 U.S.C. 114(j)(6). A ''new subscription service'' is ''a service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription or a preexisting satellite digital audio radio service.'' 17 U.S.C. 114(j)(8).

In addition to expanding the current section 114 license, the DMCA also created a new statutory license to allow for the making of ephemeral reproductions for the purpose of facilitating certain digital audio transmissions, including those made by eligible nonsubscription services and new subscription services.

The procedure for setting the rates and terms for these two statutory licenses is a two-step process. 17 U.S.C. 112(e)(3), (4), and (6) and 17 U.S.C. 114(f)(2). The first step requires the Librarian of Congress to initiate a voluntary negotiation period to give interested parties an opportunity to determine the applicable rates and terms through a less formal process. However, if the parties are unable to reach an agreement during this period, sections 112(e)(4) and 114(f)(2)(B) directs the Librarian of Congress to convene a three-person Copyright Arbitration Royalty Panel (''CARP'') for the purpose of determining the rates and terms for the compulsory license upon receipt of a petition filed in accordance with 17 U.S.C. 803(a)(1).

The Library of Congress recently conducted a CARP proceeding which produced the royalty rates and terms for these licenses applicable to eligible nonsubscription services for the period from October 28, 1998, to December 31, 2002. *See* 67 FR 45239 (July 8, 2002). In accordance with the time frame set forth in the law for the purpose of setting rates and terms for use of the section 114 license by eligible nonsubscription services, the Library published a notice initiating a six-month voluntary negotiation period to adjust the rates and terms for eligible nonsubscription services for the 2003–2004 period. *See* 67 FR 4472 (January 30, 2002). No settlement was reached at the end of the period. Consequently, two separate petitions were filed with the Copyright Office by the Recording Industry Association of America, Inc. (''RIAA''); and IOMedia Partners, Inc., 3WK, Digitally Imported Radio, IM Networks,

Inc., Beethoven.com, LLC, All Bass Radio, Discombobulated, LLC, Wolf FM and Integrity Media Group, Inc. d/b/a Boomer Radio, collectively, requesting that the Librarian of Congress convene a CARP to adjust the rates and terms for the public performance of sound recordings by means of eligible nonsubscription transmissions and for the creation of ephemeral recordings necessary to facilitate that transmission for the license period 2003–2004.

On November 20, 2002, the Copyright Office initiated the next phase of the proceeding with the publication of a notice in the **Federal Register** calling for Notices of Intent To Participate. 67 FR 70093 (November 20, 2002). Notices of intent to participate were filed by forty-nine parties. On February 6, 2003, the Office set the precontroversy discovery schedule for the proceeding with written direct cases due to be filed on May 5, 2003. *See* Order in Docket No. 2002–1 CARP DTRA3 (February 6, 2003).

Likewise, in accordance with the time frame set forth in the law for the purpose of setting rates and terms for use of the section 114 license by new subscription services, the Library initiated a six-month voluntary negotiation period to adjust the rates and terms for new subscription services, *see* 66 FR 9881 (February 12, 2001), but again no settlement was reached by the end of the negotiation period. Consequently, Music Choice and the RIAA filed separate petitions with the Copyright Office requesting that a CARP be convened in order to set the rates and terms for the public performance of sound recordings by new subscription services. Accordingly, the Office published a notice in the **Federal Register** calling for Notices of Intent to Participate. 66 FR 70093 (November 20, 2001). Five parties filed Notices of Intent. The Office has yet to set the precontroversy discovery schedule for this proceeding.

On February 14, 2003, the Digital Media Association (''DiMA'') filed with the Office a motion to consolidate the proceedings for new subscription services and nonsubscription services. However, in light of the petition filed with the Copyright Office, a hearing may not be necessary to establish rates and terms for the use of sound recordings in eligible nonsubscription transmissions and new subscription services, other than simulcasts of AM and FM radio broadcast programming (including transmissions or retransmissions thereof by third parties) and transmissions made by certain noncommercial entities, together with related ephemeral recordings. As such, on April 10, 2003, the Office dismissed without prejudice DiMA's motion to consolidate. *See* Order in Docket Nos. 2002–1 CARP DTRA3 and 2001–2 CARP DTNSRA (April 10, 2003).

Joint Petition for Adjustment of Rates and Terms for Statutory Licenses Applicable to Webcasters and New Subscription Services

On April 3, 2003, SoundExchange, a division of RIAA, the American Federation of Television and Radio Artists, the American Federation of Musicians of the United States and Canada, and the Digital Media Association (collectively, ''Petitioners''), each having filed a notice of intent to participate in one or both of the proceedings, filed a joint petition for adjustment of rates and terms for the statutory licenses applicable to webcasting and a request for an immediate stay of the obligation to file written direct cases in the proceeding to adjust the rates and terms for eligible nonsubscription transmissions.[1] The rates and terms set forth in the agreement are to govern the use of sound recordings in eligible nonsubscription transmissions and for the use of sound recordings in transmissions made by new subscription services, in addition to the making of ephemeral recordings necessary for the facilitation of such transmissions. The rates and terms do not pertain to the use of sound recordings in digital transmissions of simulcasts of AM and FM radio broadcast programming (including transmissions or retransmissions thereof by third parties), transmissions made by certain noncommercial entities, and small commercial webcasters who elect to operate under an agreement negotiated pursuant to the Small Webcasters Settlement Act of 2002.[2] However, the proposed regulations appended to the joint petition inadvertently omitted statutory royalty rates and terms applicable to new subscription services for the license period October 28, 1998, through December 31, 2002, necessitating further negotiations. Consequently, the Petitioners reconsidered the rates and terms and filed a revised version of the proposed regulations on April 14, 2003, correcting the omission and requesting that the Office publish the proposed rates and terms for public comment in lieu of convening a CARP to adjust the rates and terms for these periods.

Pursuant to § 251.63(b) of title 37 of the Code of Federal Regulations, the Librarian can adopt the parties' proposed rates and terms without convening a CARP, provided that the proposed rates and terms are published in the **Federal Register** and no interested party with an intent to participate in the proceeding files a comment objecting to the proposed terms. In other words, unless there is an objection from a person with a significant interest in the proceeding who is prepared and eligible to participate in a CARP proceeding, the purpose of which is to adjust the rates and terms for use of sound recordings in eligible nonsubscription transmissions and new subscription services pursuant to the section 112 and section 114 statutory licenses, the Librarian can adopt the rates and terms in the proposed settlement in final regulations without convening a CARP. This procedure to adopt negotiated rates and terms in the case where an agreement has been reached has been specifically endorsed by Congress.

> If an agreement as to rates and terms is reached and there is no controversy as to these matters, it would make no sense to subject the interested parties to the needless expense of an arbitration proceeding conducted under (section 114(f)(2)(1995)). Thus, it is the Committee's intention that in such a case, as under the Copyright Office's current regulations concerning rate adjustment proceedings, the Librarian of Congress should notify the public of the proposed agreement in a notice-and-comment proceeding and, if no opposing comment is received from a party with a substantial interest and an intent to participate in an arbitration proceeding, the Librarian of Congress should adopt the rates embodied in the agreement without convening an arbitration panel.

S. Rep. No. 104–128, at 29 (1995)(citations omitted).

Accordingly, the Copyright Office is granting the joint petition and is publishing for public comment the proposed rates and terms embodied in

[1] The Office vacated the precontroversy discovery schedule announced in the February 6, 2003, Order in Docket No. 2002–1 CARP DTRA3, as to the parties covered by the joint proposal. *See* Order in Docket Nos. 2002–1 CARP DTRA3 and 2001–2 CARP DTNSRA (April 10, 2003). As noted above, no schedule has been set for the rate setting proceeding for new subscription services.

[2] On December 4, 2002, President Bush signed into law the Small Webcaster Settlement Act of 2002 (''SWSA''), Pub. L. 107–321, 116 Stat. 2780, which amends the section 112 and section 114 statutory licenses of the Copyright Act, as they relate to small webcasters and noncommercial webcasters. Among other things, the SWSA allowed SoundExchange to enter into an agreement on behalf of all copyright owners and performers to set rates, terms, and conditions for small webcasters operating under the section 112 and section 114 statutory licenses in lieu of any rates and terms set by the Librarian of Congress. Small webcasters that elect to be covered under this agreement shall not be subject to the proposed rates and terms offered in the April 14 agreement. *See* 67 FR 78510 (December 24, 2002).

the April 3, 2003, petition, as amended by the April 14, 2003, correction of the proposed regulations. Any party with a substantial interest who objects to the proposed rates and terms set forth herein must file a written objection with the Copyright Office and an accompanying Notice of Intent to Participate, if the party has not already done so, in accordance with the requirements set forth in the November 20, 2001, Notice. *See* 66 FR 58180, 58181 (November 20, 2001). The content of the written challenge should describe the party's substantial interest in the proceeding, the proposed rule the party finds objectionable, and the reasons for the challenge. If no comments are received, the regulations shall become final upon publication of a final rule and shall cover certain eligible nonsubscription transmissions to the extent prescribed by the rules for the period from January 1, 2003, to December 31, 2004, and the use of sound recordings in transmissions made by new subscription services for the period from October 28, 1998, to December 31, 2004.

List of Subjects in 37 CFR Part 262

Copyright, Digital audio transmissions, Performance right, Sound recordings.

Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes adding part 262 to 37 CFR to read as follows:

PART 262—RATES AND TERMS FOR CERTAIN ELIGIBLE NONSUBSCRIPTION TRANSMISSIONS, NEW SUBSCRIPTION SERVICES AND THE MAKING OF EPHEMERAL REPRODUCTIONS

Sec.

262.1 General.
262.2 Definitions.
262.3 Royalty fees for public performance of sound recordings and for ephemeral recordings.
262.4 Terms for making payment of royalty fees and statements of account.
262.5 Confidential information.
262.6 Verification of statements of account.
262.7 Verification of royalty payments.
262.8 Unclaimed funds.

Authority: 17 U.S.C. 112(e), 114, 801(b)(1).

§ 262.1 General.

(a) *Scope.* This part 262 establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions by certain Licensees in accordance with the provisions of 17 U.S.C. 114, and the making of Ephemeral Recordings by certain Licensees in accordance with the provisions of 17 U.S.C. 112(e), during the period 2003–2004 and, in the case of Subscription Services, 1998–2004 (the ''License Period'').

(b) *Legal compliance.* Licensees relying upon the statutory licenses set forth in 17 U.S.C. 112 and 114 shall comply with the requirements of those sections, the rates and terms of this part and any other applicable regulations.

(c) *Relationship to voluntary agreements.* Notwithstanding the royalty rates and terms established in this part, the rates and terms of any license agreements entered into by Copyright Owners and services shall apply in lieu of the rates and terms of this part to transmissions within the scope of such agreements.

§ 262.2 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Aggregate Tuning Hours* means the total hours of programming that the Licensee has transmitted during the relevant period to all Listeners within the United States from all channels and stations that provide audio programming consisting, in whole or in part, of eligible nonsubscription transmissions or noninteractive digital audio transmissions as part of a new subscription service, except Broadcast Simulcasts, less the actual running time of any sound recordings for which the Licensee has obtained direct licenses apart from 17 U.S.C. 114(d)(2) or which do not require a license under United States copyright law. By way of example, if a service transmitted one hour of programming to 10 simultaneous Listeners, the service's Aggregate Tuning Hours would equal 10. If three minutes of that hour consisted of transmission of a directly licensed recording, the service's Aggregate Tuning Hours would equal 9 hours and 30 minutes. As an additional example, if one Listener listened to a service for 10 hours (and none of the recordings transmitted during that time was directly licensed), the service's Aggregate Tuning Hours would equal 10.

(b) *Broadcast Simulcast* means a simultaneous Internet transmission or retransmission of an over-the-air terrestrial AM or FM radio broadcast, whether such Internet transmission or retransmission is made by the owner and operator of the AM or FM radio station that makes the broadcast or by a third party.

(c) *Copyright Owner* is a sound recording copyright owner who is entitled to receive royalty payments made under this part pursuant to the statutory licenses under 17 U.S.C. 112(e) or 114.

(d) *Designated Agent* is the agent designated by the Librarian of Congress as provided in § 262.4(b).

(e) *Ephemeral Recording* is a phonorecord created for the purpose of facilitating a transmission of a public performance of a sound recording under a statutory license in accordance with 17 U.S.C. 114(f), and subject to the limitations specified in 17 U.S.C. 112(e).

(f) *Licensee* is a person or entity that has obtained a compulsory license under 17 U.S.C. 114 and the implementing regulations therefor to make eligible nonsubscription transmissions, or noninteractive digital audio transmissions as part of a new subscription service (as defined in 17 U.S.C. 114(j)(8)), or that has obtained a compulsory license under 17 U.S.C. 112(e) and the implementing regulations therefor to make Ephemeral Recordings for use in facilitating such transmissions, but not a person or entity that:

(1) Solely makes Broadcast Simulcasts;

(2) Is exempt from taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501);

(3) Has applied in good faith to the Internal Revenue Service for exemption from taxation under section 501 of the Internal Revenue Code and has a commercially reasonable expectation that such exemption shall be granted; or

(4) Is a State or possession or any governmental entity or subordinate thereof, or the United States or District of Columbia, making transmissions for exclusively public purposes.

(g) *Listener* is a player, receiving device or other point receiving and rendering a transmission of a public performance of a sound recording made by a Licensee, irrespective of the number of individuals present to hear the transmission.

(h) *Nonsubscription Service* means a service making eligible nonsubscription transmissions.

(i) *Performance* is each instance in which any portion of a sound recording is publicly performed to a Listener by means of a digital audio transmission or retransmission (*e.g.*, the delivery of any portion of a single track from a compact disc to one Listener) but excluding the following:

(1) A performance of a sound recording that does not require a license (*e.g.*, the sound recording is not copyrighted);

(2) A performance of a sound recording for which the service has previously obtained a license from the

Copyright Owner of such sound recording;

(3) An incidental performance that both:

(i) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events and

(ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song); and

(4) A Broadcast Simulcast.

(j) *Performers* means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the parties identified in 17 U.S.C. 114(g)(2)(D).

(k) *Subscription Service* means a new subscription service (as defined in 17 U.S.C. 114(j)(8)) making noninteractive digital audio transmissions.

(l) *Subscription Service Revenues* shall mean all monies and other consideration paid or payable, including the fair market value of non-cash or in-kind consideration paid or payable by third parties, from the operation of a Subscription Service, as comprised of the following:

(1) Subscription fees and other monies and consideration paid for access to the Subscription Service by or on behalf of subscribers receiving within the United States transmissions made as part of the Subscription Service;

(2) Monies and other consideration (including without limitation customer acquisition fees) from audio or visual advertising, promotions, sponsorships, time or space exclusively or predominantly targeted to subscribers of the Subscription Service, whether

(i) On or through the Subscription Service media player, or on pages accessible only by subscribers or that are predominantly targeted to subscribers, or

(ii) In e-mails addressed exclusively or predominantly to subscribers of the Subscription Service, or

(iii) Delivered exclusively or predominantly to subscribers of the Subscription Service in some other manner, in each case less advertising agency commissions (not to exceed 15% of those monies and other consideration) actually paid to a recognized advertising agency not owned or controlled by Licensee;

(3) Monies and other consideration (including without limitation the proceeds of any revenue-sharing or commission arrangements with any fulfillment company or other third party, and any charge for shipping or handling) from the sale of any product or service directly through the Subscription Service media player or through pages or advertisements accessible only by subscribers or that are predominantly targeted to subscribers (but not pages or advertisements that are not predominantly targeted to subscribers), less

(i) Monies and other consideration from the sale of phonorecords and digital phonorecord deliveries of sound recordings,

(ii) The Licensee's actual, out-of-pocket cost to purchase for resale the products or services (except phonorecords and digital phonorecord deliveries of sound recordings) from third parties, or in the case of products produced or services provided by the Licensee, the Licensee's actual cost to produce the product or provide the service (but not more than the fair market wholesale value of the product or service), and

(iii) Sales and use taxes, shipping, and credit card and fulfillment service fees actually paid to unrelated third parties; provided that:

(A) The fact that a transaction is consummated on a different page than the page/location where a potential customer responds to a ''buy button'' or other purchase opportunity for a product or service advertised directly through such player, pages or advertisements shall not render such purchase outside the scope of Subscription Service Revenues hereunder, and

(B) Monies and other consideration paid by or on behalf of subscribers for software or any other access device owned by Licensee (or any subsidiary or other affiliate of the Licensee, but excluding, for the avoidance of doubt, any entity that sells a third party product, whether or not bearing the Licensee's brand) to access the Licensee's Subscription Service shall not be deemed part of Subscription Service Revenues, unless such software or access device is required as a condition to access the Subscription Service and either is purchased by a subscriber contemporaneously with or after subscribing or has no independent function other than to access the Subscription Service;

(4) Monies and other consideration for the use or exploitation of data specifically and separately concerning subscribers or the Subscription Service, but not monies and other consideration for the use or exploitation of data wherein information concerning subscribers or the Subscription Service is commingled with and not separated or distinguished from data that predominantly concern nonsubscribers or other services; and

(5) Bad debts recovered with respect to paragraphs (l)(1) through (4) of this section; provided that the Subscription Service shall be permitted to deduct bad debts actually written off during a reporting period.

§ 262.3 Royalty fees for public performances of sound recordings and for ephemeral recordings.

(a) *Basic royalty rate.* Royalty rates and fees for eligible nonsubscription transmissions for the period January 1, 2003, through December 31, 2004, and royalty rates and fees for noninteractive digital audio transmissions as part of a new subscription service for the period October 28, 1998, through December 31, 2004, but not Broadcast Simulcasts, made by Licensees pursuant to 17 U.S.C. 114(d)(2), and the making of Ephemeral Recordings by Licensees pursuant to 17 U.S.C. 112(e) to facilitate such transmissions, shall be as follows:

(1) *Nonsubscription Services.* For their operation of Nonsubscription Services, Licensees shall, at their election as provided in paragraph (b) of this section, pay at one of the following rates:

(i) *Per Performance Option.* $0.000762 (0.0762¢) per Performance for all digital audio transmissions, except that 4% of Performances shall bear no royalty to approximate the number of partial Performances of nominal duration made by a Licensee due to, for example, technical interruptions, the closing down of a media player or channel switching; Provided that this provision is not intended to imply that permitting users of a service to ''skip'' a recording is or is not permitted under section 114(d)(2). For the avoidance of doubt, this 4% exclusion shall apply to all Licensees electing this payment option irrespective of the Licensee's actual experience in respect of partial Performances.

(ii) *Aggregate Tuning Hour Option.* $0.0117 (1.17¢) per Aggregate Tuning Hour for all channels and stations of the Nonsubscription Service except channels and stations where substantially all the programming consists of non-music programming, such as news, talk, sports and business

programming, and for such non-music channels and stations, $0.00078 (0.078¢) per Aggregate Tuning Hour.

(2) *Subscription Services.* For their operation of Subscription Services, Licensees shall, at their election as provided in paragraph (b) of this section, pay at one of the following rates:

(i) *Per Performance Option.* $0.000762 (0.0762¢) per Performance for all digital audio transmissions, except that 4% of Performances shall bear no royalty to approximate the number of partial Performances of nominal duration made by a Licensee due to, for example, technical interruptions, the closing down of a media player or channel switching; Provided that this provision is not intended to imply that permitting users of a service to ''skip'' a recording is or is not permitted under section 114(d)(2). For the avoidance of doubt, this 4% exclusion shall apply to all Licensees electing this payment option irrespective of the Licensee's actual experience in respect of partial Performances.

(ii) *Aggregate Tuning Hour Option.* $0.0117 (1.17¢) per Aggregate Tuning Hour for all channels and stations of the Subscription Service except channels and stations where substantially all the programming consists of non-music programming, such as news, talk, sports and business programming, and for such non-music channels and stations, $0.00078 (0.078¢) per Aggregate Tuning Hour.

(iii) *Percentage of Subscription Service Revenues Option.* 10.9% of Subscription Service Revenues, but in no event less than 27¢ per month for each person who subscribes to the Subscription Service for all or any part of the month or to whom the Subscription Service otherwise is delivered by Licensee without a fee (*e.g.*, during a free trial period), subject to the following reduction associated with the transmission of directly licensed sound recordings (if applicable). For any given payment period, the fee due from Licensee shall be the amount calculated under the formula described in the immediately preceding sentence multiplied by the following fraction: the total number of Performances (as defined under § 262.2(i), which excludes directly licensed sound recordings) made by the Subscription Service during the period in question, *divided by* the total number of digital audio transmissions of sound recordings made by the Subscription Service during the period in question (inclusive of Performances and equivalent transmissions of directly licensed sound recordings). Any Licensee paying on such basis shall report to the Designated Agent on its statements of account the pertinent music use information upon which such reduction has been calculated. This option shall not be available to a Subscription Service where:

(A) A particular computer software product or other access device must be purchased for a separate fee from the Licensee as a condition of receiving transmissions of sound recordings through the Subscription Service, and the Licensee chooses not to include sales of such software product or other device to subscribers as part of Subscription Service Revenues in accordance with § 262.2(1)(3), or

(B) The consideration paid or given to receive the Subscription Service also entitles the subscriber to receive or have access to material, products or services other than the Subscription Service (for example, as in the case of a ''bundled service'' consisting of access to the Subscription Service and also access to the Internet in general). In all events, in order to be eligible for this payment option, a Licensee may not engage in pricing practices whereby the Subscription Service is offered to subscribers on a ''loss leader'' basis or whereby the price of the Subscription Service is materially subsidized by payments made by the subscribers for other products or services.

(b) *Election process.* A Licensee shall elect the particular Nonsubscription Service and/or Subscription Service royalty rate categories it chooses (that is, among paragraphs (a)(1)(i) or (ii) of this section and/or paragraphs (a)(2)(i), (ii) or (iii) of this section) for the License Period by no later than the date 30 days after these rates and terms are adopted by the Librarian of Congress and published in the **Federal Register**. Notwithstanding the preceding sentence, where a Licensee has not previously provided a Nonsubscription Service or Subscription Service, as the case may be, the Licensee may make its election by no later than thirty (30) days after the new service first makes a digital audio transmission of a sound recording under the section 114 statutory license. Each such election shall be made by notifying the Designated Agent in writing of such election, using an election form provided by the Designated Agent. A Licensee that fails to make a timely election shall pay royalties as provided in paragraphs (a)(1)(i) and (a)(2)(i) of this section, as applicable. Notwithstanding the foregoing, a Licensee eligible to make royalty payments under an agreement entered into pursuant to the Small Webcaster Settlement Act of 2002 may elect to make payments under such agreement as specified in such agreement.

(c) *Ephemeral Recordings.* The royalty payable under 17 U.S.C. 112(e) for any reproduction of a phonorecord made by a Licensee during the License Period, and used solely by the Licensee to facilitate transmissions for which it pays royalties as and when provided in this section and § 262.4 shall be deemed to be included within, and to comprise 8.8% of, such royalty payments.

(d) *Minimum fee.* Each Licensee shall pay a minimum fee of $2,500 for each calendar year in which it makes eligible nonsubscription transmissions, noninteractive digital audio transmissions as part of a new subscription service or Ephemeral Recordings for use to facilitate such transmissions, whether or not it does the foregoing for all or any part of the year; except that the minimum annual fee for a Licensee electing to pay under paragraph (a)(2)(iii) of this section shall be $5,000. This minimum fee shall be nonrefundable, but it shall be fully creditable to royalty payments due under paragraph (a) of this section for the same calendar year (but not any subsequent calendar year).

(e) *Continuing Obligation.* For the limited purpose of the period immediately following the License Period, and on an entirely without prejudice and nonprecedential basis relative to other time periods and proceedings, if successor statutory royalty rates for Licensees for the period beginning January 1, 2005, have not been established by January 1, 2005, then Licensees shall pay to the Designated Agent, effective January 1, 2005, and continuing for the period through April 30, 2005, or until successor rates and terms are established, whichever is earlier, an interim royalty pursuant to the same rates and terms as are provided for the License Period. Such interim royalties shall be subject to retroactive adjustment based on the final successor rates. Any overpayment shall be fully creditable to future payments, and any underpayment shall be paid within thirty days after establishment of the successor rates and terms, except as may otherwise be provided in the successor terms. If there is a period of such interim payments, Licensees shall elect the particular royalty rate categories it chooses for the interim period as described in paragraph (b) of this section, except that the election for a service that is in operation shall be made by no later than January 15, 2005.

(f) *Other royalty rates and terms.* This Part 262 does not apply to persons or

entities other than Licensees, or to Licensees to the extent that they make Broadcast Simulcasts or other types of transmissions beyond those set forth in paragraph (a) of this section. For transmissions other than those governed by paragraph (a) of this section, or the use of Ephemeral Recordings to facilitate such transmissions, persons making such transmissions must pay royalties, to the extent (if at all) applicable, under sections 112(e) and 114 or as prescribed by other law, regulation or agreement.

§ 262.4 Terms for making payment of royalty fees and statements of account.

(a) *Payment to designated agent.* A Licensee shall make the royalty payments due under § 262.3 to the Designated Agent.

(b) *Designation of agent and potential successor designated agents.* (1) Until such time as a new designation is made, SoundExchange, presently an unincorporated division of the Recording Industry Association of America, Inc. (''RIAA''), is designated as the Designated Agent to receive statements of account and royalty payments from Licensees due under § 262.3 and to distribute such royalty payments to each Copyright Owner and Performer entitled to receive royalties under 17 U.S.C. 112(e) or 114(g). SoundExchange shall continue to be designated after its separate incorporation.

(2) If SoundExchange should fail to incorporate by July 1, 2003, dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by successor entities upon the fulfillment of the requirements set forth in paragraphs (b)(2)(i) and (ii) of this section.

(i) By a majority vote of the nine copyright owner representatives on the SoundExchange Board as of the last day preceding the condition precedent in paragraph (b)(2) of this section, such representatives shall file a petition with the Copyright Office designating a successor Designated Agent to distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized such Designated Agent.

(ii) By a majority vote of the nine performer representatives on the SoundExchange Board as of the last day preceding the condition precedent in paragraph (b)(2) of this section, such representatives shall file a petition with the Copyright Office designating a successor Designated Agent to distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized such Designated Agent.

(iii) The Copyright Office shall publish in the **Federal Register** within thirty days of receipt of a petition filed under paragraph (b)(2)(i) or (ii) of this section an order designating the Designated Agents named in such petitions. Nothing contained herein shall prohibit the petitions filed under paragraphs (b)(2)(i) and (ii) of this section from naming the same successor Designated Agent.

(3) If petitions are filed under paragraphs (b)(2)(i) and (ii) of this section, then, following the actions of the Copyright Office in accordance with paragraph (b)(2)(iii) of this section:

(i) Each of the successor entities shall have all the rights and responsibilities of a Designated Agent under this Part 262, except as specifically set forth in paragraph (b)(3) of this section.

(ii) Licensees shall make their royalty payments to the successor entity named by the copyright owner representatives under paragraph (b)(2)(i) of this section (the ''Receiving Agent'') and shall provide statements of account on a form prepared by the Receiving Agent. Licensees shall submit a copy of each statement of account to the collective named by the performer representatives under paragraph (b)(2)(ii) of this section at the same time such statement of account is delivered to the Receiving Agent.

(iii) The Designated Agents shall agree between themselves concerning responsibility for distributing royalty payments to Copyright Owners and Performers that have not themselves authorized either Designated Agent. The Designated Agents also shall agree to a corresponding methodology for allocating royalty payments between them using the information provided by the Licensee pursuant to the regulations governing records of use of performances for the period for which the royalty payment was made. Such methodology shall value all performances equally. Within 30 days after their agreement concerning such responsibility and methodology, the Designated Agents shall inform the Register of Copyrights thereof.

(iv) With respect to any royalty payment received by the Receiving Agent from a Licensee, a designation by a Copyright Owner or Performer of a Designated Agent must be made no later than 30 days prior to the receipt by the Receiving Agent of that royalty payment.

(v) The Receiving Agent shall promptly allocate the royalty payments it receives between the two Designated Agents in accordance with the agreed methodology. A final adjustment, if necessary, shall be agreed and paid or refunded, as the case may be, between the Receiving Agent and the collectives named under paragraph (b)(2) of this section for each calendar year no later than 180 days following the end of each calendar year. The Designated Agents shall agree on a reasonable basis for the sharing on a pro-rata basis of any costs associated with the allocations set forth in paragraph (b)(3)(iii) of this section.

(vi) If a Designated Agent is unable to locate a Copyright Owner or Performer that the Designated Agent otherwise would be required to pay under paragraph (b) of this section within three years from the date of payment by Licensee, such Copyright Owner's or Performer's share of the payments made by Licensees may first be applied to the costs directly attributable to the administration of the royalty payments due such Copyright Owners and Performers by that Designated Agent and shall thereafter be allocated between the Designated Agents on a pro rata basis (based on distributions to entitled parties) to offset any costs permitted to be deducted by a Designated Agent under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any state.

(c) *Monthly payments.* A Licensee shall make any payments due under § 262.3(a) by the 45th day after the end of each month for that month, except that payments due under § 262.3(a) for the period from the beginning of the License Period through the last day of the month in which these rates and terms are adopted by the Librarian of Congress and published in the **Federal Register** shall be due 45 days after the end of such period. All monthly payments shall be rounded to the nearest cent.

(d) *Minimum payments.* A Licensee shall make any payment due under § 262.3(d) by January 31 of the applicable calendar year, except that:

(1) Payment due under § 262.3(d) for 2003, and in the case of a Subscription Service any earlier year, shall be due 45 days after the last day of the month in which these rates and terms are adopted by the Librarian of Congress and published in the **Federal Register**; and

(2) Payment for a Licensee that has not previously made eligible nonsubscription transmissions, noninteractive digital audio transmissions as part of a new subscription service or Ephemeral

Recordings pursuant to licenses under 17 U.S.C. 114(f) and/or 17 U.S.C. 112(e) shall be due by the 45th day after the end of the month in which the Licensee commences to do so.

(e) *Late payments.* A Licensee shall pay a late fee of 0.75% per month, or the highest lawful rate, whichever is lower, for any payment received by the Designated Agent after the due date. Late fees shall accrue from the due date until payment is received by the Designated Agent.

(f) *Statements of account.* For any part of the period beginning on the date these rates and terms are adopted by the Librarian of Congress and published in the **Federal Register** and ending on December 31, 2004, during which a Licensee operates a service, by 45 days after the end of each month during the period, the Licensee shall deliver to the Designated Agent a statement of account containing the information set forth below on a form prepared, and made available to Licensees, by the Designated Agent. If a payment is owed for such month, the statement of account shall accompany the payment. A statement of account shall include only the following information:

(1) Such information as is necessary to calculate the accompanying royalty payment, or if no payment is owed for the month, to calculate any portion of the minimum fee recouped during the month, including, as applicable, the Performances, Aggregate Tuning Hours (to the nearest minute) or Subscription Service Revenues for the month;

(2) The name, address, business title, telephone number, facsimile number, electronic mail address and other contact information of the individual or individuals to be contacted for information or questions concerning the content of the statement of account;

(3) The handwritten signature of:

(i) The owner of the Licensee or a duly authorized agent of the owner, if the Licensee is not a partnership or a corporation;

(ii) A partner, if the Licensee is a partnership; or

(iii) An officer of the corporation, if the Licensee is a corporation;

(4) The printed or typewritten name of the person signing the statement of account;

(5) The date of signature;

(6) If the Licensee is a partnership or a corporation, the title or official position held in the partnership or corporation by the person signing the statement of account;

(7) A certification of the capacity of the person signing; and

(8) A statement to the following effect:

I, the undersigned owner or agent of the Licensee, or officer or partner, if the Licensee is a corporation or partnership, have examined this statement of account and hereby state that it is true, accurate and complete to my knowledge after reasonable due diligence.

(g) *Distribution of payments.* (1) The Designated Agent shall distribute royalty payments directly to Copyright Owners and Performers, according to 17 U.S.C. 114(g)(2); Provided that the Designated Agent shall only be responsible for making distributions to those Copyright Owners and Performers who provide the Designated Agent with such information as is necessary to identify and pay the correct recipient of such payments. The agent shall distribute royalty payments on a basis that values all performances by a Licensee equally based upon the information provided by the Licensee pursuant to the regulations governing records of use of sound recordings by Licensees; Provided, however, Performers and Copyright Owners that authorize the Designated Agent may agree with the Designated Agent to allocate their shares of the royalty payments made by any Licensee among themselves on an alternative basis. Parties entitled to receive payments under 17 U.S.C. 114(g)(2) may agree with the Designated Agent upon payment protocols to be used by the Designated Agent that provide for alternative arrangements for the payment of royalties consistent with the percentages in section 114(g)(2).

(2) The Designated Agent shall inform the Register of Copyrights of:

(i) Its methodology for distributing royalty payments to Copyright Owners and Performers who have not themselves authorized the Designated Agent (hereinafter ''nonmembers''), and any amendments thereto, within 60 days of adoption and no later than 30 days prior to the first distribution to Copyright Owners and Performers of any royalties distributed pursuant to that methodology;

(ii) Any written complaint that the Designated Agent receives from a nonmember concerning the distribution of royalty payments, within 60 days of receiving such written complaint; and

(iii) The final disposition by the Designated Agent of any complaint specified by paragraph (g)(2)(ii) of this section, within 60 days of such disposition.

(3) A Designated Agent may request that the Register of Copyrights provide a written opinion stating whether the Designated Agent's methodology for distributing royalty payments to nonmembers meets the requirements of this section.

(h) *Permitted deductions.* The Designated Agent may deduct from the payments made by Licensees under § 262.3, prior to the distribution of such payments to any person or entity entitled thereto, all incurred costs permitted to be deducted under 17 U.S.C. 114(g)(3); Provided, however, that any party entitled to receive royalty payments under 17 U.S.C. 112(e) or 114(g) may agree to permit the Designated Agent to make any other deductions.

(i) *Retention of records.* Books and records of a Licensee and of the Designated Agent relating to the payment, collection, and distribution of royalty payments shall be kept for a period of not less than three (3) years.

§ 262.5 Confidential information.

(a) *Definition.* For purposes of this part, ''Confidential Information'' shall include the statements of account, any information contained therein, including the amount of royalty payments, and any information pertaining to the statements of account reasonably designated as confidential by the Licensee submitting the statement.

(b) *Exclusion.* Confidential Information shall not include documents or information that at the time of delivery to the Receiving Agent or a Designated Agent are public knowledge. The Designated Agent that claims the benefit of this provision shall have the burden of proving that the disclosed information was public knowledge.

(c) *Use of Confidential Information.* In no event shall the Designated Agent use any Confidential Information for any purpose other than royalty collection and distribution and activities directly related thereto; Provided, however, that the Designated Agent may disclose to Copyright Owners and Performers Confidential Information provided on statements of account under this part in aggregated form, so long as Confidential Information pertaining to any individual Licensee cannot readily be identified, and the Designated Agent may disclose the identities of services that have obtained licenses under section 112(e) or 114 and whether or not such services are current in their obligations to pay minimum fees and submit statements of account (so long as the Designated Agent does not disclose the amounts paid by the Licensee).

(d) *Disclosure of Confidential Information.* Except as provided in paragraph (c) of this section and as required by law, access to Confidential Information shall be limited to:

(1) Those employees, agents, attorneys, consultants and independent contractors of the Designated Agent, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related thereto, who are not also employees or officers of a Copyright Owner or Performer, and who, for the purpose of performing such duties during the ordinary course of their work, require access to the records;

(2) An independent and qualified auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Designated Agent with respect to the verification of a Licensee's statement of account pursuant to § 262.6 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty payments pursuant to § 262.7;

(3) The Copyright Office, in response to inquiries concerning the operation of the Designated Agent;

(4) In connection with future Copyright Arbitration Royalty Panel proceedings under 17 U.S.C. 114(f)(2) and 112(e), and under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the proceedings, Copyright Arbitration Royalty Panels, the Copyright Office or the courts; and

(5) In connection with bona fide royalty disputes or claims that are the subject of the procedures under § 262.6 or § 262.7, and under an appropriate confidentiality agreement or protective order, the specific parties to such disputes or claims, their attorneys, consultants or other authorized agents, and/or arbitration panels or the courts to which disputes or claims may be submitted.

(e) *Safeguarding of Confidential Information.* The Designated Agent and any person identified in paragraph (d) of this section shall implement procedures to safeguard all Confidential Information using a reasonable standard of care, but no less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to such Designated Agent or person.

§ 262.6 Verification of Statements of Account.

(a) *General.* This section prescribes procedures by which the Designated Agent may verify the royalty payments made by a Licensee.

(b) *Frequency of verification.* The Designated Agent may conduct a single audit of a Licensee, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior three calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* The Designated Agent must file with the Copyright Office a notice of intent to audit a particular Licensee, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Licensee to be audited. Any such audit shall be conducted by an independent and qualified auditor identified in the notice, and shall be binding on all Copyright Owners and Performers.

(d) *Acquisition and retention of records.* The Licensee shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than three years. The Designated Agent shall retain the report of the verification for a period of not less than three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and qualified auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to the Designated Agent, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Licensee being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Licensee reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Designated Agent shall pay the cost of the verification procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Licensee shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 262.7 Verification of Royalty Payments.

(a) *General.* This section prescribes procedures by which any Copyright Owner or Performer may verify the royalty payments made by the Designated Agent; Provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner or a Performer and the Designated Agent have agreed as to proper verification methods.

(b) *Frequency of verification.* A Copyright Owner or a Performer may conduct a single audit of the Designated Agent upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior three calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Copyright Owner or Performer must file with the Copyright Office a notice of intent to audit the Designated Agent, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Designated Agent. Any such audit shall be conducted by an independent and qualified auditor identified in the notice, and shall be binding on all Copyright Owners and Performers.

(d) *Acquisition and retention of records.* The Designated Agent shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than three years. The Copyright Owner or Performer requesting the verification procedure shall retain the report of the verification for a period of not less than three years.

(e) Acceptable verification procedure. An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and qualified auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) Consultation. Before rendering a written report to a Copyright Owner or Performer, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Designated Agent in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Designated Agent reasonably cooperates with the auditor to remedy promptly

any factual errors or clarify any issues raised by the audit.

(g) Costs of the verification procedure. The Copyright Owner or Performer requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Designated Agent shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 262.8 Unclaimed funds.

If a Designated Agent is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty payment under this part, the Designated Agent shall retain the required payment in a segregated trust account for a period of three years from the date of payment. No claim to such payment shall be valid after the expiration of the three-year period. After the expiration of this period, the Designated Agent may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any state.

Dated: April 28, 2003.

David O. Carson,

General Counsel.

[FR Doc. 03–10795 Filed 4–30–03; 8:45 am]

BILLING CODE 1410–33–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 39

RIN 2900–AH46

State Cemetery Grants

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its regulations governing grants to States to establish, expand, or improve State veterans' cemeteries. We propose to implement through regulation the statutory increase of up to 100 percent of certain costs that can be covered by a grant, to simplify the preapplication process, and to establish a system of prioritizing grant applications. These changes are consistent with a statutory change effected by the Veterans Programs Enhancement Act of 1998, which changed the grant formula from a 50–50 Federal-State matching program to a program that authorizes up to 100 percent Federal funding. The changes will also facilitate States' applications, and make the best use of available funds.

DATES: Comments must be received by VA on or before June 30, 2003.

ADDRESSES: Mail or hand-deliver written comments to: Director, Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to ''RIN 2900–AH46.'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: William Jayne, Director of State Cemetery Grants Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington DC 20420. Telephone: (202) 565–6152 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The goal of the State Cemetery Grants Program (SCGP) is to complement the mission of the National Cemetery Administration (NCA) by providing a mechanism for States to establish, expand, or improve veterans' cemeteries. The SCGP encourages States to provide burial service to our Nation's veterans by operating veterans' cemeteries in areas where the most number of veterans would benefit as determined by VA. Under Public Law 95–476, the State Cemetery Grants Program was authorized to provide Federal assistance to States for the establishment, expansion, and improvement of veterans' cemeteries. The amount of the Federal grant to a State was limited to 50 percent of the combined value of the land to be acquired or dedicated for cemetery purposes, and the cost of the improvements to be made. The remaining 50 percent of the project's cost was to be contributed by the State.

Public Law 105–368, the Veterans Programs Enhancement Act of 1998, revised the funding formula for the SCGP to authorize the Federal Government to pay up to 100 percent of the costs of development associated with the establishment, expansion, or improvement of a veterans' cemetery as well as to provide for purchase of initial operating equipment. The intent of the increase in the amount of the grant was to encourage and facilitate State participation in the SCGP.

The proposed rule places in regulation the statutory increase of up to 100 percent funding of certain costs related to the establishment, expansion, or improvement of a veterans' cemetery, as well as for purchase of initial operating equipment by the States for establishment grants. In addition, the proposed rule establishes a system of prioritization at the preapplication stage of the application process as VA anticipates increased participation by the States in the SCGP.

The proposed rule simplifies the preapplication process to reduce the initial burden of application by prospective participating States. Many requirements from the previous preapplication process have been incorporated into the actual application process, while other requirements have been removed altogether. The preapplication process is now designed to serve as a means for planning, screening, and opening lines of communication between NCA and potential participating States. As a part of the preapplication process, the State will certify that it will be able to adhere to the requirements of the grant. The application process then becomes a certification of actual adherence to the requirements of the grant. This change allows the process to begin with State certification to avoid the potential for future adherence difficulties.

With the increased amount of the grant, NCA expects more participation by States. Once a project is approved, VA may award a grant up to 100 percent of the amount requested, provided that sufficient funds are available. The proposed rule establishes a prioritization process for fair and equitable administration of the program. This system of prioritization is simple and direct. There are four priorities. These are:

- Priority I—Projects for gravesite expansion or improvements that are needed to continue service at an existing veterans' cemetery. This includes phased development of currently undeveloped land.
- Priority II—Projects for the establishment of new cemeteries.
- Priority III—Planned phased gravesite developments prior to need.
- Priority IV—Other improvements to cemetery infrastructure such as building expansion and upgrades to roads and irrigation systems that are not directly related to the development of new gravesites.

Within priority categories I, II and III, individual projects will be ranked based on the greatest number of veterans who will benefit from the project as determined by VA. This prioritization

system, based on veteran population data, will assist VA in maintaining and improving access to more veterans and their eligible family members for burial in a veterans cemetery.

In addition, square footage requirements for specific rooms and other specifications have been removed so the design of buildings will not be impeded by overly prescriptive requirements.

Paperwork Reduction Act

Although this document contains provisions constituting a collection of information at 38 CFR 39.6, 39.10, 39.16, 39.17, 39.25 and 39.26 under the Paperwork Reduction Act (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this proposed rule. The information collection requirements for §§ 39.6, 39.10, 39.16, 39.17, 39.25 and 39.26 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 0348–0002, 0348–0043, 0348–0041, 0348–0042, and 2900–0559.

Executive Order 12866

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

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Only individual VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance Program Number

The Catalog of Federal Domestic Assistance Program Number for this document is 64.203.

List of Subjects in 38 CFR Part 39

Cemeteries, Grant programs—veterans, Veterans.

Approved: February 19, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to revise 38 CFR part 39 to read as follows:

PART 39—AID TO STATES FOR ESTABLISHMENT, EXPANSION, AND IMPROVEMENT OF VETERANS' CEMETERIES

Sec.

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Authority: 38 U.S.C. 101, 501, 2408.

Subpart A—General Provisions

§ 39.1 Purpose.

This part sets forth the mechanism for a State to obtain a grant to establish, expand, or improve veterans' cemeteries that are or will be owned by the State.

(Authority: 38 U.S.C. 501, 2408.)

§ 39.2 Definitions.

For the purpose of this part:

(a) *Establishment* means the process of site selection, land acquisition, design and planning, earthmoving, landscaping, construction and provision of initial operating equipment necessary to convert a tract of land to an operational veterans' cemetery.

(b) *Expansion* means an increase in the burial capacity or acreage of an existing cemetery through the addition of gravesites and other cemeterial facilities.

(c) *Improvement* means the enhancement of a cemetery through landscaping, nonrecurring maintenance, or addition of other features appropriate to cemeteries.

(d) *Establishment, expansion and improvement* include the installation of facilities necessary for the functioning of the cemetery, such as committal-service shelters, crypts (preplaced grave liners), and columbaria.

(e) *Time-phased development plan* means a detailed, narrative description of the proposed site's characteristics, schedule for development, and estimates of costs by phases of construction.

(f) *Project* means an undertaking to establish, expand, or improve a specific site for use as a State-owned veterans' cemetery.

(g) *State* means each of the States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(h) *Veteran* means a person who served in the active military, naval, or air service and who died while in service or was discharged or released under conditions other than dishonorable.

(i) *Secretary* means the Secretary of the United States Department of Veterans Affairs.

(j) *VA* means the United States Department of Veterans Affairs.

(k) *State Cemetery Grants Service (SCGS)* means the State Cemetery Grants Service within VA's National Cemetery Administration.

(Authority: 38 U.S.C. 101, 501, 2408.)

§ 39.3 Decisionmakers, notifications, and additional information.

Decisions required under this part will be made by the Director, State Cemetery Grants Service, National Cemetery Administration, unless otherwise specified in this part. The VA decisionmaker will provide written notice to affected States of approvals, denials, or requests for additional information under this part.

(Authority: 38 U.S.C. 501, 2408.)

§ 39.4 Submissions of information and documents to VA.

All information and documents required to be submitted to VA must be submitted, unless otherwise specified under this part, to the Director of State Cemetery Grants Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 501, 2408.)

Subpart B—Grant Requirements and Procedures

§ 39.5 General requirements for a grant.

(a) In order to qualify for a grant, a State veterans' cemetery must be operated solely for the interment of veterans, their wives, husbands, surviving spouses, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support.

(b) For a State to obtain a grant under this part for the establishment, expansion, or improvement of a State veterans' cemetery:

(1) Its preapplication for the grant must be approved under § 39.6;

(2) Its project must be ranked sufficiently high on the priority list in § 39.7 for the current fiscal year so that funds are available for the project;

(3) Its plans and specifications for the project must be approved under § 39.8;

(4) The State must meet the application requirements in § 39.10; and

(5) Other requirements specified in §§ 39.9 and 39.13 must be satisfied.

(c) VA may approve under § 39.11 any application up to the amount of the grant requested once the requirements under paragraph (b) of this section have been satisfied, provided that sufficient funds are available. In determining whether sufficient funds are available, VA shall consider the project's priority ranking, the total amount of funds available for cemetery grant awards during the applicable fiscal year, and the prospects of higher ranking projects being ready for the award of a grant before the end of the applicable fiscal year.

(Authority: 38 U.S.C. 501, 2408.)

§ 39.6 Preapplication requirements.

(a) A State seeking a grant for the establishment, expansion, or improvement of a veterans' cemetery must submit a preapplication if the State seeks more than $100,000.

(b) No detailed drawings, plans, or specifications are required with the preapplication. As a part of the preapplication, the State must submit each of the following:

(1) Standard Form 424 (''Face Sheet'') and Standard Form 424C (''Budget Information'') signed by the authorized representative of the State. These forms document the amount of the grant requested, which may not exceed 100 percent of the estimated cost of the project to be funded with the grant.

(2) A program narrative describing the objectives of the project, the need for a grant, the method of accomplishment, the projected interment rate, and the results or benefits expected to be obtained from the assistance requested.

(3) If a site has been selected, a description of the geographic location of the project (*i.e.*, a map showing the location of the project and all appropriate geographic boundaries, and any other supporting documentation, as needed).

(4) A design concept describing the major features of the project including the number and types of gravesites, such as columbarium niches.

(5) Any comments or recommendations made by the State's ''Single Point of Contact'' reviewing agency.

(c) In addition, the State must submit written assurance that:

(1) Any cemetery established, expanded, or improved through a grant will be used exclusively for the interment of eligible persons as set forth in § 39.5(a).

(2) Title to the site is or will be vested solely in the State.

(3) It possesses legal authority to apply for the grant, and to finance and construct the proposed facilities; *i.e.*, legislation or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the State to act in connection with the application and to provide such additional information as may be required.

(4) Any cemetery established, expanded, or improved through a grant will be maintained and operated in accordance with the operational standards and measures of the National Cemetery Administration.

(5) It will assist VA in assuring that the grant complies with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), Executive Order 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 *et seq.*).

(6) It will obtain approval by VA of the final construction drawings and specifications before the project is advertised or placed on the market for bidding; it will construct the project, or cause it to be constructed, to completion in accordance with the application and approved plans and specifications; it will submit to the Director of the State Cemetery Grants Program, for prior approval, changes that alter the costs of the project, use of space, or functional layout; and it will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the grant program have been met.

(7) It will comply with the Federal requirements in 38 CFR parts 43 and 44 and submit Standard Form 424D (''Assurances-Construction Programs'').

(d) The State must submit an Environmental Assessment to determine if an Environmental Impact Statement is necessary for compliance with section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4332). The Environmental Assessment must briefly describe the project's possible beneficial and harmful effects on the following impact categories:

(1) Transportation,
(2) Air quality,
(3) Noise,
(4) Solid waste,
(5) Utilities,
(6) Geology (Soils/Hydrology/Floodplains),
(7) Water quality,
(8) Land use,
(9) Vegetation, Wildlife, Aquatic, Ecology/Wetlands, etc.,
(10) Economic activities,
(11) Cultural resources,
(12) Aesthetics,
(13) Residential population,
(14) Community services and facilities,
(15) Community plans and projects, and
(16) Other.

If an adverse environmental impact is anticipated, the State must explain what action will be taken to minimize the impact. The assessment shall comply with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

(e) The State must submit a copy of the legislation, as enacted into law, authorizing the establishment, maintenance and operation of the facility as a veterans' cemetery in accordance with 38 CFR 39.5(a).

(f) Upon receipt of a preapplication for a grant, including all necessary assurances and all required supporting documentation, VA shall determine

whether the preapplication conforms to all requirements listed in paragraphs (a) through (e) of this section, including whether it contains sufficient information necessary to establish the project's priority. VA will notify the State of any nonconformity. If the preapplication does conform, VA shall notify the State that the preapplication has been found to meet the preapplication requirements, and the proposed project will be included in the next scheduled ranking of projects, as indicated in § 39.7(d).

(Authority: 38 U.S.C. 501, 2408.)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 0348–0043, 0348–0041; 0348–0042.)

§ 39.7 Priority list.

(a) The priority groups, with Priority Group 1 having the highest priority and Priority Group 4 the lowest priority, are:

(1) Priority Group 1—Projects needed to avoid disruption in burial service that would otherwise occur at existing veterans' cemeteries within 4 years of the date of the preapplication. Such projects would include expansion projects as well as improvement projects (such as construction of additional or replacement facilities) when such improvements are required to continue interment operations.

(2) Priority Group 2—Projects for the establishment of new veterans' cemeteries.

(3) Priority Group 3—Expansion projects at existing veterans' cemeteries when a disruption in burial service due to the exhaustion of existing gravesites is not expected to occur within 4 years of the date of the preapplication.

(4) Priority Group 4—Other improvement projects to cemetery infrastructure such as building expansion and upgrades to roads and irrigation systems that are not directly related to the development of new gravesites.

(b) Within Priority Groups 1, 2, and 3, highest priority will be given to projects in geographical locations with the greatest number of veterans who will benefit from the project as determined by VA. This prioritization system, based on veteran population data, will assist VA in maintaining and improving access to burial in a veterans cemetery to more veterans and their eligible family members. Within Priority Group 1, at the discretion of VA, higher priority may be given to a project that must be funded that fiscal year to avoid disruption in burial service.

(c) Within Priority Group 4, projects will be ranked in priority order based upon VA's determination of the relative importance and necessity to operations of the proposed improvements.

(d) By August 15 of each year, VA will make a list prioritizing the preapplications that were received on or before July 1 of that year and that were approved under § 39.6, ranking them in their order of priority for funding during the fiscal year that begins the following October 1. Preapplications from previous years will be re-prioritized each year.

(Authority: 38 U.S.C. 501, 2408.)

§ 39.8 Plan preparation.

The State must prepare plans and specifications in accordance with the requirements of this section for review by the SCGS. The plans and specifications must be approved by the SCGS prior to the State's solicitation for construction bids. The State must determine the successful bidder prior to submission of the application. The State must establish procedures for determining that costs are reasonable, necessary and allocable in accordance with the provisions of Office of Management and Budget (OMB) Circular No. A–87. Once the preapplication and the project's plans and specifications have been approved, an application for assistance must be submitted in compliance with the uniform requirements for grants-in-aid to State and local governments prescribed by Office of Management and Budget Circular No. A–102, Revised.

(a) *General.* These requirements have been established for the guidance of the State agency and the design team to provide a standard for preparation of drawings, specifications and estimates.

(b) *Technical requirements.* The State should meet these technical requirements as soon as possible after VA approves the preapplication.

(1) *Boundary and site survey.* The State agency shall provide a survey of the site and furnish a legal description of the site. A boundary and site survey need not be submitted if one was submitted for a previously approved project and there have been no changes. Relevant information may then be shown on the site plan. If required, the survey shall show:

(i) The outline and location referenced to boundaries, of all existing buildings, streets, alleys (whether public or private), block boundaries, easements, encroachments, the names of streets, railroads and streams, and other information as specified. If there is nothing of this character affecting the property, the Surveyor shall so state on the drawings.

(ii) The point of beginning, bearing, distances, and interior angles. Closure computations shall be furnished with the survey and error of closure shall not exceed 1 foot for each 10,000 feet of lineal traverse. Boundaries of an unusual nature (curvilinear, off-set, or having other change or direction between corners) shall be referenced with curve data (including measurement chord) and other data sufficient for replacement and such information shall be shown on the map. For boundaries of such nature, coordinates shall be given for all angles and other pertinent points.

(iii) The area of the parcel in acres or in square feet.

(iv) The location of all monuments.

(v) Delineation of 100-year floodplain and source.

(vi) The signature and certification of the Surveyor.

(2) *Soil investigation.* The State shall provide a soil investigation of the scope necessary to ascertain site characteristics for construction and burial or to determine foundation requirements and utility service connections. A new soil investigation is not required if one was done for a previously approved project on the same site and information contained is adequate and unchanged. Soil investigation, when done, shall be documented in a signed report. Adequate investigation shall be made to determine the subsoil conditions. The investigation shall include a sufficient number of test pits or test borings as will determine, in the judgment of the architect, the true conditions. The following information will be covered in the report:

(i) Thickness, consistency, character, and estimated safe bearing value where needed for structural foundation design of the various strata encountered in each pit or boring.

(ii) Amount and elevation of ground water encountered in each pit or boring, its probable variation with the seasons, and effect on the subsoil.

(iii) The elevation of rock, if known, and the probability of encountering quicksand.

(iv) If the site is underlaid with mines, the elevations and location of the tops of the mine workings relative to the site, or old workings located in the vicinity.

(3) *Topographical survey.* A topographical survey in 1-foot contour intervals shall be prepared for projects establishing new cemeteries and for significant expansion projects in previously undeveloped land.

(c) *Master plan.* A master plan showing the proposed layout of all

facilities—including buildings, roadways and burial sections—on the selected site shall be prepared for all new cemetery establishment projects for approval by the SCGS. If the project is to be phased into different year programs, the phasing shall be indicated. The master plan shall analyze all factors affecting the design, including climate, soil conditions, site boundaries, topography, views, hydrology, environmental constraints, transportation access, etc. It should provide a discussion of alternate designs that were considered. In the case of an expansion or improvement project, the work contemplated should be consistent with the VA-approved master plan or a justification for the deviation should be provided.

(d) *Preliminary or ''design development'' drawings.* Following VA approval of the master plan, the State must submit design development drawings that show all current phase construction elements to be funded by the grant. The drawings must comply with the following requirements:

(1) Site development and environmental plans must include locations of structures, demolition, parking, roads, service areas, walks, plazas, memorial paths, other paved areas, landscape buffer and major groupings, interment areas (including quantity of gravesites in each area). A grading plan including existing and proposed contours at 1-foot intervals of the entire area affected by the site work must be submitted. A site plan of the immediate area around each building shall be drawn to a convenient scale and shall show the building floor plan, utility connections, walks, gates, walls or fences, flagpoles, drives, parking areas, indication of handicapped provisions, landscaping, north arrow and any other appropriate items.

(2) Floor plans of all levels at a convenient scale shall be double line drawings and shall show overall dimensions, construction materials, door swings, names and square feet for each space, toilet room fixtures and interior finish schedule.

(3) Elevations of the exteriors of all buildings shall be drawn to the same scale as the plan and shall include all material indications.

(4) Preliminary mechanical and electrical layout plans shall be drawn at a convenient scale and shall have an equipment and plumbing fixture schedule.

(e) *Final construction drawings and specifications.* Funds for the construction of any project being assisted under this program will not be released until VA approves the final construction drawings and specifications. If VA approves them, VA shall send the State a written letter of approval indicating the project complies with the terms and conditions as prescribed by VA, but this does not constitute approval of the contract documents. It is the responsibility of the State to ascertain that all State and Federal requirements have been met and that the drawings and specifications are acceptable for bid purposes.

(1) The State shall prepare final working drawings so that clear and distinct prints may be obtained. These drawings must be accurately dimensioned to include all necessary explanatory notes, schedules and legends. Working drawings shall be complete and adequate for VA review and comment. The State shall prepare separate drawings for each of the following types of work: architectural, equipment, layout, structural, heating and ventilating, plumbing, and electrical.

(2) *Architectural drawings.* The State shall submit drawings which include: all structures and other work to be removed; all floor plans if any new work is involved; all elevations, which are affected by the alterations; building sections; demolition drawings; all details to complete the proposed work and finish schedules; and fully dimensioned floor plans at ⅛″ or ¼″ scale.

(3) *Equipment drawings.* The State shall submit a list of all equipment to be provided under terms of the grant in the case of an establishment project. Large-scale drawings of typical special rooms indicating all fixed equipment and major items of furniture and moveable equipment shall be included.

(4) *Layout drawings.* The State shall submit a layout plan that shows:

(i) All proposed features such as roads, buildings, walks, utility lines, burial layout, etc.

(ii) Contours, scale, north arrow, legend showing existing trees.

(iii) A graphic or keyed method of showing plant types as well as quantities of each plant.

(iv) Plant list with the following: key, quantity, botanical name, common name, size and remarks.

(v) Typical tree and shrub planting details.

(vi) Areas to be seeded or sodded.

(vii) Areas to be mulched.

(viii) Gravesite section layout with permanent section monument markers and lettering system.

(ix) Individual gravesite layout and numbering system. If the cemetery is existing and the project is expansion or renovation, show available, occupied, obstructed and reserved gravesites.

(x) Direction the headstone faces.

(5) *Structural drawings.* The State shall submit complete foundation and framing plans and details, with general notes to include: governing code, material strengths, live loads, wind loads, foundation design values, and seismic zone.

(6) *Mechanical drawings.* The State shall submit:

(i) Heating and ventilation drawings showing complete systems and details of air conditioning, heating, ventilation and exhaust; and

(ii) Plumbing drawings showing sizes and elevations of soil and waste systems, sizes of all hot and cold water piping, drainage and vent systems, plumbing fixtures, and riser diagrams.

(7) *Electrical drawings.* The State shall submit separate drawings for lighting and power, including drawings of:

(i) Service entrance, feeders and all characteristics;

(ii) All panel, breaker, switchboard and fixture schedules;

(iii) All lighting outlets, receptacles, switches, power outlets and circuits; and

(iv) Telephone layout, fire alarm systems and emergency lighting.

(8) Final specifications (to be used for bid purposes) shall be in completed format. Specifications shall include the invitations for bids, cover or title sheet, index, general requirements, form of bid bond, form of agreement, performance and payment bond forms, and sections describing materials and workmanship in detail for each class of work.

(9) The State shall show in convenient form and detail the estimated total cost of the work to be performed under the contract including provisions of fixed equipment shown by the plans and specifications, if applicable, to reflect the changes of the approved financial plan. Estimates shall be summarized and totaled under each trade or type of work. Estimates shall also be provided for each building structure and other important features such as the assembly area and include burial facilities.

(Authority: 38 U.S.C. 501, 2408.)

§ 39.9 Conferences.

(a) *Predesign conference.* A predesign conference is required for all major construction projects primarily to ensure that the State agency becomes oriented to VA procedures and requirements plus any technical comments pertaining to the project. These conferences will take place at an appropriate location near the proposed site and should include a site visit to ensure that all parties to the process,

including NCA staff, are familiar with the site and its characteristics.

(b) *Additional conferences.* At any time, VA may recommend an additional conference (such as a design development conference) be held in VA Central Office in Washington, DC, to provide an opportunity for the State and its architects to discuss requirements for a grant with VA officials.

(Authority: 38 U.S.C. 501, 2408.)

§ 39.10 Application requirements.

For a project to be considered for grant funding under this part, the State must submit an application (as opposed to a preapplication) consisting of the following:

(a) Standard Form 424 (''Face Sheet'') with the box labeled ''application'' marked;

(b) Standard Form 424C (''Budget Information''), which documents the amount of funds requested based on the construction costs as estimated by the successful construction bid;

(c) A copy of itemized bid tabulations (If there are non-VA participating areas, these shall be itemized separately.); and

(d) Standard Form 424D (''Assurances-Construction Program'').

(Authority: 38 U.S.C. 501, 2408.)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 0348–0043; 0348–0041; 0348–0042.)

§ 39.11 Final review and approval of application.

Following VA approval of bid tabulations and cost estimates, the complete grant application will be reviewed for approval in accordance with the requirements of § 39.5. If the application is approved, the grant will be awarded by a Notification of Award of Federal Grant Funds.

(Authority: 38 U.S.C. 501, 2408.)

§ 39.12 Hearings.

(a) No application for a grant to establish, expand, or improve a State veterans' cemetery shall be disapproved until the applicant has been afforded an opportunity for a hearing.

(b) Whenever a hearing is requested under this section, notice of the hearing, procedure for the conduct of such hearing, and procedures relating to decisions and notices shall accord with the provisions of §§ 18.9 and 18.10 of this chapter. Failure of an applicant to request a hearing under this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to be heard and constitutes consent to the making of a decision on the basis of such information as is available.

(Authority: 38 U.S.C. 501, 2408.)

§ 39.13 Amendments to application.

Any amendment of an application that changes the scope of the application or increases the cost of the grant requested, whether or not the application has already been approved, shall be subject to approval in the same manner as an original application.

(Authority: 38 U.S.C. 501, 2408.)

§ 39.14 Withdrawal of application.

A State representative may withdraw an application by submitting to VA a written document requesting withdrawal.

(Authority: 38 U.S.C. 501, 2408.)

Subpart C—Award of Grant

§ 39.15 Amount of grants.

(a) The amount of a grant awarded under this part may not exceed 100 percent of the total cost of the project, but may be less than that amount.

(b) The total cost of a project under this part may include:

(1) Administration and design costs, *e.g.*, architectural and engineering fees, inspection fees, and printing and advertising cost.

(2) The cost of cemetery features, *e.g.*, entry features, flag plaza and assembly areas, columbarium, preplaced liners or crypts, irrigation, committal-service shelters, and administration/maintenance buildings.

(3) In the case of an establishment grant, the cost of equipment necessary for the operation of the State cemetery. This may include the cost of non-fixed equipment such as grounds maintenance equipment, burial equipment, and office equipment.

(4) In the case of an improvement grant, the cost of equipment necessary for operation of the State cemetery, but only if:

(i) Included in the construction contract;

(ii) Installed during construction; and

(iii) Permanently affixed to a building or connected to the heating, ventilating, air conditioning, or other service distributed through a building via ducts, pipes, wires, or other connecting device, such as kitchen and intercommunication equipment, built-in cabinets, and equipment lifts.

(5) A contingency allowance not to exceed five percent of the total cost of the project for new construction or eight percent for renovation projects.

(c) The total cost of a project under this part may not include the cost of:

(1) Land acquisition;

(2) Building space that exceeds the space guidelines specified in this part;

(3) Improvements not on cemetery land, such as access roads or utilities;

(4) Maintenance or repair work;

(5) Office supplies or consumable goods (such as fuel and fertilizer) which are routinely used in a cemetery; or

(6) Fully enclosed, climate-controlled committal-service buildings, or chapels.

(d) VA shall certify approved applications to the Secretary of the Treasury in the amount of the grant, and shall designate the appropriation from which it shall be paid. Funds paid for the establishment, expansion, or improvement of a veterans' cemetery must be used solely for carrying out approved projects.

(Authority: 38 U.S.C. 501, 2408.)

§ 39.16 Line item adjustment to grant.

After a grant has been awarded, upon request from the State representative, VA may approve a change in a line item (line items are identified in Standard Form 424C, which is set forth in § 39.26(c)) of up to 10 percent (increase or decrease) of the cost of the line item if the change would be within the scope or objective of the project and would not change the amount of the grant.

(Authority: 38 U.S.C. 501, 2408.)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 0348–0041.)

§ 39.17 Payment of grant award.

The amount of the grant award will be paid to the State or, if designated by the State representative, the State cemetery for which such project is being carried out, or any other State agency or instrumentality. Such amount shall be paid by way of reimbursement, and in such installments consistent with the progress of the project, as the Director of State Cemetery Grants Service may determine and certify for payment to the appropriate Federal institution. Funds paid under this section for an approved project shall be used solely for carrying out such project as so approved. As a condition for the final payment, the State representative must submit to VA the following:

(a) Standard Form 271 (''Outlay Report and Request for Reimbursement for Construction Programs'') (The form is set forth at § 39.26.);

(b) A request in writing for the final architectural/engineering inspection, including the name and telephone number of the local point of contact for the project;

(c) The written statement ''It is hereby agreed that the monetary commitment of

the federal government will have been met and the project will be considered terminated upon payment of this voucher'; and

(d) Evidence that the State has met its responsibility for an audit under the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*) and § 39.19, if applicable.

(Authority: 38 U.S.C. 501, 2408.)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 0348–0002.)

§ 39.18 Recapture provisions.

(a) If a State which has received a grant to establish, expand, or improve a veterans' cemetery ceases to own such cemetery, ceases to operate such cemetery as a veterans' cemetery in accordance with § 39.5(a), or uses any part of the funds provided through such grant for a purpose other than that for which the grant was made, the United States shall be entitled to recover from the State the total of all grants made to the State in connection with the establishment, expansion or improvement of such cemetery.

(b) If all funds from a grant have not been used by a State for the purpose for which the grant was made within 3 years after the VA has certified the approved application for such grant to the Department of the Treasury, the United States shall be entitled to recover any unused grant funds from the State.

(Authority: 38 U.S.C. 501, 2408.)

Subpart D—Standards and Requirements for Project

§ 39.19 General requirements for site selection and construction of veterans' cemeteries.

(a) The various codes, requirements, and recommendations of State and local authorities or technical and professional organizations, to the extent and manner in which those codes, requirements, and recommendations are referenced in this subpart, are applicable to grants for construction of veterans' cemeteries. Additional information concerning these codes, requirements, and recommendations may be obtained from the Department of Veterans Affairs, National Cemetery Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

(b) The standards in §§ 39.19 through 39.22 constitute general design and construction criteria and shall apply to all projects for which Federal assistance is requested under 38 U.S.C. 2408.

(c) In developing these standards, no attempt has been made to comply with all of the various State and local codes and regulations. The standards contained in §§ 39.19 through 39.22 shall be followed where they exceed State or local codes and regulations. Departure will be permitted, however, when alternate standards are demonstrated to provide equivalent or better design criteria than the standards in these sections. Conversely, compliance is required with State and local codes where such requirements provide a standard higher than those in these sections. The additional cost, if any, in using standards that are higher than those of VA should be documented and justified in the application.

(d) The space criteria and area requirements referred to in these standards shall be used as a guide in planning. Additional area and facilities beyond those specified as basic may be included if found to be necessary to meet the functional requirements of the project but are subject to approval by VA. Substantial deviation from the space or area standards shall be carefully considered and justified. Failing to meet the standards or exceeding them by more than 10 percent in the completed plan would be regarded as evidence of inferior design or as exceeding the boundaries of professional requirements. In those projects that unjustifiably exceed maximum space or area criteria, VA funding may be subject to proportionate reduction in proportion to the amount by which the space or area of the cemetery exceeds the maximum specified in these standards.

(Authority: 38 U.S.C. 501, 2408.)

§ 39.20 Site planning standards.

(a) *Site selection*—(1) *Location.* The land should be located as close as possible to the densest veteran population in the area under consideration.

(2) *Size.* Sufficient acreage shall be available to provide gravesites for estimated needs for at least 20 years. More acreage should be provided where feasible. Acreage could vary depending on the State veteran population and national cemetery availability.

(3) *Accessibility.* The site should be readily accessible by highway. Offsite improvements shall not be funded by the grant.

(4) *Topography.* The land should range from comparatively level to rolling and moderately hilly terrain. Natural rugged contours are suitable only if development and maintenance costs would not be excessive and burial areas would be accessible to elderly or infirm visitors. The land shall not be subject to flooding.

(5) *Water table.* The water table should be lower than the maximum proposed depth of burial.

(6) *Soil requirements.* The soil should be free from rock, muck, unstable composition, and other materials that would hamper the economical excavation of graves by normal methods. In general, the soil should meet the standards of good agricultural land that is capable of supporting turf and trees, with normal care and without the addition of topsoil.

(7) *Utilities.* Electricity and gas, if required, should be available. Offsite improvements shall not be funded by the grant.

(8) *Water supply.* An adequate supply of water should be available. Offsite improvements shall not be funded by the grant.

(9) *Sewerage.* An approved means to dispose of storm flow and sewage from the facility should be available. Offsite improvements shall not be funded by the grant.

(b) *Site development requirements*—(1) *General.* The development plan shall provide for adequate hard surfaced roads, walks, parking areas, public rest rooms, flag circle, and a main gate.

(2) *Parking.* All parking facilities shall include provisions to accommodate the physically handicapped. A minimum of one space shall be set aside and identified with signage in each parking area with additional spaces provided in the ratio of 1 handicapped space to every 20 regular spaces. Handicapped spaces shall not be placed between two conventional diagonal or head-on parking spaces. Each of the handicapped parking spaces shall not be less than 9 feet wide; in addition, a clear space 4 feet wide shall be provided between the adjacent conventional parking spaces and also on the outside of the end spaces. Parking is not provided for large numbers of people attending ceremonial events such as Memorial Day services.

(3) *Roads.* Roads should generally follow the topography of the cemetery, and allow pedestrian access to burial sections on both sides. Roads should generally not be used as ''boundaries'' outlining burial sections. Extensive bridging should be avoided. The grant program funding cannot be used to build access roads on property that is not part of the cemetery. Road widths shall be compatible with proposed traffic flows and volumes. Primary roads are generally 24 feet wide.

(4) *Pavement design.* The pavement section of all roads, service areas and parking areas shall be designed for the maximum anticipated traffic loads and existing soil conditions and in

accordance with local and State design criteria.

(5) *Curbs.* Bituminous roads may be provided with integral curbs and gutters constructed of portland cement concrete. Freestanding curbs may be substituted when the advantage of using them is clearly indicated. All curbs shall have a ''roll-type'' cross section for vehicle and equipment access to lawn areas except as may be necessary for traffic control. The radii of curbs at road intersections shall not be less than 20 feet—0 inches. Curb ramps shall be provided to accommodate the physically handicapped and maintenance equipment. Curb ramps shall be provided at all intersections of roads and walks. The curb ramps shall not be less than 4 feet wide; they shall not have a slope greater than 8 percent, and preferably not greater than 5 percent. The vertical angle between the surface of a curb ramp and the surface of a road or gutter shall not be less than 176 degrees; the transition between the two surfaces shall be smooth. Curb ramps shall have nonskid surfaces.

(6) *Walks.* Walks shall be designed with consideration for the physically handicapped and elderly. Walks and ramps designed on an incline shall have periodic level platforms. All walks, ramps and platforms shall have nonskid surfaces. Any walk shall be ramped if the slope exceeds 3 percent. Walks that have gradients from 2 to 3 percent shall be provided with level platforms at 200-foot intervals and at intersections with other walks. Ramps shall not have a slope greater than 8 percent, and preferably not greater than 5 percent. The ramps shall have handrails on both sides unless other protective devices are provided; every handrail shall have clearance of not less than 1½ inches between the back of the handrail and the wall or any other vertical surface behind it. Ramps shall not be less than 4 feet wide between curbs; curbs shall be provided on both sides. The curbs shall not be less than 4 inches high and 4 inches wide. A level platform in a ramp shall not be less than the full width of the ramp and not less than 5 feet long. Entrance platforms and ramps shall be provided with protective weather barriers to shield them against hazardous conditions resulting from inclement weather.

(7) *Steps.* Exterior steps may be included in the site development as long as provisions are also provided for use by physically handicapped persons.

(8) *Grading.* Minimum lawn slopes shall be 2 percent; critical spot grade elevations shall be shown on the contract drawings. Insofar as practicable, lawn areas shall be designed without steep slopes.

(9) *Landscaping.* The landscaping plan should provide for a park-like setting of harmonious open spaces balanced with groves of indigenous and cultivated deciduous and evergreen trees. Shrubbery should be kept to a minimum. Steep slopes that are unsuitable for interment areas should be kept in their natural state.

(10) *Surface drainage.* Surface grades shall be determined in coordination with the architectural, structural and mechanical design of buildings and facilities so as to provide proper surface drainage.

(11) *Burial areas.* A site plan of the cemetery shall include a burial layout. If appropriate, the burial layout should reflect the phases of development in the various sections. The first phase of construction should contain sufficient burial sites to meet the foreseeable demand for at least 10 years. All applicable dimensions to roadways, fences, utilities or other structures shall be indicated on the layout.

(12) *Gravesites.* Gravesites shall be laid out in uniform pattern. There shall be a minimum of 10 feet from the edge of roads and drives and a minimum of 20 feet from the boundaries or fence lines. Maximum distance from the edge of a permanent road to any gravesite shall not be over 275 feet. Temporary roads may be provided to serve areas in phase developments.

(13) *Monumentation.* Each grave shall be marked with an appropriate marker and each cemetery shall maintain a register of burials setting forth the name of each person buried and the designation of the grave in which he/she is buried. Permanent gravesite control markers shall be installed based on a grid system throughout the burial area unless otherwise specified. This will facilitate the gravesite layout, placement of utility lines, and alignment of headstones.

(14) *Entrance.* The entrance should be an architectural or landscape feature that creates a sense of arrival.

(15) *Memorial walkway.* Each cemetery should have an area for the display of memorials donated by veterans groups and others. Such areas may take the form of a path or walkway and should provide a contemplative setting for visitors.

(16) *Donation items.* Family members and others often wish to donate items such as benches and trees. Acceptable items of donation should be specified in the cemetery plan. The plan should also designate appropriate locations for such items.

(17) *Flag/assembly area.* There shall be one primary flagpole for the United States flag. This flag shall be lighted. A turf assembly area should be developed for major gatherings such as Memorial Day. The assembly area may be focused on the flag. The area may also incorporate an architectural or a landscape feature that functions as a platform or backdrop for speakers.

(18) *Site furnishings.* Site furnishings include signage, trash receptacles, benches, and flower containers. These items should be coordinated and complement each other, the architectural design and the cemetery as a whole. They should be simple, durable, standardized and properly scaled.

(19) *Carillons.* The cemetery development plan should include a location for a carillon tower. Carillons are normally donated. They are not provided for in the grant.

(Authority: 38 U.S.C. 501, 2408.)

§ 39.21 Space criteria for support facilities.

These criteria are based on a projected average burial rate of one to six per day, staffing by position, and a defined complement of maintenance and service equipment. For cemeteries with less than one or more than six burials per day, support facilities are considered on an individual basis in accordance with § 39.20(d). In converting Net Square Feet (NSF) to Gross Square Feet (GSF), a conversion factor of 1.5 is the maximum allowed. The applicant shall, in support of the design, include the following as an attachment to the application: A list of all grounds maintenance supplies and equipment and the number of Full Time Employees (FTE) by job assignment for the next 10 years.

(a) *Administrative building.* The administrative building should be approximately 1,600 NSF in total, providing space, as needed, for the following functions:

(1) Cemetery Director's Office;
(2) Other offices (as needed);
(3) Administrative Staff (Lobby/Office area);
(4) Operations (File/Office/Equipment/Work area);
(5) Family/Conference Room;
(6) Military Honors Team;
(7) Refreshment unit;
(8) Housekeeping aide's closet; and
(9) Restroom facilities.

(b) *Maintenance/service building.* The maintenance/service building may be combined with the administrative building. The maintenance/service building should be approximately 2,200 NSF in total, providing heated space, as needed, for the following functions:

(1) Foreman's Office;
(2) Lunch room;
(3) Kitchen unit;
(4) Toilet and locker room facilities;
(5) Housekeeping aide's closet; and
(6) Vehicle and equipment maintenance and storage.

(c) *Vehicle and equipment storage.* Approximately 275 NSF/Bay as needed. Not all types of vehicles and equipment require storage in heated space. Based on climatic conditions, it may be justified to rely completely on open structures rather than heated structures to protect the following types of vehicles and equipment: Dump Trucks, Pickup Trucks, Cemetery Automobiles, Gang and Circular Mowers.

(d) *Interment/committal service shelter.* One permanent shelter is authorized for every five interments per day. The shelter may include a covered area to provide seating for approximately 20 people and an uncovered paved area to provide space for approximately 50 additional people. The shelter may also include a small, enclosed equipment/storage area. Provisions must be made for the playing of Taps by recorded means.

(e) *Public Information Center.* One permanent Public Information Center is authorized per facility. A Public Information Center is used to provide orientation to visitors and funeral corteges. It should include the gravesite locator. The public restrooms may also be combined with this structure. Space determinations for separate structures for public restrooms shall be considered on an individual basis. The Public Information Center, including public restrooms, may be combined with the administrative building.

(f) *Other interment structures.* Space determinations for other support facilities such as columbaria, preplaced graveliners (or crypts), garden niches, etc., will be considered on an individual basis in accordance with § 39.20(d).

(Authority: 38 U.S.C. 501, 2408.)

§ 39.22 Architectural design standards.

(a) *Architectural and structural requirements*—(1) *Life Safety Code.* Standards must be in accordance with Code for Safety to Life from Fire in Buildings and Structures (NFPA 101), 2000 Edition, published on February 11, 2000, by the National Fire Protection Association, Inc., (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy may be inspected at the office of the State Cemetery Grants Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Fire safety construction features not included in NFPA 101 shall be designed in accordance with the standards of the 1997 Uniform Building Code, Volume 1, Administrative, Fire, and Life-Safety, and Field Inspection Provisions, published by the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, CA 90601–2298. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy may be inspected at the office of the State Cemetery Grants Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Where the adopted codes state conflicting requirements, the National Fire Codes shall govern.

(2) *State and local codes.* In addition to compliance with the standards set forth in this section, all applicable local and State building codes and regulations must be observed. In areas not subject to local or State building codes, the recommendations contained in the 1997 Uniform Building Code, Volume 1, Administrative, Fire, and Life-Safety, and Field Inspection Provisions, (*see* § 39.23(a)(1)) shall apply.

(3) *Occupational safety and health standards.* Applicable standards as contained in the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) must be observed.

(b) *Mechanical requirements.* The heating system, boilers, steam system, ventilation system and air-conditioning system shall be furnished and installed to meet all requirements of the local and State codes and regulations.

(c) *Plumbing requirements.* Plumbing systems shall comply with all applicable local and State codes, the requirements of the State Department of Health, and the minimum general standards as set forth in this part. Where no local or State codes are in force, the 2000 Uniform Plumbing Code, published by the International Association of Plumbing and Mechanical Officials, 20001 E Walnut Drive South, Walnut, CA 91789–2825, shall apply. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy may be inspected at the office of the State Cemetery Grants Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(d) *Electrical requirements.* The installation of electrical work and equipment shall comply with all local and State codes and laws applicable to electrical installations and the minimum general standards, as set forth in NFPA 70, National Electrical Code, published on August 5, 1998, by the National Fire Protection Association, Inc., 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy may be inspected at the office of the State Cemetery Grants Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The regulations of the local utility company shall govern service connections. Aluminum bus ways shall not be used as a conducting medium in the electrical distribution system.

(Authority: 38 U.S.C. 501, 2408.)

Subpart E—Responsibilities, Inspections, and Reports Following Project Completion

§ 39.23 Responsibilities following project completion.

(a) States shall monitor use of the cemetery by various subgroups and minority groups, including women veterans. To the extent that under-utilization by any of these groups is determined to exist, a program shall be established to inform members of these groups about benefits available to them. The information regarding the benefits shall be available in a language other than English where a significant number or portion of the population eligible to be served or likely to be directly affected by the grant program needs such service or information.

(b) State veterans' cemeteries established, expanded, or improved with assistance under the grant program shall be operated and maintained as follows:

(1) Buildings, grounds, roads, walks, and other structures shall be kept in reasonable repair to prevent undue deterioration and hazards to users.

(2) The cemetery shall be kept open for public use at reasonable hours based on the time of the year.

(c) VA, in coordination with the State, shall inspect the project at completion for compliance with the standards set forth in §§ 39.19 through 39.22 and at least once in every 3-year period following completion of the project throughout the period the facility is operated as a State veterans' cemetery. A copy of the inspection report shall be forwarded to the Director, State Cemetery Grants Service, giving the date and location the inspection was made and citing any deficiencies and corrective action taken or proposed.

(d) Failure of a State to comply with any of paragraphs (a) through (c) of this section shall be considered cause for the Department of Veterans Affairs to suspend any payments due the State on any or all projects until the situation involved is corrected.

(Authority: 38 U.S.C. 501, 2408; and issued under authority of the President by E.O. 13166, 65 FR 50121.)

§ 39.24 State to retain control of operations.

Neither the Secretary nor any employee of the Department of Veterans Affairs shall exercise any supervision or control over the administration, personnel, maintenance, or operation of any State veterans' cemetery established, expanded, or improved with assistance received under this program except as prescribed in this part.

(Authority: 38 U.S.C. 501, 2408.)

§ 39.25 Inspections, audits, and reports.

(a) A State will allow VA inspectors and auditors to conduct inspections as necessary to ensure compliance with the provisions of this part. The State will provide to VA evidence that it has met its responsibility under the Single Audit Act of 1984 (*see* part 41 of this chapter).

(b) A State will make an annual report on VA Form 40–0241 (''State Cemetery Data'') signed by the authorized representative of the State. These forms document current burial activity at the cemetery, use of gravesites, remaining gravesites, and additional operational information intended to answer questions about the status of the grant program.

(Authority: 38 U.S.C. 501, 2408.)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0559.)

Subpart F—Forms

§ 39.26 Forms. All forms set forth in this part are available on the Internet at *http://www.va.gov/forms.*

(a) Standard Form 271—OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS

OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS (See instructions on back)	OMB APPROVAL NO. 0348-0002	PAGE OF PAGES
	1. TYPE OF REQUEST ☐ FINAL ☐ PARTIAL	2. BASIS OF REQUEST ☐ CASH ☐ ACCRUAL
3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED	4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY	5. PARTIAL PAYMENT REQUEST NO.
6. EMPLOYER IDENTIFICATION NUMBER / 7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER	PERIOD COVERED BY THIS REQUEST FROM *(Month, day, year)*	TO *(Month, day, year)*
9. RECIPIENT ORGANIZATION *Name:* *No. and Street:* *City, State and ZIP Code:*	10. PAYEE *(Where check is to be sent if different than item 9)* *Name:* *No. and Street:* *City, State and ZIP Code:*	

11. STATUS OF FUNDS

CLASSIFICATION	PROGRAMS -- FUNCTIONS -- ACTIVITIES (a)	(b)	(c)	TOTAL
a. Administrative expense	$	$	$	$
b. Preliminary expense				
c. Land, structures, right-of-way				
d. Architectural engineering basic fees				
e. Other architectural engineering fee				
f. Project inspection fees				
g. Land development				
h. Relocation expense				
i. Relocation payments to individuals and businesses				
j. Demolition and removal				
k. Construction and project improvement cost				
l. Equipment				
m. Miscellaneous cost				
n. Total cumulative to date *(sum of lines a thru m)*				
o. Deductions for program income				
p. Net cumulative to date *(line n minus line o)*				
q. Federal share to date				
r. Rehabilitation grants (100% reimbursement)				
s. Total Federal share *(sum of lines q and r)*				
t. Federal payments previously requested				
u. Amount requested for reimbursement	$	$	$	$
v. Percentage of physical completion of project	%	%	%	%

12. CERTIFICATION			
I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with the terms of the project and that the reimbursement represents the Federal share due which has not been previously requested and that an inspection has been performed and all work is in accordance with the terms of the award.	a. RECIPIENT	SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	DATE REPORT SUBMITTED
		TYPED OR PRINTED NAME AND TITLE	TELEPHONE *(Area code, number, and extension)*
	b. REPRESENTATIVE CERTIFYING TO LINE 11V	SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	DATE SIGNED
		TYPED OR PRINTED NAME AND TITLE	TELEPHONE *(Area code, number, and extension)*

AUTHORIZED FOR LOCAL REPRODUCTION
PREVIOUS EDITION USABLE
271-103

STANDARD FORM 271 (Rev. 7-97)
Prescribed by OMB Circular A-102 and A-110

INSTRUCTIONS

Public reporting burden for this collection of information is estimated to average 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0004), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Please type or print legibly. Items 3, 4, 5, 8, 9, 10, 11s and 11v are self explanatory; specific instructions for other items are as follows:

Item	*Entry*
1	Mark the appropriate box. If the request is final, the amounts billed should represent the final cost of the project.
2	Show whether amounts are computed on an accrued expenditure or cash disbursement basis.
6	Enter the Employer Identification Number (EIN) assigned by the U.S. Internal Revenue Service or FICE (institution) code if requested by the Federal agency.
7	This space is reserved for an account number or other identifying number that may be assigned by the recipient.
11	The purpose of vertical columns (a) through (c) is to provide space for separate cost breakdowns when a large project has been planned and budgeted by program, function or activity. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page. All amounts are reported on a cumulative basis.
11a	Enter amounts expended for such items as travel, legal fees, rental of vehicles and any other administrative expenses. Include the amount of interest expense when authorized by program legislation. Also show the amount of interest expense on a separate sheet.
11b	Enter amounts pertaining to the work of locating and designing, making surveys and maps, sinking test holes, and all other work required prior to actual construction.
11c	Enter all amounts directly associated with the acquisition of land, existing structures and related right-of-way.
11d	Enter basic fees for services of architectural engineers.
11e	Enter other architectural engineering services. Do not include any amounts shown on line d.
11f	Enter inspection and audit fees of construction and related programs.
11g	Enter all amounts associated with the development of land where the primary purpose of the grant is land improvement. The amount pertaining to land development normally associated with major construction should be excluded from this category and entered on line k.
11h	Enter the dollar amounts used to provide relocation advisory assistance and net costs of replacement housing (last resort). Do not include amounts needed for relocation administrative expenses; these amounts should be included in amounts shown on line a.
11i	Enter the amount of relocation payments made by the recipient to displaced persons, farms, business concerns, and nonprofit organizations.
11j	Enter gross salaries and wages of employees of the recipient and payments to third party contractors directly engaged in performing demolition or removal of structures from developed land. All proceeds from the sale of salvage or the removal of structures should be credited to this account; thereby reflecting net amounts if required by the Federal agency.
11k	Enter those amounts associated with the actual construction of, addition to, or restoration of a facility. Also, include in this category, the amounts for project improvements such as sewers, streets, landscaping, and lighting.
11l	Enter amounts for all equipment, both fixed and movable, exclusive of equipment used for construction. For example, permanently attached laboratory tables, built-in audio visual systems, movable desks, chairs, and laboratory equipment.
11m	Enter the amounts of all items not specifically mentioned above.
11n	Enter the total cumulative amount to date which should be the sum of lines a through m.
11o	Enter the total amount of program income applied to the grant or contract agreement except income included on line j. Identify on a separate sheet of paper the sources and types of the income.
11p	Enter the net cumulative amount to date which should be the amount shown on line n minus the amount on line o.
11q	Enter the Federal share of the amount shown on line p.
11r	Enter the amount of rehabilitation grant payments made to individuals when program legislation provides 100 percent payment by the Federal agency.
11t	Enter the total amount of Federal payments previously requested, if this form is used for requesting reimbursement.
11u	Enter the amount now being requested for reimbursement. This amount should be the difference between the amounts shown on lines s and t. If different, explain on a separate sheet.
12a	To be completed by the official recipient official who is responsible for the operation of the program. The date should be the actual date the form is submitted to the Federal agency.
12b	To be completed by the official representative who is certifying to the percent of project completion as provided for in the terms of the grant or agreement.

STANDARD FORM 271 (Rev. 7-97) Back

(Authority: 38 U.S.C. 501, 2408.)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 0348–0002.)

(b) Standard Form 424—APPLICATION FOR FEDERAL ASSISTANCE

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	**2. DATE SUBMITTED**	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ — ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF-424 (Rev. 7-97) Back

(Authority: 38 U.S.C. 501, 2408.)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 0348–0043.)

(c) Standard Form 424C—
INSTRUCTIONS FOR THE SF–424C.

OMB Approval No. 0348-0041

BUDGET INFORMATION - Construction Programs

NOTE: Certain Federal assistance programs require additional computations to arrive at the Federal share of project costs eligible for participation. If such is the case, you will be notified.

COST CLASSIFICATION	a. Total Cost	b. Costs Not Allowable for Participation	c. Total Allowable Costs (Columns a-b)
1. Administrative and legal expenses	$ .00	$ .00	$ .00
2. Land, structures, rights-of-way, appraisals, etc.	$ .00	$ .00	$ .00
3. Relocation expenses and payments	$ .00	$ .00	$ .00
4. Architectural and engineering fees	$ .00	$ .00	$ .00
5. Other architectural and engineering fees	$ .00	$ .00	$ .00
6. Project inspection fees	$ .00	$ .00	$ .00
7. Site work	$ .00	$ .00	$ .00
8. Demolition and removal	$ .00	$ .00	$ .00
9. Construction	$ .00	$ .00	$ .00
10. Equipment	$ .00	$ .00	$ .00
11. Miscellaneous	$ .00	$ .00	$ .00
12. SUBTOTAL *(sum of lines 1-11)*	$ .00	$ .00	$ .00
13. Contingencies	$ .00	$ .00	$ .00
14. SUBTOTAL	$ .00	$ .00	$ .00
15. Project (program) income	$ .00	$ .00	$ .00
16. TOTAL PROJECT COSTS *(subtract #15 from #14)*	$ .00	$ .00	$ .00
FEDERAL FUNDING			
17. Federal assistance requested, calculate as follows: (Consult Federal agency for Federal percentage share.) Enter the resulting Federal share.	Enter eligible costs from line 16c Multiply X _____%		$ .00

Previous Edition Usable **Authorized for Local Reproduction** **Standard Form 424C (Rev. 7-97)**
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424C

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0041), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This sheet is to be used for the following types of applications: (1) "New" (means a new [previously unfunded] assistance award); (2) "Continuation" (means funding in a succeeding budget period which stemmed from a prior agreement to fund); and (3) "Revised" (means any changes in the Federal Government's financial obligations or contingent liability from an existing obligation). If there is no change in the award amount, there is no need to complete this form. Certain Federal agencies may require only an explanatory letter to effect minor (no cost) changes. If you have questions, please contact the Federal agency.

Column a. - If this is an application for a "New" project, enter the total estimated cost of each of the items listed on lines 1 through 16 (as applicable) under "COST CLASSIFICATION."

If this application entails a change to an existing award, enter the eligible amounts *approved under the previous award* for the items under "COST CLASSIFICATION."

Column b. - If this is an application for a "New" project, enter that portion of the cost of each item in Column a. which is *not* allowable for Federal assistance. Contact the Federal agency for assistance in determining the allowability of specific costs.

If this application entails a change to an existing award, enter the adjustment [+ or (-)] to the previously approved costs (from column a.) reflected in this application.

Column. - This is the net of lines 1 through 16 in columns "a." and "b."

Line 1 - Enter estimated amounts needed to cover administrative expenses. Do not include costs which are related to the normal functions of government. Allowable legal costs are generally only those associated with the purchases of land which is allowable for Federal participation and certain services in support of construction of the project.

Line 2 - Enter estimated site and right(s)-of-way acquisition costs (this includes purchase, lease, and/or easements).

Line 3 - Enter estimated costs related to relocation advisory assistance, replacement housing, relocation payments to displaced persons and businesses, etc.

Line 4 - Enter estimated basic engineering fees related to construction (this includes start-up services and preparation of project performance work plan).

Line 5 - Enter estimated engineering costs, such as surveys, tests, soil borings, etc.

Line 6 - Enter estimated engineering inspection costs.

Line 7 - Enter estimated costs of site preparation and restoration which are not included in the basic construction contract.

Line 9 - Enter estimated cost of the construction contract.

Line 10 - Enter estimated cost of office, shop, laboratory, safety equipment, etc. to be used at the facility, if such costs are not included in the construction contract.

Line 11 - Enter estimated miscellaneous costs.

Line 12 - Total of items 1 through 11.

Line 13 - Enter estimated contingency costs. (Consult the Federal agency for the percentage of the estimated construction cost to use.)

Line 14 - Enter the total of lines 12 and 13.

Line 15 - Enter estimated program income to be earned during the grant period, e.g., salvaged materials, etc.

Line 16 - Subtract line 15 from line 14.

Line 17 - This block is for the computation of the Federal share. Multiply the total allowable project costs from line 16, column "c." by the Federal percentage share (this may be up to 100 percent; consult Federal agency for Federal percentage share) and enter the product on line 17.

SF-424C (Rev. 7-97) Back

(Authority: 38 U.S.C. 501, 2408.)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 0348–0041.)

(d) Standard Form 424D—ASSURANCES—CONSTRUCTION PROGRAMS.

OMB Approval No. 0348-0042

ASSURANCES - CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property aquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.

4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.

5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.

6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.

14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

.5. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF-424D (Rev. 7-97) Back

(Authority: 38 U.S.C. 501, 2408.)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 0348–0042.)

(e) VA Form 10–0148c—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS PRIMARY COVERED TRANSACTIONS.

Department of Veterans Affairs

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 38 CFR Part 44, Section 44.510, Participants' responsibilities

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statues or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name | PR/Award Number of Project Name

Name and Title of Authorized Representative

Signature | Date

VA FROM MAR 2001 **10-0148c**

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered tranaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted it at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal" "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtain a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lwer tier covered transactions and in all solications for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

(Authority: 38 U.S.C. 501, 2408.)

(f) VA Form 40–0241—STATE CEMETERY DATA.

FORM APPROVED OMB NO. 2900-0559
RESPONDENT BURDEN: ONE HOUR

Department of Veterans Affairs

STATE CEMETERY DATA

FISCAL YEAR ENDING *(State)*

RESPONDENT BURDEN: Public reporting burden for this collection of information is estimated to average 60 minutes per response. Statutory authority for the State Cemetery Grants Program is 38 U.S.C., subchapter 2408. This form is approved under OMB No. 2900-0559, and when form is completed it provides VA with data regarding the number of interments conducted at states veterans cemeteries each year.

VA may not conduct or sponsor, and you are not required to respond to, this collection of information unless it displays a valid OMB Control Number. Responding to this information collection is voluntary. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to VA Clearance Officer (045A4), 810 Vermont Avenue, NW, Washington, DC 20420. *Please do not send applications for benefits to this address.*

NAME OF CEMETERY	STATUS OF CEMETERY	NAME OF DIRECTOR	AREA CODE AND PHONE NO.
	☐ OPEN ☐ CLOSED		FAX NO.

MAILING ADDRESS	DATE ESTABLISHED	DATE OPENED	DATE OF FIRST BURIAL	DATE OF ESTIMATED CLOSURE
	AUTHORITY			

NAME OF STATE AGENCY RESPONSIBLE *(Organizationally)* FOR CEMETERY *(For example: Department of Veterans Affairs. Please include Director's name, telephone no., and fax no.)*

TOTAL ACREAGE *(Usable/unusable)*	TOTAL BURIAL ACREAGE	BURIAL ACREAGE DEVELOPED	COLUMBARIA NICHES	TOTAL COLUMBARIA NICHES AVAIL.
SIZE OF GRAVESITE *(e.g. 5' x 10')*	GRAVESITES PER ACRE	GRAVESITES AVAILABLE	TOTAL IN-GROUND NICHES	TOTAL IN-GROUND NICHES AVAIL.

COMMENTS *(i.e., The acreage developed is almost full and additional funds (estimated amount) for expansion in a particular year/month to develop the remaining acreage is requested. If additional space is needed please provide your comments on plain paper and attach to form.)*

NUMBER OF CUMULATIVE INTERMENTS				NUMBER OF INTERMENTS			TYPE OF HEADSTONE/MARKER *(Check applicable box(es))*
	FULL CASKET	CREMATIONS			VETERAN	DEPENDENT	
		IN-GROUND	COLUMBARIA				
VETERAN				FY PRIOR			☐ FLAT BRONZE ☐ BRONZE NICHE
NON-VETERAN				FY CURRENT			☐ FLAT GRANITE ☐ UPRIGHT GRANITE
GRAVESITES MAINTAINED				FY FUTURE *(Estimated)*			☐ FLAT MARBLE ☐ UPRIGHT MARBLE

PERSONNEL		OPERATING COSTS		
NO. OF ADMINISTRATIVE	NO. OF GROUNDS MAINTENANCE	PRIOR YEAR $	CURRENT YEAR $	FUTURE YEAR $

NO. OF OTHER *(Specify)*	AMOUNT CHARGED TO VETERAN FOR INTERMENT *(Do not include burial plot allowance)*	AMOUNT CHARGED TO DEPENDENT FOR INTERMENT
	$	$

COST COMMENTS *(Use this area to list total costs associated with operating your cemetery. For example if the Superintendent of the cemetery is also in charge of the adjacent Vets Home and their salary is paid by them, then please reflect their salary in this space with a brief explanation. If convicts are used for labor then please note in above block and explain here. If additional space is required, please provide your comments on plain paper and attach to form.)*

LOCATION AND GENERAL DESCRIPTION OF CEMETERY *(Please include precise directions from the nearest large airport to cemetery. Please provide comments on historical matters relating to the cemetery. For example, cemetery is located near an old civil war battlefield or is part of the state veterans home. Also, describe your facilities. e.g., the cemetery has a separate maintenance facility with three, heated maintenance bays, a separate administrative building and a chapel. In sum, tell us what you want a visitor to know about your cemetery. What makes your cemetery unique. If additional space is require please provide your comments on plain paper and attach to form.)*

DESCRIBE ELIGIBILITY REQUIREMENTS AND FACTS OF SPECIAL INTEREST OR HISTORICAL SIGNIFICANCE *(Are there state residency requirements, if so, how many years? Who is your first interment? Are there any Medal of Honor veterans buried in your cemetery, or other highly decorated or well-known soldiers? If additional space is required please provide your comments on plain paper and attach to form.)*

VA FORM MAY 1997(RS) **40-0241**

NATIONAL CEMETERY SYSTEM (VACO) COPY - 1

(Authority: 38 U.S.C. 501, 2408.)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0559.)

[FR Doc. 03–10688 Filed 4–30–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD139–3098b; FRL–7477–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revisions to Regulation for Control of Fuel Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland. The revision amends the regulation pertaining to Control of Fuel Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by June 2, 2003.

ADDRESSES: Written comments should be addressed to Makeba Morris, Acting Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: March 31, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–10656 Filed 4–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–93–200318 (b); FRL–7491–6]

Approval and Promulgation of Implementation Plans, Florida: Martin Gas Sales, Inc., Variance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the State Implementation Plan (SIP) submitted by the Florida Department of Environmental Protection on January 17, 2003. The proposed revision consists of a department order granting a variance from rule 62–212.600(2)(c), F.A.C., to Martin Gas Sales, Inc., in Hillsborough County, Florida.

In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before June 2, 2003.

ADDRESSES: All comments should be addressed to: Heidi LeSane at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

FOR FURTHER INFORMATION CONTACT: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Heidi LeSane, 404/562–9035 *lesane.heidi@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: April 18, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–10756 Filed 4–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–142, 144–200321, FRL–7491–3]

Approval and Promulgation of Implementation Plans: Revisions to the Kentucky Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan revision that was submitted by the Commonwealth of Kentucky on February 28, 2003. This submittal revises the new source set-aside program by altering the methodology for distributing nitrogen oxides allowances. Rather than grant allowances, the Commonwealth of Kentucky will sell them. This revision also includes clarification language and changes to definitions.

DATES: Written comments must be received on or before June 2, 2003.

ADDRESSES: All comments should be addressed to: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency

Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Copies of Kentucky's submittals and other information relevant to this action are available for inspection during normal business hours at the following addresses: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601–1403.

Persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day and reference files KY–142.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Lakeman can also be reached by phone at (404) 562–9043 or by electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 28, 2003, the Commonwealth of Kentucky's Natural Resources and Environmental Protection Cabinet submitted revisions to EPA that revises the new source set-aside program by altering the methodology for distributing nitrogen oxides (NO_X) allowances. Rather than grant allowances, the Commonwealth of Kentucky will sell them.

II. Analysis of Kentucky's Submittal

Regulation 401 KAR 51:001 Definitions for 401 KAR Chapter 51

This regulation was revised to allow for the addition of the definitions ''General fund'', ''NO_X Allowance Tracking System (NATS)'' and the removal of ''Low NO_X burners'' that is not used in any of the administrative regulations in 401 KAR Chapter 51.

Regulation 401 KAR 51:160 NO_X Requirements for Large Utility and Industrial Boilers

This revision added language to clarify how to establish a general account, which forms to utilize, and the procedures for moving NO_X allowances between accounts in the NO_X allowance tracking system (NATS). This revision also revises the new source set-aside program to allow Kentucky to sell all allowances which were previously reserved to allocate to new sources. The new source set aside comprises an established percentage of the electric generating unit (EGU) and non-EGU budgets taken off the top and reserved for new units. The allocation period that begins in 2004 for EGUs that commence commercial operation after May 1, 2001, and before May 1, 2006, is five percent of the tons of NO_X emissions in the Commonwealth trading program budget apportioned to EGUs. For allocation periods beginning in 2007 or later, the allocation for new EGU units is two percent of the tons of NO_X emissions in the Commonwealth trading program budget apportioned to EGUs for the given allocation period. For non-EGUs, for all allocation periods, the allocation for new units is two percent of the NO_X allowances in the Commonwealth trading budget apportioned to non-EGUs for the given allocation period.

In a letter from Kentucky to EPA Region 4, dated February 28, 2003, Kentucky stated that their general account is being established and Kentucky has a contract with a brokerage firm to sell the NO_X allowances. Once a satisfactory sale has been negotiated, Kentucky will transfer the shares from the general account to that of the broker, who will then transfer the allowances from that account to the buyer. An accounting of transfer of the NO_X allowances will be done electronically through NATS. The Kentucky Model Procurement Code provides the Commonwealth the authority to contract with vendors for various services, including advisory and sales services for revenue-generation. The Kentucky Model Procurement Code is set forth at Chapter 45A, Title VI of the Kentucky Revised Statutes and may be viewed at *http://www.lrc.state.ky.us/krs/titles.htm.*

III. Proposed Action

EPA is proposing to approve the aforementioned changes to the SIP because the revisions are consistent with Clean Air Act and EPA regulatory requirements.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed 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 proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone and Reporting and recordkeeping requirements.

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

Dated: April 23, 2003.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 03–10760 Filed 4–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[ME–062–7011b; A–1–FRL–7491–8]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Total Reduced Sulfur From Kraft Paper Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to Maine's plan for controlling air pollution according to section 111(d) of the Clean Air Act (*i.e.* a ''111(d) plan''). This revision changes state regulations controlling the emission of total reduced sulfur (TRS) from existing kraft paper mills. In the Final Rules section of this **Federal Register**, EPA is approving the State's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Written comments must be received on or before June 2, 2003.

ADDRESSES: Comments may be mailed to Steve Rapp, Unit Manager, Air Permits, Toxics, and Indoor Programs Unit, Office of Ecosystem Protection (mail code CAP), U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017.

FOR FURTHER INFORMATION CONTACT: Ian D. Cohen, (617) 918—1655.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: April 21, 2003.

Robert W. Varney,

Regional Administrator, EPA-New England.

[FR Doc. 03–10758 Filed 4–30–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 193

[Docket No. RSPA–03–14456; Notice 1]

RIN 2137–AD80

Pipeline Safety: Liquefied Natural Gas Facilities: Clarifying and Updating Safety Standards

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to clarify application of RSPA's safety standards for operation, maintenance, and fire protection of liquefied natural gas (LNG) facilities to certain existing facilties. In addition, this notice proposes to revise standards that contain incorrect cross-references, clarify training standards, and require annual reviews of plans and procedures. This notice also proposes to update present references to the National Fire Protection Association (NFPA) 59A standard to the 2001 edition of that standard. These actions are needed to remove ambiguities, assure that plans and procedures are up-to-date, and modernize present references to NFPA 59A. The changes would improve the clarity and effectiveness of RSPA's LNG facility safety standards.

DATES: Persons interested in submitting written comments on the rules proposed in this notice must do so by June 30, 2003. Late filed comments will be considered so far as practicable.

ADDRESSES: You may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Alternatively, you may submit written comments to the docket electronically at the following Web address: *http://dms.dot.gov.* All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. To file written comments electronically, after logging on to *http://dms.dot.gov,* click on ''Comment/Submissions.'' You can also read comments and other material in the docket at *http://dms.dot.gov.* General information about our pipeline safety program is available at *http://ops.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477–78), or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: L. M. Furrow by phone at 202–366–4559, by fax at 202–366–4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590, or by e-mail at *buck.furrow@rspa.dot.gov*.

SUPPLEMENTARY INFORMATION:

Applicability

In the **Federal Register** of March 1, 2000 (65 FR 10950), RSPA published a final rule amending the safety standards in 49 CFR part 193 that govern liquefied natural gas facilities used in gas pipeline transportation. The final rule, which took effect March 31, 2000, replaced many existing standards on siting, design, construction, equipment,

and fire protection with references to a consensus standard, NFPA 59A, ''Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)'' (1996 edition). However, as explained below, an amendment to § 193.2005, Applicability, inadvertently made the application of part 193 to existing LNG facilities unclear.

Before the final rule took effect, former § 193.2005(a)(1) [1] exempted LNG facilities existing or under construction from any new or amended standards on siting, design, installation, or construction of LNG facilities. This exemption included standards in subpart B—Siting, subpart C—Design, subpart D—Construction, and subpart E—Equipment. In contrast, part 193 did not exempt LNG facilities existing or under construction from new or amended standards on operation or maintenance, including standards in subpart F—Operations, subpart G—Maintenance, subpart H—Personnel Qualifications and Training, subpart I—Fire Protection, and subpart J—Security. Applying these standards retroactively to existing facilities is consistent with the Congressional authorization to regulate the safe operation and maintenance of LNG facilities (49 U.S.C. 60103(d)).

However, as revised by the final rule, present § 193.2005(a) [2] can be interpreted to exclude LNG facilities existing on March 31, 2000, from changes the final rule made to standards on operations, maintenance, and fire protection of LNG facilities. These changes affected §§ 193.2521, 193.2619(c), 193.2639(a) and subpart I—Fire Protection. Yet no such exclusion was intended. Although the preamble discussion of § 193.2005 indicated that ''new requirements'' would not apply to existing LNG facilities,[3] the new requirements we intended were requirements on siting, design, installation, and construction of LNG facilities. Given our long-standing regulatory policy that part 193 operation, maintenance, and fire protection standards apply to all regulated LNG facilities, if we had intended to exclude certain facilities from these standards, we would have explained this change in policy. Neither the final rule nor the underlying notice of proposed rulemaking (63 FR 70735; Dec. 22, 1998) contains such an explanation.

Therefore, we are proposing to revise present § 193.2005(a) as set forth below. The revision would clarify that LNG facilities existing or under construction are exempt only from new or amended standards on siting, design, installation, and construction of LNG facilities. We also intend this revision to clarify that §§ 193.2521, 193.2619(c), 193.2639(a) and subpart I—Fire Protection apply to LNG facilities existing or under construction on March 31, 2000.

Cross-references

Part 193 contains several sections with cross-references to sections in subpart I that were removed by the final rule published March 1, 2000. To correct this problem, we are proposing the following amendments:

Section 193.2503(h) requires that operating procedures provide for compliance with § 193.2805(b). However, § 193.2805(b) no longer exists. It concerned fire prevention procedures that are no longer required by part 193. So § 193.2503(h) would be removed.

Section 193.2507 requires that operators monitor buildings determined under § 193.2805(a)(2) in which a hazard to persons or property could exist to detect fire or any malfunction or flammable fluid that could cause a hazardous condition. Section 193.2805(a)(2), which was removed by the final rule, required operators to determine areas, as described in section 500–5 of NFPA 70 (1996 edition), where the potential exists for presence of flammable fluids. Although the cross-reference to § 193.2805(a)(2) would be removed from § 193.2507, operators would still have to monitor buildings in which a hazard to persons or property could exist. Operators could use the previously referenced NFPA 70 as a compliance guide.

Section 193.2509(b) requires operators to follow procedures in handling fire emergencies identified under § 193.2817(a). Section 193.2817(a), which no longer exists, required that operators determine the types and sizes of fires that could occur in or near an LNG plant and affect the safety of plant components. Although the reference to § 193.2817(a) would be removed, operators would still have to follow procedures in handling fire emergencies.

Section 193.2605(b)(2) requires that maintenance procedures describe actions needed to comply with § 193.2805. Section 193.2805 no longer exists. It concerned fire prevention plans that are not now required by part 193. So the cross-reference to § 193.2805 would be removed.

Section 193.2705(b) requires operators to determine periodically if inspectors are satisfactorily performing their duties assigned under § 193.2307. This section, which required certain inspections of construction, installation, and testing activities, was removed by the final rule as no longer necessary in view of inspection duties under NFPA 59A. Although the cross-reference to § 193.2307 would be removed, operators would still have to determine if construction, installation, and testing activities are being satisfactorily inspected.

Section 193.2717(a) requires operators to train their operating and maintenance personnel in various fire protection standards in subpart I that no longer exist:

- Paragraph (a)(1) requires training in fire prevention procedures under § 193.2805(b). Since part 193 no longer requires these procedures, paragraph (a)(1) would be removed.
- In paragraph (a)(2), the cross-reference to § 193.2805(a) would be removed, but operators would still have to train personnel to know the potential causes and areas of fire.
- In paragraph (a)(3), the cross-reference to § 193.2817(a) would be removed, but operators would still have to train personnel to know the types, sizes, and predictable consequences of fire.
- In paragraph (a)(4), the cross-reference to ''equipment provided under § 193.2817'' would be replaced by ''equipment provided under § 193.2801.''

Plans and Procedures

Part 193 requires operators to prepare and follow written plans and procedures for various LNG plant activities. For example, plans are required for personnel health (§ 193.2711) and training (§§ 193.2713–193.2719), and procedures are required for operations (§ 193.2503), emergencies (§ 193.2509(b)), fluid transfers (§ 193.2513(a)), maintenance (§ 193.2605(b)), and security (§ 193.2903).

Under § 193.2017 operators must make their plans and procedures available for review by federal and state inspectors. Reviews by RSPA personnel

[1] *§ 193.2005 Applicability.* (a) New or amended standards in this part governing the siting, design, installation, or construction of an LNG facility and related personnel qualifications and training do not apply to: (1) LNG facilities under construction before the date such standards are published; or * * * (49 CFR 193.2005 (1999)).

[2] *§ 193.2005 Applicability.* (a) Safety requirements mandating compliance with standard ANSI/NFPA 59A and other changes in this part governing siting, design, construction, equipment, fire protection, operation and maintenance apply to LNG facilities placed in service after March 31, 2000, unless otherwise noted. (49 CFR 2005 (2001)).

[3] The final rule states: ''This section 193.2005 has been restructured to clarify that new requirements apply to new and significantly altered LNG facilities after the effective date of this rule unless otherwise noted.'' (65 FR 109502).

have disclosed that while operators generally keep their plans and procedures up-to-date, not all plans and procedures are kept up-to-date. And outmoded plans and procedures can be a source of safety problems.

Our standards in 49 CFR part 192, which apply to gas pipelines serving LNG plants, address this potential safety problem by requiring operators to review and update their pipeline operating and maintenance procedures at intervals not exceeding 15 months, but at least once each calendar year (§ 192.605(a)). We think a similar requirement should apply to plans and procedures for LNG plants. Therefore, we are proposing to establish a new § 193.2017(c) to require annual reviews and updates of plans and procedures required by part 193.

Fire Drills

Section 193.2717 requires operators of LNG plants to train their operations and maintenance personnel in fire protection. The training must include ''plant fire drills.'' To meet this fire drill requirement, some operators use only tabletop exercises. We believe the exclusive use of such exercises is inconsistent with the ordinary meaning of ''fire drill,'' because tabletop exercises do not involve actual evacuation of buildings and performance of fire control duties. Therefore, to insure that proper fire drills are conducted, we are proposing to amend § 193.2717 to require that fire drills include evacuation of buildings and personnel performing fire control duties. See proposed § 193.2717(c) below.

NFPA 59A

At present, many sections in part 193 concerning siting, design, construction, equipment, fire protection, and operating and maintenance records incorporate by reference the 1996 edition of NFPA 59A, ''Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG).'' However, the 1996 edition of the standard is now out-of-date and is no longer available in book form from NFPA. The latest edition, the 2001 edition, is available from NFPA either in book or electronic form by entering ''59A'' in the search block at *http://www.nfpa.org/catalog.*

There are several significant differences between the 1996 and 2001 editions. The 2001 edition:

1. Bases design on the concept of a maximum credible earthquake, in line with building codes used throughout country.

2. Allows use of the FEM3A model to calculate vapor dispersion distances. (Part 193 already allows use of this model).

3. Increases the frequency of inspecting and testing LNG tank relief valves.

4. Enhances chapter 10 requirements for plants with less than 300,000 gallons of storage. (We are not now proposing to incorporate chapter 10 by reference in part 193.)

5. Establishes operations and maintenance requirements. (We are not now proposing to incorporate these new requirements by reference in part 193.)

6. Adds appendices containing part 193 training and security standards.

We have considered the differences between the 1996 and 2001 editions of NFPA 59A and believe it is in the interest of LNG facility safety to amend Part 193 to reference the 2001 edition instead of the 1996 edition. This update would be accomplished by changing Appendix A to part 193 as set forth below. In addition, the specific reference to the 1996 edition in § 193.2019(a) would be replaced by a general reference to NFPA 59A. As indicated by § 193.2013(a), any general reference to NFPA 59A refers to the latest edition listed in Appendix A.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Policies and Procedures

RSPA does not consider this proposed rulemaking to be a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735; Oct. 4, 1993). Therefore, the Office of Management and Budget (OMB) has not received a copy of this rulemaking to review. RSPA also does not consider this proposed rulemaking to be significant under DOT regulatory policies and procedures (44 FR 11034: February 26, 1979).

We prepared a Draft Regulatory Evaluation of the proposed rules and a copy is in the docket. The evaluation concludes there should be only minimal additional cost, if any, for operators to comply with the proposed rules. If you disagree with this conclusion, please provide information to the public docket described above.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), RSPA must consider whether a rulemaking would have a significant economic impact on a substantial number of small entities. The proposed rules are consistent with customary practices in the gas pipeline industry. Therefore, based on the facts available about the anticipated impacts of this proposed rulemaking, I certify that this proposed rulemaking would not have a significant impact on a substantial number of small entities. If you have any information that this conclusion about the impact on small entities is not correct, please provide that information to the public docket described above.

Executive Order 13175

The proposed rules have been analyzed in accordance with the principles and criteria contained in Executive Order 13084, ''Consultation and Coordination with Indian Tribal Governments.'' Because the proposed rules would not significantly or uniquely affect the communities of the Indian tribal governments and would not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Paperwork Reduction Act

Title: Recordkeeping for LNG Facilities.

Summary: Section 193.2017(c) proposes to add a minor information collection requirement to already existing information collection requirements. Operators would be required to review and update the plans and procedures required by part 193 at intervals not exceeding 15 months, but at least once each calendar year. However, we believe most operators routinely carry out reviews and updates during the course of executing their plans and procedures. So we believe the burden of complying with the proposed review-and-update requirement would be minimal. Because the additional paperwork burden of this proposed rule is likely to be minimal, we believe that submitting an analysis of the burdens to OMB under the Paperwork Reduction Act is unnecessary. If you disagree with this conclusion, please submit your comments to the public docket.

Use: Records are kept to facilitate personnel training and other LNG plant activities.

Respondents (including the number of): There are 150 gas pipeline operators.

OMB Control Number: 2137–0048.

Average burden estimate per operator: 126.7 hours per year.

Annual Burden Estimate: 19,000 hours per year.

Frequency: Annual.

Unfunded Mandates Reform Act of 1995

This proposed rulemaking would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more to either State,

local, or tribal governments, in the aggregate, or to the private sector, and would be the least burdensome alternative that achieves the objective of the rule.

National Environmental Policy Act

We have analyzed the proposed rules for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Because the proposed rules parallel present requirements or practices, we have preliminarily determined that the proposed rules would not significantly affect the quality of the human environment. An environmental assessment document is available for review in the docket. A final determination on environmental impact will be made after the end of the comment period. If you disagree with our preliminary conclusion, please submit your comments to the docket as described above.

Executive Order 13132

The proposed rules have been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). The proposed rules do not propose any regulation that (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

List of Subjects in 49 CFR Part 193

Pipeline safety, Fire prevention, Security measures, Reporting and recordkeeping requirements.

Accordingly, we are proposing the following amendments to 49 CFR part 193:

1. The authority citation for part 193 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60111, 60118 and 49 CFR 1.53.

2. Revise § 193.2005(a) to read as follows:

§ 193.2005 Applicability.

(a) Standards in this part governing siting, design, installation, or construction of LNG facilities do not apply to LNG facilities existing or under construction before the date such standards take effect under this part.

* * * * *

3. Add § 193.2017(c) to read as follows:

§ 193.2017 Plans and procedures.

* * * * *

(c) Each operator must review and update the plans and procedures required by this part at intervals not exceeding 15 months, but at least once each calendar year.

4. Remove the parenthetical expression ''(1996 edition)'' from § 193.2019(a).

5. Amend § 193.2503 as follows:

a. In paragraph (e), remove the semicolon and add a period in its place;

b. In paragraph (g), remove the semicolon and the word ''and'' and add a period in the place of the removed semicolon; and

c. Remove paragraph (h).

6. Revise the first sentence of § 193.2507 to read as follow:

§ 193.2507 Monitoring operations.

Each component in operation or building in which a hazard to persons or property could exist must be monitored to detect fire or any malfunction or flammable fluid that could cause a hazardous condition. * * *

7. Revise the first sentence of § 193.2509(b) introductory text to read as follows:

§ 193.2509 Emergency procedures.

* * * * *

(b) To adequately handle each type of emergency identified under paragraph (a) of this section and each fire emergency, each operator shall follow one or more manuals of written procedures. * * *

* * * * *

8. Revise § 193.2605(b)(2) to read as follows:

§ 193.2605 Maintenance procedures.

* * * * *

(b) * * *

(2) A description of other actions necessary to maintain the LNG plant in accordance with the requirements of this subpart.

* * * * *

9. Revise § 193.2705(b) to read as follows:

§ 193.2705 Construction, installation, inspection, and testing.

* * * * *

(b) Each operator must periodically determine whether inspectors performing construction, installation, and testing duties required by this part are satisfactorily performing their assigned functions.

10. In § 193.2717, revise paragraph (a) and add paragraph (c) to read as follows:

§ 193.2717 Training: fire protection.

(a) All personnel involved in maintenance and operations of an LNG plant, including their immediate supervisors, must be trained in accordance with a written plan of initial instruction, including plant fire drills, to:

(1) Know the potential causes and areas of fire;

(2) Know the types, sizes, and predictable consequences of fire; and

(3) Know and be able to perform their assigned fire control duties according to the procedures established under § 193.2509 and by proper use of equipment provided under § 193.2801.

* * * * *

(c) Plant fire drills must include—

(1) Evacuation of buildings; and

(2) Personnel performing fire control duties.

11. In section II. E. 1. of Appendix A to Part 193, remove the parenthetical expression ''(1996 edition)'' and add the parenthetical expression ''(2001 edition)'' in its place.

Issued in Washington, DC on April 25, 2003.

Stacey Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–10689 Filed 4–30–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[ID 042403A]

RIN 0648–A010

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Skate Fisheries; Northeast Skate Fishery Management Plan

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

ACTION: Notice of availability of a fishery management plan; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council (Council) has submitted the Northeast Skate Fishery Management Plan (FMP) for Secretarial review and is requesting comments from the public. The FMP would establish a management program and fishing effort controls for

the skate fisheries in the Northeast (NE). The goal of the management program is to rebuild overfished skate resources (thorny and barndoor skates) and prevent overfishing of all seven skate resources.

DATES: Comments must be received on or before June 30, 2003.

ADDRESSES: Comments on the FMP should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Northeast Skate FMP.'' Comments may also be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the FMP, the Final Environmental Impact Statement (FEIS), Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Michael Pentony, Senior Fishery Policy Analyst, 978–281–9283, fax 978–281–9135.

SUPPLEMENTARY INFORMATION: The purpose of the FMP is to initiate management of the fisheries for the species in the NE skate complex (barndoor, clearnose, little, rosette, smooth, thorny, and winter skates) in Federal waters of the northeastern United States, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The FMP was developed by the Council in response to concerns that the continued development of and increased landings in the skate fisheries required implementation of management measures to prevent overfishing and to allow for the collection of catch information on the status of the stocks. Because two species of skates (barndoor and thorny skates) are considered overfished, this FMP is necessary to comply with the requirements of the Magnuson-Stevens Act to end overfishing and rebuild these species.

Skates are harvested in two very different fisheries, one for lobster bait and one for wings for human consumption. The fishery for lobster bait is a more traditional and directed skate fishery, involving vessels, primarily from ports in southern New England, that target a combination of little skates (estimated to be >90 percent of landings) and, to a much lesser extent, juvenile winter skates (<10 percent of landings). The catch of juvenile winter skates mixed with little skates is very difficult to differentiate, due to their nearly identical appearance. The fishery for skate wings evolved in the 1990s, as skates were promoted as an underutilized species and fishermen shifted effort from groundfish and other troubled fisheries to skates and dogfish. The wing fishery is a more incidental fishery that involves a larger number of vessels located throughout the region. Vessels tend to catch skates when targeting other species, such as groundfish and monkfish, and land them if the price is sufficient to offset the labor costs associated with cutting the wings.

The need to rebuild the overfished barndoor and thorny skate resources and prevent overfishing on the other five species are the primary problems needing management attention. Rebuilding overfished species is of particular concern because skates are relatively slow-growing, late-maturing species that produce few young, making them particularly vulnerable to overfishing.

A proposed rule that would implement the FMP will be published in the **Federal Register** for public comment, following NMFS' evaluation of the proposed rule under the procedures of the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on the FMP to be considered in the approval/disapproval decision on the FMP. All comments received by June 30, 2003, whether specifically directed to the FMP or the proposed rule, will be considered in the approval/disapproval decision on the FMP. Any comments on the proposed rule received after that date will not be considered in the decision to approve or disapprove the FMP.

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

Dated: April 25, 2003.

Richard W. Surdi,

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

[FR Doc. 03–10678 Filed 4–30–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 84

Thursday, May 1, 2003

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–03–01]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) is announcing a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: The meeting dates are: May 13, 2003, 8 a.m. to 6:30 p.m., and May 14, 2003, 8 a.m. to 5 p.m. Requests from individuals and organizations wishing to make an oral presentation at the meeting are due by the close of business on April 28, 2003.

ADDRESSES: The meeting will take place at the Radisson Hotel and Suites, The Travis Room, 111 E. Cesar Chavez, Austin, Texas. Requests for copies of the NOSB meeting agenda, requests to make an oral presentation at the meeting, or written comments may be sent to Ms. Katherine Benham at USDA–AMS–TMD–NOP, 1400 Independence Avenue, SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250–0200. Requests to make an oral presentation at the meeting may also be sent electronically to Ms. Katherine Benham at *katherine.benham@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Mathews, Program Manager, National Organic Program, (202) 720–3252.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. Section 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to make recommendations about whether a substance should be allowed or prohibited in organic production or handling, to assist in the development of standards for substances to be used in organic production and to advise the Secretary on other aspects of the implementation of the OFPA. The NOSB met for the first time in Washington, DC, in March 1992, and currently has six committees working on various aspects of the organic program. The committees are: Accreditation, Crops, Livestock, Materials, Processing, and International.

In August of 1994, the NOSB provided its initial recommendations for the National Organic Program (NOP) to the Secretary of Agriculture. Since that time, the NOSB has submitted 47 addenda to its recommendations and reviewed more than 246 substances for inclusion on the National List of Allowed and Prohibited Substances. The last meeting of the NOSB was held on October 19–20, 2002, in Washington, DC.

The Department of Agriculture (USDA) published its final National Organic Program regulation in the **Federal Register** on December 21, 2000 (65 FR 80548). The rule became effective April 21, 2001.

The principal purposes of the meeting are to provide an opportunity for the NOSB to: receive an update from the USDA/NOP, receive various committee reports, hear a presentation from USDA, AMS Audit Review and Compliance Branch, receive reports from the Board Policy Task Force, Composting Task Force, and Inerts Task Force, and review materials to determine if they should be included on the National List of Allowed and Prohibited Substances.

The Livestock Committee will present for NOSB consideration its recommendations on breeder stock replacement; fiber bearing animal standards; dairy animal replacement standards; clarification of requirements for reviewing livestock materials; and review of Ivermectin for removal from, and review of Benzimidazole for addition, to the National List (parasiticides). The Livestock Committee will also report on alternative feed supplements to DL—Methionine. The Materials Committee will explain the materials review process and report on the status of current petitioned materials. The Materials Committee will also present for NOSB consideration 15 materials for possible inclusion on the National List of Allowed and Prohibited Substances. The Processing Committee will present for NOSB consideration its recommendations regarding the food contact substance policy, and clarification of the use of chlorine in direct contact with organic food. The Processing Committee will also present a report on differentiation of handling and processing for producers and retailers. The Crops Committee will present for NOSB consideration its recommended guidance document for hydropondic production. Finally, the Accreditation Committee will present for NOSB consideration its recommendation on minor non-compliances.

Materials to be reviewed at the meeting by the NOSB are as follows: for Crop Production: Tetrahydrofurfuryl Alcohol, Potassium Silicate, Phosphoric Acid, and Glycerine Oleate/Glycerine Monooleate; for Livestock Production: Proteinated Chelates, Calcium Propionate, Furosemide, Mineral Oil, Atropine, and Moxidectin; and for Processing: Egg White Lysozyme, Nitrous Oxide, Malic Acid, Sodium Acid Pyrophosphate, and Microorganisms.

For further information, see *http://www.ams.usda.gov/nop.* Copies of the NOSB meeting agenda can be requested from Ms. Katherine Benham by telephone at (202) 205–7806; or by accessing the NOP Web site at *http://www.ams.usda.gov/nop.*

The meeting is open to the public. The NOSB has scheduled time for public input on Tuesday, May 13, 2003, from 9 a.m. until 11:10 a.m.; and Wednesday, May 14, 2003, from 8 a.m. until 9 a.m. Individuals and organizations wishing to make an oral presentation at the meeting may forward their request by facsimile to Ms. Katherine Benham at (202) 205–7808. While persons wishing to make a presentation may sign up at the door, advance registration will ensure that a person has the opportunity to speak during the allotted time period and will help the NOSB to better manage the meeting and to accomplish its agenda. Individuals or organizations will be given approximately 5 minutes to present their views. All persons making an oral presentation are requested to provide their comments in writing.

Written submissions may contain information other than that presented at the oral presentation.

Written comments may also be submitted at the meeting. Persons submitting written comments at the meeting are asked to provide 30 copies.

Interested persons may visit the NOSB portion of the NOP Web site *http://www.ams.usda.gov/nop* to view available documents prior to the meeting. Approximately 6 weeks following the meeting interested persons will be able to visit the NOSB portion of the NOP Web site to view documents from the meeting.

Dated: April 28, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–10871 Filed 4–30–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ash Creek Fire Salvage, Umpqua National Forest, Douglas County, OR

AGENCY: Forest Service, USDA.

ACTION: Correction.

SUMMARY: In notice document 03–6686 on page 13666 in the issue of Thursday, March 20, 2003, make the following corrections:

In the third column the **FOR FURTHER INFORMATION CONTACT** was previously listed as Alan Baurman. This should be changed to read Alan Baumann.

The last sentence in the first paragraph of **SUPPLEMENTARY INFORMATION** the legal description of Planning Area should be changed. The legal description of Planning Area should read—The Planning Area includes all or portions of sections 27–29 and 32–34 of T. 28 S., R.1 E; sections 3–9, 16–21, 29–31 of T. 29 S., R.1 E; sections 13–14, 22–27, 35–36, of T. 29 S., R.1 W; and sections 1–2 of T. 30 S., R. 1W, Willamette Meridian, Douglas County, Oregon.

Dated: April 18, 2003.

James A. Caplan,

Forest Supervisor.

[FR Doc. 03–10724 Filed 4–30–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Crook County Resource Advisory Committee, Sundance, Wyoming, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Black Hills National Forests' Crook County Resource Advisory Committee will meet Monday, May 19, 2003, in Sundance, Wyoming for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on May 19, begins at 6:30 p.m., at U.S. Forest Service, Bearlodge Ranger District Office, 121 South 21st Street, Sundance, Wyoming. Agenda topics will include Bearlodge Fuel Break, watershed and wildlife Projects, Sundance Campground tree planting and updates on April's actions. A public forum will begin at 8:30 p.m. (MT).

FOR FURTHER INFORMATION CONTACT: Steve Kozel, Bearlodge District Ranger and Designated Federal Officer, at (307) 283–1361.

Dated: April 23, 2003.

Steve Kozel,

Bearlodge District Ranger.

[FR Doc. 03–10702 Filed 4–30–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, CA, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest Lassen County Resource Advisory Committee will meet Thursday, May 8, 2003, in Susanville, California for a business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting begins May 8, 2003 at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. Agenda topics will include: review previous meeting minutes and approve, RAC member/sub-committee reports, report from Annual National Forest Counties & School Coalition Conference; monitoring of approved projects; work plan for next cycle; possible date for field trip to one of the projects. Time will also be set aside for public comments at the end of the meeting.

FOR FURTHER INFORMATION CONTACT: Robert Andrews, Eagle Lake District Ranger and Designated Federal Officer, at (530) 257–4188; or RAC Coordinator, Heidi Perry, at (530) 252–6604.

Edward C. Cole,

Forest Supervisor.

[FR Doc. 03–10722 Filed 4–30–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, May 22, 2003. The purpose of this meeting is to provide orientation to Advisory Committee members, and to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meeting will be held May 22, 2003.

ADDRESSES: The meeting will be held at the Southeast Alaska Discovery Center Learning Center (back entrance), 50 Main Street, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to *jingersoll@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jerry Ingersoll, District Ranger, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, (907) 228–4100.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after

the meeting. Public input sessions will be provided and individuals who made written requests by May 21 will have the opportunity to address the Committee at those sessions.

Dated: April 24, 2003.

Dennis Neill,

Acting Forest Supervisor.

[FR Doc. 03–10723 Filed 4–30–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on May 8, 2003, from 3 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Lake County Board of Supervisor's Chambers at 255 North Forbes Street, Lakeport.

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh, Committee Coordinator, USDA, Mendocino National Forest, Upper Lake Ranger District, 10025 Elk Mountain Road, Upper Lake, CA 95485. (707) 275–2361; e-mail *dmcintosh@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Roll Call/Establish Quorum; (2) Review and Approval of the Minutes of the August 8, 2002 Meeting; (3) Finalize business for 2002; (4) Discuss/revise evaluation criteria for projects; (5) Evaluate Committee Membership; (6) Discussion on Chair Position for 2003; (7) Discussion on Next Meeting Date; and (8) Discuss Project Cost Accounting USFS/County of Lake; (9) Recommend Projects for 2003; (10) Public Comment period. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: April 23, 2003.

Blaine P. Baker,

Designated Federal Officer.

[FR Doc. 03–10733 Filed 4–30–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[03–01–C]

Opportunity To Comment on the Applicants for the Grand Forks (ND) and Minnesota Areas

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

ACTION: Notice.

SUMMARY: GIPSA requests comments on the applicants for designation to provide official services in the geographic area currently assigned to Grand Forks Grain Inspection Department, Inc. (Grand Forks) and the Minnesota Department of Agriculture (Minnesota).

DATES: Comments must be postmarked or electronically dated on or before May 30, 2003.

ADDRESSES: Comments must be submitted in writing to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604. FAX 202–690–2755; e-mail *Janet.M.Hart@usda.gov.* All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov.*

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 3, 2003, **Federal Register** (68 FR 9971), GIPSA asked persons interested in providing official services in the Grand Forks and Minnesota areas to submit an application for designation.

There were five applicants for the Grand Forks Area: Grand Forks, Grain Inspection, Inc. (Jamestown), Minot Grain Inspection, Inc. (Minot), North Dakota Grain Inspection Service, Inc. (North Dakota), all currently designated official agencies; and Paul B. Bethke, Terry D. Pladson, and Ryan M. Kuhl proposing to do business as Northern Plains Grain Inspection Service, Inc. Grand Forks applied for designation to provide official services in the entire area currently assigned to them. Jamestown, Minot, North Dakota, and Northern Plains Grain Inspection Service, Inc., applied for all or part of the area currently assigned to Grand Forks.

There were six applicants for the Minnesota area: Minnesota, North Dakota Grain Inspection Service, Inc. (North Dakota), D. R. Schaal Agency, Inc. (Schaal), Sioux City Inspection and Weighing Service Company (Sioux City), all currently designated official agencies; Paul B. Bethke, Terry D. Pladson, and Ryan M. Kuhl proposing to do business as Northern Plains Grain Inspection Service, Inc., and Kathleen Duea, Kyle Duea, Ben Duea, and Nicole Youel proposing to do business as Southern Minnesota Grain Inspection. Minnesota applied for designation to provide official services in the entire area currently assigned to them. North Dakota and Northern Plains Grain Inspection Service, Inc., applied for all or part of the area currently assigned to Minnesota. Schaal applied for all or part of the following Minnesota Counties: Blue Earth, Faribault, Freeborn, Mower, Steele, and Waseca. Sioux City applied for all or part of the following Minnesota Counties: Brown, Cottonwood, Jackson, Lincoln, Lyon, Martin, Murray, Nobles, Pipestone, Redwood, Renville, Rock, Watonwan, and Yellow Medicine. Southern Minnesota Grain Inspection applied for all or part of the area currently assigned to Minnesota, and specified all or part of the following Minnesota Counties: Blue Earth, Cottonwood, Faribault, Jackson, Martin, Murray, Nobles, and Watonwan.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of the applicants. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicants written notification of the decision.

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

Dated: April 28, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–10753 Filed 4–30–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Sunshine Act Meeting Notice

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 2 p.m., Thursday, May 8, 2003.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Broadband Loan Program update.
2. Privatization issues.
3. Proposed fiscal year 2004 budget.
4. Director liability.
5. Administrative issues.

ACTION: Board of Directors meeting.

TIME AND DATE: 9 a.m., Friday, May 9, 2003.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Action on Minutes of the February 14, 2003 board meeting.
3. Secretary's Report on loans approved in second quarter, FY 2003.
4. Treasurer's Report.
5. Discussion of privatization of the Rural Telephone Bank.
6. Governor's Remarks.
7. Adjournment.

FOR FURTHER INFORMATION CONTACT: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: April 29, 2003.

Hilda Gay Legg,

Governor, Rural Telephone Bank.

[FR Doc. 03–10930 Filed 4–29–03; 3:34 pm]

BILLING CODE 3410–15–P

ARCTIC RESEARCH COMMISSION

Sunshine Act Meeting

April 24, 2003.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 68th Meeting in Calgary, Canada on May 14 and 15, 2003. The Business Session is open to the public and will convene at 9 a.m. Wednesday, May 14, and the Agenda items include:

(1) Call to order and approval of the Agenda.

(2) Approval of the Minutes of the 67th Meeting.

(3) Reports from Congressional Liaisons.

(4) Agency Reports.

The focus of the Meeting will be reports and updates on programs and research projects affecting the U.S. Arctic. Presentations include a review of the research needs for civil infrastructure in Alaska.

The Business Session will reconvene at 9 a.m. Thursday, May 15. An Executive Session will follow adjournment of the Business Session.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 03–10825 Filed 4–28–03; 5:04 pm]

BILLING CODE 7555–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Louisiana Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 2:30 p.m. on April 29, 2003. The purpose of the meeting is to be briefed by the U.S. Department of Justice regarding race relations in Baker, LA involving the Mayor and City Council.

This conference call is available to the public through the following call-in number: 1–800–923–4213, access code 16409931. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414), by 4 p.m. on Monday, April 28, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 11, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–10731 Filed 4–30–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

[I.D. 042503C]

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.

Title: Pacific Billfish Angler Survey.

Form Number(s): NOAA Form 88–10.

OMB Approval Number: 0648–0020.

Type of Request: Regular submission.

Burden Hours: 104.

Number of Respondents: 1,250.

Average Hours Per Response: 5 minutes.

Needs and Uses: Volunteer recreational anglers are asked to report on their fishing catch and effort for billfish throughout the Pacific area. The information received is used to study the health and activity of the billfish resources in the Pacific.

Affected Public: Individuals or households.

Frequency: On occasion.

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 within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 24, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–10799 Filed 4–30–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 042503D]

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: Highly Migratory Species Tournament Registration and Reporting.

Form Number(s): None.

OMB Approval Number: 0648–0323.

Type of Request: Regular submission.

Burden Hours: 70.

Number of Respondents: 300.

Average Hours Per Response: 2 minutes for a registration form and 20 minutes for a tournament summary report.

Needs and Uses: NOAA would require that operators of fishing tournaments involving Highly Migratory Species (HMS) provide advance identification of the tournament and then, if selected, provide information after the tournament on the HMS that are caught, whether they were kept or released, the length and weight of the fish, and other information. Completed forms are mailed to NOAA. Most of the data required for post-tournament reporting are already collected in the routine course of tournament operations. The data collected are needed to estimate the total annual catch of these species and to evaluate the impact of tournament fishing in relation to other types of fishing.

Affected Public: Business or other for-profit organizations; not-for-profit institutions.

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, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 24, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–10800 Filed 4–30–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

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

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with section 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of May 2003, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

	Period
Antidumping Duty Proceeding	
Argentina: Light-walled Rectangular Carbon Steel Pipe and Tubing, A–357–802	5/1/02–4/30/03
Belgium: Stainless Steel Plate in Coils, A–423–808	5/1/02–4/30/03
Brazil:	
Iron Construction Castings, A–351–503	5/1/02–4/30/03
Frozen Concentrated Orange Juice, A–351–605	5/1/02–4/30/03
Canada:	
Softwood Lumber, A–122–838	5/22/02–4/30/03
Stainless Steel Plate in Coils, A–122–830	5/1/02–4/30/03
France: Antifriction Bearings, Ball and Spherical Plain, A–427–801	5/1/02–4/30/03
Germany: Antifriction Bearings, Ball, A–428–801	5/1/02–4/30/03
India:	
Silicomanganese, A–533–823	11/9/01–4/30/03
Welded Carbon Steel Pipes and Tubes, A–533–502	5/1/02–4/30/03
Indonesia: Extruded Rubber Thread, A–560–803	5/1/02–4/30/03
Italy:	
Antifriction Bearings, Ball, A–475–801	5/1/02–4/30/03
Stainless Steel Plate in Coils, A–475–822	5/1/02–4/30/03
Japan:	
Antifriction Bearings, Ball, A–588–804	5/1/02–4/30/03
Gray Portland Cement and Clinker, A–588–815	5/1/02–4/30/03
Stainless Steel Angle, A–588–856	5/1/02–4/30/03
Kazakhstan: Silicomanganese, A–834–807	11/9/01–4/30/03
Republic of Korea:	
Malleable Cast Iron Pipe Fittings, Other than Grooved, A–580–507	5/1/02–4/30/03
Polyester Staple Fiber, A–580–812	5/1/02–4/30/03

	Period
Stainless Steel Angle, A–580–846	5/1/02–4/30/03
Stainless Steel Plate in Coils, A–580–831	5/1/02–4/30/03
Singapore: Antifriction Bearings, Ball, A–559–801	5/1/02–4/30/03
Spain: Stainless Steel Angle, A–469–810	5/1/02–4/30/03
South Africa: Stainless Steel Plate in Coils, A–791–805	5/1/02–4/30/03
Taiwan:	
Certain Circular Welded Carbon Steel Pipe & Tubes, A–583–008	5/1/02–4/30/03
Polyester Staple Fiber, A–583–833	5/1/02–4/30/03
Stainless Steel Plate in Coils, A–583–830	5/1/02–4/30/03
The People's Republic of China:	
Iron Construction Castings, A–570–502	5/1/02–4/30/03
Pure Magnesium, A–570–832	5/1/02–4/30/03
The United Kingdom: Antifriction Bearings, Ball, A–412–801	5/1/02–4/30/03
Turkey: Welded Carbon Steel Pipe and Tube, A–489–501	5/1/02–4/30/03
Venezuela: Silicomanganese, A–307–820	11/9/01–4/30/03
Countervailing Duty Proceedings	
Belgium: Stainless Steel Plate in Coils, C–423–809	1/1/02–12/31/02
Brazil: Iron Construction Castings, C–351–504	1/1/02–12/31/02
Canada: Softwood Lumber, C–122–839	1/1/02–12/31/02
Italy: Stainless Steel Plate in Coils, C–475–823	1/1/02–12/31/02
South Africa: Stainless Steel Plate in Coils, C–791–806	1/1/02–12/31/02
Suspension Agreements	
None.	

In accordance with section 351.213(b) the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of May 2003. If the Department does not receive, by the last day of May 2003, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: April 25, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 03–10793 Filed 4–30–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Amended Final Results of Antidumping Duty Administrative Reviews

[A-588–804]

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

ACTION: Notice of final court decision and amended final results of administrative reviews.

SUMMARY: On June 28, 2002, the United States Court of Appeals for the Federal Circuit affirmed the United States Court of International Trade's affirmation of the Department of Commerce's final remand results affecting final assessment rates for the administrative review of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Japan with respect to NSK Ltd., NTN Corporation, and Koyo Seiko Co. Ltd,. and the period May 1, 1995, through April 30, 1996. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. As there is now a final and conclusive court decision in these actions, we are amending our final results of reviews and we will instruct the U.S. Customs Service to liquidate entries subject to these reviews.

EFFECTIVE DATE: May 1, 2003.

FOR FURTHER INFORMATION CONTACT: Susan Lehman or Richard Rimlinger, AD/CVD Enforcement Group I, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: 202–482–0180 or 202–482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 17, 1997, the Department of Commerce (the Department) published *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 66472, and on November 20, 1997, it published *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Amended Final Results of Antidumping Duty Administrative Reviews*, 62 FR 61963 (collectively, *AFBs 7*), which covered the period May 1, 1995, through April 30, 1996. The Japanese companies covered by the reviews are NTN Corporation (NTN), NSK Ltd. (NSK), Koyo Seiko Co., Ltd. (Koyo), Nippon Pillow Block Manufacturing Company (NPBS), and Nachi Fujikoshi (Nachi). The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). Various parties appealed *AFBs 7*.

On June 5, 2000, the Court issued an order in *NTN Bearing Corporation of America, NTN Corporation, American NTN Bearings Manufacturing Corporation, NTN Driveshaft, Inc. and NTN-Bower Corporation; NSK Ltd. and NTN Corporation; Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A. v. United States*, Consol. Court No. 97–10–01801, Slip Op. 00–64 (June 5, 2000) (*NTN*), remanding *AFBs 7* to the Department. In *NTN*, the Court remanded *AFBs 7* to the Department to make the following changes: 1) annul all findings and conclusions made pursuant to the duty-absorption inquiry conducted for the reviews; 2) make adjustments pursuant to section 772(c) of the Tariff Act of 1930 as amended (the Act), to section 772(a)'s starting price for determining export price; 3) make adjustments pursuant to sections 772(c) and (d) of the Act to section 772(b)'s starting price for determining constructed export price (CEP); 4) articulate how the record supports the Department's decision to recalculate NTN's home-market indirect selling expenses without regard to level of trade; 5) clarify how the Department complied with sections 776 and 782 of the Act by using facts available and applying an adverse inference with respect to NTN's alleged zero-price sample sales and, if the Department determined that it conformed with the statutory framework, to include NTN's sample sales in its U.S. sales database or, if the Department determined that it did not adhere to all of the statutory prerequisite conditions, to give NTN the opportunity to remedy or explain any deficiency regarding its sample sales; and 6) clarify whether NTN was provided with notice and opportunity to respond pursuant to sections 776 and 782 of the Act with regard to its cost-of-production (COP) and constructed-value (CV) data. The remand affected the Department's calculations for NTN, Koyo, and NSK with respect to the antidumping duty orders on BBs, CRBs, and SPBs from Japan for the period May 1, 1995, through April 30, 1996.

The Department submitted its Remand Results to the Court on September 5, 2000. On February 23, 2001, the Court affirmed the Department's Remand Results in their entirety. NTN, NSK, and Koyo appealed the ruling of the Court and the lawsuit was litigated at the United States Court of Appeals for the Federal Circuit (CAFC). On June 28, 2002, the CAFC affirmed the judgment of the Court.

As there is now a final and conclusive court decision with respect to NTN, NSK, and Koyo, we are amending our final results of review for these companies and we will subsequently instruct the U.S. Customs Service to liquidate the relevant entries subject to these reviews.

Amendment to Final Results

Pursuant to section 516A(e) of the Act, we are now amending the final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Japan, for the period of May 1, 1995, through April 30, 1996, with respect to NTN. The current rates for NTN are as follows: 6.94 for BBs, 4.33 for CRBs, and 7.19 for SPBs. There are no rate changes for Koyo, Nachi, NPBS, or NSK. Accordingly, the Department will determine and the U.S. Customs Service will assess appropriate antidumping duties on entries of the subject merchandise produced by NTN, NSK, and Koyo. Individual differences between United States price and foreign market value may vary from the percentages listed above. The Department will issue appraisement instructions to the U.S. Customs Service within 15 days of publication of these amended final results of reviews.

The Court remanded *AFBs 7* to the Department to annul all findings and conclusions made pursuant to the duty-absorption inquiry it conducted in *AFBs 7*. The Department complied with the remand as directed by the Court with respect to Koyo, NSK, and NTN and annulled all findings and conclusions made pursuant to its duty-absorption inquiry conducted for the subject reviews with respect to Koyo, NSK, and NTN. The Court affirmed the Department's remand in its entirety.

This notice is published pursuant to section 751(a) of the Act.

Dated: April 24, 2003.

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. 03–10792 Filed 4–30–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042503B]

Proposed Information Collection; Comment Request; Commercial Fisheries Employment Survey.

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 30, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the information collection instrument and instructions should be directed to Amy Gautam, NMFS ST1, 1315 East-West Highway, Silver Spring, MD 20910.

SUPPLEMENTARY INFORMATION:

I. Abstract

The data will be collected to estimate full- and part-time employment in commercial fisheries. This information is needed to identify how many individuals are affected by proposed commercial fishing regulations. Respondents will be commercial fishing vessel owners and captains.

II. Method of Collection

Respondents will complete a paper questionnaire to be mailed back to the NMFS or contractor conducting the survey on NMFS' behalf.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals or households.
Estimated Number of Respondents: 10,000.
Estimated Time Per Response: 5 minutes.
Estimated Total Annual Burden Hours: 833.
Estimated Total Annual Cost to Public: 0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 24, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–10798 Filed 4–30–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Luz Torres DeRosa, Pedro Vidal, Frontera Colley and Fernando E. Otero Rodriguez From Objections by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of appeals and request for comments.

SUMMARY: Luz Torres DeRosa, Pedro Vidal, Frontera Colley and Fernando E. Otero Rodriguez (Appellants), filed with the Secretary of Commerce (Secretary) four separate notices of appeal pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.,* and the Department of Commerce's implementing regulations, 15 CFR part 930, subpart H. The appeals are taken from objections by the Puerto Rico Planning Board (PRPB) to the Appellants' consistency certifications for U.S. Army Corps of Engineers' permits for the reconstruction of stilt houses. The proposed projects are located within the maritime-terrestrial zone, territorial waters and submerged lands.

DATES: Public comments on the appeals are due within 30 days of the publication of this notice.

ADDRESSES: Comments should be sent to Mary Elliott Rolle, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Public filings made by the parties to the appeals may be available at the NOAA Office of the Assistant General Counsel for Ocean Services and the Puerto Rico Planning Board, Minillas Government Center, North Building, De Diego Ave. Stop 22, San Juan, Puerto Rico 00940–1119.

FOR FURTHER INFORMATION CONTACT: Mary Elliott Rolle, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910 or at 301–713–2967, extension 216.

SUPPLEMENTARY INFORMATION:

I. Notice of Appeals

Luz Torres DeRosa, Pedro Vidal, Frontera Colley and Fernando E. Otero Rodriguez (Appellants), filed with the Secretary of Commerce (Secretary) four separate notices of appeal pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.,* and the Department of Commerce's implementing regulations, 15 CFR part 930, subpart H. The regulations have been revised as of January 8, 2000. These matters fall under the old regulations in place at the time of the filings of these appeals. The appeals are taken from objections by the Puerto Rico Planning Board (PRPB) to the Appellants' consistency certifications for U.S. Army Corps of Engineers' permits for the reconstruction of stilt houses. The proposed projects are located within the maritime-terrestrial zone, territorial waters and submerged lands.

The CZMA provides that a timely objection by a state precludes any federal agency from issuing licenses or permits for an activity unless the Secretary finds that the activity is either ''consistent with the objectives'' of the CZMA (Ground I) or ''necessary in the interest of national security'' (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellants request that the Secretary override the Board's consistency objections based on Ground I. To make the determination that a proposed activity is ''consistent with the objectives'' of the CZMA, the Secretary must find that: (1) The proposed activity furthers one or more of the competing national objectives or purposes contained in section 302 or 303 of the CZMA; (2) the national interest furthered by the proposed activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively; (3) the activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended; and (4) no reasonable alternative is available that would permit the proposed activity to be conducted in a manner consistent with the enforceable policies of Puerto Rico's coastal zone management program. See 15 CFR 930.121.

II. Public Comments

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within 30 days of the publication of this notice and should be sent to Mary Elliott Rolle, Attorney-Adviser, Office of the Assistant General Counsel for Ocean

Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Copies of comments will also be forwarded to the Appellant and the State.

III. Appeal Documents

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the NOAA Office of the Assistant General Counsel for Ocean Services and the Puerto Rico Planning Board.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.)

Dated: April 23, 2003.

James R. Walpole,

General Counsel.

[FR Doc. 03–10754 Filed 4–30–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041603C]

Vessel Monitoring Systems; Additional Approved Mobile Transmitting Unit

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

ACTION: Notice of vessel monitoring systems; approval.

SUMMARY: This document provides notice of additional vessel monitoring systems (VMS) approved by NOAA for use by pelagic longline vessels in the Atlantic Highly Migratory Species (HMS) Fisheries and sets forth relevant features of the VMS. This notification is being issued in addition to the approval notice published on March 11, 2003, and provides updated address information for one of the VMS providers.

ADDRESSES: To obtain copies of the list of NOAA approved VMS mobile transmitting units and NOAA approved VMS communications service providers, or information regarding the status of VMSs being evaluated by NOAA for approval, write to NMFS Office for Law Enforcement (OLE), 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910.

To submit a completed and signed checklist, mail or fax it to NOAA Enforcement, 9721 Executive Center Drive North, Koger Building, St. Petersburg, FL 33702, fax 727–570–5575.

For more addresses regarding approved VMS, see the **SUPPLEMENTARY INFORMATION** section, under the heading VMS Provider Addresses.

FOR FURTHER INFORMATION CONTACT: For current listing information Mark Oswell, Outreach Specialist, phone 301–427–2300, fax 301–427–2055. For questions regarding VMS installation, activation checklists, and status of evaluations, contact Jonathan Pinkerton, National VMS Program Manager, phone 301–427–2300, fax 301–427–2055. For questions regarding the checklist, contact Fred Kyle, Special Agent, NMFS Office for Law Enforcement, Southeast Division, phone 727–570–5344.

The public may acquire this notice, installation checklist, and relevant updates via the ''fax-back'' service, or at the OLE website *http://www.nmfs.noaa.gov/ole/vms.html*. Telephone requests can be made by calling 301–427–2300.

SUPPLEMENTARY INFORMATION:

I. The VMS Requirement

Information regarding the VMS requirement was described in the VMS approval notice published March 11, 2003 (68 FR 11534) and is not repeated here. This approval notice is being issued in addition to that notice.

II. VMS Mobile Transceiver Unit

The additional Inmarsat-C satellite communications VMS transmitting unit that meets the minimum technical requirements for the HMS Fisheries is the Thrane & Thrane Fishery ''Mini-C'' (part number TT–3026–NMFS). The address for the Thrane & Thrane distributor (LandSea Systems) dealer contact is provided under the heading VMS Provider Addresses.

Pursuant to 50 CFR 635.69(d), NMFS will provide an installation and activation checklist for the below listed units which the vessel owner must follow. The vessel owner must sign a statement on the checklist certifying compliance with the installation procedures and return the checklist to NMFS. Installation can be performed by experienced crew or by an electronics specialist, and the installation cost is paid by the owner.

The owner may confirm that automated position reports are being received by calling the NMFS Office for Law Enforcement in St. Petersburg, FL at 727–570–5344.

Thrane & Thrane TT–3026–NMFS features: The transceiver consists of an integrated GPS/Inmarsat-C unit mounted atop the vessel. The unit is factory pre-configured for NMFS VMS operations (non-Global Maritime Distress & Safety System (non-GMDSS)). Satellite commissioning services are provided by LandSea Systems personnel.

Automatic GPS position reporting starts after transceiver installation and power activation onboard the vessel. The unit is an integrated transceiver/antenna/GPS design using a floating 10 to 32 VDC power supply. The unit is configured for automatic reduced position transmissions when the vessel is stationary (i.e., in port). It allows for port stays without power drain or power shut down. The unit restarts normal position transmission automatically when the vessel goes to sea.

A configuration option is available to automatically send position reports to a private address, such as a fleet management company. Another available option is the ability to send and receive private e-mail and other messages with the purchase and installation of an input device such as a laptop or personal computer.

A vessel owner wishing to purchase this system may contact the entity identified under the heading VMS Provider Addresses for Thrane & Thrane TT–3026–NMFS. The owner should identify himself or herself as a vessel owner in the ''United States HMS Fishery.'' The Thrane & Thrane unitized transceiver the vessel owner purchases will be configured for the HMS Fisheries.

To use the Mini-C, the vessel owner will need to establish an Inmarsat-C system use contract with an approved Inmarsat-C communications service provider. The owner will be required to complete the Inmarsat-C ''Registration for Service Activation for Maritime Mobile Earth Station.'' The owner should consult with LandSea Systems when completing this form.

LandSea Systems personnel will perform the following before shipment: (a) configure the TT–3026–NMFS according to NMFS OLE specifications for the HMS Fisheries; (b) download the predetermined NMFS position reporting and broadcast command identification numbers into the unit; (c) test the unit to ensure operation when installation has been completed on the vessel; and (d) forward the Inmarsat service provider and TT–3026–NMFS identifying information to the NOAA Office for Law Enforcement.

III. Communications Service Providers

This information was provided in an earlier notice published March 11, 2003 (68 FR 11534) and is not repeated here. As a convenience to the vessel owner

both Telenor and Xantic services and customer support are available through LandSea Systems. LandSea Systems provides customer service for Xantic users to support and establish two-way transmission of transceiver and land-based control centers. This supports the Office of Law Enforcement's message needs and, optionally, fishermen's private messaging needs.

IV. VMS Provider Addresses

For Thrane & Thrane TT–3026–NMFS information, contact Ken Ravenna, Marine Products, LandSea Systems, Inc., 509 Viking Drive, Suite K, L, and M, Virginia Beach, VA 23452; voice: 757–463–9557; fax: 757–463–9581, e-mail: *KCR@LandSeaSystems.com.*; website: *http://www.landseasystems.com.*

For Telenor information, contact Telenor Satellite Services, 6560 Rock Spring Drive, Bethesda, MD 20817; Telenor Customer Care, phone: 800–685–7898 or 301–838–7700; e-mail: *www.customercare@telenor-usa.com.*; website: *www.telenor-usa.com.* Alternate Contact: Courtney Coleman, Manager COMSAT-C Services Marketing, 6560 Rock Spring Dr., Bethesda, MD 20817; phone: 301–214–3293; e-mail: *courtney.coleman@telenor-usa.com.*

For Xantic, the contact information published in the March 11, 2003 notice (68 FR 11534) is no longer valid. The new contact for Xantic is LandSea Systems Inc., Donna Sherman, 509 Viking Drive, Suite K, L, and M, Virginia Beach, VA 23452; voice: 757 463–9557; fax: 757 463–9581 e-mail: *airtime@landseasystems.com.* Alternate contacts: Xantic, Folef Hooft Graafland, 6100 Hollywood Boulevard, Suite 410, Hollywood, FL 33024; voice: (954) 962–9908 Ext. 11; fax: (954) 962–1164; Cellular:(954) 214–2609; e-mail: *folef.hooftgraafland@Xantic.net*; Andre Cortese, 1211 Connecticut Ave., NW, Suite 504, Washington, DC 20036; telephone number: 202–785–5615; e-mail: *andre.cortese@Xantic.net*; Bobbie Thach, 1211 Connecticut Ave, NW Suite 504, Washington, DC 20036; voice: (202) 785–5614; fax: (202) 785–5616; e-mail: *bobbie.thach@Xantic.net.* Customer Service, contact LandSea Systems, Inc.,509 Viking Drive, Suite K, L, and M, Virginia Beach, VA 23452; voice: 757–463–9557; fax: 757–463–9581, e-mail: *KCR@LandSeaSystems.com.*; or Xantic Netherlands, toll free: 1–888–440–8988; website: *www.Xantic.net.*

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

Dated: April 25, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–10803 Filed 4–30–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041503C]

Marine Mammals; File No. 881–1709

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Jo-Ann Mellish, Ph.D., University of Alaska Fairbanks and Alaska SeaLife Center, 301 Railway Avenue, P.O. Box 1329, Seward, Alaska 99664, has applied in due form for a permit to take tissue samples from harbor seals (Phoca vitulina) and northern fur seals (Callorhinus ursinus) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before June 2, 2003.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant requests authorization to collect and receive an unlimited number of tissue samples (including, teeth/bone, blubber, muscle, blood, skin, vibrissae, placenta, fetus, reproductive tracts, stomach and intestinal tracts, heart, liver, lungs, kidney and other vital organs) taken from carcasses of harbor seals and northern fur seals that have died of natural causes or were killed during legal subsistence hunts in Alaska. The purposes of the research are to determine contaminant loads in tissues to study whether exposure to contaminants may be a contributing factor to poor survival and reproduction of these species, and to determine steroid hormone levels in the tissues of these species to develop methods to study the reproductive rate and population structure of marine mammals. Export of tissues to Canada for tissue analyses and to other countries world-wide for future opportunistic research is also proposed. The applicant has requested a five-year permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 25, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–10801 Filed 4–30–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Proposed Information Collection; Comment Request; Public Telecommunications Facilities Program Application Form

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A).

DATES: Written comments must be submitted on or before June 30, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 1401 Constitution Avenue, NW., Washington, DC 20230 (or via the Internet *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Clifton Beck, NTIA, Room H–4888, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of the Public Telecommunications Facilities Program is to assist, through matching funds, in the planning and construction of public telecommunications facilities in order to achieve the following objectives:

- Extend delivery of public telecommunications services to as many citizens in the United States as possible by the most efficient and economical means, including the use of broadcast and non-broadcast technologies;
- Increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and
- Strengthen the capability of existing public radio and television stations to provide public telecommunications services to the public.

II. Method of Collection

Paper form and the Internet.

III. Data

OMB Number: 0660–0003.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions, State, Local or Tribal government.

Estimated Number of Respondents: 450.

Estimated Time Per Response: Varies, 6 to 86 hours per response, depending on required information.

Estimated Total Annual Burden Hours: 37,188.

Estimated Total Annual Cost to the Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to the notice will be summarized and/or included in the request for OMB approval of the information collection; they also will become a matter of public record.

Dated: April 25, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–10712 Filed 4–30–03; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Invention Promoters/Promotion Firms Complaints

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 30, 2003.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, Suite 310, 2231 Crystal Drive, Arlington, VA 22202; by telephone at (703) 308–7400; or by electronic mail at *susan.brown@uspto.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Robert Oberleitner, Mail Stop 24, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at (703) 305–8800; or by electronic mail at *robert.oberleitner@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the Inventors' Rights Act of 1999, as found in 35 U.S.C. 297 and implemented by 37 CFR Part 4, the United States Patent and Trademark Office (USPTO) is required to provide a forum for the publication of complaints concerning invention promoters and replies from the invention promoters to these complaints. An individual may submit a complaint concerning an invention promoter to the USPTO, which will forward the complaint to the invention promoter for response. The complaints and responses will be published and made available to the public on the USPTO Web site. The USPTO does not investigate these complaints or participate in any legal proceedings against invention promoters or promotion firms.

Complaints submitted to the USPTO must identify the name and address of the complainant and the invention promoter or promotion firm, explain the basis for the complaint, and include the signature of the complainant. The identifying information is necessary so that the USPTO can forward the complaint to the invention promoter or promotion firm and also notify the complainant that the complaint has been forwarded. Complainants should understand that the complaints will be forwarded to the invention promoter for response and that the complaint and response will be made available to the public as required by the Inventors' Rights Act. If the USPTO does not receive a response from the invention promoter, the complaint will still be published without the response. The USPTO does not accept complaints under this program if the complainant requests confidentiality.

This information collection includes one paper form, Complaint Regarding Invention Promoter (PTO/SB/2048),

which is used by the public to submit a complaint under this program. This form is available for download from the USPTO Web site. Use of this form is not mandatory as long as the complaint includes the necessary information and is clearly marked as a complaint filed under the Inventors' Rights Act. There is no associated form for responses to the complaints.

In September 2002, OMB approved a change worksheet that decreased the burden for this information collection due to the USPTO receiving fewer complaints and responses to the complaints than previously estimated. This information collection includes personal information that is subject to the Privacy Act of 1974.

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO.

III. Data

OMB Number: 0651–0044.

Form Number(s): PTO/SB/2048.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 100 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take the public approximately 15 minutes (0.25 hours) to gather the necessary information, prepare the form, and submit the complaint to the USPTO. The USPTO also estimates that it will take an invention promoter or promotion firm approximately 30 minutes (0.5 hours) to prepare and submit a response to a complaint.

Estimated Total Annual Respondent Burden Hours: 38 hours per year.

Estimated Total Annual Respondent Cost Burden: $4,790 per year. The USPTO expects that complaints will be prepared by paraprofessionals or independent inventors at an estimated rate of $30 per hour. The USPTO expects that the responses to the complaints will be prepared either by attorneys or by invention promoters. Using the average of the professional rate of $252 per hour for associate attorneys in private firms and the estimated rate of $100 per hour for invention promoters, the USPTO estimates that the average rate for preparing the responses to the complaints will be $176 per hour. Therefore, the respondent cost burden for this collection will be $4,790 per year.

Item	Estimated time for response (in minutes)	Estimated annual responses	Estimated annual burden hours
Complaint Regarding Invention Promoter	15	50	13
Responses to the Complaints	30	50	25
Total		100	38

Estimated Total Annual Non-hour Respondent Cost Burden: $37. There are no capital start-up or maintenance costs or filing fees associated with this information collection. However, the public may incur postage costs when submitting a complaint or a response to a complaint by mail to the USPTO. The USPTO estimates that the first-class postage cost for a mailed complaint or response to a complaint will be 37 cents, for a total non-hour respondent cost burden in the form of postage costs of $37 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.,* the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 24, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–10703 Filed 4–30–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 30, 2003.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, Suite 310, 2231 Crystal Drive, Arlington, VA 22202; by telephone at (703) 308–7400; or by electronic mail at *susan.brown@uspto.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Robert J. Spar, Director, Office of Patent Legal Administration, USPTO, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at (703) 308–5107; or by electronic mail at *bob.spar@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The requirements for submitting nucleotide and/or amino acid sequence disclosures as part of a patent application are outlined in 37 CFR 1.821–1.825. The rules of practice require patent applicants to submit these sequence listings in a standard international format that is consistent with World Intellectual Property Organization (WIPO) Standard ST.25 (1998). Sequence listings may be submitted for both national and international patent applications.

The USPTO uses the sequence listings during the examination process to determine the patentability of the associated patent application. Sequence listings are also disclosed as part of the published patent application or issued patent. Sequence listings that are extremely long (more than 600K or approximately 300 typed pages) are published only in electronic form and are available to the public on the USPTO sequence data web page.

Patent applications that contain nucleotide and/or amino acid sequence disclosures must include a copy of the sequence listing in accordance with the requirements in 37 CFR 1.821–1.825. Previously, the rules of practice required applicants to submit a paper copy of the sequence listing as the official archival copy. Due to the recognition that the submission of massive paper versions of extremely long sequence listings was a significant burden on applicants and the USPTO and of minimal utility for examination purposes, the USPTO amended the rules of practice in a Final Rule Notice published in the **Federal Register** on September 8, 2000, entitled ''Changes to Implement the Patent Business Goals'' (Vol. 65, No. 175), to allow the official copy of the sequence listing under 37 CFR 1.821(c) to be submitted either in paper or on compact disc (CD).

Under 37 CFR 1.821(e), applicants must also submit a copy of the sequence listing in ''computer readable form'' (CRF) with a statement indicating that the CRF copy of the sequence listing is identical to the official paper or CD copy required by 1.821(c). If an applicant later submits an amendment to the paper or CD copy of the sequence listing, a new CRF copy of the amended listing must also be submitted.

Applicants may submit the CRF copy of the sequence listing to the USPTO on CD, as provided in 37 CFR 1.824. Sequence listings may also be filed electronically using the Electronic Filing System (EFS) software developed by the USPTO for secure transmission of patent applications and related documents over the Internet. Applicants may use EFS to file a sequence listing electronically with a patent application or subsequent to a previously filed application.

There are no paper forms associated with the collection of sequence information filed with a patent application. Applicants who submit sequence listings electronically using EFS must complete the electronic transmittal forms provided within the electronic submission software provided by the USPTO. If a sequence listing is filed via EFS subsequent to a previously filed application, the CRF copy may be submitted electronically but the applicant must also mail a paper or CD copy of the sequence listing to the USPTO along with a statement indicating that the paper or CD copy and the CRF copy are identical.

In November 2001, OMB approved a change worksheet that increased the burden for this information collection due to increases in patent application filings involving nucleotide and amino acid sequence listings. However, although the total number of annual responses for this collection increased, the proportion of these responses that were submitted electronically was lower than originally estimated.

II. Method of Collection

By mail, hand delivery, or electronically over the Internet to the USPTO.

III. Data

OMB Number: 0651–0024.

Form Number(s): None.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; not-for-profit institutions; farms; the Federal Government; and state, local or tribal governments.

Estimated Number of Respondents: 23,750 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take the public approximately 1 hour and 20 minutes (1.33 hours) to gather the necessary information, prepare the paper sequence listing, and submit it to the USPTO. For sequence listings prepared on CD, the USPTO estimates that it will take the public approximately 1 hour to prepare and submit the sequence listing. For submissions filed electronically using EFS, the USPTO estimates that it will take the public approximately 10 minutes (0.17 hours) to prepare and submit the sequence listing.

Estimated Total Annual Respondent Burden Hours: 29,856 hours per year.

Estimated Total Annual Respondent Cost Burden: $895,680 per year. The USPTO expects that the information in this collection will be prepared by paraprofessionals at an estimated rate of $30 per hour. Therefore, the USPTO estimates that the respondent cost burden for this collection will be $895,680 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Sequence Listing in Application (paper)	1.33 hours	18,880	25,110
Sequence Listing in Application (CD)	1 hour	4,720	4,720
Electronic Sequence Listing in Application (EFS)	10 minutes	150	26
Total		23,750	29,856

Estimated Total Annual Non-hour Respondent Cost Burden: $50,598 per year. There are no maintenance costs or filing fees associated with this collection. There is no separate filing fee for submitting a sequence listing as part of a patent application. The USPTO also provides PatentIn authoring software for creating the sequence listing in the proper format, which may be downloaded at no cost from the USPTO Web site. However, this collection does have annualized costs in the form of capital start-up costs, recordkeeping costs, and postage costs.

There are capital start-up costs associated with submitting sequence listings to the USPTO on CD. Producing a CD requires additional hardware, software, and supplies, including a CD drive capable of recording onto CD media (a ''CD burner''), CD recording software, blank recordable CD (CD–R) media, cases and labels for the CDs, and a padded mailing envelope for shipping. The cost of a CD burner is approximately $200, depending on the speed and type of PC connection. Commercial software for recording CDs retails for approximately $100, although basic CD recording software is typically included with the CD burner. The cost of blank CD–R media with plastic cases is approximately $10 for 10 blank CDs, and the cost of software and supplies for labeling CDs is approximately $20. Padded mailing envelopes for safely

shipping the CDs cost approximately $12 for a package of 12. The total capital start-up cost for this collection is $342 per year.

Applicants who submit sequence listings on CD may also incur recordkeeping costs. The USPTO advises applicants to retain a back-up copy of CD submissions and associated documentation for their records. The USPTO estimates that it will take applicants 5 minutes to produce a back-up CD copy and 2 minutes to print copies of documentation, for a total of 7 minutes (0.12 hours) to make a back-up copy of the CD submission. The USPTO estimates that approximately 4,720 CD submissions will be received per year, for a total of 566 hours (4,720 responses multiplied by 0.12 hours). The USPTO expects that these back-up copies will be prepared by paraprofessionals at an estimated rate of $30 per hour, for a total recordkeeping cost of $16,980 per year.

Customers may incur postage costs when submitting a sequence listing to the USPTO by mail. The USPTO estimates that the average first-class postage cost for a mailed sequence listing submission on paper or CD will be $1.41 and that 23,600 sequence listings will be mailed to the USPTO per year. The total postage cost for this collection is $33,276 per year.

The total non-hour respondent cost burden for this collection in the form of capital start-up costs and postage costs is $50,598 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 23, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–10704 Filed 4–30–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0079]

Federal Acquisition Regulation; Submission for OMB Review; Corporate Aircraft Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0079).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning corporate aircraft costs. A request for public comments was published in the **Federal Register** at 68 FR 11537, on March 11, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 2, 2003.

ADDRESSES: Submit comments, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward Loeb, Acquisition Policy Division, GSA, (202) 501–0650.

SUPPLEMENTARY INFORMATION:

A. Purpose

Government contractors that use company aircraft must maintain logs of flights containing specified information to ensure that costs are properly charged against Government contracts and that directly associated costs of unallowable activities are not charged to such contracts.

B. Annual Reporting Burden

Number of Respondents: 3,000.
Responses Per Respondent: 1.
Total Responses: 3,000.
Average Burden Per Response: 6 hours.
Total Burden Hours: 18,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0079, Corporate Aircraft Costs, in all correspondence.

Dated: April 25, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

[FR Doc. 03–10706 Filed 4–30–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of the Feasibility Study and Proposed Plan for the St. Louis North County Site for Public Review and Comment

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The St. Louis District, U.S. Army Corps of Engineers (USACE), in consultation with the U.S. Environmental Protection Agency (EPA), proposes to cleanup contaminants at the St. Louis North County Site resulting from uranium manufacturing and processing activities conducted during the early years of the nation's atomic energy program. This site is one of several being addressed under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

Alternatives, which identify the range of potential final site remedies, have been developed and evaluated in the St. Louis North County Feasibility Study (FS). USACE has identified Alternative 5, Excavation with Institutional Controls Under Roads, Bridges, Railroads and Other Permanent Structures, as the preferred alternative in the Proposed Plan (PP) based on the information available at this time. The final remedy will be selected and identified in a Record of Decision (ROD) only after consideration of all comments received and any new information presented.

DATES: The FS and PP will be available for public review from May 1, 2003 through May 30, 2003. Written comments must be received before June 1, 2003. A public meeting, regarding all of the alternatives presented in the FS/PP, will be begin at 6 p.m. at the Hazelwood Civic Center—East at 8969 Dunn Road in Hazelwood, MO on May 29, 2003. Oral and written comments will be accepted at the meeting.

ADDRESSES: Submit written comment to Ms. Sharon Cotner, FUSRAP Program Manager, U.S. Army Corps of Engineers, St. Louis District, 8945 Latty Avenue, Berkeley, MO 63134 before June 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline Mattingly at (314) 260–3924 or (314) 260–3905, or *Jacqueline.Mattingly@mvs02.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The USACE, St. Louis District, is issuing the St. Louis North County FS and PP for public review and comment. The North County Site became contaminated as a result of activities supporting the nation's early atomic energy program. From 1942 to 1957, the Mallinckrodt Chemical Plant extracted uranium and radium from ore at the St. Louis Downtown Site in St. Louis, Missouri. From 1946 until 1967, radioactive process byproducts were stored at an area adjacent to the Lambert-St. Louis Airport, which is now referred to as the St. Louis Airport Site (SLAPS). In 1966, the SLAPS wastes were purchased, moved to, and stored at a property on Latty Avenue. This property later became known as the Hazelwood Interim Storage Site (HISS) and the Futura property. During this move, handling and transportation of the contamination resulted in the material being spread along haul routes and to the adjacent vicinity properties, which are referred to as the SLAPS Vicinity Properties (VPs). The North County Site, which generally consists of SLAPS, HISS/Futura, and the VPs, is being managed by the Corps of Engineers under the Formerly Utilized Sites Remedial Action Program (FUSRAP). The alternatives to address contamination at this site are evaluated in the FS and are summarized in the PP.

2. Project Alternatives

a. Alternative 1—No Action. Required by CERCLA for baseline comparison. Requires periodic environmental monitoring. No soils excavated.

b. Alternative 2—Partial Excavation and Capping at SLAPS and HISS/Futura. Excavate impacted soils only from the VPs for out-of-state disposal. Cap SLAPS and HISS/Futura with stone and clean soil. Use institutional controls to restrict future land use at SLAPS, HISS/Futura, and to control soils beneath roads, bridges, railroads, and other permanent structures.

c. Alternative 3—Partial Excavation and Treatment at SLAPS. Excavate impacted soils from HISS/Futura and VPs. Consolidate excavated soils at SLAPS for treatment (soil sorting and washing). Use soils meeting supplemental standards as backfill at SLAPS and cover site with clean soils. Soils not meeting supplemental standards disposed out-of-state. Use institutional controls to restrict future land use at SLAPS and to control soils beneath roads, bridges, railroads, and other permanent structures.

d. Alternative 4—Institutional Controls. Limit future land use at SLAPS, HISS/Futura, VPs, and for soils beneath roads, bridges, railroads, and other permanent structures using deed notices, land use restrictions, and zoning restrictions. Institutional controls and site maintenance would be implemented to prevent unacceptable exposures to site contamination.

e. Alternative 5—Excavation with Institutional Controls Under Roads, Bridges, Railroads, and Other Permanent Structures. Excavate impacted soils from SLAPS, HISS/Futura and VPs for out-of-state disposal. Use institutional controls to control soils beneath roads, bridges, railroads and other permanent structures.

f. Alternative 6—Excavation at all Properties. Excavate impacted soils from all locations, regardless of accessibility, for out-of-state disposal. Based on available information, the Corps of Engineers' preferred alternative is Alternative 5, Excavation with Institutional Controls Under Roads, Bridges, Railroads, and Other Permanent Structures. Although Alternative 5 is preferred at the present time, public comments are welcome on all alternatives.

3. Availability of the FS and PP

Copies of the FS and PP are with the site Administrative Record File and may be reviewed at the following locations: U.S. Army Corps of Engineers, St. Louis District, FUSRAP Project Office, 8945 Latty Avenue, Berkeley, MO 63134 between 8 a.m.–4:30 p.m., Monday thru Friday; or the St. Louis Public Library, Government Information Room, 1302 Olive Street, St. Louis, MO 63103 during normal business hours. Electronic copies of these documents are also available at: *http://www.mvs.usace.army.mil/engr/fusrap/home2.htm.*

Sharon R. Cotner,

FUSRAP Program Manager.

[FR Doc. 03–10686 Filed 4–30–03; 8:45 am]

BILLING CODE 3710–55–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.336A]

Office of Postsecondary Education; Teacher Quality Enhancement Grants Program—State Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: To provide grants to promote improvements in the quality of new teachers with the ultimate goal of increasing student achievement in the nation's K–12 classrooms. State Grants are designed to improve the quality of a State's teaching force by supporting the implementation of comprehensive statewide reform activities in areas such as teacher licensing and certification, accountability for high-quality teacher preparation, and recruitment.

Eligible Applicants: States, as defined in section 103(16) of the Higher Education Act of 1965, as amended (HEA).

Note: A State that received a previous grant under this program is not eligible for a FY 2003 grant. The following States are eligible: Alaska, Arizona, Delaware, Hawaii, Iowa, Montana, Minnesota, New Hampshire, New York, and the Commonwealth of the Northern Mariana Islands, Guam, the Republic of Marshall Islands, the Republic of Palau, and the United States Virgin Islands.

Applications Available: May 1, 2003.

Deadline for Transmittal of Applications: June 16, 2003.

Deadline for Intergovernmental Review: August 18, 2003.

Available Funds: $7,645,000.

Estimated Range of Awards: $2,000,000–$3,000,000 per year.

Estimated Average Size of Awards: $2,500,000 per year.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Page Limit: The application narrative is where you, the applicant, address the selection criteria reviewers use to evaluate your application.

If you are submitting an application for a State grant, you must limit your narrative to the equivalent of no more than 50 pages and your accompanying work plan to the equivalent of no more than 10 pages. Submit the work plan as an appendix. In addition, you must limit your budget narrative to the equivalent of no more than 10 pages and your evaluation plan to the equivalent of no more than 5 pages.

For the application narrative, work plan, budget narrative, and evaluation plan, the following standards apply:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text, including titles, headings, quotations, references, and captions.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).
- For tables, charts, or graphs also use a font that is either 12-point or larger or no smaller than 10 pitch.

Our reviewers will not read any of the specified sections of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In Fiscal Year 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Teacher Quality Enhancement Grants Program—State Grants is one of the programs included in the pilot project. If you are an applicant under the Teacher Quality Enhancement Grants Program—State Grants you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You must submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The State's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Teacher Quality Enhancement Grants Program's State Grants Program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under *For Further Information Contact* or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Teacher Quality Enhancement Grants Program's State Grant Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98 and 99. (b) The regulations for this program in 34 CFR part 611.

Priority: This competition focuses on projects designed to meet a priority in the regulations for this program (34 CFR 611.13).

The Secretary provides a competitive preference on the basis of how well the State's proposed activities in any one or more of the following statutory priorities are likely to yield successful and sustained results:

(a) Initiatives to reform State teacher licensure and certification requirements so that current and future teachers possess strong teaching skills and academic content knowledge in the subject areas they will be certified or licensed to teach.

(b) Innovative reforms to hold higher education institutions with teacher preparation programs accountable for preparing teachers who are highly competent in the academic content areas and have strong teaching skills.

(c) Innovative efforts to reduce the shortage (including the high turnover) of highly competent teachers in high-poverty urban and rural areas.

Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on how well the application meets one or more of these priorities.

Special Funding Considerations: The program regulations (34 CFR part 611.3(c)) provide that when two or more applicants are ranked equally for the last available award, the Secretary selects the applicant whose activities will focus (or have most impact) on local educational agencies and schools located in one (or more) of the Nation's Empowerment Zones and Enterprise Communities.

For Applications and Further Information Contact: Luretha Kelley, Teacher Quality Program, Office of Postsecondary Education, U.S. Department of Education, 1990 K Street NW., Room 7096, Washington, DC 20006–8525. Telephone: (202) 502–7878, FAX: (202) 502–7864 or via Internet: *Luretha.Kelley@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Applications and Further Information Contact.* However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have the Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1021 *et seq.*

Dated: April 28, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–10765 Filed 4–30–03; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–347–000]

Chandeleur Pipe Line Company; Notice of Tariff Filing

April 25, 2003.

Take notice that on April 22, 2003, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective July 1, 2003:

Fourth Revised Sheet No. 2
Fifth Revised Sheet No. 3
Original Sheet No. 17A
Sixth Revised Sheet No. 18
Fourth Revised Sheet No. 18A
First Revised Sheet No. 18B
Original Sheet No. 18C
Seventh Revised Sheet No. 19
Eighth Revised Sheet No. 19A
Third Revised Sheet No. 19A.01
Third Revised Sheet No. 19A.02
Original Sheet No. 19A.03
Eighth Revised Sheet No. 19B
First Revised Sheet No. 19B.01
Fifth Revised Sheet No. 19C
First Revised Sheet No. 19D
First Revised Sheet No. 32A
Fifth Revised Sheet No. 34
First Revised Sheet No. 34A
Original Sheet No. 34B
Original Sheet No. 34C
Original Sheet No. 34D
Fourth Revised Sheet No. 45
Second Revised Sheet No. 46
First Revised Sheet No. 46A
Third Revised Sheet No. 47
First Revised Sheet No. 52A
Second Revised Sheet No. 56A
Fifth Revised Sheet No. 65
Third Revised Sheet No. 65A
Third Revised Sheet No. 67A
Original Sheet No. 68A
Eighth Revised Sheet No. 69
Seventh Revised Sheet No. 69A
First Revised Sheet No. 69A.01
First Revised Sheet No. 69A.02
Third Revised Sheet No. 69B

Chandeleur asserts that the purpose of this filing is to comply with the Commission's order issued March 12, 2003, in Docket No. RM96–1–024 (Order No. 587-R).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 5, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10773 Filed 4–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–60–003]

CMS Trunkline LNG Company, LLC; Notice of Filing

April 25, 2003.

Take notice that on April 17, 2003, CMS Trunkline LNG Company, LLC (Trunkline LNG), Docket No. CP02–60–003, P. O. Box 4967, Houston, Texas, filed with the Federal Energy Regulatory Commission (Commission) an abbreviated application pursuant to the Natural Gas Act (NGA) to amend the authority granted for its LNG Terminal Expansion Project by Commission order dated December 18, 2002 in Docket Nos. CP02–60–000 and CP02–60–001. The application is on file with the Commission and open for public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For

assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202) 502–8659.

Trunkline LNG requests authorization to amend its Expansion Project with the following modifications: (1) To operate the new docking facilities as a marine layberth, in lieu of the construction of new unloading facilities; (2) to utilize local commercial electric service, Entergy Louisiana, Inc. (Entergy), in lieu of installing additional on-site generation facilities; and (3) to extend for one year, until January 1, 2006, the in-service date for the proposed expansion project. The modifications will not affect the newly authorized additional storage capacity of 2.7 Bcf nor the daily sendout capability of 1,200 MMcf per day and peaking capacity of 1,300 MMcf per day. The estimated cost of the amended project is $166.4 million, compared to the original estimated cost of $177.2 million.

Any questions regarding this application may be directed to William W. Grygar, Vice President, Rates and Regulatory Affairs, at (713)989–7660, CMS Trunkline LNG Company, LLC, 5444 Westheimer Road, Houston, Texas 77056.

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. 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. 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 may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: May 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10766 Filed 4–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–13–009]

Portland Natural Gas Transmission System; Notice of Amended Report of Refunds

April 25, 2003.

Take notice that on April 22, 2003, Portland Natural Gas Transmission System (PNGTS), tendered for filing a corrected refund report in the above captioned proceeding. PNGTS states that the corrected report corrects a minor error in PNGTS's prior distribution of refunds to customers in accordance with section 2.2 of a Stipulation and Settlement Agreement filed with the Commission on October 25, 2002 in Docket No. RP02–13, and approved by the Commission's Order issued on January 14, 2003.

PNGTS states the error resulted in an overpayment of interest on refunds that it completed on March 26, 2003, and reflected in a prior refund report filed on April 11, 2003. PNGTS states that the aggregate amount of the correction is $7,649.51.

PNGTS further states that copies of the filing have been served upon the affected shippers and on the State Commission's of affected shippers.

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 comment date 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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance,

please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10772 Filed 4–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–171–004, *et al.*]

Entergy Mississippi, Inc., *et al.*; Electric Rate and Corporate Filings

April 23, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Central Vermont Public Service Corporation and Green Mountain Power Corporation

[Docket No. EC03–78–000]

Take notice that on April 18, 2003, Central Vermont Public Service Corporation (Central Vermont) and Green Mountain Power Corporation (Green Mountain) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization to transfer certain shares of Common Stock of Vermont Yankee Nuclear Power Corporation (VYNPC) to their respective passive investment holding company subsidiaries Custom Investment Corporation and Green Mountain Power Investment Company. Central Vermont also seeks authorization to transfer certain shares of Connecticut Yankee Atomic Power Corporation, Maine Yankee Atomic Power Corporation and Yankee Atomic Electric Company, and two promissory notes issued by a subsidiary, to Custom Investment Corporation. Central Vermont and Green Mountain request expedited approval to permit the realization of certain tax benefits associated with the payment of dividends by VYNPC.

Green Mountain states that a copy of the filing was served upon the Vermont Public Service Board and upon the Connecticut Department of Public Utility Control.

Comment Date: May 9, 2003.

2. ESI Energy, LLC; ESI Hawkeye Power, LLC; ESI Northeast Energy LP, Inc.; Badger Windpower Holdings, LLC; FPL Energy Lake Benton Acquisitions, LLC; High Winds Holdings, LLC; FPL Energy New Mexico Holdings, LLC and FPL Energy American Wind, LLC

[Docket No. EC03–79–000]

Take notice that on April 18, 2003, pursuant to Section 203 of the Federal Power Act, ESI Energy, LLC, ESI Hawkeye Power, LLC, ESI Northeast Energy, LP, Inc., Badger Windpower Holdings, LLC, FPL Energy Lake Benton Acquisitions, LLC, High Winds Holdings, LLC, FPL Energy New Mexico Holdings, LLC, and FPL Energy American Wind, LLC (jointly, the Applicants) filed a joint application for approval of an intracorporate reorganization. Applicants state that the proposed reorganization will not change the ultimate ownership of the facilities.

The Applicants state that a copy of the application has been served on the public utility commissions in the states where the facilities are located. The Applicants have requested waivers of the Commission's regulations so that the filing may become effective at the earliest possible date, but no later than June 1, 2003.

Comment Date: May 9, 2003.

3. ESI Energy, LLC, FPL Energy Construction Funding LLC

[Docket No. EC03–80–000]

Take notice that on April 18, 2003, pursuant to Section 203 of the Federal Power Act, ESI Energy, LLC and FPL Energy Construction Funding LLC (jointly, the Applicants) filed a joint application for approval of a corporate reorganization. Applicants state that the proposed organization will not change the ultimate ownership of the facilities.

The Applicants state that a copy of the application has been served on the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105–33265, and the Alabama Public Service Commission, P.O. Box 304260, 100 N. Union Street, RSA Union, Suite 850, Montgomery, AL 36130. The Applicants have requested waivers of the Commission's regulations so that the filing may become effective at the earliest possible date, but no later than June 1, 2003.

Comment Date: May 9, 2003.

4. PSEG Energy Resources & Trade, LLC Public Service Electric and Gas Company

[Docket Nos. ER99–3151–002 and ER97–837–003]

Take notice that on April 17, 2003, PSEG Energy Resources & Trade, LLC and Public Service Electric and Gas Company tendered for filing their joint triennial market power update in compliance with the Commission Orders granting them market-based rate authority in Docket Nos. ER99–3151–000 and ER97–837–000.

Comment Date: May 8, 2003.

5. PJM Interconnection, L.L.C.

[Docket No. ER03–694–001]

Take notice that, on April 18, 2003, PJM Interconnection, L.L.C. (PJM) amended its April 1, 2003 filing in Docket No. ER03–694–000 which proposed revisions to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to establish a charge for submission of excessive numbers of bids or offers in the PJM energy market and FTR auctions. PJM requests a waiver of the Commission's sixty-day notice requirement to permit an effective date of April 21, 2003 for the amendments filed in this docket.

PJM states that copies of this filing were served upon each person designated on the official service list compiled by the Secretary in this proceeding, all PJM members, and each state electric utility commission in the PJM region.

Comment Date: May 9, 2003.

6. Entergy Services, Inc.

[Docket No. ER03–753–000]

Take notice that on April 18, 2003, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (together, Entergy) submitted for filing several amendments to the Entergy System Agreement to make certain modifications to Service Schedules MSS–4.

Entergy states it has served a copy of this filing on its state and local regulatory commissions and the Commission's Official Service list in Docket No. EL01–88–000.

Comment Date: May 9, 2003.

7. American Transmission Company LLC

[Docket No. ER03-754–000]

Take notice that on April 18, 2003, American Transmission Company LLC (ATCLLC) tendered for filing a revised Generation-Transmission Interconnection Agreement between ATCLLC and Fox Energy Company LLC (Revised Service Agreement No. 233). ATCLLC states that Revised Service Agreement No. 233 consist of amendments to Exhit No. 11. ATCLLC requests retention of the original effective date of January 15, 2002.

Comment Date: May 9, 2003.

8. Public Service Company of New Mexico

[Docket No. ER03–755–000]

Take notice that on April 21, 2003, Public Service Company of New Mexico (PNM) submitted for filing, pursuant to the Regulations of the Federal Energy Regulatory Commission, a Notice of Cancellation of a rate schedule between PNM and Tri-State Generation and Transmission Association, Inc. (Tri-State). Pursuant to PNM's filing, the agreement to be canceled is: The Master Interconnection Agreement of June 12, 1975 Between Tri-State Generation and Transmission Association, Inc., and Public Service Company of New Mexico (Rate Schedule FERC No. 31). PNM states that the filing is available for public inspection at its offices in Albuquerque, New Mexico.

PNM states that a copy of this filing has been served upon Tri-State and informational copies have been sent to the New Mexico Public Regulation Commission and to the New Mexico Attorney General.

Comment Date: May 12, 2003.

9. PacifiCorp

[Docket No. ER03–756–000]

Take notice that on April 21, 2003 PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, PacifiCorp's First Revised Rate Schedule No. 418 Restated Storage and Integration Service Agreement between Public Utility Distric (PUD) No. 1 of Clark County, WA and PacifiCorp.

PacifiCorp states that copies of this filing were supplied to PUD No. 1 of Clark County, WA, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment Date: May 12, 2003.

10. PECO Energy Company

[Docket No. ER03–757–000]

Take notice that on April 21, 2003, PECO Energy Company (PECO) submitted for filing:

(1) First Revised Sheet Nos. 60—63 Superseding Original Sheet Nos. 60—63, to the Interconnection Agreement between PECO and Exelon Generation Company (Exelon Generation) for the Eddystone Generating Station designated as First Revised Rate Schedule FERC No. 129;

(2) First Revised Sheet Nos. 61 and 62 Superseding Original Sheet Nos. 61 and 62 to the Interconnection Agreement between PECO and Exelon Generation for the Falls Generating Station designated as First Revised Rate Schedule FERC No. 130;

(3) First Revised Sheet Nos. 63 and 64 Superseding Original Sheet Nos. 63 and 64 to the Interconnection Agreement between PECO and Exelon Generation for the Moser Generating Station designated as First Revised Rate Schedule FERC No. 132;

(4) First Revised Sheet Nos. 57 and 58 Superseding Original Sheet Nos. 57 and 58 to the Interconnection Agreement between PECO and Exelon Generation for the Muddyrun Generating Station designated as First Revised Rate Schedule FERC No. 133; and

(5) First Revised Sheet Nos. 62 and 63 Superseding Original Sheet Nos. 62 and 63 to the Interconnection Agreement between PECO and Exelon Generation for the Southwark Generating Station designated as First Revised Rate Schedule FERC No. 138.

PEPCO states that the pages were revised to address the installation of new metering equipment at the generation stations. Copies of this filing were served on Exelon Generation and PJM Interconnection, L.L.C.

Comment Date: May 12, 2003.

11. Jackson County Power, LLC

[Docket No. ER03–758–000]

Take notice that on April 21, 2003, Jackson County Power, LLC submitted a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 1.

Comment Date: May 12, 2003.

12. Public Service Company of New Mexico

[Docket No. ER03–759–000]

Take notice that on April 21, 2003, Public Service Company of New Mexico (PNM) submitted for filing an executed revised Network Integration Transmission Service Agreement (NITSA) and an associated revised Network Operating Agreement (NOA) with Tri-State Generation and Transmission Association, Inc. (Tri-State), with an effective date of April 1, 2003, under the terms of PNM's Open Access Transmission Tariff (OATT). PNM states that the NITSA and NOA have been updated to reflect current business arrangements between PNM and Tri-State, including (among other things) the incorporation of Tri-State's recently completed Pyramid Generating Station into Tri-State's Network Resources to meet network loads in New Mexico under the NITSA. PNM is requesting an effective date for the NITSA and NOA of April 1, 2003. PNM states that the filing is available for public inspection at its offices in Albuquerque, New Mexico.

PNM states that a copy of this filing has been served upon Tri-State and informational copies have been sent to the New Mexico Public Regulation Commission and to the New Mexico Attorney General.

Comment Date: May 12, 2003.

13. Public Service Company of New Mexico

[Docket No. ER03–760–000]

Take notice that on April 21, 2003, Public Service Company of New Mexico (PNM) submitted for filing an executed revised Control Area Services Agreement with Texas-New Mexico Power Company (TNMP), under the terms of PNM's Open Access Transmission Tariff. PNM states that the agreement updates provisions of an existing Control Area Services Agreement between PNM and TNMP. PNM requests April 1, 2003, as the effective date for the agreement. PNM states that the filing is available for public inspection at its offices in Albuquerque, New Mexico.

PNM states that copies of the filing have been sent to TNMP, the New Mexico Public Regulation Commission and the New Mexico Attorney General.

Comment Date: May 12, 2003.

14. Powersol Energy Marketing, LLC

[Docket No. ER03–761–000]

Take notice that on April 21, 2003, Powersol Energy Marketing, LLC (Powersol) submitted a Notice of Cancellation of Rate Schedule FERC No. 1, filed August 2, 2002 in Docket No. ER02–2413–000.

Powersol states that copies of this filing were served to the relevant state commissions.

Comment Date: May 12, 2003.

15. North West Rural Electric Cooperative

[Docket No. ES03–36–000]

Take notice that on April 18, 2003, North West Rural Electric Cooperative (North West) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to make long-term borrowings in an amount not to exceed $13.5 million under a line of credit with the National Rural Utilities Cooperative Finance Corporation.

North West also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: May 14, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10695 Filed 4–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–76–000, *et al.*]

Williams Energy Marketing & Trading Company Progress Ventures, Inc., *et al.;* Electric Rate and Corporate Filings

April 24, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Williams Energy Marketing & Trading Company Progress Ventures, Inc.

[Docket No. EC03–76–000]

Take notice that on April 22, 2003, Williams Energy Marketing and Trading (Williams EMT) and Progress Ventures, Inc. (Progress Ventures), filed with the Federal Energy Regulatory Commission an affidavit regarding a competitive study to supplement their application filed April 5, 2003, pursuant to Section 203 of the Federal Power Act and a request for expedited approval of a proposed transaction whereby Williams EMT will assign its interest in a Power Supply and Energy Call Agreement between Williams EMT and Jackson Electric Membership Corporation (Jackson EMC) Progress Ventures.

Williams EMT states that copies of the public version of this filing were served upon the Georgia Public Service Commission and Jackson EMC.

Comment Date: May 6, 2003.

2. Mirant Americas Energy Marketing, L.P., Mirant New England, LLC, Mirant Kendall, LLC and, Mirant Canal, LLC v. ISO New England Inc.

[Docket No. EL01–93–008]

Take notice that on April 22, 2003, ISO New England Inc., pursuant to the Commission's Order in Docket Nos. EL01–93–005 and EL01–93–006, 103 FERC ¶61,018, filed with the Federal Energy Regulatory Commission an unredacted and non-confidential versions of the mitigation agreements previously filed with the Commission on February 25, 2002.

ISO New England states that copies of said filing have been served upon all parties to this proceeding, and upon New England Power Pool (NEPOOL) Participants, as well as upon the utility regulatory agencies of the six New England States which comprise the NEPOOL Control Area.

Comment Date: May 22, 2003.

3. Athens Generating Company, L.P., Covert Generating Company, LLC, Harquahala Generating Company, LLC and Millennium Power Partners, L.P.

[Docket Nos. ER99–4282–003, ER01–520–003, ER01–748–003 and ER98–830–007]

Take notice that on April 21, 2003, Athens Generating Company, L.P., Covert Generating Company, LLC, Harquahala Generating Company, LLC, and Millennium Power Partners, L.P., filed with the Commission a Notice of Withdrawal of their November 18, 2002 Notice of Change in Status, under section 205 of the Federal Power Act.

Comment Date: May 12, 2003.

4. Entergy Services, Inc.

[Docket No. ER02–2014–011]

Take notice that on April 18, 2003, as supplemented on April 21, 2003, Entergy Services, Inc., (Entergy) tendered for filing a First Inforrmational Report Entergy's implementation of the Generator Operating Limits as required by the Commission's Order issued March 13, 2003 in Docket No. ER02–2014–006.

Comment Date: May 9, 2003.

5. New York Independent System Operator, Inc.

[Docket No. ER03–303–002]

Take notice that on April 21, 2003, the New York Independent System Operator, Inc. (NYISO) submitted a compliance filing in response to the Commission's March 13, 2003 Order in Docket Nos. ER03–303–000 and ER03–303–001.

The NYISO states that it has served a copy of this filing upon all parties that have executed service agreements under the NYISO's OATT and Services Tariff.

Comment Date: May 12, 2003.

6. PJM Interconnection, L.L.C.

[Docket No. ER03–406–003]

Take notice that on April 22, 2003, PJM Interconnection, L.L.C., (PJM) amended its April 11, 2003 compliance filing in Docket ER03–406–002, regarding PJM's new Financial Transmission auction process. PJM states that this amended filing is necessary to include inadvertently omitted revised sheets of the Amended and Restated Operating Agreement of PJM Interconnection L.L.C., and a corrected page of the PJM Open Access Transmission Tariff.

PJM states that copies of this filing were served upon each person designated on the Commission's official service list in this proceeding, all PJM members, and each state electric utility commission in the PJM region.

Comment Date: May 13, 2003.

7. Minnesota Power

[Docket No. ER03–475–002]

Take notice that on April 21, 2003, Minnesota Power tendered for filing cost information in support of the monthly charge for the City of Hibbing, Minnesota's use of Minnesota Power's substation equipment, as set forth in Rate Schedule FERC No. 136 for the City of Hibbing, Minnesota—Public Utilities Commission. Minnesota Power requests an effective date of January 1, 2003, the same date requested in its original filing in Docket ER03–475–000.

Comment Date: May 12, 2003.

8. PacifiCorp

[Docket No. ER03–545–001]

Take notice that on April 21, 2003, PacifiCorp tendered for filing, in accordance with 18 CFR 35 of the Commission's Rules and Regulations, an amended filing in further support of its February 19, 2003 filing of proposed unexecuted Umbrella Service Agreements with Conoco Inc.; J. Aron & Company; Reliant Energy; Portland

General Electric; Pinnacle West; Sempra Energy Trading Corp.; UBS Warburg Energy; and Williams Energy Marketing & Trading Company; under PacifiCorp's market based rate tariff, FERC Electric Tariff, Third Revised Volume No. 12 (the Tariff).

PacifiCorp states that copies of this filing were supplied to Conoco Inc.; J. Aron & Company; Reliant Energy; Portland General Electric; Pinnacle West; Sempra Energy Trading Corp.; UBS Warburg Energy; Williams Energy Marketing & Trading Company; Utah Public Service Commission and the Public Utility Commission of Oregon.

Comment Date: May 12, 2003.

9. ISO New England Inc.

[Docket No. ER03–631–001]

Take notice that on April 22, 2003, ISO New England Inc., (ISO) filed with the Federal Energy Regulatory Commission an amendment to its March 18, 2003 filing of three Bid Mitigation Agreements between ISO New England and (1) Mirant Kendall, LLC; (2) PG&E Energy Trading—Power, L.P.; and (3) Devon Power LLC, Connecticut Jet Power LLC, Middletown Power LLC, Montville Power LLC, and Norwalk Harbor Power, LLC. ISO states that the amendment withdraws the ISO's request for confidential treatment of the filed agreements.

10. Alliant Energy Corporate Services, Inc.

[Docket No. ER03–762–000]

Take notice that on April 22, 2003, Alliant Energy Corporate Services, Inc., filed with the Federal Energy Regulatory Commission its market-based rate wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2.

Comment Date: May 13, 2003.

11. Innovative Technical Services, L.L.C.

[Docket No. ER03–763–000]

Take notice that on April 21, 2003, Innovative Technical Services, L.L.C., (InTech-LLC) petitioned the Commission for acceptance of InTech-LLC Rate Schedule No. 1; the granting of certain blanket approvals, including authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

InTech-LLC states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. InTech-LLC indicates that it is not in the business of generating or transmitting electric power.

Comment Date: May 12, 2003.

12. Calpine Northbrook Energy Marketing, LLC

[Docket No. ER03–764–000]

Take notice that on April 21, 2003, Calpine Northbrook Energy Marketing, LLC tendered for filing a proposed change to the Western Systems Power Pool Rate Schedule FERC No. 6 to reflect the admission of Calpine Northbrook Energy Marketing, LLC to membership in the Western Systems Power Pool Agreement.

Comment Date: May 12, 2003.

13. Calpine Oneta Power, L.P.

[Docket No. ER03–765–000]

Take notice that on April 22, 2003, Calpine Oneta Power, L.P., tendered for filing, under Section 205 of the Federal Power Act, a rate schedule for reactive power from the Oneta Energy Center.

Comment Date: May 13, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10694 Filed 4–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 201–014 AK]

Petersburg Municipal Power and Light; Notice of Availability of Environmental Assessment

April 25, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), Office of Energy Projects staff has reviewed the application for a new license for the Blind Slough Hydroelectric Project, an existing, operating facility located on Crystal Creek, near the City of Petersburg, Alaska. In the environmental assessment (EA), the staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA can be viewed 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. To be notified via email of new filings and issuances related to this or other pending projects, register online at *http://www.ferc.gov/esubscribenow.htm*. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10768 Filed 4–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–84–000]

Transcontinental Gas Pipe Line Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Mobile Bay Replacement Project and Request for Comments on Environmental Issues

April 25, 2003.

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 Mobile Bay Replacement Project involving construction and operation of facilities by Transcontinental Gas Pipe Line Corporation (Transco) in Mobile County, Alabama.[1] These facilities would consist of an offset replacement of about 1.45 miles of 30-inch-diameter pipeline. 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.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Transco provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Transco intends to install the 1.45 miles of 30-inch-diameter pipeline in order to ensure compliance with U.S. Department of Transportation pipeline safety regulations. Transco would construct the new replacement pipeline parallel to the existing pipeline and within its existing right-of-way. Once construction of the new offset pipeline has been completed, the old pipeline would be removed and restoration and revegetation activities would be completed.

The location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 26.2 acres of land. Following construction, the entire work area 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[3] 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 requests public comments on the scope of the issues it will 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.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- public safety land use
- water resources, fisheries, and wetlands cultural resources
- vegetation and wildlife endangered and threatened species
- geology and soils

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations 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 may 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.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Transco. This preliminary list of issues may be changed based on your comments and our analysis.

- Two federally listed endangered or threatened species may occur in the proposed project area.
- A total of 1.6 acres of palustrine emergent or scrub-shrub wetlands and 1.4 acres of forested wetlands would be temporarily disturbed.
- One waterbody, the Island Branch, would be crossed.
- There would be seven residences located within 50 feet of the proposed construction work area, five of which would be within 25 feet.

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, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

[1] Transco's application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site at the ''FERRIS'' 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 FERRIS 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).

• Label one copy of the comments for the attention of Gas Branch 2.

• Reference Docket No. CP03–84–000.

• Mail your comments so that they will be received in Washington, DC on or before (May 28, 2003).

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

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

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential temporary right-of-way grantors and/or landowners currently holding right-of-way leases. 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 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 FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

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/esubscribenow.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10767 Filed 4–30–03; 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

[Project No. 2105–089]

Notice of Intent To Prepare an Environmental Impact Statement, Scoping Meetings and Site Visits, and Soliciting Scoping Comments

April 25, 2003.

Take notice that the following hydroelectric application has been filed with Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2105–089.

c. *Date filed:* October 23, 2002.

d. *Applicant:* Pacific Gas and Electric Company (PG&E).

e. *Name of Project:* Upper North Fork Feather River Project.

f. *Location:* On the North Fork Feather River, in the vicinity of the community of Chester, Plumas County, California, T28N, R7E. The project occupies 1,500 acres of land administered by the Forest Supervisors of the Lassen and Plumas National Forests.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contacts:* Mr. Randal Livingston, Lead Director, Hydro Generation Department, Pacific Gas and Electric Company, P.O. Box 770000 (N11C), San Francisco, CA, 94177, (415) 973–6950, and Ms. Janet Loduca, Attorney, Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, CA, 94120–7442, (415) 973–0174.

i. *FERC Contact:* John Mudre, (202) 502–8902 or *john.mudre@ferc.gov*.

j. *Deadline for filing scoping comments:* June 20, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all 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.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application is not ready for environmental analysis at this time.

l. The existing Upper North Fork Feather River Project consists of three dams and reservoirs, five powerhouses, tunnels and penstocks connecting the reservoirs to the powerhouses, 230kV and 115kV transmission facilities, and various roads, recreation facilities, and administrative facilities. Project reservoirs include Lake Almanor (1,142,251 acre-feet), Butt Valley Reservoir (49,891 acre-feet), and Belden Forebay (2,477 acre-feet). Powerhouses include Butt Valley Powerhouse (41 MW), Caribou No. 1 Powerhouse (75 MW), Caribou No. 2 Powerhouse (120 MW), Oak Flat Powerhouse (1.3 MW), and Belden Powerhouse (125 MW). The

Applicant proposes no new facilities, but proposes to add 33.73 acres of lands of the Plumas National Forest to the project because of historical and future project use of these lands.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Scoping Process:* The Commission intends to prepare an Environmental Impact Statement (EIS) on the project in accordance with the National Environmental Policy Act. The EIS will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

FERC staff will conduct one agency scoping meeting and one public meeting. The agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the public scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EIS. The times and locations of these meetings are as follows:

Public Scoping Meeting

Date: Tuesday May 20, 2003.
Time: 7 p.m.
Place: Veterans Memorial Hall.
Address: 225 Gay Street, Chester, CA.

Agency Scoping Meeting

Date: Wednesday May 21, 2003.
Time: 10 a.m.
Place: Pacific Gas and Electric Company Facility.
Address: 460 Rio Lindo Road, Chico, CA.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EIS were distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the web at *http://www.ferc.gov* using the ''FERRIS'' link: enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Site Visit

The Applicant and FERC staff will conduct a project site visit beginning at 9:30 a.m. on Monday May 19, 2003, and continuing at 9:30 a.m. on Tuesday May 20, 2003. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at the parking area on the Lake Almanor Dam (also known as Canyon Dam) off Highway 89, just west of its intersection with Highway 147. All participants are responsible for their own transportation to the site. Anyone with questions about the site visit should contact Mr. Tom Jereb of PG&E at 415–973–9320.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EIS. (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EIS; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10769 Filed 4–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2177–053]

Notice of Application and Applicant-Prepared EA Accepted for Filing, Soliciting Motions to Intervene and Protests, and Soliciting Comments, and Final Recommendations, Terms and Conditions, and Prescriptions

April 25, 2003.

Take notice that the following hydroelectric application and applicant-prepared environmental assessment has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–2177–053.

c. *Date filed:* December 13, 2002.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Middle Chattahoochee Project.

f. *Location:* On the Chattahoochee River, in Harris and Muscogee Counties, Georgia; Lee and Russell Counties, Alabama; near the cities of Columbus, Georgia and Phenix City Alabama. The project does not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Georgia Martin, Relicensing Project Manger, Georgia Power Company, 22nd Floor, Bin 10221, 241 Ralph McGill Blvd., NE., Atlanta, Georgia 30308, (404) 506–1357 or gamartin@southernco.com.

i. *FERC Contact:* Ronald McKitrick, (770) 452–3778 or *ronald.mckitrick@ferc.gov*.

j. *Deadline for filing motions to intervene and protests, comments, and final recommendations, terms and conditions, and prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions may be

filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing.

l. The proposed Middle Chattahoochee Project includes three developments:

Goat Rock Development consisting of: (1) A 965-acre impoundment; (2) a 75foot-high concrete reinforced dam located at river mile (RM) 172.2; (3) a 909.5-foot-long fixed crest spillway structure topped with 4-foot-high wooden flashboards; (4) a 200-foot-long and 77-foot-long non-overflow section; (5) a 173-foot-long combined powerhouse and intake section; (6) four trash gates on the east end of the intake having a total length of 74 feet; (7) two new horizontal generating units (to replace 2 existing units) with a nameplate rating of 8.7 MW each, one horizontal generating unit with a nameplate rating of 6.9 MW, and three horizontal generating units with a nameplate rating of 5.0 MW; (8) a total generating capacity of 39.3 MW, a total hydraulic capacity of 9,877 cfs, and average annual generation of 151,120,490 kWh.

Oliver Development consisting of: (1) A 2,280-acre impoundment; (2) a 70-foot-high concrete reinforced dam located at RM 163.5; (3) a 1,324-foot-long gated spillway structure which includes 33 16-foot-high by 35-foot-long radial-arm taintor gates, and one 16-foot-high by 11-foot-long trash gate; (4) a 284-foot-long and 215-foot-long non-overflow section; (5) a 198-foot-long combined powerhouse and intake section; (6) three vertical generating units with a nameplate rating of 18 MW each, and one vertical generating unit with a nameplate rating of 6.0 MW; and (7) a total generating capacity of 60 MW, a total hydraulic capacity of 12,496 cfs, and average annual generation of 234,019,210 kWh.

North Highlands Development consisting of: (1) A 131-acre impoundment; (2) a 36foot-high concrete reinforced dam located at RM 162.5 (3) a curved 705-foot-long spillway section topped with 3.6-foot-high flashboards; (4) a 46-foot-long and 40-foot-long non-overflow section; (5) a 193-foot-long combined power house and intake section; (6) three vertical generating units with a nameplate rating of 9.2 MW each, and one vertical generating unit with a nameplate rating of 2.0 MW; (7) a total generating capacity of 29.6 MW, a total hydraulic capacity of 13,031 cfs, and average annual generation of 138,832,160 kWh.

The three developments of the Middle Chattahoochee Project have a total installed capacity of 128.9 megawatts (MW) and generates about 524,000 megawatt-hours (MWh) of electric energy annually. All generated power is utilized within the applicant's electric utility system.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

The Commission directs, pursuant to section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application and APEA be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Notice soliciting final terms and conditions: April 2003.

Deadline for Agency Recommendations: June 2003.

Deadline for Reply Comments: August 2003.

Notice of the availability of the EA: November 2003.

Public Comments on EA due: January 2004.

Ready for Commission's decision on the application: April 2004.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10770 Filed 4–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5334–019—Michigan]

Charter Township of Ypsilanti, Ford Lake Hydroelectric Station; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

April 25, 2003.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure

provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding. [1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Michigan State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to the Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. 470 f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project No. 5334–019.

The programmatic agreement, when executed by the Commission, the SHPO, and the Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13(e)). The Commission's responsibilities pursuant to Section 106 for the Black Warrior River Project would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Order issuing a license.

The Charter Township of Ypsilanti, as licensee for Project No. 5334, is invited to participate in consultations to develop the programmatic agreement.

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for the aforementioned projects as follows: Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

Ms. Joann Brinker, Administrative Services/Human Resources Director, Charter Township of Ypsilanti, 7200 South Huron River Drive, Ypsilanti, MI 48197. Ms. Martha MacFarlane-Faes, Michigan State Historic Preservation Office, Michigan Historical Center, P.O. Box 30740, 702 W. Kalamazoo St., Lansing, MI 48909–8240.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15 day period.

An original and 8 copies of any such motion must be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, and must be served on each person whose name appears on the official service list. The first page of the motion should clearly show the project number, P–5334. Your response 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. The Commission strongly encourages electronic filings. 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 at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10771 Filed 4–30–03; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2010.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7492–5]

Sector Strategies Program; Announcement of Program Launch

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the selection of seven sectors to participate in the multi-media sector program in the Office of Policy, Economics and Innovation (OPEI). The following sectors will participate in the program: Agribusiness, Cement Manufacturing, Colleges and Universities, Construction, Forest Products, Iron and Steel Manufacturing, and Ports. An eighth sector may be added in the near future.

On September 20, 2002, EPA announced the new program and solicited expressions of interest from trade organizations. Responses were evaluated on the basis of each sector's potential to address the Administration's current environmental priorities—reductions in greenhouse gas emissions and smog, improved water quality and infrastructure, increased recycling of hazardous waste, and enhanced environmental protection in agriculture. We also evaluated each sector's potential to expand the voluntary use of environmental management systems (EMS) among its member companies.

The sectors chosen to participate in the program will be primarily represented by the following associations: (1) Agribusiness—National Food Processors Association; (2) Cement Manufacturing—Portland Cement Association; (3) Colleges and Universities—American Council on Education, Association of Higher Education Facilities Officers, Campus Consortium for Environmental Excellence, Campus Safety, Health and Environmental Management Association, Howard Hughes Medical Institute, and the National Association of College and University Business Officers; (4) Construction—Associated General Contractors of America; (5) Forest Products—American Forest and Paper Association; (6) Iron and Steel Manufacturing—American Iron and Steel Institute and Steel Manufacturers Association; and (7) Ports—American Association of Port Authorities.

The new program will have staff level points-of-contact within OPEI who are highly knowledgeable about each specific sector. These individuals will play a liaison function among associations, individual companies and other operating entities, EPA program and regional offices, state and local governments, technical experts, and other stakeholder groups. The sector points-of-contact also will focus their attention in three areas: addressing regulatory or other government barriers to improved environmental performance, helping to expand the use of EMS as a tool to achieve better performance, and measuring sector-wide performance improvements.

EPA anticipates that participants in the program will benefit from coordinated, cooperative, and constructive problem-solving with government. The Agency will invite participating sector representatives to offer their own innovative ideas for reducing environmental impacts and

developing strategies to promote the use of EMS. Because sector-wide performance improvement is the goal, EPA will work with trade associations and others to find creative ways to measure environmental progress and burden reductions.

OPEI will maintain points-of-contact with the Metal Finishing, Metal Casting, Shipbuilding & Ship Repair, and Specialty-Batch Chemical sectors. OPEI will follow through on EMS and other projects that are ongoing with these sectors. Accomplishments with the Meat Processing industry will support new work with the Agribusiness Sector.

FOR FURTHER INFORMATION CONTACT: Robert Benson, Director, Sector Strategies Division (mail code 1808T), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Email: *benson.robert@epa.gov.* Telephone: 202–566–2954.

Dated: April 28, 2003.

Jessica L. Furey,

Associate Administrator for Policy, Economics and Innovation.

[FR Doc. 03–10887 Filed 4–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0124; FRL–7305–3]

4-Chlorophenoxyacetic Acid; Report of the FQPA Tolerance Reassessment Progress and Risk Management Decision (TRED); Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the ''Report of the Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision (TRED) for 4-Chlorophenoxyacetic Acid (4-CPA).'' EPA has reassessed the two tolerances, or legal limits, established for residues of 4-CPA in/on raw agricultural commodities. These tolerances are now considered safe under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the FQPA of 1996.

DATES: Comments, identified by docket ID number OPP–2003–0124 must be received on or before June 2, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mark T. Howard, Special Review and Registration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8172; fax number: (703) 308–8005; e-mail address: howard.markt@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, but will also be of interest to stakeholders, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0124. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand

delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0124. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–124. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0124.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0124. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Action is the Agency Taking?

EPA has assessed the risks associated with the current use of 4-CPA, reassessed two existing tolerances, and reached a tolerance reassessment decision. The Agency is issuing the resulting Report on FQPA Tolerance Reassessment Progress and Risk Management Decision for 4-CPA, known as a TRED, as well as a fact sheet, and technical support documents.

The Agency has determined that there are no dietary (food or drinking water) or aggregate risks of concern for the current registered use of 4-CPA, so mitigation of these risks is not necessary. For the purposes of this TRED, EPA is assuming there is no common mechanism of toxicity, and that the tolerances established for residues of 4-CPA in/on raw agricultural commodities are considered reassessed as safe under section 408(q) of the FFDCA.

EPA works extensively with affected parties to reach the tolerance reassessment decisions presented in TREDs. The Agency, therefore, is issuing the 4-CPA TRED as a final decision. However, the docket remains open, and if the Agency receives any comments by June 2, 2003, which significantly affect the Agency's decision, EPA will publish an amendment to the TRED in the **Federal Register**. In the absence of substantive comments, the tolerance reassessment decisions reflected in this TRED will be considered final.

List of Subjects

Environmental protection, Pesticides, Plant growth regulators, Tolerances, and 4-CPA.

Dated: April 23, 2003.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–10764 Filed 4–30–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7490–9]

Notice of Proposed Administrative Order on Consent Pursuant to Sections 106(a), 107(a) and 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), PCB Treatment, Inc. Superfund Site, Kansas City, KS, and Kansas City, MO, Docket No. CERCLA 07–2002–0128

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative order on consent, PCB Treatment, Inc. Superfund Site, Kansas City, Kansas, and Kansas City, Missouri.

SUMMARY: Notice is hereby given that a proposed administrative order on consent regarding the PCB Treatment Inc. Superfund Site (Site), was signed by the United States Environmental Protection Agency (EPA) on February 4, 2003, and approved by the United States Department of Justice (DOJ) on April 3, 2003.

DATES: EPA will receive comments until June 2, 2003, relating to the proposed agreement.

ADDRESSES: Comments should be addressed to Audrey Asher, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 North Fifth Street, Kansas City, Kansas 66101 and should refer to *the PCB Treatment, Inc. Superfund Site Administrative Order on Consent, Docket No. CERCLA 07–2002–0128.*

The proposed agreement may be examined or obtained in person or by mail at the office of the United States Environmental Protection Agency, Region VII, 901 North Fifth Street, Kansas City, KS 66101, (913) 551–7255.

SUPPLEMENTARY INFORMATION: The proposed agreement concerns two facilities, about two miles apart, located in the industrial areas of Kansas City, Kansas at 45 Ewing Street and Kansas City, Missouri at 2100 Wyandotte Street. The facilities were formerly operated by PCB Treatment, Inc., now a defunct corporation. Between 1982 and 1987, PCB Treatment, Inc. and its subsidiaries or affiliates treated and stored PCBs contained in used transformers, capacitors, oil, equipment, and other materials at the Wyandotte facility and the Ewing facility. During its period of operations, spills of PCB-contaminated oil and solvents occurred.

Samples collected at the Site in the late 1990s indicated that the PCB contamination at Ewing Street exceeded 1,790 parts per million (ppm) in the building and 1,450 ppm in the surrounding soils. At Wyandotte Street, the PCB contamination exceeded 23,800 ppm in the building and 800 ppm in the surrounding soils.

Over 1000 parties arranged for disposal of PCB wastes at the Site, but the majority of the PCB contaminated material was sent to the Site by fewer than 15 parties. This settlement is with 11 private parties who contributed a major portion of waste to the Site and 12 Federal parties who collectively contributed a major share. This proposed settlement requires the private party Respondents to perform the removal actions at this Site which is estimated to cost $35,000,000. These costs will be paid by the Respondents, who will be reimbursed by the Federal Respondents for approximately 33% of the costs. In addition, Respondents may be reimbursed for approximately 24% of their costs through disbursements from a Special Account created with funds EPA recovered through *de minimis* settlements with small volume contributors.

Dated: April 21, 2003.

James B. Gulliford,

Regional Administrator, Region VII.

[FR Doc. 03–10763 Filed 4–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7491–2; CWA–HQ–2001–6009; EPCRA–HQ–2001–6009; CAA–HQ–2001–6009; RCRA–HQ–2001–6009]

Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity To Comment Regarding Gerdau Ameristeel, Inc., d/b/a/ Gerdau Ameristeel, Perth Amboy and Gerdau Ameristeel, Sayerville

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has entered into a consent agreement with Gerdau Ameristeel, Inc., d/b/a/ Gerdau Ameristeel, Perth Amboy and Gerdau Ameristeel, Sayerville (''Gerdau'') to resolve violations of the Clean Water Act (''CWA''), the Clean Air Act (''CAA''), the Resource Conservation and Recovery Act (''RCRA'') and the Emergency Planning and Community Right-to-Know Act (''EPCRA'') and their implementing regulations.

The Administrator is hereby providing public notice of this consent agreement and final order and providing an opportunity for interested persons to comment on the CWA portions, as required by CWA section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C).

Gerdau failed to have an adequate Spill Prevention Control and Countermeasure (''SPCC'') plans for two facilities where they stored diesel oil in above ground tanks at its Perth Amboy and Sayerville, New Jersey facilities. EPA, as authorized by CWA section 311(b)(6), 33 U.S.C. 1321(b)(6), has assessed a civil penalty for these violations. Gerdau failed to meet all the requirements of the facility's storm water permit, specifically by performing unauthorized discharges, and a failure to perform training required under the Storm Water Pollution Prevention Plan (SWPPP) provisions of the General Permit at its Sayerville, New Jersey facility. EPA, as authorized by CWA section 309(g), 33 U.S.C. 1319, has assessed a civil penalty for these violations. Gerdau failed to follow the New Source Performance Standards found at 40 CFR part 60 and CAA section 111, 42 U.S.C. 7411 at its Perth Amboy, New Jersey facility. EPA, as authorized by CAA section 113(d)(1), 42 U.S.C. 7413(d)(1), has assessed a civil penalty for these violations. At the Sayerville, New Jersey facility, Gerdau failed to submit an Emergency and Hazardous Chemical Inventory form to the Local Emergency Planning Commission, the State Emergency Response Commission, and the fire department with jurisdiction over each facility in violation of EPCRA section 312, 42 U.S.C. 11022. EPA, as authorized by EPCRA section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations. Gerdau failed to properly manage and characterize certain hazardous wastes, and failed to include certain notifications on its manifests, in accordance with RCRA and its implementing regulations, specifically 40 CFR parts 262 and 268 at its Perth Amboy, New Jersey facility and failed to amend its contingency plan and to conduct annual hazardous waste

training in accordance with RCRA and its implementing regulations, specifically, 40 CFR part 265, and to characterize hazardous waste, specifically 40 CFR part 262, at its Sayerville, New Jersey facility.

DATES: Comments are due on or before June 2, 2003.

ADDRESSES: Send written comments to the Docket Office, Enforcement and Compliance Docket and Information Center (2201T), Docket Number EC–2002–020, U.S. Environmental Protection Agency, EPA West, 1200 Pennsylvania Avenue NW., Room B133, Washington, DC 20460 (in triplicate if possible.)

Please use a font size no smaller than 12. Comments may also be sent electronically to *docket.oeca@epa.gov* or faxed to (202) 566–1511. Attach electronic comments as a text file and try to avoid the use of special characters and any forms of encryption. Please be sure to include the Docket Number EC–2002–020 on your document.

In person, deliver comments to U.S. Environmental Protection Agency, EPA West, 1301 Constitution Avenue, NW., Room B133, Washington, DC 20460. Parties interested in reviewing docket information may do so by calling (202) 566–1512 or (202) 566–1513. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Sanda Howland, Multimedia Enforcement Division (2248–A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–5022; fax: (202) 564–0010; e-mail: *howland.sanda@epa.gov.*

SUPPLEMENTARY INFORMATION: *Electronic Copies:* Electronic copies of this document are available from the EPA Home Page under the link ''Laws and Regulations'' at the Federal Register—Environmental Documents entry (*http://www.epa.gov/fedrgstr*).

I. Background

Gerdau is a steel minimill, incorporated in the State of Florida, with its headquarters office located at 5100 West Lemon Street, Suite 312, Tampa, Florida. Gerdau has facilities located at 225 Elm Street, P.O. Box 309, Perth Amboy, New Jersey 08862, and North Crossman Road, Sayreville, New Jersey 08871. Gerdau disclosed, pursuant to the EPA ''Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations'' (''Audit Policy''), 65 FR 19618 (April 11, 2000), that it failed to have all of the necessary elements of an SPCC plan for the Perth Amboy, New Jersey facility, in violation of the CWA section 311(b)(3) and 40 CFR part 112. Gerdau disclosed that for its Perth Amboy, New Jersey facility, that it also had failed to perform monitoring and maintain records in accordance with CAA section 111 and 40 CFR part 60. Gerdau disclosed that its Perth Amboy, New Jersey facility also failed to properly manage and manifest certain hazardous waste in violation of RCRA section 3004 and 3005 and 40 CFR parts 265 and 268. Also, it failed to properly characterize certain solid wastes in accordance with RCRA section 3002 and 40 CFR part 262.

Gerdau also disclosed that at its Sayreville, New Jersey facility it discharged contact water without a permit in accordance CWA parts 301 and 402 and 40 CFR parts 420 and 433, and failed to have documentation of training in its SPCC plan as required by CWA section 311 and 40 CFR part 112, and in its SWPPP, as required by CWA sections 301 and 402. In addition, Gerdau failed to properly characterize solid waste, in accordance with RCRA section 3002 and 40 CFR part 262, and had deficiencies in the facility's contingency plan in violation of RCRA section 3005 and 40 CFR part 265. Finally, Gerdau's Sayreville, New Jersey failed to identify all chemicals at the facility that exceeded threshold levels for reporting on the facility's Tier II reports. Those chemicals not identified include calcium carbide, calcium silicon, calcium hydroxide (lime), carbon, chromium compounds, diethylene glycol, dolime, dolomite, ethylene glycol, epoxy powder, ferroboron, ferrosilicon, ferrovanadium, graphite, O2 cryogenic liquid, silicon manganese, synthetic lubricating fluid, biocides in violation of EPCRA section 312 , 42 U.S.C. 11022, and 40 CFR part 370.

Pursuant to 40 CFR 22.45(b)(2)(iii), the following is a list of facilities at which Gerdau self-disclosed violations of CWA section 311: 225 Elm Street, P.O. Box 309, Perth Amboy, New Jersey 08862 and North Crossman Road, Sayreville, New Jersey 08871. Gerdau also disclosed a violation of CWA sections 301 and 402 at the Sayreville, New Jersey.

In addition, Gerdau self-disclosed violations of EPCRA section 312 at its facility located in the state of New Jersey.

EPA determined that Gerdau met the criteria set out in the Audit Policy for a 100% waiver of the gravity component of the penalty. As a result, EPA proposes to waive the gravity based penalty ($439,622) and proposes a settlement penalty amount of forty-three thousand, five hundred and sixty-five dollars ($43,565). This is the amount of the economic benefit gained by Gerdau, attributable to their delayed compliance with the CWA, RCRA, CAA and EPCRA regulations. Gerdau has agreed to pay this amount. EPA and Gerdau negotiated and signed an administrative consent agreement, following the Consolidated Rules of Practice, 40 CFR 22.13(b), on March 11, 2003 (*In Re: Gerdau Ameristeel, Inc., d/b/a Gerdau Ameristeel, Perth Amboy and Gerdau Ameristeel, Sayerville*, Docket Nos. RCRA–HQ–2001–6009, CWA–HQ–2001–6009, CAA–HQ–2001–6009, EPCRA–HQ–2001–6009). This consent agreement is subject to public notice and comment under CWA sections 309, 33 U.S.C. 311(b)(6), 33 U.S.C. 1321(b)(6).

Under CWA section 311(b)(6)(A), 33 U.S.C. 1321 (b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of the CWA section 311(b)(3), 33 U.S.C. 1321 (b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA section 311(j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to $137,500 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR part 22.

Under CWA sections 301 and 402, persons are not allowed to discharge pollutants to waters of the United States without first obtaining a permit. Any person who fails to comply with sections 301 and 402, or who fails or refuses to comply with any regulations or permits that have been issued under CWA sections 301 and 402, may be assessed an administrative civil penalty of up to $137,500 by EPA. Class II proceedings under CWA section 301 and 402 are conducted in accordance with 40 CFR part 22.

Under CAA section 113(d), the Administrator may issue an administrative order assessing a civil penalty against any person who has violated an applicable requirement of the CAA, including any rule, order, waiver, permit or plan. Proceedings under CAA section 113(d) are conducted in accordance with 40 CFR part 22.

Under EPCRA section 325, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable emergency planning or right to know requirements, or any other requirement of EPCRA. Proceedings under EPCRA section 325

are conducted in accordance with 40 CFR part 22.

Under RCRA section 3008, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated RCRA or its implementing regulations. Proceedings under RCRA section 3008 are conducted in accordance with 40 CFR part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a Clean Water Act Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is June 2, 2003. All comments will be transferred to the Environmental Appeals Board (''EAB'') of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.4(a).

Pursuant to CWA section 311(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

Dated: April 24, 2003.

Robert A. Kaplan,

Acting Director, Multimedia Enforcement Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 03–10761 Filed 4–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7491–4]

Notice of Final Issuance of a National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From Small Municipal Separate Storm Sewer Systems in the States of Massachusetts and New Hampshire and Indian Lands in the States of Connecticut, Massachusetts, and Rhode Island and Federal Facilities in Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Issuance of NPDES General Permits MAR040000; NHR040000; MAR04000I; CTR04000I; RIR04000I and VTR04000F.

SUMMARY: The Environmental Protection Agency—Region 1, is today providing notice of final issuance of a National Pollutant Discharge Elimination System (NPDES) general permits for storm water discharges from small municipal separate storm sewer systems (MS4s) in the States of Massachusetts, New Hampshire, for federal facilities in the State of Vermont, and for Indian Country lands in the States of Connecticut, Massachusetts, and Rhode Island. The final NPDES general permits establish Notice of Intent (NOI) requirements, standards, prohibitions, and management practices for discharges of storm water from municipal separate storm sewer systems.

Owners and/or operators of small MS4s that discharge storm water will be required to submit an NOI to EPA—Region 1 to be covered by the general permit and will receive a written notification from EPA—Region 1 of permit coverage and authorization to discharge under the general permit. This general permit does not cover new sources as defined at 40 CFR 122.2.

DATES: The effective date of the permit is May 1, 2003. The permit will expire five years from the effective date. The Notice of Intent required by the permit must be submitted no later than July 30, 2003.

ADDRESSES: The final permit is based on an administrative record available for public review at EPA—Region 1, Office of Ecosystem Protection (CMU), 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. Copies of information in the record are available upon request. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the final permit may be obtained between the hours of 9 a.m. and 5 p.m. Monday through Friday excluding holidays from: Thelma Murphy, Office of Ecosystem Protection, Environmental Protection Agency, 1 Congress Street, Suite 1100, Boston, MA 02114–2023; telephone: 617–918–1615; e-mail: *murphy.thelma@epa.gov.*

SUPPLEMENTARY INFORMATION: The final general permit and the Response to Comments may be viewed over the Internet via the EPA—Region 1 Web site *http://www.epa.gov/ne/npdes/index.html.* To obtain a hard copy of the document, please contact Thelma Murphy. Contact information is provided above. A reasonable fee may be charged for copying requests. The Response to Comments document addresses comments received on the draft permit and identifies parts of the final permit which were changed based on the comments received on the draft permit.

Pursuant to section 402 of the Clean Water Act, 33 U.S.C. 1342, EPA proposed and solicited public comment on NPDES draft general permits: MAR04000, NHR040000, MAR04000I, CTR04000I, RIR04000I and VTR04000F at 67 FR 61103 (September 27, 2002). Region 1 held four informational public meetings and one public hearing. The Region received comments from communities, transportation agencies, watershed associations, and private citizens. Based on the comments received, some changes were made to the permit. Two addenda, one for endangered species and the other for historic properties, were added to the final permit. The purpose of the addenda is to provide guidance for municipalities in determining permit eligibility regarding endangered species and historic properties. Watershed specific requirements contained in the Massachusetts section of the general permit have been removed. Infiltration language has been clarified. Record retention has been increased from three years to five years. Other comments and questions are addressed in the response to comments document.

Other Legal Requirements

A. State Certification

Under section 401(a)(1) of the Act, EPA may not issue an NPDES permit until the state in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and state law. The Region received certifications from the Commonwealth of Massachusetts and the State of New Hampshire.

B. Economic Impact (Executive Order 12866)

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this general permit is not a ''significant regulatory action'' under the terms of

Executive Order 12866 and is therefore not subject to formal OMB review prior to proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq,* requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. The permit being issued is not a ''rule'' subject to the Regulatory Flexibility Act.

D. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' on State, local and tribal governments and the private sector. UMRA uses the term ''regulatory actions'' to refer to regulations. (See, *e.g.*, UMRA section 201, ''Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)'' (emphasis added)). UMRA section 102 defines ''regulation'' by reference to section 658 of Title 2 of the U.S. Code, which in turn defines ''regulation'' and ''rule'' by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of the Administrative Procedure Act (APA), or any other law * * *'' NPDES general permits are not ''rules'' under the APA and thus not subject to the APA requirements to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the Clean Water Act. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide ''an opportunity for a hearing.'' Thus, NPDES general permits are not ''rules'' for RFA or UMRA purposes.

Dated: April 21, 2003.

Robert W. Varney,

Regional Administrator, Region 1.

[FR Doc. 03–10762 Filed 4–30–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of New Interpretation of Federal Financial Accounting Standards, Accounting for Imputed Intra-Departmental Costs: An Interpretation of SFFAS No. 4

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued a new Interpretation, *Accounting for Imputed Intra-Departmental Costs: An Interpretation of SFFAS No. 4.*

A summary of the Interpretation follows: On April 18, 2003, the Federal Accounting Standard Advisory Board (FASAB) issued Interpretation No. 6, Accounting for Imputed Intra-Departmental Costs: An Interpretation of SFFAS No. 4. The proposed interpretation clarifies that paragraph 110 of SFFAS No. 4 does not limit the recognition of imputed intra-departmental costs. The interpretation further explains that intra-departmental costs should be accounted for in accordance with the full cost of provisions of SFFAS No. 4, which includes the recognition of imputed intra-departmental costs.

The interpretation is available on the FASAB Home page *http://www.fasab.gov/interpretations.htm.* Copies can be obtained by contacting FASAB at (202) 512–7350, or *loughanm@fasab.gov.*

Wendy M. Comes, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

For Further Information, Contact: Wendy Comes, Executive Director, 441 G Street, NW., Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. No. 92–463.

Dated: April 28, 2003.

Wendy M. Comes,

Executive Director.

[FR Doc. 03–10796 Filed 4–30–03; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

April 21, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 2, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via internet at *Kim_A._Johnson@omb.eop.gov*, and Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or a copy of the information collection(s) contact Les Smith at 202–418–0217 or via internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: *The Commission has requested emergency OMB review of this collection with an approval by April 25, 2003.*

OMB Control Number: 3060–0692.

Type of Review: Revision of a currently approved collection.

Title: Home Wiring Provisions.

Form Number: N/A.

Respondents: Business or other for-profit entities; Individuals or households.

Number of Respondents: 30,500.

Estimated Time per Response: 5 mins. (0.083 hrs) to 20 hrs.

Frequency of Response: Recordkeeping; Annual and on occasion reporting requirements; Third party disclosure.

Total Annual Burden: 46,114 hours.

Total Annual Cost: None.

Needs and Uses: On January 29, 2003, the Commission issued a First Order on Reconsideration and Second Report and Order, FCC 03–9, which grants in part and denies in part the petitions for reconsideration filed in response to the Report and Order. The Commission's home run wiring rules were modified in the First Order on Reconsideration to provide that in the event of sale, the home run wiring be made available to the MDU owner or alternative provider during the 24-hour period prior to actual service termination by the incumbent and that home run wiring located behind sheet rock is physically inaccessible for purposes of determining the demarcation point between home wiring and home run wiring. In the Second Report and Order, the Commission adopted a limited exemption for small non-cable MVPDs from the signal leakage reporting requirements and concluded that the cable and home run wiring rules should apply to all MVPDs in the same manner that they apply to cable operators. The Commission declined to restrict exclusive contracts or ban perpetual contracts. The Commission also declined to allow MDU owners to require sharing of incumbent-owned cable wiring.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–10734 Filed 4–30–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

April 22, 2003.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Paul J. Laurenzano, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0848.

OMB Approval date: 03/24/2003.

Expiration Date: 03/31/2006.

Title: Deployment of Wireline Servies Offering Advanced Telecommunications Capability, CC Docket No. 98–147.

Form No.: N/A.

Estimated Annual Burden: 1,750 responses; 165,600 total annual hours; 95 hours per respondent.

Needs and Uses: The requirements implement section 251 of the Communications Act of 1934, as amended, to promote deployment of advanced services without significantly degrading the performance of other services. All the requirements will be used by the Commission and competitive local exchange carriers (CLECs) to facilitate the deployment of advanced data services and to implement section 251 of the Act.

OMB Control No.: 3060–0806.

OMB Approval Date: 03/24/2003.

Expiration Date: 03/31/2006.

Title: Universal Service—Schools and Libraries Universal Service Program.

Form No.: 470 & 471.

Estimated Annual Burden: 60,000 responses; 440,000 total annual hours; 7.3 hours per respondent.

Needs and Uses: The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. To participate in the program, schools and libraries must submit a description of the services desired to the Administrator via FCC Form 470. FCC Form 471 is submitted by schools and libraries that have ordered telecommunications services, internet access, & internal connections. The data is used to determine eligibility. The Commission revised the FCC Form 471 and instructions to make it possible to read with electronic readers, to update references to current deadlines dates and relevant statutes, and to clarify explanations to make the form generally easier to understand. The collection requirements haven't changed.

OMB Control No.: 3060–0513.

OMB Approval Date: 04/15/2003.

Expiration Date: 04/30/2006.

Title: ARMIS Joint Cost Report.

Form No.: FCC–43–03.

Estimated Annual Burden: 85 responses; 6,460 total annual hours; 76 hours per respondent.

Needs and Uses: The Joint Cost Report is needed to administer our joint cost rules (part 64) and to analyze data in order to prevent cross-subsidization of non-regulated operations by the regulated operations of Tier 1 carriers.

OMB Control No.: 3060–0763.

OMB Approval date: 04/15/2003.

Expiration Date: 04/30/2006.

Title: The ARMIS Customer Satisfaction Report.

Form No.: FCC–43–06.

Estimated Annual Burden: 7 responses; 5,040 total annual hours; 720 hours per respondent.

Needs and Uses: The Customer Satisfaction Report reflects the results of customer satisfaction based on surveys conducted by individual carriers from their customers.

OMB Control No.: 3060–0512.

OMB Approval date: 04/15/2003.

Expiration Date: 04/30/2006.

Title: The ARMIS Annual Summary Report.

Form No.: FCC–43–01.

Estimated Annual Burden: 115 responses; 10,695 total annual hours; 93 hours per respondent.

Needs and Uses: The Annual Summary Report contains financial and operating data and is used to monitor the incumbent local exchange carrier industry and to perform routine analyses of costs and revenues on behalf of the Commission.

OMB Control No.: 3060–0395.

OMB Approval Date: 04/15/2003.

Expiration Date: 04/30/2006.

Title: The Armis USOA Report (ARMIS Report 43–02); The ARMIS Service Quality Report (ARMIS Report 43–05); and the ARMIS Infrastructure Report (ARMIS Report 43–07).

Form No.: FCC–43–02, FCC–43–05, FCC–43–07.

Estimated Annual Burden: 49 responses; 23,677 total annual hours; 483 hours per respondent.

Needs and Uses: The USOA Report provides the annual results of the carriers' activities for each account of the Uniform System of Accounts. The Service Quality Report provides service quality information in the areas of interexchange access service, installation and repair intervals, local service installation and repair intervals, trunk blockage, and total switch downtime for price cap carriers. The Infrastructure Report provides switch deployment and capabilities data.

OMB Control No.: 3060–0972.

OMB Approval date: 03/13/2003.
Expiration Date: 03/31/2006.
Title: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers.
Form No.: FCC–507, FCC–508, FCC–509.
Estimated Annual Burden: 5,555 responses; 31,725 total annual hours; 5.7 hours per respondent.
Needs and Uses: The Commission modified, on its own motion, the data collection and filing procedures for implementation of the Interstate Common Line Support (ICLS) mechanism, in order to ensure timely implementation of the ICLS mechanism on July 1, 2002, as adopted in the MAG Order. The Commission will use the information to determine whether and to what extent non-price cap or rate of return carriers are providing the data eligible to receive universal service support. The tariff data is used to make sure the rates are just and reasonable.

OMB Control No.: 3060–0855.
OMB Approval Date: 04/03/2003.
Expiration Date: 04/30/2006.
Title: Telecommunications Reporting Worksheet, CC Docket No. 96–45.
Form No.: FCC–499–A, FCC–499–Q.
Estimated Annual Burden: 15,500 responses; 164,487 total annual hours; 10.6 hours per respondent.
Needs and Uses: Pursuant to the Communications Act of 1934, as amended, telecommunications carriers (and certain other providers of telecommunications services) must contribute to the support and cost recovery mechanisms for telecommunications relay services, numbering administration, number portability, and universal service. The Commission modified the existing methodology used to assess contributions that carriers make to the federal universal service support mechanisms. The modifications adopted, will entail altering to the current revenue reporting requirements to which interstate telecom. carriers are subject under part 54 of the Commission's rules.

OMB Control No.: 3060–0511.
OMB Approval date: 04/15/2003.
Expiration Date: 04/30/2006.
Title: ARMIS Access Report.
Form No.: FCC–43–04.
Estimated Annual Burden: 84 responses; 13,188 total annual hours; 140.3 hours per respondent.
Needs and Uses: The Access Report is needed to administer the Commission's accounting, jurisdicational separations and access charge rule; to analyze revenue requirements and rates of return, and to collect financial data from Tier 1 incumbent local exchange carriers.

OMB Control No.: 3060–0496.
OMB Approval date: 04/15/2003.
Expiration Date: 04/30/2006.
Title: The ARMIS Operating Data Report.
Form No.: FCC–43–08.
Estimated Annual Burden: 53 responses; 7,367 total annual hours; 139 hours per respondent.
Needs and Uses: The Operating Data Report collects annual statistical data in a consistent format that is essential for the Commission to monitor network growth, usage, and reliability.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–10735 Filed 4–30–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 2003–9]

Enforcement Procedures

AGENCY: Federal Election Commission.

ACTION: Notice of public hearing and request for public comment.

SUMMARY: The Federal Election Commission is announcing a public hearing on the enforcement processes of the Federal Election Campaign Act of 1971, as amended (''the FECA'' or ''the Act''), and its implementing regulations. The Commission seeks comments from the public on the FECA's enforcement procedures administered by the Commission.

DATES: Comments must be received on or before May 30, 2003. A public hearing will be held on Wednesday, June 11, 2003, from 10 a.m. to 5 p.m. at the Federal Election Commission, 999 E Street, NW., 9th floor Hearing Room, Washington, DC 20463. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Susan L. Lebeaux, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to insure legibility. Electronic mail comments should be sent to *enfpro@fec.gov.* Persons sending requests and comments by electronic mail must include their full name, electronic mail address and postal service address within the text of the request or comments. If the electronic comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web site within ten business days of the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Susan L. Lebeaux, Assistant General Counsel, Office of General Counsel, or Ruth Heilizer, Staff Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Background and Hearing Goals

The Commission is currently examining its enforcement practices and procedures. The Commission is conducting this review to determine if issues have arisen that require reexamination or adaptation of enforcement practices and procedures. The Commission will use the comments received to determine whether internal directives or practices should be adjusted, and/or whether rulemaking in this area is advised. The Commission has made no decisions in this area, and may choose to take no action.

The Federal Election Act of 1971, as amended, 2 U.S.C. 431 *et seq.* (''FECA'' or ''the Act''), grants to the Commission ''exclusive jurisdiction with respect to civil enforcement'' of the provisions of the Act and Chapters 95 and 96 of Title 26. 2 U.S.C. 437c(b)(1). Enforcement matters come to the Commission through complaints from the public, referrals from the Reports Analysis and Audit Divisions, referrals from other agencies, *sua sponte* submissions, and through agency personnel. Enforcement matters are processed, numbered as Matters Under Review (MURs), and assigned to enforcement attorneys. The Commission investigates MURs pursuant to the compliance procedures set forth at 11 CFR part 111, and various internal directives.

In the course of addressing its administrative obligations, the Commission periodically reviews its programs. For example, the Commission recently reviewed its Alternative Dispute Resolution and Audit procedures and is currently reviewing its Reports Analysis Division procedures. The intent behind this Notice of Inquiry is to examine the

enforcement practices and procedures, many of which have been in place since the Commission was founded; and to give the regulated community and representatives of the public an opportunity to bring general enforcement policy concerns before the Commission.

In inviting a constructive dialogue concerning its enforcement procedures, the Commission asks those who submit comments to be cognizant of the fact that statutory requirements, such as confidentiality and privacy mandates, may be implicated by certain proposals. Thus, the Commission would appreciate if participants would specify in their written remarks whether their proposals are compatible with applicable statutes or would require legislative action.

The Commission would like to see addressed the issues that face counsel who practice before the Commission, complainants and respondents who directly interact with the FEC, witnesses, other third parties, and the general public. The Commission seeks general comments on how the FEC's enforcement procedures have been helpful or unhelpful in working through enforcement cases. The Commission is *not* interested in complaints or compliments about individual FEC employees, but seeks input on structural and policy issues. The Commission would also benefit from hearing about practices and procedures used by other civil law enforcement agencies when acting in a prosecutorial (*i.e.,* non-adjudicative) capacity. For example, do such agencies provide greater or lesser transparency? What opportunities exist for presenting or addressing issues, evidence, or potential claims that might be the basis of a subsequent adjudicative proceeding? The Commission would also be interested in any studies, surveys, research or other empirical data that might support changes in its enforcement procedures.

General Topics for Specific Comments

The Commission welcomes input on any aspect of its enforcement procedures. Among the topics on which the Commission will accept comment are those below. However, the list is not seen as exhaustive and comments are encouraged on other issues as well.

1. Designating Respondents in a Complaint

In addition to respondents named in the complaint, the Commission may designate additional respondents from information ascertained in the normal course of carrying out its supervisory responsibilities. 2 U.S.C. 437(a)(2); 11 CFR 111.8(a). As a simple example, a complaint may allege that a campaign accepted an illegal contribution from Corporation X, but name only the campaign as a respondent. The Commission may add the alleged donor as a respondent. This has been done on a case-by-case basis. In some cases, the Commission has been criticized for designating too many additional respondents who may only have tangential interaction with the allegations in the complaint. At other times, the Commission has been criticized for failing to give early notice and an opportunity to address allegations that give rise to potential liability to persons who may be generated as respondents at the reason to believe stage or after the investigation is underway. The Commission seeks comments as to how the Commission designates respondents. In what circumstances and at what time is it appropriate to designate additional respondents? What criteria should the Commission apply?

2. Confidentiality Advisement

Under 2 U.S.C. 437g(a)(12), an investigation shall not be made public without the consent of the respondents. To ensure the confidentiality of investigations, including the protection of respondents from premature disclosure, Commission staff advises witnesses (usually orally, but sometimes in writing) of this statutory requirement. The Commission has received comments in the past from respondents that this advisement has been interpreted by some third party witnesses (such as vendors) as preventing them from speaking to respondents and thus interfering with the respondent's own investigation of the events in question. *See generally* MUR 4624 Coalition; Carol F. Lee, *The Federal Election Commission, The First Amendment, and Due Process,* 89 Yale L.J. 1199, 1209–1210 (1980). Should the Commission clarify its confidentiality advisement to address this issue? If so, how? What, if any, language should be included in an oral or written advisement to explicitly exclude communications with third party witnesses that are initiated by respondents? Is the Commission obliged to inform witnesses that they can speak to respondents? Is the Commission permitted to identify the respondents so as to convey such permission? Is there a better way in which to ensure confidentiality?

3. Motions Before the Commission

Both complainants' and respondents' attorneys have occasionally put forward motions for the Commission to consider, including motions to dismiss and reconsider. Although neither the FECA nor the Commission's regulations provide for consideration of such motions, and the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* (''APA'') does not require that agencies entertain such motions in nonadjudicative proceedings,[1] the Commission has reviewed these motions on a case-by-case basis. The Commission requests comments on whether procedures for consideration of these motions should be formalized in a rulemaking. If yes, what motions should be considered and what should the time frame be for consideration? Should there be a requirement that in order to trigger the Commission's review, the motion must contain genuinely new material that respondents had no opportunity to present previous to the subject findings? Should the motions be considered even though this would extend the time that a MUR remains active? Should parties be required to toll the statute of limitations for periods in which motions are under consideration by the Commission?

4. Deposition and Document Production Practices

When Commission attorneys take a respondent's sworn testimony at an enforcement deposition authorized by section 437d(a)(4), only the deponent and his or her counsel may attend. The respondent has the right to review and sign the transcript, but normally a respondent is not allowed to obtain a copy of, or take notes on, his or her own transcript until the investigation is complete, *i.e.* after all depositions have been taken.

If the General Counsel decides to recommend that the Commission find probable cause to believe that a respondent has violated the Act, the Act requires that the General Counsel so notify the respondent, and provide a brief on the legal and factual issues in the case. The Act entitles respondents to submit, within 15 days, a brief stating their position on the factual and legal issues of the case. 2 U.S.C. 437g(a)(3). Although nothing in the FECA requires that documents or deposition transcripts be provided to respondents at this stage, respondents are generally provided, upon request, with the documents and depositions of other respondents and third party witnesses that are referred to in the General Counsel's brief.

[1] Note, however, that unless otherwise prohibited by law, it is always within the agency's discretion to afford more procedure than that required by the APA. *Chrysler Corp.* v. *Brown,* 441 U.S. 281 (1979).

Respondents, however, may deem other information that the Commission does not disclose as valuable to the respondents' defense. Note that this practice can cause delay because, upon receiving these documents and depositions, respondents' counsel often seek an extension of time since counsel must submit the reply brief within 15 days of receiving the General Counsel's probable cause brief. Should counsel have access to all documents prior to the probable cause stage?

The Commission's practice in providing depositions and documents to respondents contrasts with the practice of some other civil law enforcement agencies during the investigative stage of their proceedings, in which the only deposition transcript supplied to the respondent is the respondent's own deposition. Further, during the pendancy of an investigation, section 6b of the APA, 5 U.S.C. 555(c), grants investigative agencies the right to deny the request of a witness for copies of transcripts of his or her own testimony based on ''good cause,'' such as concerns that witnesses still to be examined might be coached. *Commercial Capital Corp.* v. *SEC,* 360 F.2d 856, 858 (7th Cir. 1966). On the other hand, it can be suggested the Commission's practice contrasts with procedural rights afforded in litigation matters under the Federal Rules of Civil Procedure, which give litigants the right to attend the depositions of all persons deposed in their case and obtain copies of all deposition transcripts.

The Commission would like comments on whether and when the respective depositions (respondent, other respondents, and witness) should be released and to whom the depositions should be released. Should respondents be allowed full access to the depositions of all other respondents, including those with the same and those with competing interests, prior to the Commission's decision to sue in court? If so, should this occur only at the probable cause stage or at some point during the investigation? If the latter, when? Would full access to the deposition transcripts of all other respondents increase the likelihood of a public disclosure in violation of 2 U.S.C. 437g(a)(12)? If full access were to be granted prior to the probable cause stage, would it compromise the effectiveness of the Commission's investigations? Should respondents be allowed to attend depositions of other respondents, including those with the same and those with competing interests? If so, in what circumstances? One change in practice to make transcripts of a respondent's own testimony more readily available would be for the Office of General Counsel routinely to allow deponent-respondents to procure immediately a copy of their own transcript unless on a case-by-case basis the General Counsel concludes (or the Commission concludes, on the recommendation of the General Counsel) that it is necessary to the successful completion of the investigation to withhold the transcript until completion of the investigation.

Similarly, the Commission seeks comments on whether all relevant documents that would be required to be disclosed in civil litigation pursuant to Federal Rule of Civil Procedure 26(a) should be provided with the probable cause brief. Would it be practical to do so in cases involving voluminous records and multiple respondents? Who should bear the costs of copying documents and ordering deposition transcripts from court reporters? Would providing all such materials and allowing time for their review further delay the submission of responsive briefs? Would doing so compromise investigations? Should this be done on a case-by-case basis? Would some standard other than Rule 26(a) of the Federal Rules of Civil Procedure provide a more workable standard?

The Commission seeks comments on these or other approaches to balancing its need to conduct effective investigations with the interests of respondents seeking to support their positions before the Commission.

5. Extensions of Time

Under what circumstances, if any, should extensions of time be granted to respondents to respond to the probable cause brief? Are there particular situations in which extensions of time should be denied? If extensions are granted, should they be contingent on respondents' agreements to toll the statute of limitations for the extension period?

6. Appearance Before the Commission

Pursuant to the FECA, Respondents are permitted to present their position through written submissions in response to the complaint and the General Counsel's probable cause brief, and may also do so at the reason-to-believe stage pursuant to Commission practice. Neither the FECA nor the APA specifically provide that respondents also be permitted the opportunity to appear and present their positions in person, and the Commission has no procedure allowing such appearances in the context of MURs.[2] The Commission seeks comment on whether respondents should be entitled to appear before the Commission, either *pro se* or through counsel, at the probable cause stage and on motions to quash subpoenas. If so, should appearances be limited to certain types of hearings and cases? If so, what should be the limiting criteria? What should be the scope and form of the personal appearance? Should the Commission be permitted to draw an adverse inference if respondents decline to answer certain questions or do not fully answer them? Allowing counsel to appear would add an additional procedural right, but would also lengthen the enforcement process. How would this additional step be balanced with the timeliness of completing a MUR? Is the Commission justified in prolonging the process? Would this complicate the process or add unnecessary time constraints? What would respondents achieve that they are not already afforded by the statutory process? Would affording the opportunity to appear in person before the Commission at the probable cause stage diminish respondents' interest in conciliating at an earlier stage? Would it place respondents with limited resources, or those located far from Washington, at a comparative disadvantage, and if so, is this a valid reason to restrict personal appearances for all respondents? In cases involving multiple respondents, how would the Commission protect the confidentiality of other respondents also wishing to appear? The Commission would also benefit from hearing about whether other civil law enforcement agencies provide for personal appearances before agency decision-makers.

7. Releasing Documents or Filing Suit Before an Election

The Commission's practice is to release to the public closed enforcement matters in the normal course of business, even if this occurs immediately prior to, or following, an election that may involve one of the respondents in the matter. Upon resolution of an enforcement matter, the Commission could not deny a FOIA request for disclosure of conciliation agreements or other dispositions simply because of the proximity of an upcoming election. Furthermore, the FECA provides for expedited conciliation immediately prior to an election, which allows voters to

[2] However, the Office of General Counsel, which may be recommending action adverse to the respondent, is present to answer questions of law and fact for the Commission.

consider a Commission determination that a campaign has not violated the FECA as alleged in a complaint, or alternatively, that a campaign has accepted responsibility for an election law violation. 2 U.S.C. 437g(a)(4)(A)(ii).

On the other hand, the Commission is sensitive to the fact that releasing documents or filing suit before an election, even when it occurs in the normal course of business, may influence election results. The Commission seeks comment on whether consideration of an upcoming election should or should not be considered when releasing documents. In particular, should the Commission adopt a policy of not releasing outcomes of cases for some period immediately preceding an election? If so, should that policy apply only to violations from a previous cycle? Would such a policy invite respondents to employ dilatory tactics for the apparent purpose of keeping information confidential until the election is over? Should the same considerations apply to when the Commission has completed the administrative process and is prepared to file an enforcement action in federal court? What if the statute of limitations is due to run before or shortly after the election?

8. Public Release of Directives and Guidelines

In an effort to assure greater uniformity in sentencing, the Federal courts in the 1980s adopted sentencing guidelines. Should the Commission make public its penalty guidelines in a similar manner? Do other civil law enforcement agencies do so? If the Commission publishes such guidelines, would they be applicable without exception or with only a few specified exceptions? Should the Commission give up its discretion and flexibility to depart from its guidelines in instances when it feels that fairness or public policy requires another result? Would such guidelines minimize or even eliminate negotiations over what constitutes an appropriate penalty? Are there other directives that should be publicly available, including those pertaining to enforcement procedures? Should more procedural information be available via the Web site and other publications?

9. Timeliness

Though the Commission in recent years has reduced its case backlog, it has still been criticized in some quarters for lack of timeliness. Are there specific practices or procedures that the Commission could implement, consistent with the FECA and the APA, that could reduce the time it takes to process MURs? Does the agency have too few staff assigned to handle its workload? Can the Commission afford respondents with more procedural rights without sacrificing its goal of conducting timely investigations? Should respondents be afforded more process than is required by the FECA or the APA when the likely result will be longer proceedings? How should a respondent's timeliness in responding to discovery requests and subpoenas and orders, or the lack thereof, be weighed in the balance? Has any particular stage of the enforcement procedure been a source of timeliness problems?

10. Prioritization

The Commission has adopted an Enforcement Priority System to focus resources on cases that most warrant enforcement action. Should the Commission give lesser or greater priority to cases that require complex investigations and/or raise issues where there is little consensus about the application of the law—such as coordination, qualified non-profit corporation status, and express advocacy/issue ad analysis? Since cases involving these issues often involve large amounts of spending, and hence large potential violations, should these be the cases given high priority?

11. Memorandum of Understanding With the Department of Justice

The Commission for years has divided responsibility for the enforcement of FECA with the Department of Justice. A 1977 Memorandum of Understanding has dictated that the Department of Justice should handle ''significant and substantial knowing and willful'' violations and the Commission should handle the rest. Is this still a valid demarcation of responsibility? Does anything in BCRA suggest a different approach is appropriate?

12. Dealing With 3–3 Votes at ''Reason To Believe'' Stage

On some occasions the six commissioners split 3–3 on whether to find ''reason to believe'' and hence whether to conduct an investigation of the alleged violations in a complaint. Should the Commission adopt a policy of proceeding with an investigation in such circumstances where the Office of General Counsel has so recommended? Would a legislative change be required to permit an investigation in such circumstances?

13. Other Issues

As noted above, the Commission welcomes comments on other issues relevant to the processing of MURs.

Dated: April 25, 2003.

David M. Mason,

Commissioner, Federal Election Commission.

[FR Doc. 03–10701 Filed 4–30–03; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–03–03]

Fiscal Year 2003 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications for the Alzheimer's Disease Demonstration Grants to States Program.

SUMMARY: The Administration on Aging announces that under this program announcement it will hold a competition for grant awards for two (2) to three (3) projects at a Federal share of approximately $225,000–$350,000 per year for a project period of three years.

Legislative Authority: The Alzheimer's Disease Demonstration Grants to States Programs (ADDGS) was established under Section 398 of the Public Health Service Act (Pub. L. 78–410) as amended by Public Law 101–157, and by Public Law 105–379, the Health Professions Education Partnerships Act of 1998. (Catalog of Federal Domestic Assistance 93.051).

Purpose of grant awards: The purpose of these projects is to:

1. Develop models of home and community based care for persons with Alzheimer's disease and their families, and

2. Improve the existing home and community based care system to better respond to the needs of persons with dementia and their families, through improving the coordination and integrated access to health and social support services.

Eligibility for grant awards and other requirements: Eligibility for grant awards is limited to state agencies. The thirty-three (33) states currently funded under the Alzheimer's Demonstration Program are not eligible. Only one application per state will be accepted. Applicants must provide a letter from their state's Governor designating the applicant agency as the sole applicant for the state.

Grantees are required to provide a 25% non-federal match during the first year, 35% during the second year, and 45% during the third year of the grant. Executive Order 12372 is not applicable to these grant applications.

Review of applications: Applications will be evaluated against the following criteria: Purpose and Need for Assistance (15 points); Approach/Method—Workplan and Activities (35 points); Outcomes/Benefits/Impacts (25 points); and Level of Effort, Program Management, and Organizational Capacity (25 points).

DATES: The deadline date for the submission of applications is June 16, 2003.

ADDRESSES: Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Center for Planning and Policy Development, Washington, DC 20201; by calling 202/357–3452; or online at *http://www.aoa.gov/egrants*. Applications may be mailed to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, Washington, DC 20201, attn: Margaret Tolson (AoA 03–03).

Applications may be delivered to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, One Massachusetts Avenue, NW., Room 4604, Washington, DC 20001, attn: Margaret Tolson (AoA 03–03). Instructions for electronic mailing of grant applications available at *http://www.aoa.gov/egrants/*.

SUPPLEMENTARY INFORMATION: All grant applicants are encouraged to obtain a D–U–N–S number from Dun and Bradstreet. It is a nine-digit identification number, which provides unique identifiers of single business entities. The D–U–N–S number is free and easy to obtain from *http://www.dnb.com/US/duns_update/*.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, Washington, DC 20201, telephone: (202) 357–3440.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 03–10721 Filed 4–30–03; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at the following Web sites: *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl,Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–6870, (Formerly: Jewish Hospital of Cincinnati, Inc.)

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (Formerly: Cox Medical Centers)

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2661/800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories,* 10150–102 Street, Suite 200, Edmonton, Alberta, Canada TJ5 5E2, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609

Express Analytical Labs, 3405 7th Avenue, Suite 106, Marion, IA 52302, 319–377–0500

Gamma-Dynacare Medical Laboratories,* a Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.)

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/800–322–3361 (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134

Pacific Toxicology Laboratories, 9348 De Soto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory

Pathology Associates Medical Laboratories, 110 West Cliff Drive, Spokane, WA 99204, 509–755–8991/800–541–7891 x8991

PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063 800–824–6152 (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750 (Formerly: Associated Pathologists Laboratories, Inc.)

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010 (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories)

Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Sciteck Clinical Laboratories, Inc., 317 Rutledge Road, Fletcher, NC 28732, 828–650–0409

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

Sure-Test Laboratories, Inc., 2900 Broad Avenue, Memphis, Tennessee 38112, 901–474–6028

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson

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* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, July, 16 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 FR 29908–29931, June 9, 1994). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Street, Fort George G. Meade, MD 20755–5235, 301–677–3714

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–10852 Filed 4–30–03; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[T.D. 03–22]

Tuna Fish Tariff-Rate Quota for Calendar Year 2003

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Announcement of the tariff-rate quota for tuna fish for calendar year 2003.

SUMMARY: The tariff-rate quota applicable in each year to tuna fish classifiable in subheading 1604.14.22 of the Harmonized Tariff Schedule of the United States is based on tuna consumption in the United States during the preceding calendar year. This document sets forth the tariff-rate quota for calendar year 2003.

EFFECTIVE DATES: The 2003 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1 through December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Connie Chancey, Chief, Quota Branch, Textile Enforcement and Operations Division, Trade Compliance and Facilitation, Office of Field Operations, Bureau of Customs and Border Protection, Washington, DC 20229, (202) 927–5850.

SUPPLEMENTARY INFORMATION: It has now been determined that 18,777,508 kilograms of tuna fish in airtight containers may be entered for consumption or withdrawn from warehouse for consumption during calendar year 2003 at the rate of 6 percent ad valorem under subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS). Any tuna fish otherwise described in subheading 1604.14.22, HTSUS, which is entered, or withdrawn from warehouse, for consumption during calendar year 2003 in excess of that quota will be classifiable under subheading 1604.14.30, HTSUS, and dutiable at the rate of 12.5 percent ad valorem.

Dated: April 28, 2003.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 03–10730 Filed 4–30–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.FR–4815–N–22]

Notice of Submission of Proposed Information Collection to OMB: Builder's Certification of Plans, Specifications, and Site

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 2, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0496) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail Lauren_Wittenberg@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Builder's Certification of Plans, Specifications, and Site.

OMB Approval Number: 2502–0496.

Form Numbers: HUD–92541.

Description of the Need for the Information and its Proposed Use: HUD requires builders to certify to the presence of any adverse site/location factor(s) of a property, including floodplains. This is to avoid insuring a mortgage on property which might pose a risk to the health or safety of the occupant.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion.

	Number of responses	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	800	82		0.25		16,400

Total Estimated Burden Hours: 16,400.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 25, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–10779 Filed 4–30–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for Silvicultural Activities, Williamsburg County, SC

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Mr. Ben McCutcheon (Applicant) has applied for an incidental take permit (ITP) from the Fish and Wildlife Service (Service) pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended. The permit would allow take of one group of red-cockaded woodpecker (*Picoides borealis*), a federally listed, endangered species, incidental to silvicultural activities on the Applicant's property in Williamsburg County, South Carolina. The Service, on behalf of the Applicant, has developed a Habitat Conservation Plan (HCP), which describes the mitigation measures proposed to address the effects of the Project to the protected species. We have determined that the Applicant's proposal, including the proposed mitigation measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the proposed project is considered a ''low-effect'' project and would qualify as a categorical exclusion under the National Environmental Policy Act (NEPA). The Service announces the availability of the HCP for the ITP application. Copies of the HCP are available, and your comments are solicited.

DATES: Written comments on the permit application, Determination of Low Effect, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before June 2, 2003.

ADDRESSES: Persons wishing to review the application, HCP, and supporting documentation may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia, at the address below. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Charleston Field Office, 176 Croghan Spur Road, Suite 200, Charleston, South Carolina 29407 (Attn: Phil DeGarmo). Written data or comments concerning the application, HCP, or supporting documents should be submitted to the Regional Office. Requests for the documentation should be in writing. Please reference permit number TE063814–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Valenta, Regional Permit Coordinator (see **ADDRESSES** above), telephone: 404/679–4144; or Mr. Phil DeGarmo, Fish and Wildlife Biologist, Charleston Field Office (see **ADDRESSES** above), telephone 843/727–4707, extension 21.

SUPPLEMENTARY INFORMATION: The red-cockaded woodpecker is a territorial, non-migratory bird species once common in the southern Coastal Plain from east Texas to Florida and north to Maryland, Missouri, and Kentucky. Red-cockaded woodpeckers roost and nest in cavities excavated in large living pine trees 60 years old or older. The red-cockaded woodpecker is a cooperative breeder that lives in family groups of one to nine birds, with each bird nesting in a separate cavity; the aggregate of cavity trees used by a group is called a cluster. Red-cockaded woodpeckers prefer mature longleaf pine forests, but also inhabit loblolly, pond, slash, shortleaf, and Virginia pine stands. Without periodic fire to control hardwoods, red-cockaded woodpeckers abandon clusters as other cavity competitors and predators typical of hardwood habitats move in. The decline of the red-cockaded woodpecker is due primarily to loss of the old-growth, fire-maintained southern pine ecosystem as a result of logging, fire suppression, and conversion to non-forest land uses.

Recovery activities for the red-cockaded woodpecker are focused on Federal lands. Private lands are also important in our recovery strategy to supplement habitat where the Federal land base is insufficient to support recovery, to establish and maintain connectivity with populations on public lands, and to provide a donor source of juvenile red-cockaded woodpeckers for translocation into designated recovery populations. Red-cockaded woodpeckers have generally declined on private lands because of habitat fragmentation, and a lack of active habitat management. We believe that red-cockaded woodpeckers geographically isolated on private lands, as on this site, will eventually cease to exist without management for the species.

The applicant intends to harvest 5 acres of merchantable timber and reforest the project site in loblolly pine, resulting in the take of one group of red-cockaded woodpeckers through harm resulting from habitat alteration. The affected group of red-cockaded woodpeckers is not part of a larger population, with the nearest known group found approximately one-half mile away. Isolated populations of red-cockaded woodpeckers in fragmented habitat limit any contribution to the species' recovery by these individuals. The biological goal of the applicant's HCP is to create a new breeding group of red-cockaded woodpeckers in an area of suitable habitat that will consolidate a stable red-cockaded woodpecker population within the species' historic range. This will be accomplished by establishing two recruitment clusters consisting of at least four artificial cavities at two discrete sites on South Carolina Department of Natural Resources (SCDNR) property. Mitigation will be considered successful when one recruitment cluster is occupied by a potential breeding pair (via natural dispersal of resident birds, including subadults) for at least 6 months, including a breeding season. The National Fish and Wildlife Foundation will provide $10,000 to the Fish and Wildlife Service, who will then contract with a private consultant to complete the required mitigation activities. These activities will consist of conducting the mitigation, minimization, and monitoring required to fulfill all aspects of this HCP. The Clemson Field Office of the Fish and Wildlife Service will fund and supervise the capture and relocation of the existing members of the red-cockaded woodpecker group to a donor site on managed lands.

We believe augmenting or creating a new group of red-cockaded woodpeckers in an area of better habitat would help to consolidate a more stable population. This proposal would offset project impacts while allowing the applicant profitable use of his property. Under Section 9 of the Endangered Species Act (Act), as amended, and its implementing regulations, ''taking'' of endangered and threatened wildlife is prohibited. However, under limited circumstances, we may issue permits to take such wildlife if the taking is

incidental to and not the purpose of otherwise lawful activities. Our regulations for approving such permit requests are contained in Section 10(a)(2)(B) of the Act.

We have determined that the HCP is a low-effect plan that is categorically excluded from further NEPA analysis and, therefore, does not require the preparation of an environmental assessment or environmental impact statement. Low-effect HCPs are those involving: (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Applicant's HCP qualifies for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the red-cockaded woodpecker and its habitat. We do not anticipate significant direct or cumulative effects on this species as a result of this project.

2. Approval of the HCP would not have adverse effects on known geographic, historic, or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local, or tribal law or requirement imposed for protection of the environment.

5. Approval of the HCP would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

We specifically request information, views, and opinions from the public via this Notice on the Federal action. Further, we specifically solicit information regarding the adequacy of the HCP as measured against the Service's ITP issuance criteria found in 50 CFR Parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE063814–0 in your comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may comment via the internet to *aaron_valenta@fws.gov*. Please submit comments over the internet as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the Service that we have received your e-mail message, contact us directly at either telephone number listed above (see **FOR FURTHER INFORMATION CONTACT**).

Finally, you may hand-deliver comments to either Service office listed above (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

We will evaluate the HCP and public comments to determine whether the application meets the requirements of Section 10(a) of the Act. We will also evaluate whether the issuance of the ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation to ensure that the ITP will not jeopardize the continued existence of this species. We will use the results of this consultation, in combination with the above findings, to determine if the requirements of the ITP are met and whether or not to issue the ITP.

Dated: April 23, 2003.

J. Mitch King,

Acting Regional Director.

[FR Doc. 03–10725 Filed 4–30–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Policy Committee of the Minerals Management Advisory Board; Notice and Agenda for Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The OCS Policy Committee of the Minerals Management Advisory Board will meet at the Radisson Hotel Old Town in Alexandria, Virginia.

DATES: Tuesday, May 13, 2003, from 8:30 a.m. to 5 p.m. and Wednesday, May 14, 2003, from 8:30 a.m. to 3:30 p.m.

ADDRESSES: The Radisson Hotel Old Town, 901 North Fairfax Street, Alexandria, Virginia 22314, telephone (703) 683–6000.

FOR FURTHER INFORMATION CONTACT: Ms. Jeryne Bryant at Minerals Management Service, 381 Elden Street, Mail Stop 4001, Herndon, Virginia 20170–4187. She can be reached by telephone at (703) 787–1211 or by electronic mail at *jeryne.bryant@mms.gov*.

SUPPLEMENTARY INFORMATION: The OCS Policy Committee represents the collective viewpoint of coastal states, environmental interests, industry, and other parties involved with the OCS Program. It provides policy advice to the Secretary of the Interior through the Director of the MMS on all aspects of leasing, exploration, development, and protection of OCS resources.

The agenda for May 13 will cover the following principal subjects:

World Oil Scenario. This presentation will address the current state of the world's oil supply and demand; how it is affected by the world's political scenario and the barriers in reducing imports.

Gas Imports to Meet the Nation's Energy Demand. This presentation will address proposed liquefied natural gas ports, the Blue Atlantic Transmission System, and proposed regulatory changes.

Geosciences Data and Collections—National Resources in Peril. This presentation will address the National Research Council's report, Geosciences Data and Collections—National Resources in Peril.

States' Vision for the OCS Program. This presentation will address how the states deal with oil and gas and sand and gravel activities, and how MMS activities in the OCS affects the states.

Building Consensus. This presentation will address components of the consensus building process, an executive outline of the report, Moving Beyond Conflict to Consensus, and MMS's current rules

Coastal Zone Management Act. The presentation will discuss the roles of the Department of Commerce and the Department of the Interior, as directed in the National Energy Policy, for promoting energy-related activities in the coastal zone and on the OCS.

U.S. Commission on Ocean Policy. This presentation will provide an update on the draft recommendations of the U.S. Commission of Ocean Policy.

The agenda for May 14 will cover the following principal subjects:

Education and Outreach. This presentation will address the draft Education and Outreach Subcommittee report.

Hard Minerals Subcommittee Update. This presentation will provide an update on subcommittee activities and other pertinent hard minerals information.

OCS Scientific Committee Update. This presentation will provide an update on the activities of the Scientific Committee. It will also highlight the activities that are related to energy issues/concerns, ocean issues, hard mineral activities, and any other topics that are relevant to both Committees.

Congressional/Legislative Update. This presentation will provide an update on the status of current congressional issues related to the OCS Program.

MMS Environmental Research on Sperm Whales. The presentation will address ''Cooperative Research on Sperm Whales and Their Response to Seismic Exploration in the Gulf of Mexico.''

National Research Council's North Slope Cumulative Effects Study. This presentation will address the cumulative effects study and its relevance to offshore oil and gas activities.

McCovey Project—Working with the Communities. This presentation will address EnCana's approach to working with the communities on the North Slope for the McCovey Project.

MMS Regional Updates. The Regional Directors will highlight activities off the California and Alaska coasts and the Gulf of Mexico.

The meeting is open to the public. Approximately 100 visitors can be accommodated on a first-come-first-served basis.

Upon request, interested parties may make oral or written presentations to the OCS Policy Committee. Such requests should be made no later than May 9, 2003, to Jeryne Bryant. Requests to make oral statements should be accompanied by a summary of the statement to be made. Please see **FOR FURTHER INFORMATION CONTACT** section for address and telephone number.

Minutes of the OCS Policy Committee meeting will be available for public inspection and copying at MMS in Herndon, Virginia.

Authority: Federal Advisory Committee Act, P.L. No. 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: April 28, 2003.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 03–10777 Filed 4–30–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy in 28 CFR 50.7, notice is hereby given that on April 11, 2003, a proposed Consent Decree in *United States of America and Commonwealth of Pennsylvania* v. *Bradford Sanitary Authority*, Civil Action No. 03–123E, was lodged with the United States District Court for the Western District of Pennsylvania.

In this action, the United States sought injunctive relief and civil penalties against Defendant Bradford Sanitary Authority (''Bradford''). Bradford operates a publicly-owned water treatment works that has discharged pollutants into waters of the United States in violation of Sections 301(a) and 402(a) of the Clean Water Act (''CWA''), 33 U.S.C. 1311(a), 1342(a), and in violation of the terms of its National Pollutant Discharge Elimination System (''NPDES'') permit, issued to Bradford pursuant to Section 402 of the CWA, 33 U.S.C. 1342. The Consent Decree requires Bradford to comply with Federal and State clean water standards, pay a $40,000 civil penalty, and perform a Supplemental Environmental Project that will cost approximately $60,000.

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, D.C. 20044–7611, and should refer to *United States* v. *Bradford Sanitary Authority*, D.J. Ref. # 90–5–1–1–4473. The Consent Decree may be examined at the Office of the United States Attorney, c/o Robert Eberhardt, Assistant United States Attorney, 7th & Grant Streets Pittsburgh, PA 15219, telephone (412) 644–5891, and at U.S. EPA Region III, c/o Yvette Roundtree, Assistant Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the Consent Decree may be examined on the 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, P.O. 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 $6.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–10710 Filed 4–30–03; 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 23, 2003, a proposed Consent Decree in *United States* v. *Godley Auction Company, Inc.,* Civil Action Number 4–01–4857–23, was lodged with the United States District Court for the District of South Carolina.

In this action the United States sought, under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, recovery of response costs incurred by the United States Environmental Protection Agency in connection with responding to the release and threatened release of hazardous substances at the Southern Asbestos Superfund Site in Bennettsville, South Carolina. Under the Consent Decree, Godley will pay $500,000 plus interest in installments over less than three years. This settlement is based on Godley's ability to pay.

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. *Godley Auction Company, Inc.,* DOJ Ref. #90–11–3–07626.

The Consent Decree may be examined at the Office of the United States Attorney, 1441 Main Street, Suite 500, Columbia, South Carolina, 29201, and at U.S. EPA Region IV, 61 Forsyth Street,

Atlanta, Georgia 30303. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. 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 $6.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–10707 Filed 4–30–03; 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 11, 2003, a proposed consent decree in *United States* v. *IT Higbie Manufacturing Co. et al.,* Civil Action No. 02–74727 was lodged with the United States District Court for the Eastern District of Michigan.

This Consent Decree resolves specified claims against twelve defendants and thirteen third-party defendants under the Comprehensive Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9601 *et seq.,* relating to the AABCO Road Oiling & Waste Oil Service, Inc. Superfund Site (''Site'') in Detroit, Michigan. The consent decree requires the twenty-five (25) settling defendants and third-party defendants to reimburse the Superfund in the amount of $464,000 for the United States' past costs of response actions relating to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to this settlement. 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. *IT Higbie Manufacturing Co. et al.,* Civil Action No. 02–74727, D.J. Ref. 90–11–3–07266.

The consent decree for this settlement may be examined at the Office of the United States Attorney, 211 West Fort Street, Suite 2300, Detroit, Michigan 48226–3211, and at U.S. EPA Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604. During the public comment period, the consent decree for this settlement, 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, P.O. 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 $12.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–10709 Filed 4–30–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Notice is hereby given that, on March 28, 2003, the United States lodged with the United States District Court for the District of Rhode Island a proposed Consent Decree with Kayser-Roth Corporation (''Kayser-Roth'') in *United States* v. *Kayser-Roth Corp.*, Civil Action No. 98–160ML (D.R.I.). In the action, which was filed in March, 1998, the United States brought a claim against Kayser-Roth, pursuant to section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), seeking to recover past unreimbursed costs and prejudgment interest incurred with respect to the Stamina Mills, Inc., Superfund Site located in North Smithfield, Rhode Island (the ''Site'').

Pursuant to the terms of the proposed Consent Decree, Kayser-Roth has agreed to pay the United States, within 30 days of entry of the Decree, an amount equal to the sum of (a) $7,169,432, plus interest accruing from September 30, 2002 and (b) $45,211, plus interest accruing from October 17, 2002. The United States has agreed to provide Kayser-Roth with a covenant not to sue, pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), for Past Response Costs, which are defined as all costs that the Environmental Protection Agency paid at or in connection with the Site through May 31, 2002 or that the Department of Justice, on behalf of the Environmental Protection Agency, paid at or in connection with the Site through May 31, 2002, plus accrued interest on such costs. The United States has also agreed to extend the covenant to Collins & Aikman Products Co., Inc., which has provided an indemnity to Kayser-Roth in connection with the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comment should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Kayser-Roth Corp.*, Civil Action No. 98–160ML (D.R.I.), DOJ No. 90–11–2–356B. A copy of the comments should also be sent to Donald G. Frankel, Trial Attorney, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, One Gateway Center, Suite 616, Newton, Massachusetts 02458.

The proposed Consent Decree may be examined at EPA Region 1, One Congress Street, Suite 1100, Boston, MA 02114–2023 (contact Lloyd Selbst at 617–918–1739), and at the Office of the United States Attorney for the District of Rhode Island, 50 Kennedy Plaza, 8th floor, Providence, Rhode Island 02903 (contact Lisa Dinerman at 410–528-5477). 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, P.O. 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, referencing *United States* v. *Kayser-Roth Corp.*, Civil No. 98–160ML (D.R.I), DOJ No. 90–11–2–356B. In requesting a copy, please enclose a check in the amount of

$6.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–10708 Filed 4–30–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of April 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

None.

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A)(I.B) (no sales or production decline and (a)(2)(B)(II.B) (no shift in production to a foreign country) have not been met.

TA–W–51,256; Westinghouse Electric Co., Nuclear Fuel Specialty Metals Plant, Blairsville, PA

The investigation revealed that criterion (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (no shift in production to a foreign country) have not been met.

TA–W–51,464; Fishing Vessel (F/V) Chasina Bay, Ketchikan, AK
TA–W–51,221; Colfax Corp., Industrial Clutch Div., Waukesha, WI
TA–W–51,213; MKS Instruments, Colorado Facility, Colorado Springs, CO
TA–W–50,876; Mechanical Products Co., LLC, Aerospace Div., Jackson, MI
TA–W–50,899; Fishing Vessel (F/V) Rhonda K, Monosassa, FL
TA–W–50,958; Rodman Industries, Marinette, WI
TA–W–51,028; Pliant Corp., Merced, CA—''Workers engaged in employment related to the production of winwrap-stretch film.''
TA–W–51,136; Wing-Lynch, Inc., Beaverton, OR
TA–W–50,856; Schlumberger Oilfield Services, Webster, TX
TA–W–50,215; Greystone, Inc./Phode Island Tool Co., Providence, RI
TA–W–50,502; Cable Warehouse, Denver, CO
TA–W–50,786; Pure Resources, Inc., Midland, TX
TA–W–50,073; Collins & Aikman Automotive Systems, Marshall, MI
TA–W–50,551; The Hayes Co., Inc., Wichita, KS
TA–W–50,586; Fishing Vessel (F/V) Renaissance, Kodiak, AK
TA–W–50,758; Fishing Vessel (F/V) Maryna J. Naknek, AK
TA–W–51,076; Key Plastics, LLC, Chesterfield Div., Chesterfield, MI
TA–W–51,254; NAPCO, Inc., Butler, PA
TA–W–51,361; Sisiutl Fisheries, Kodiak, AK

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–51,467; Sunshine Traders of El Paso, LLC, El Paso, TX
TA–W–51,385; Actiontec Electronics, Inc., Colorado Springs, CO
TA–W–51,362; Client Logic, Buffalo, NY
TA–W–51,139; Embraer Aircraft Customer Services, Inc., Ft. Worth, TX
TA–W–51,144; International Business Machines Corp. (IBM), IBM Global Services Div., Greensboro, NC Pittsfield, MA
TA–W–51,171; SAP America, Inc., a wholly-owned subsidiary of SAP AG, Customer Interaction Center, Newtown Square, PA
TA–W–51,177; Kelly Services, Inc., Newtown Square, PA
TA–W–50,848; Strategic Distributions, Inc., Lenoir, NC
TA–W–51,008; IBM Corp., Server Group Development, Beaverton, OR
TA–W–51,125; Symantec Corp., Beaverton, OR
TA–W–51,173; Ericsson, Inc., Brea, CA
TA–W–51,268; Hamilton Beach/Proctor Silex, Inc., a subsidiary of NACCO Industries, Inc. El Paso Distribution Center, El Paso, TX
TA–W–51,288l Kyocera Tycom Corp., Arden Hill, MN
TA–W–51,368; Mellon Bank, N.A., Pittsburgh, PA
TA–W–51,399; Axis/Salant Corp., Culver City, CA
TA–W–51,440; ASML Albuquerque, Albuquerque, NM

The investigation revealed that criterion (a)(2)(A)(I.A) (no employment declines) have not been met.

TA–W–51,423; State of Alaska Commercial Fisheries Entry Commission Permit #S) 4K57565P, Kodiak, AK
TA–W–51,167; Fishing Vessel Midnight Cove, Kodiak Island, AK
TA–W–51,425; Fishing Vessel (F/V) Sunset, Cross Sound, AK
TA–W–51,238; Fishing Vessel (F/V) Artic Nomad, Naknek, AK
TA–W–51,409; Showcase Glass, Post Falls, ID

The investigation revealed that criterion (a)(2)(A)(I.B) (sales or production, or both did not decline) and (a)(2)(A)(II.B) (no shift in production to a foreign country) have not been met.

TA–W–50,838; Fishing Vessel (F/V) Windy Sea, Kodiak, AK
TA–W–51,234; HP Pelzer, Thompson, GA

The investigation revealed that criterion (a)(2)(A)(I.C.) (Increased imports) and (a)(2)(B) (No shift in production to a foreign country) have not been met.

TA–W–50,945; Chem-Fab Corp., Hot Springs, AR

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–51,230; Vanguard EMS, Inc., a/k/a Viasystems Portland, Inc., Beaverton, OR
TA–W–51,153; Esteves—DWD, LLC, Danville, KY

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company

name and location of each determination references the impact date for all workers of such determination.

None.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–51,003; Plexus Corp., San Diego Electronic Assembly, Poway, CA: February 26, 2002.

TA–W–51,402; Geiger Bros., Inc., Lewiston, ME: March 31, 2002.

TA–W–51,353; Interlake Material Handling, Inc., Lodi California Plant, Lodi, CA: March 20, 2002.

TA–W–51,187; Thermal Arc, Inc., Troy, OH: March 7, 2002.

TA–W–51,260; L.L. Bean Manufacturing, a Div. of L.L. Bean, Inc., Brunswick, ME: March 7, 2002.

TA–W–50,923; Gretag Imaging, Inc., including temporary workers of Agentry, Holyoke, MA: February 1, 2002.

TA–W–51,096; DCB Corp., Madisonville, TN: February 26, 2002.

TA–W–51,121; Anchor Hocking Corp., Mirro Corporation Div., Manitowoc, WI: February 7, 2002.

TA–W–51,159; Zosel Lumber Co., Oroville, WA: March 11, 2002.

TA–W–50,560; Crown Pacific, Gilchrist, Or: October 11, 2002.

TA–W–50,614; Entronix International, Inc., Formerly Auto Sound Companies, Eveleth, MN: January 16, 2002.

TA–W–50,815; Nexans Magnet Wire USA, Inc., Mexico, MO: February 4, 2002.

TA–W–51,150; Logan Stampings, Inc., Logansport, IN: March 11, 2002.

TA–W–50,914; Air products & Chemicals, Inc., Chemicals Div., Cumberland, RI: February 3, 2002.

TA–W–51,232; Lees Curtain Co., Inc., Thayer, MO: March 5, 2002.

TA–W–51,022; Fellowes, Inc., Itasca, IL: February 21, 2002.

TA–W–51,119; Worzalla Publishing Co., Stevens Point, WI: March 17, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–51,356; Howden Buffalo, Inc., Springfield, IL: March 28, 2002.

TA–W–50,868 & A; Ge-Ray Fabrics, Morganville, NJ & Lustar Dye and Finishing, Ashville, NC: February 26, 2002.

TA–W–51,396; Nabco, Inc., Reed City, Operations, Reed City, MI: April 2, 2002.

TA–W–51,339; Wellsville Firebrick Co., a subsidiary of National Refractories and Minerals Co., a subsidiary of National Refractories Holding Co., Wellsville, MO: March 26, 2002.

TA–W–51,445; Fishing Vessel (F/V), Jesse & Merle, Dillingham, AK: April 3, 2002.

TA–W–51,309; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T57353U, Manokotak, AK: March 21, 2002.

TA–W–51,311; State of Alaska Commercial Fisheries Entry Commission Permit #S04T64983X, Manokotak, AK: March 21, 2002.

TA–W–51,337 & A; National Refractories and Minerals Corp., a subsidiary of National Refractories Holding Co., Columbiana, OH, Headquarters of National Refractories Holding Co., Livermore, CA: March 26, 2002.

TA–W–51,245; National Refractories and Minerals Corp., a subsidiary of National Refractories Holding Co., Mexico, MO: March 16, 2002.

TA–W–51,348; Fields & Sons, Inc., Kodiak, AK: March 25, 2002.

TA–W–51,346; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T59802F, Dillingham, AK: March 24, 2002.

TA–W–51,381; Vishay Micro-Measurements, Wendell, NC: December 13, 2001.

TA–W–51,272; Erasteel, Inc., McKeesport, PA: March 21, 2002.

TA–W–51,291; U.S. Cotton, LLC, Valley Park, MO: March 14, 2002.

TA–W–51,304; State of Alaska Commercial Fisheries Entry Commission Permit #S04T58837L, Manokotak, AK: March 21, 2002.

TA–W–51,307; State of Alaska Commercial Fisheries Permit #S04T62119A, Manokotak, AK: March 21, 2002.

TA–W–51,010 and A; Ethan Allen, Inc., Mayville, NY and Union City, PA: February 25, 2002.

TA–W–50,526; Sanmina-SCI Corp., West Liberty, KY: January 3, 2002.

TA–W–51,287; Vision Teq, Inc., a subsidiary of Electroline, Inc., including workers of the Former Owner Lamson and Sessions, Inc., Ft. Lauderdale, FL: March 24, 2002.

TA–W–51,292; Hamilton Sundstrand Denver, a Div. of Hamilton Sundstrand Corp., Denver, CO: March 24, 2002.

TA–W–51,299; Ametek, Inc., Dixson Div., including leased workers of SOS Staffing Services, Grand Junction, CO: April 18, 2003.

TA–W–51,359; Fishing Vessel (F/V) Kiavak, State of Alaska Commercial Fisheries Entry Commission Permit #S01E62046X and S01K59455A, Kodiak, AK: March 18, 2002.

TA–W–51,413; Silvered Electronic Mico Co., Inc. (SEMCO), Willimantic, CT: March 24, 2002.

TA–W–50,620; Youngstown Forge, Youngstown, OH: January 21, 2002.

TA–W–51,027; Crescent Lighting (Genlyte-Thomas), Supply Div., Barrington, NJ: February 28, 2002.

TA–W–51,075; Philips Semiconductor, San Antonio Wafer Fab Div., a subsidiary of Royal Philips Electronics, NV, San Antonio, TX: March 3, 2002.

TA–W–51,148; Torque-Traction Manufacturing Technologies, Syracuse, IN: February 25, 2002.

TA–W–51,028; Pliant Corp., Merced, CA: February 27, 2002.

All workers engaged in employment related to the production of P.V.C. food film, who became totally or partially separated from employment on or after February 27, 2002 are eligible to apply for trade adjustment assistance under Section 223 of the Trade Act of 1974.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of April 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increased imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with

articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

None.

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

None.

Affirmative Determinations NAFTA–TAA

None.

I hereby certify that the aforementioned determinations were issued during the month of April 2003. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 22, 2003.

Timothy F. Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–10751 Filed 4–30–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,436]

American Video Glass Company, a Subsidiary of Sony Technology Center, Mt. Pleasant, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 7, 2003 in response to a petition filed on behalf of workers at American Video Glass Company, a subsidiary of Sony Technology Center, Mt. Pleasant, Pennsylvania.

On April 1, 2003, the Department initiated a petition filed on behalf of workers of American Video Glass Company, a subsidiary of Sony Technology Center, Mt. Pleasant, Pennsylvania, TA–W–51,383, for which a determination has not yet been issued.

Since this worker group is the subject of an ongoing investigation, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, DC this 10th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10748 Filed 4–30–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,051]

Carbone Kirwood LLC, Cleveland, OH; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 4, 2003 in response to a worker petition filed by a company official on behalf of workers at Carbone Kirwood LLC, Cleveland, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 10th day of March, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10745 Filed 4–30–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,350]

Dana/Torque Traction Tech., Inc., Whitsett, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 28, 2003, in response to a worker petition filed on behalf of workers at Dana/Torque-Traction Tech., Inc., Whitsett, North Carolina.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–51,406). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 17th day of April 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10746 Filed 4–30–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,420]

Drexel Heritage Furnishings, Inc., Drexel, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 3, 2003 in response to a petition filed by workers at Drexel Heritage Furnishings, Drexel, North Carolina.

The petitioning group of workers is covered by an active certification issued on May 9, 2002, and remains in effect (TA–W–41,003). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 10th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10747 Filed 4–30–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,809]

Eastman Kodak Company, Skilled Resources Division, Rochester, NY; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Eastman Kodak Company, Skilled Resources Division, Rochester, New York.

The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–50,809; Eastman Kodak Company, Skilled Resources Division, Rochester, New York (April 18, 2003).

Signed at Washington, DC this 22nd day of April 2003.

Timothy F. Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–10749 Filed 4–30–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,477]

Fleming Companies, Inc., Altoona, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated March 17, 2003, petitioners 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 applicable to workers of Fleming Companies, Inc., Altoona, Pennsylvania, was signed on February 4, 2003, and published in the **Federal Register** on February 24, 2003 (68 FR 8620).

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 was filed on behalf of workers at Fleming Companies, Inc., Altoona, Pennsylvania, engaged in activities related to distribution services. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222 of the Act.

The petitioner asserted that the petitioning worker group did not perform distribution services, but produced ''business application software.'' The petitioner further clarified that the product involved a type of distribution software that could be used in convenience stores.

Petitioning workers do not produce an ''article'' within the meaning of the Trade Act of 1974. The functions performed at the subject firm relate to information technology services. These services are thus not tangible commodities, that is, marketable products, and are not listed on the Harmonized Tariff Schedule of the United States (HTS), which describes all articles imported to the United States.

Further, the Trade Adjustment Assistance (TAA) program was established to help workers who produce articles and who lose their jobs as a result of increases of like or directly competitive imports of such articles contributing importantly to the layoff. Throughout the Trade Act an article is often referenced as something that can be subject to a duty. To be subject to a duty on a tariff schedule an article will have a value that makes it marketable, fungible and interchangeable for commercial purposes. But, although a wide variety of tangible products are described as articles and characterized as dutiable in the HTS, technology services that are electronically transmitted are not listed in the HTS.

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 decision. Accordingly, the application is denied.

Signed at Washington, DC, this 17th day of April, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10743 Filed 4–30–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,501 and TA–W–40,501B]

Motorola, Inc., Global Telecom Solutions Sector (GTSS), Formerly Network Solutions Sector (NSS), Schaumburg, Illinois; and Motorola, Inc., Deer Park, Illinois; 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 May 2, 2002, applicable to workers of Motorola, Inc., Global Telecom Solutions Sector (GTSS), formerly Network Solutions Sector (NSS), Schaumburg, Illinois. The notice was published in the **Federal Register** on May 17, 2002 (67 FR 35143).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of IDEN and CGISS radio system units.

Information shows that worker separations occurred at the Deer Park, Illinois location of the subject firm. The workers provide administrative support functions for Motorola's Global Telecommunications Solutions Sector (GTSS), located in Schaumburg, Illinois.

Accordingly, the Department is amending the certification to include workers of Motorola, Inc., Deer Park, Illinois.

The intent of the Department's certification is to include all workers of Motorola, Inc., Global Telecom Solutions Sector (GTSS), formerly Network Solutions Sector (NSS) who were adversely affected by increased imports.

The amended notice applicable to TA-W–40,501 is hereby issued as follows:

All workers of Motorola, Inc., Global Telecom Solutions Sector (GTSS), formerly Network Solutions Sector (NSS), Schaumburg, Illinois (TA–W–40,501), engaged in employment related to the production of IDEN and CTSS radio systems units, and workers of Motorola, Inc., Deer Park, Illinois (TA–W–40,501B) providing support services related to the production of Global Telecom Solutions Sector (GTSS), formerly Network Solutions Sector (NSS), at Schaumburg, Illinois, who became totally or partially separated from employment on or after November 15, 2000, through May 2, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 17th day of March 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10740 Filed 4–30–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Workers Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has

instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than may 12, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 12, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 22nd day of April, 2003.

Timothy F. Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 04/01/2003 and 04/11/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
42,361	P.C.Cutting and Apparel (Wkrs)	Hialeah, FL	04/10/2003	10/05/2002
51,375	U.S. Repeating Arms Company (Comp)	New Haven, CT	04/01/2003	03/31/2003
51,376	Ravenna Machine Company (Comp)	Defiance, OH	04/01/2003	03/31/2003
51,377	Weyerhaeuser (Comp)	Millport, AL	04/01/2003	03/21/2003
51,378	American Quality Ceramics (Comp)	Bangs, TX	04/01/2003	03/31/2003
51,379	Printed Fabrics Corp. (Wkrs)	Carrollton, GA	04/01/2003	03/26/2003
51,380	Colorado Medtech (Wkrs)	Boulder, CO	04/01/2003	03/27/2003
51,381	Hasler, Inc. (Wkrs)	Shelton, CT	04/01/2003	03/31/2003
51,382	OEM Worldwide (Comp)	Spearfish, SD	04/01/2003	03/28/2003
51,383	American Video Glass Company (Wkrs)	Mt. Pleasant, PA	04/01/2003	03/25/2003
51,384	Honeywell Sensor Systems (Comp)	Pawtucket, RI	04/01/2003	03/31/2003
51,385	Actiontec Electronics (Comp)	Colorado Springs, CO	04/02/2003	04/01/2003
51,386	Avaya, Inc. (IBEW)	Omaha, NE	04/02/2003	04/01/2003
51,387	Allvac/Oremet and Allegheny Tech Co. (USWA).	Albany, OR	04/02/2003	03/27/2003
51,388	Filtronic Solid State (Wkrs)	Santa Clara, CA	04/02/2003	04/01/2003
51,389	State of Alaska Commercial Fisheries (Comp)	Naknek, AK	04/02/2003	04/01/2003
51,390	State of Alaska Commercial Fisheries (Comp)	Naknek, AK	04/02/2003	03/28/2003
51,391	State of Alaska Commercial Fisheries (Comp)	King Salmon, AK	04/02/2003	03/28/2003
51,392	State of Alaska Commercial Fisheries (Comp)	Naknek, AK	04/02/2003	03/28/2003
51,393	Stillwater, Inc. (Comp)	Augusta Springs, VA	04/03/2003	03/18/2003
51,394	B–W Specialty Mfg. (Wkrs)	Seattle, WA	04/03/2003	01/20/2003
51,395	Lexington Home Brands (Comp)	Lexington, NC	04/03/2003	03/31/2003
51,396	Nabco, Inc. (Comp)	Reed City, MI	04/03/2003	04/02/2003
51,397	McCrosky Tool Corp. (Comp)	Meadville, PA	04/03/2003	04/03/2003
51,398	Textron Fastening Systems (Comp)	Rockford, IL	04/03/2003	03/21/2003
51,399	Axis/Salant Corporation (Wkrs)	Culver City, CA	04/03/2003	03/24/2003
51,400	Credence Corporations (Wkrs)	Hillsboro, OR	04/04/2003	03/21/2003
51,401	SV Microwave Components Group (Comp)	Largo, FL	04/04/2003	03/31/2003
51,402	Geiger Bros, Inc. (Comp)	Lewiston, ME	04/04/2003	03/31/2003
51,403	Clariant Corporation (WI)	Oak Creek, WI	04/04/2003	04/01/2003
51,404	TexStyle, Inc. (Wkrs)	Manchester, KY	04/04/2003	03/21/2003
51,405	Itronix (Comp)	Spokane, WA	04/04/2003	03/03/2003
51,406	Dana Corporation (Comp)	Whitsett, NC	04/04/2003	03/24/2003
51,407	MeadWestvaco (GCIU)	Newark, DE	04/04/2003	03/13/2003
51,408	Motorola (Wkrs)	Arlington Hgts, IL	04/04/2003	04/01/2003
51,409	Showcase Glass (Comp)	Post Falls, ID	04/04/2003	03/20/2003
51,410	Daniel Hays Company, Inc. (The) (UNITE)	Johnstown, NY	04/04/2003	03/19/2003
51,411	Corteco (Comp)	Newport, TN	04/04/2003	01/24/2003
51,412	Express Personnel Services (Comp)	Portland, ME	04/04/2003	03/31/2003
51,413	Silvered Electronic Mica Company, Inc. (Comp).	N. Windham, CT	04/04/2003	03/24/2003
51,414	Windsor Forestry Tools, LLC (Wkrs)	Milan, TN	04/04/2003	03/20/2003
51,415	Washington Group (Comp)	Manassas, VA	04/04/2003	03/27/2003
51,416	Weyerhaeuser (Wkrs)	Laredo, TX	04/04/2003	03/18/2003
51,417	Leading Technologies, Inc. (Wrks)	Leechburg, PA	04/04/2003	03/21/2003
51,418	Dover Furniture Manufacturing, Inc. (Wkrs)	Arley, AL	04/04/2003	03/28/2003
51,419	Vaisala, Inc. (Comp)	Plain City, OH	04/04/2003	03/27/2003
51,420	Drexel Heritage Furniture (Wkrs)	Drexel, NC	04/04/2003	03/31/2003
51,421	Modern Mold and Tool Magnus Molding (MA)	Pittsfield, MA	04/04/2003	03/19/2003
51,422	Butler Manufacturing Company (USWA)	Galesburg, IL	04/04/2003	04/03/2003
51,423	State of Alaska Commercial Fisheries (Comp)	Kodiak, AK	04/04/2003	04/01/2003
51,424	Fishing Vessel (F/V) Sunset (Comp)	Petersburg, AK	04/04/2003	03/28/2003
51,425	Fishing Vessel (F/V Sunset) (Comp)	Cross Sound, AK	04/04/2003	04/01/2003

APPENDIX—Continued

[Petitions instituted between 04/01/2003 and 04/11/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
51,426	360 Networkds (Wkrs)	Broomfield, CO	04/04/2003	03/31/2003
51,427	Rhodia, Inc. (Comp)	Freeport, TX	04/04/2003	03/28/2003
51,428	Knoll, Inc. (Wkrs)	East Greenville, PA	04/04/2003	04/04/2003
51,429	Roseburg Forest Products (WCIW)	Dillard, OR	04/04/2003	04/02/2003
51,430	Triangle Suspension Systems, Inc. (Comp)	DuBois, PA	04/04/2003	04/03/2003
51,431	Tecumseh Products (IAM)	Grafton, WI	04/04/2003	04/03/2003
51,432	Marlock, Inc. (Comp)	Maynardville, TN	04/07/2003	04/01/2003
51,433	Kingston Technology (CA)	Fountain Valley, CA	04/07/2003	03/27/2003
51,434	Power Quest Corporation (Wkrs)	Orem, UT	04/07/2003	04/03/2003
51,435	Breg, Inc. (Comp)	Vista, CA	04/07/2003	12/23/2003
51,436	American Video Glass Co. (Wkrs)	Mt. Pleasant, PA	04/07/2003	03/28/2003
51,437	NTN–BCA (USWA)	Lititz, PA	04/07/2003	02/26/2003
51,438	Commonwealth Sprague (MA)	N. Adams, MA	04/07/2003	04/02/2003
51,439	Royal Hosiery Company, Inc. (Comp)	Granite Falls, NC	04/07/2003	04/02/2003
51,440	ASML Albuquerque (Wkrs)	Albuquerque, NM	04/07/2003	04/04/2003
51,441	Rochester Button Company (Wkrs)	Kenbridge, VA	04/07/2003	03/27/2003
51,442	Stora Enso Duluth Paper Mill (Comp)	Duluth, MN	04/07/2003	03/31/2003
51,443	Automotive Ignition Co., Inc. (Wkrs)	Pittsburgh, PA	04/07/2003	03/31/2003
51,444	Lindley Laboratories, Inc. (Wkrs)	Gibsonville, NC	04/07/2003	03/31/2003
51,445	Fishing Vessel (F/V) Jesse and Merle (Comp)	Dillingham, AK	04/07/2003	04/03/2003
51,446	Fishing Vessel (F/V) Jesse and Merle (Comp)	Dillingham, AK	04/07/2003	04/03/2003
51,447	NetManage, Inc.	Bellingham, WA	04/09/2003	04/23/2003
51,448	Hobart Corporation (Wkrs)	Troy, OH	04/09/2003	04/28/2003
51,449	IBM Global Services (Wkrs)	New York, NY	04/09/2003	04/01/2003
51,450	Stratford Die Casting, Inc. (Comp)	Winston-Salem, NC	04/09/2003	04/07/2003
51,451	Aetna (Wkrs)	Tyler, TX	04/09/2003	03/25/2003
51,452	Good Companies (CA)	Carson, CA	04/09/2003	04/01/2003
51,453	Jersey Shore Steel (USWA)	Jersey Shore, PA	04/09/2003	04/03/2003
51,454	Heiting Tool and Die, Inc. (Comp)	Appleton, WI	04/09/2003	04/07/2003
51,455	White Rodgers (AR)	Harrison, AR	04/09/2003	04/07/2003
51,456	Symbol Technologies (Wkrs)	Arlington Hgts., IL	04/09/2003	03/31/2003
51,457	Crown Manufacturing (Wkrs)	Hornbeak, TN	04/09/2003	03/03/2003
51,458	SGI (Wkrs)	Chippewa Falls, WI	04/09/2003	02/12/2003
51,459	Caterpillar Paving Products (Wkrs)	Brooklyn Park, MN	04/09/2003	04/07/2003
51,460	Mettler Toledo (Comp)	Inman, SC	04/09/2003	04/08/2003
51,461	Gilliam Candy Brands, Inc. (Comp)	Paducah, KY	04/09/2003	04/03/2003
51,462	Woodburn Diamond Die (Comp)	Charlevoix, MI	04/09/2003	04/04/2003
51,463	F/V Kingtail (Comp)	Nikiski, AK	04/11/2003	04/08/2003
51,464	Fishing Vessel (F/V) Chasina Bay (Comp)	Ketchikan, AK	04/11/2003	04/08/2003
51,465	Little Narrows, Inc. (Wkrs)	Kodiak, AK	04/11/2003	04/10/2003
51,466	Wards Cove Packing (Comp)	Seattle, WA	04/11/2003	04/09/2003
51,467	Sunshine Traders of El Paso (Wkrs)	El Paso, TX	04/11/2003	04/02/2003
51,468	Aliant Tech Systems (MN)	Edina, MN	04/11/2003	04/09/2003
51,469	Nortel Networks (Wkrs)	Rsrch Trgle Prk, NC	04/11/2003	04/04/2003
51,470	Harriet and Henderson Yarns, Inc. (Comp)	Clarkton, NC	04/11/2003	04/09/2003
51,471	Irvin Automotive Products (Comp)	Greenwood, MS	04/11/2003	01/14/2003
51,472	PDS Technical Services (Wkrs)	Seattle, WA	04/11/2003	03/21/2003
51,473	Shepard Clothing Company, Inc. (Comp)	New Bedford, MA	04/11/2003	03/31/2003
51,474	Seneca Sawmill Company, (Comp)	Eugene, OR	04/11/2003	04/08/2003
51,475	Guy Bennett Lumber Company (Wkrs)	Clarkston, WA	04/11/2003	04/04/2003
51,476	Ultra Cutting (Wkrs)	Medley, FL	04/11/2003	04/02/2003
51,477	Farley's and Sathers Candy Company (Wkrs)	Pittston, PA	04/11/2003	04/09/2003
51,478	VPI Mirrex LLC (Wkrs)	Delaware City, DE	04/11/2003	03/28/2003
51,479	Andrews Wire Company (Comp)	Andrews, SC	04/11/2003	04/03/2003
51,480	Chorum Technologies LP (Comp)	Richardson, TX	04/11/2003	04/09/2003
51,481	Alexandra Fashions, Inc. (Comp)	North Bergen, NJ	04/11/2003	03/31/2003
51,482	Tecumseh Products Co. (Comp)	Douglas, GA	04/11/2003	04/10/2003
51,483	Whiting and Davis (Comp)	Attleboro Falls, MA	04/11/2003	04/10/2003
51,484	CPI Business Groups, Inc. (Comp)	Rochester, NY	04/11/2003	03/31/2003
51,485	Bloomsburg Mills, Inc. (Comp)	New York, NY	04/11/2003	03/31/2003
51,486	Meadwestvaco Envelope Co. (Wkrs)	Springfield, MA	04/11/2003	04/10/2003

[FR Doc. 03–10738 Filed 4–30–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,530]

PHB Tool and Die, Girard, Pennsylvania; Notice of Revised Determination on Reconsideration

By application of February 28, 2003, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on February 13, 2003, based on the finding that criteria (a)(2)(A) (I.C.) and (a)(2)(B) (II.B) were not met. The denial notice was published in the **Federal Register** on March 10, 2003 (68 FR 11409).

To support the request for reconsideration, the company provided additional information that their sole customer, PHB Die Casting, Fairview, Pennsylvania had recently been certified for trade adjustment assistance (TA–W–42,331).

Upon examination of the data supplied by the applicant, it became apparent that PHB Tool and Die workers provided molds and dies used in the production of die castings at an affiliated certified facility (PHB Die Casting, Fairview, Pennsylvania).

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that increased imports of articles like or directly competitive with those produced at an affiliated TAA certified firm contributed importantly to the declines in the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

Workers of PHB Tool and Die, Girard, Pennsylvania, who became totally or partially separated from employment on or after January 8, 2002 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 17th day of April, 2003.

Elliott S. Kushner

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10744 Filed 4–30–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,451]

Powerex, Inc., Youngwood, Pennsylvania; Notice of Revised Determination on Reconsideration

By application of December 5, 2002, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on November 4, 2002, based on the finding that imports of rectifiers and thyristors did not contribute importantly to worker separations at the subject firm plant. The denial notice was published in the **Federal Register** on November 22, 2002 (67 FR 70460).

To support the request for reconsideration, the petitioner supplied additional information to supplement that which was gathered during the initial investigation. Upon further review and contact with two major declining customers, it was revealed that these customers either increased their imports absolutely or increased their reliance on imports of like or directly competitive products in the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Powerex, Youngwood, Pennsylvania, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Powerex, Youngwood, Pennsylvania, who became totally or partially separated from employment on or after March 8, 2002 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 17th day of April, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10741 Filed 4–30–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,459]

Rohm and Haas Company, Philadelphia, Pennsylvania; Notice of Revised Determination on Remand

The United States Court of International Trade (USCIT) remanded to the Secretary of Labor for further investigation of the negative determination in *Former Employees of Rohm and Haas* v. *U.S. Secretary of Labor* (Court No. 00–07–00333).

The Department's initial denial of Trade Adjustment Assistance (TAA) for the workers producing ion exchange resins at Rohm and Haas Company, Philadelphia, Pennsylvania, was based on the finding that criterion (1) of the group eligibility requirements of Section 222 of the Trade Act of 1974, as amended, was not met. The decision was signed on April 18, 2000 and published in the **Federal Register** on May 11, 2000 (65 FR 30443).

On voluntary remand, the Department determined that workers of Rohm and Haas Company, Philadelphia, Pennsylvania, producing ion exchange resins were threatened with employment declines. Therefore, criterion (1) of the group eligibility requirements of Section 222 of the Trade Act of 1974, as amended, was met. Also on voluntary remand, it was determined that criterion (2) of the group eligibility requirements of Section 222 of the Trade Act of 1974, as amended, was met. However, criterion (3) of the group eligibility requirements of Section 222 of the Trade Act of 1974, as amended, was not met. Imports did not contribute importantly to worker separations at the subject firm.

On remand, the Department obtained new information from the company which they did not provide during the initial investigation or during voluntary remand.

New data recently supplied by the company shows that the company increased their imports of ion exchange resins (IER's) during the relevant period of the investigation. The data supplied by the company on remand also

indicates that the workers were not separately identifiable by product.

On May 8, 2002, workers of Rohm and Haas Company, Philadelphia were certified (TA–W–41,312) eligible to apply for Trade Adjustment Assistance. That certification covers workers from March 27, 2001 through May 8, 2004.

Conclusion

After careful review of the additional facts obtained on remand, I conclude that there were increased imports of articles like or directly competitive with those produced by the subject firm that contributed importantly to the worker separations and sales or production declines at the subject facility. In accordance with the provisions of the Trade Act, I make the following certification:

All workers of Rohm and Haas Company, Philadelphia, Pennsylvania who became totally or partially separated from employment on or after March 3, 1999, through March 26, 2001, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of April 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10739 Filed 4–30–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,444]

Tyson Foods, Stilwell, OK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 3, 2003 in response to a petition filed by a company official on behalf of workers at Tyson Foods, Stilwell, Oklahoma.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 21st day of March 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10742 Filed 4–30–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6103]

Bombardier Aerospace, Learjet, Inc., Wichita, KS; Notice of Negative Determination Regarding Application for Reconsideration

By application dated September 6, 2002, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on August 9, 2002, and was published in the **Federal Register** on September 10, 2002 (66 FR 57454).

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 mis-interpretation of facts or of the law justified reconsideration of the decision.

The denial of NAFTA–TAA for workers engaged in the manufacture and assembly of aircraft at Bombardier Aerospace, Inc., Learjet, Inc., Wichita, Kansas was denied because the ''contributed importantly'' group eligibility requirement of Section 250 of the Trade Act, as amended, was not met. The subject firm did not import competitive products nor did it shift production from the subject facility to Canada or Mexico in the relevant period.

The petitioner appears to allege that the parent company stopped all repair operations for ''the old existing fleet of Lear jets in lieu of just supporting what they are currently producing.''

Repair functions do not constitute production in terms of eligibility for NAFTA–TAA assistance, and are therefore irrelevant to this investigation.

The petitioner also asserts that production of the Model 31A, which had components and assembly performed at the subject facility, is being replaced by the Model 45, which has foreign-produced components for final assembly at the subject firm. The petitioner appears to be alleging that the 45 is like or directly competitive with the 31A, and therefore the Canadian-produced components of the 45 are like or directly competitive with the 31A components produced at the subject firm.

A company official was contacted in regard to this issue and clarified that production of the 31A had ceased as of January of 2003 because it had become obsolete. He also confirmed that subject firm workers had never produced components of the 45, but were only engaged in final assembly. In regard to the competitiveness of the 31A and the 45, an industry analyst at the United States International Trade Commission (USITC) was consulted, whereupon it was revealed that the 31A and 45 are not like or directly competitive. As a result, the model 45 components are not considered like or directly competitive with components of the 31A, and thus these Canadian produced components have no bearing on the petitioning workers' eligibility for NAFTA–TAA.

The petitioner also alleges that production of the Continental jet model (currently called the Challenger), although assembled in Wichita, is comprised of foreign-produced components, and thereby seems to imply that the imports of these components has import impact on subject firm workers. The petitioner further asserts that there are plans to move the assembly of this aircraft to Canada.

The Challenger model produced in Wichita is not like or directly competitive with other models produced at the subject facility and thus the import of its component parts has no bearing on worker eligibility for NAFTA–TAA. In addition, assembly of the Challenger model has not been shifted to date and any future shift is outside the scope of this investigation.

The petitioner asserts that Bombardier ''is going to build a smaller version of the Model 45 to exactly replace the Model 31,'' and that this new model will be mostly produced abroad. The implication appears to be that this future production will be a competitive replacement for subject firm production.

A company official responded to this allegation by stating that the company is developing a ''Model 40'' that is competitive with the 31A; however, this plane is not yet in production and thus it has no bearing on the scope of this investigation.

The petitioner asserts that ''there has been a substantial shift of production work to Canada and much more to come.'' The petitioner also asserts that Canadian and other imported aircraft parts are shipped to the U.S., thereby

implying that workers should be eligible for NAFTA–TAA.

An investigation into this matter revealed that production has not been shifted from the subject firm to Canada in the relevant period. Further, as has been noted in detail above, there is no evidence of products like or directly competitive with those produced at the subject firm.

Finally, throughout the reconsideration request, the petitioner alleges that several non-manufacturing functions have been or may be shifted to domestic and Canadian facilities, including the ''Training Center'', ''Customization Engineering'', the ''Technical Publication Department'' and the ''Spare Orders Department.'' The petitioner appears to assert that these shifts should somehow qualify workers for NAFTA–TAA assistance.

None of the above-mentioned departments involve production in context with worker eligibility for NAFTA Transitional Adjustment Assistance, and thus have no relevance in this investigation. Only in very limited instances are service workers certified for NAFTA–TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for NAFTA–TAA.

In conclusion, the workers at the subject firm did not meet the ''contributed importantly'' group eligibility requirement of Section 250(a) of the Trade Act of 1974, as amended.

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 decision. Accordingly, the application is denied.

Signed at Washington, DC, this 4th day of April 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–10750 Filed 4–30–03; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Additional notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Daniel Schneider, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* May 20, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Focus Grants, submitted to the Division of Education Programs at the April 15, 2003 deadline.

2. *Date:* May 21, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Focus Grants, submitted to the Division of Education Programs at the April 15, 2003 deadline.

3. *Date:* May 22, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Focus Grants, submitted to the Division of Education Programs at the April 15, 2003 deadline.

4. *Date:* May 23, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Focus Grants, submitted to the Division of Education Programs at the April 15, 2003 deadline.

5. *Date:* May 28, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Focus Grants, submitted to the Division of Education Programs at the April 15, 2003 deadline.

6. *Date:* May 30, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Focus Grants, submitted to the Division of Education Programs at the April 15, 2003 deadline.

Daniel Schneider,

Advisory Committee Management Officer.

[FR Doc. 03–10794 Filed 4–30–03; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 67 FR 69573 on December 24, 2002 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register.**

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will

have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Teresa R. Pierce, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *tpierce@nsf.gov.* Copies of the submission may be obtained by calling (703) 292–7555.

FOR FURTHER INFORMATION CONTACT: Teresa R. Pierce, NSF Reports Clearance Officer at (703) 292–7555 or send e-mail to *tpierce@nsf.gov.*

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: 2003 Survey of Doctorate Recipients.

OMB Approval Number: 3145–0020.

Abstract: The Survey of Doctorate Recipients (SDR) has been conducted biennially since 1973. The 2003 SDR will consist of a sample of individuals under the age 76 who have earned research doctoral degrees in science and engineering from U.S. institutions. The purpose of this longitudinal study is to provide national estimates on the doctoral science and engineering workforce and changes in employment, education and demographic characteristics. The study is one of three components of the Scientists and Engineers Statistical Data System (SESTAT), which produces national estimates of the size and characteristics of the nation's science and engineering population.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to "* * * provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government." The SDR is designed to comply with these mandates by providing information on the supply and utilization of nation's doctorate level scientists and engineers. Collected data will be used to produce estimates of the characteristics of these individuals. They will also provide necessary input into the SESTAT labor force data system, which produces national estimates of the size and characteristics of the country's science and engineering population.

The Foundation uses this information to prepare congressionally mandated reports such as *Women, Minorities and Persons with Disability in Science and Engineering* and *Science and Engineering Indicators.* The NSF publishes statistics from the survey in many reports, but primarily in the biennial series, *Characteristics of Doctoral Scientists and Engineers in the United States.* A public release file of collected data, designed to protect respondent confidentiality, will be made available to research on CD–ROM and on the World Wide Web.

The National Opinion Research Corporation at University of Chicago will conduct the study for NSF. Data will be obtained by self-administered mail and web questionnaires, and computer assisted telephone interviews beginning October 2003. The survey will be collected in conformance with the Privacy Act of 1974 and the individual's response to the survey is voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for research or statistical purposes, and preparing scientific reports and articles.

Expected Respondents: A statistical sample of approximately 40,000 U.S. doctorates will be contacted in 2003. A total response rate in 2001 was 83%.

Burden on the Public: The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, on average it will take approximately 25 minutes to complete the survey. We estimate that the total annual burden will be 14,167 hours during the year.

Dated: April 25, 2003.

Teresa R. Pierce,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 03–10700 Filed 4–30–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board

Committee on Education and Human Resources; Sunshine Act Meetings

DATE AND TIME: May 5, 2003, 1 p.m.–2 p.m. Open session.

PLACE: The National Science Foundation, Stafford One Building, 4201 Wilson Boulevard, Room 130, Arlington, VA 22230.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: Monday, May 5, 2003.

Open Session (1 p.m. to 2 p.m.)

Consideration of the recommendation of the NSB/EHR Committee Task Force on National Workforce Policies for Science and Engineering to transmit its draft report (NSB/NWP 03–09) to the full Board to be considered for approval as a draft NSB report for public comment.

FOR FURTHER INFORMATION CONTACT: Gerard Glaser, Executive Officer, NSB, (703) 292–7000, *www.nsf.gov/nsb.*

Gerard Glaser,

Executive Officer.

[FR Doc. 03–10810 Filed 4–28–03; 4:15 pm]

BILLING CODE 7555–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposals(s)

(1) *Collection title:* Railroad Service and Compensation Reports.

(2) *Form(s) submitted:* BA–3a, BA–4, BA–4 (Internet).

(3) *OMB Number:* 3220–0008.

(4) *Expiration date of current OMB clearance:* 2–28–2005.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Business or other for-profit.

(7) *Estimated annual number of respondents:* 579.

(8) *Total annual responses:* 1,028.

(9) *Total annual reporting hours:* 37,927.

(10) *Collection description:* Under the Railroad Retirement Act and the

Railroad Unemployment Insurance Act, employers are required to report service and compensation for each employee to update Railroad Retirement Board records for payment of benefits.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–202 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–10705 Filed 4–30–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Bergstrom Capital Corporation, Common Stock, $1.00 Par Value) File No. 1–01641

April 25, 2003.

Bergstrom Capital Corporation, a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $1.00 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of Amex rule 18 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer states that it is taking such actions for the following reason: the liquidation of the Issuer has been authorized by the stockholders, substantial liquidating distributions have been made, and the Issuer is no longer eligible for continued dealings on the Amex.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act [3] shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before May 19, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–10715 Filed 4–30–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Laidlaw Global Corporation, Common Stock, $.00001 Par Value) File No. 1–15867

April 25, 2003.

Laidlaw Global Corporation, a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.00001 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of Amex rule 18 by complying with all applicable laws in State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer states in its application the reasons that it took such actions are as follows: the Issuer does not expect to meet the Exchange's continuing listing requirements within the cure period and conditions stipulated by the Amex, and the Issuer intends to withdraw the common stock from listing on the Amex and to list the Securities on the OTC Bulletin Board.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under section 12(b) of the Act [3] shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before May 19, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–10714 Filed 4–30–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 5, 2003: Closed Meetings will be held on Tuesday, May 6, 2003 at 10 a.m. and May 8, 2003 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or

more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a) (3), (5), (6), (7)(i)(C), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, May 6, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions.

The subject matter of the Closed Meeting scheduled for May 8, 2003 will be:

Formal orders of investigation;

Institution and settlement of administrative proceedings of an enforcement nature; and

Institution and settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: April 29, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–10879 Filed 4–29–03; 12:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8221; 34–47743; IC–26028; FR–70]

Commission Statement of Policy Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter

AGENCY: Securities and Exchange Commission.

ACTION: Policy statement.

SUMMARY: The Securities and Exchange Commission has determined that the Financial Accounting Standards Board (FASB or Board) and its parent organization, the Financial Accounting Foundation (FAF), satisfy the criteria in section 108 of the Sarbanes-Oxley Act of 2002 and, accordingly, FASB's financial accounting and reporting standards are recognized as ''generally accepted'' for purposes of the federal securities laws. As a result, registrants are required to continue to comply with those standards in preparing financial statements filed with the Commission, unless the Commission directs otherwise. Our determination is premised on an expectation that the FASB, and any organization affiliated with it, will address the issues set forth in this statement and any future amendments to this statement, and will continue to serve investors and protect the public interest. This policy statement updates Accounting Series Release No. 150, issued on December 20, 1973, which expressed the Commission's intent to continue to look to the private sector for leadership in establishing and improving accounting principles and standards through the FASB with the expectation that the body's conclusions will promote the interests of investors.

FOR FURTHER INFORMATION CONTACT: Scott A. Taub, John W. Albert, or Robert E. Burns, Office of the Chief Accountant, at (202) 942–4400, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1103.

SUPPLEMENTARY INFORMATION:

I. Background

The federal securities laws set forth the Commission's broad authority and responsibility to prescribe the methods to be followed in the preparation of accounts and the form and content of financial statements to be filed under those laws,[1] as well as its responsibility to ensure that investors are furnished with other information necessary for investment decisions. To assist it in meeting this responsibility, the Commission historically has looked to private-sector standard-setting bodies designated by the accounting profession to develop accounting principles and standards. At the time of the FASB's formation in 1973, the Commission reexamined its policy and formally recognized pronouncements of the FASB that establish and amend accounting principles and standards as ''authoritative'' in the absence of any contrary determination by the Commission. The Commission concluded at that time that the expertise and resources that the private sector could offer to the process of setting accounting standards would be beneficial to investors.[2]

On July 30, 2002, President Bush signed the Sarbanes-Oxley Act of 2002. Section 108 of that Act amends section 19 of the Securities Act of 1933[3] to establish criteria that must be met in order for the work product of an accounting standard-setting body to be recognized as ''generally accepted.'' A new subsection 19(b) indicates that in carrying out its authority under section 19 and under section 13(b) of the Securities Exchange Act of 1934[4] the Commission may recognize as ''generally accepted'' for purposes of the federal securities laws any accounting principles established by a standard setting body that:

- Is organized as a private entity;
- Has, for administrative and operational purposes, a board of trustees serving in the public interest, the majority of whom are not, concurrent with their service on such board, and have not been during the two-year period preceding such service, associated persons of any registered public accounting firm;
- Is funded as provided in section 109 of the Sarbanes-Oxley Act;
- Has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices; and
- Considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment, the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of investors.

Representatives of the FASB and FAF have requested that ''[t]he FASB * * * '' continue to be the designated organization in the private sector for establishing standards of financial accounting and reporting.''[5]

II. Qualification and Recognition of the FASB

A. Structure of the FASB

In assessing compliance with the provisions of section 108, the Commission has evaluated the organizational structure, operations, and procedures of both the FAF and the FASB.

[1] See *e.g.*, sections 7, 19(a) and Schedule A, items (25) and (26) of the Securities Act of 1933, 15 U.S.C. 77g, 77s(a), 77aa(25) and (26); sections 3(b), 12(b) and 13(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(b), 78*l*(b) and 78m(b); sections 5(b), 14, 15 and 20 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79e(b), 79n, 79o and 79t; sections 8, 30(e), 31 and 38(a) of the Investment Company Act of 1940, 15 U.S.C. 80a–8, 80a–29(e), 80a–30 and 80a–37(a).

[2] Accounting Series Release No. 150 (December 20, 1973).

[3] 15 U.S.C. 77s.

[4] 15 U.S.C. 78m.

[5] Letter dated August 16, 2002 to SEC Chairman Harvey L. Pitt from Robert H. Herz, Chairman, FASB and Manuel H. Johnson, Chairman and President, FAF. The Act does not restrict the Commission's ability to develop accounting principles on its own, and does not limit the number of private-sector bodies the Commission may recognize.

The FAF is comprised of independent trustees and is responsible for overseeing, funding,[6] and appointing members of the Board, as well as selecting members of an advisory body.[7] The Commission has been informed that the majority of the FAF trustees are not, and have not been during the two-year period preceding their service on the FAF, associated with a public accounting firm. Based on our past relationship with the FAF, we believe that the FAF serves the public interest. Accordingly, the FAF meets the applicable criteria in section 108 of the Sarbanes-Oxley Act for the board of trustees of a recognized private sector accounting standard setter.

The Board is responsible for promulgating financial accounting and reporting standards. It currently has seven members who have expertise in accounting and financial reporting. Members generally are appointed for five-year terms and can be reappointed to one additional term. Board members are full time employees of the FAF.

B. Commission Oversight of FASB Activities

While the Commission consistently has looked to the private sector in the past to set accounting standards, the securities laws, including the Sarbanes-Oxley Act, clearly provide the Commission with authority to set accounting standards for public companies and other entities that file financial statements with the Commission.[8] In addition, recognition of standards set by a private sector standard-setting body as ''generally accepted'' is only appropriate under section 108 of the Sarbanes-Oxley Act if, among other things, the Commission determines that the private sector body ''has the capacity to assist the Commission in fulfilling the requirements of * * * the Securities Exchange Act * * * because, at a minimum, the standard setting body is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws.'' [9] As noted above, section 108 also emphasizes the Commission's responsibility to determine that the standard setting body:

- Has ''procedures to ensure prompt consideration * * * of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices'';
- Considers the need to amend standards ''to reflect changes in the business environment''; and
- Considers, to the extent necessary or appropriate, international convergence of accounting standards.

Given the Commission's responsibilities under the securities laws and our specific responsibilities under the Sarbanes-Oxley Act to make findings regarding the procedures, capabilities, activities, and results of any designated accounting standards-setting body, we believe that:

- The FAF and FASB should give the Commission timely notice of, and discuss with the Commission, the FAF's intention to appoint a new member of the FAF or FASB.[10] While the FAF makes the final determinations regarding the selection of FASB and FAF members, we believe that to fulfill our statutory responsibilities we should provide the FAF with our views and that the FAF should consider those views in making its final selection. The Commission, FAF, and FASB share the belief that the qualifications and appropriateness of each member of the FAF and the FASB are critical if the FASB is to continue to be a premier private-sector standards-setting body.
- The FASB, in its role of ''assist(ing) the Commission in fulfilling the requirements of the Securities Exchange Act,'' [11] should provide timely guidance to public companies, accounting firms, regulators and others on accounting issues that the Commission considers to be of immediate significance to investors. The Commission and its staff, however, do not prohibit the FASB from also addressing other topics, and do not dictate the direction or outcome of specific FASB projects so long as the conclusions reached by the FASB are in the interest of investor protection. We expect that the Commission staff [12] will refer issues to the FASB or one of its affiliated organizations [13] when those issues may warrant new, amendments to, or formal interpretations of, accounting standards. We also expect that the FASB will address such issues in a timely manner. On those occasions when the FASB may determine that consideration of the issue is not advisable or that the issue cannot be resolved within the time frame acceptable to the Commission,[14] we expect that the FASB promptly will notify the Commission or its staff, provide us with its views regarding an appropriate resolution of the issue, and diligently work with us and our staff to ensure the protection of investors from misleading or inadequate accounting or disclosures.
- Because the Commission and FASB share the common goal of providing investors with the disclosure of meaningful financial information, we anticipate continuation of our collegial working relationship with the FASB. To that end, we expect that, when

[6] The funding provisions under section 109 of the Sarbanes-Oxley Act replace the FAF's funding responsibilities; the FAF will continue to be responsible for the fee requests, including establishing the FASB's budget for review by the Commission each year.

[7] The FASB receives input from, among other sources, a standing advisory body, the Financial Accounting Standards Advisory Council (FASAC), which is comprised of members from the accounting and business communities, academia, and professional organizations, all of whom share an interest in fostering quality financial reporting and disclosure. FASAC's primary mission is to advise the FASB on its projects and agenda. In addition, the FASB has established a User Advisory Council (UAC) to assist the FASB in raising awareness of how investors and investment professionals, equity and credit analysts, and rating agencies use financial information. The FASB has recruited more than 40 professionals, representing a variety of investment and analytical disciplines, to participate on the UAC.

[8] Section 108(c) of the Sarbanes-Oxley Act states, ''Nothing in this Act, including this section * * * shall be construed to impair or limit the authority of the Commission to establish accounting principles or standards for purposes of enforcement of the securities laws.''

[9] *See* Securities Act of 1933, section 19(b)(1)(B), as added by the Sarbanes-Oxley Act.

[10] Such consultations have occurred in the past. *See, e.g.*, SEC Press Release No. 96–87, ''FAF and SEC Reach Agreement on Changes in Composition of Accounting Foundation: Appointing Three New Trustees to Serve,'' dated July 8, 1996, which states, ''The FAF selected the new At-Large Trustees in consultation with the SEC''; SEC Annual Report 1996, at 90–91, which states, ''The change in composition of the FAF's Board was made in consultation with the SEC to include a greater representation by those who do not have a special interest in the outcome of accounting standards setting,'' and FAF, *1996 Annual Report of the Financial Accounting Foundation,*'' at 5, which states, ''In consultation with the chairman of the Securities and Exchange Commission, the FAF agreed in July to change the composition of the Foundation's Board.''

[11] Section 19(b)(1)(B) of the Securities Act of 1933, as added by section 108 of the Sarbanes-Oxley Act of 2002.

[12] The Commission staff will continue to take such action on a day-to-day basis as may be appropriate to resolve specific accounting and reporting issues under the particular factual circumstances involved in filings and reports of individual registrants.

[13] For example, the issue may be referred to the FASB's Emerging Issues Task Force (EITF). The EITF is comprised of approximately 13 members who serve, generally without compensation, on a part-time basis. EITF members are partners in large, medium and small accounting firms, business executives, financial analysts and other users of financial statements, and academics. Upon ratification of an EITF consensus by the FASB, the consensus is published as part of the EITF's minutes and may be relied on by Commission registrants and others in the preparation of financial statements that purport to conform to generally accepted accounting principles.

[14] We expect such occasions will be infrequent because the Commission and the FASB share the goal of providing timely guidance to public companies and accounting firms on matters that are significant to investors.

requested to do so, the FASB will make information and staff reasonably available to facilitate our, or our staff's, understanding and implementation of a FASB standard.

The Commission and its staff intend to work with the FAF and the Board to ensure that proper oversight procedures and policies are in place to allow the Commission to assess whether the FASB continues to meet the characteristics of an accounting-standard setter that are discussed in the Sarbanes-Oxley Act.

C. Key FASB Initiatives

As noted earlier, the Commission has treated FASB accounting standards as ''authoritative'' since 1973. In order for U.S. accounting standards to remain relevant and to continue to improve, however, the Commission expects the FASB to:

- Consider, in adopting accounting principles, the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of investors,[15] including consideration of moving towards greater reliance on principles-based accounting standards whenever it is reasonable to do so;
- Take reasonable steps to continue to improve the timeliness with which it completes its projects, while satisfying appropriate public notice and comment requirements; [16] and
- Continue to be objective in its decision-making and to weigh carefully the views of its constituents and the expected benefits and perceived costs of each standard.[17]

D. FASB's Independence

While effective oversight of the FASB's activities is necessary in order for the Commission to carry out its responsibilities under the securities laws, we recognize the importance of the FASB's independence. By virtue of today's Commission determination, the FASB will continue its role as the preeminent accounting standard setter in the private sector. In performing this role, the FASB must use independent judgment in setting standards and should not be constrained in its exploration and discussion of issues. This is necessary to ensure that the standards developed are free from bias and have the maximum credibility in the business and investing communities.[18]

E. Conclusion

Based on available information, the organizational structure, operating activities, and procedures of the FAF and FASB meet the criteria in section 108 the Sarbanes-Oxley Act.[19] In addition, the Commission has determined that the FASB has the capacity to assist the Commission in fulfilling the requirements of subsection 19(a) of the Securities Act of 1933 and section 13(b) of the Securities Exchange Act of 1934 and is capable of improving both the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws.[20] Accordingly, the standards set by the FASB are recognized as ''generally accepted'' under section 108 of the Sarbanes-Oxley Act.

As required under the securities laws, including the Sarbanes-Oxley Act, the Commission will monitor the FASB's procedures, qualifications, capabilities, activities, and results, as well as the FAF's and FASB's ongoing compliance with the expectations and views expressed in this policy statement. We will issue an appropriate revision of this policy statement if we determine that the FAF or FASB no longer meets the statutory criteria or expectations discussed in this policy statement, or if we consider it otherwise necessary or appropriate to do so.

III. Regulatory Requirements

This policy statement is not an agency rule requiring notice of proposed rulemaking, opportunities for public participation, and prior publication under the provisions of the Administrative Procedure Act (APA). Similarly, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or another statute, are not applicable.

IV. Codification Update

The ''Codification of Financial Reporting Policies'' announced in Financial Reporting Release No. 1 (April 15, 1982) [47 FR 21028] is updated as follows:

1. By adding at the end of Section 101, under the Financial Reporting Number (FR–70) assigned to this policy statement, the text in the policy statement beginning with the second paragraph in Section I. and all of Section II. of this release.
2. By renumbering the footnotes from this release that are included in the Codification to run consecutively from number one through number 18.

The Codification is a separate publication of the Commission. It will not be published in the **Federal Register**/Code of Federal Regulations.

By the Commission.

Dated: April 25, 2003.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–10716 Filed 4–30–03; 8:45 am]

BILLING CODE 8010–01–P

[15] We expect that during its deliberations of an accounting issue the FASB will consider, among other things, international accounting standards addressing that issue.

[16] These ideas, among others, are embodied in the FASB's current Rules of Procedure. To the extent that the FAF or FASB determines that inadequate staffing or resources hampers the timeliness of the FASB's processes, the Commission will review requests for increases in the FASB's budget in accordance with the procedures in section 109(e) of the Sarbanes-Oxley Act.

[17] *Id.*

[18] The occasions where the Commission has not accepted a particular FASB standard have been rare due, in part, to our recognition and support of FASB's independence. As noted elsewhere in this release, the Commission and its staff do not prohibit the FASB from addressing a particular topic and do not dictate the direction or outcome of specific FASB projects provided that the conclusions reached by the FASB are in the interest of investor protection.

[19] As noted above, one of the statutory criteria is that the recognized accounting body is funded as provided in section 109 of the Sarbanes-Oxley Act. We are providing an endorsement of the FASB so that it may begin to work with the Public Company Accounting Oversight Board to implement the funding mechanisms in section 109. Our recognition of the FASB is in anticipation of and with the expectation that this funding will be forthcoming in the near term.

[20] *See*, section 108(a) of the Sarbanes-Oxley Act; section 19(b)(1)(B) of the Securities Act of 1933, 15 U.S. 77s(b)(1)(B).

SECURITIES AND EXCHANGE COMMISSION

Securities Act of 1933, Release No. 8222/April 25, 2003, Securities Exchange Act of 1934, Release No. 47745/April 25, 2003; Order Regarding Section 103(a)(3)(B) of the Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act of 2002 (''Act'') established the Public Company Accounting Oversight Board (''PCAOB'') and charged it with the responsibility of overseeing the audits of public companies that are subject to the U.S. Federal securities laws. Under the Act, the PCAOB's duties include the establishment of auditing, quality control, ethics, independence and other standards relating to public company audits. In connection with this standard-setting responsibility, section 103(a)(3)(B) of the Act provides that the PCAOB may adopt ''any portion of any statement of auditing standards or other professional standards that the [PCAOB] determines satisfy the requirements of [the Act] and that were proposed by 1 or more professional groups of accountants' as initial or transitional standards, to the extent the PCAOB determines necessary. This section of

the Act also provides that any such initial or transitional standards shall be separately approved by the Commission at the time it makes the determination required by section 101(d) of the Act, without regard to the procedures that otherwise would apply to Commission approval of PCAOB rules.

The PCAOB has determined that is it necessary in the public interest and for the protection of investors to adopt initial or transitional professional standards (which it refers to as ''interim'' standards) as permitted by section 103(a)(3)(B) of the Act. In this connection, the PCAOB has advised the Commission that it has adopted the following rules setting forth interim standards that the PCAOB finds satisfy the requirements of section 103(a)(3)(A)(i) of the Act.

Rule 3200T. Interim Auditing Standards

In connection with the preparation or issuance of any audit report, a registered public accounting firm, and its associated persons, shall comply with generally accepted auditing standards, as described in the AICPA Auditing Standards Board's Statement of Auditing Standards No. 95, as in existence on April 16, 2003 (Codification of Statements on Auditing Standards, AU § 150 (AICPA 2002)).

Note: Under section 102(a) of the Act, public accounting firms are not required to be registered with the Board until 180 days after the date of the determination of the Commission under section 101(d) that the Board has the capacity to carry out the requirements of Title I of the Act (the ''mandatory registration date''). The Board intends that, during the period preceding the mandatory registration date, the Interim Auditing Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.

Rule 3300T. Interim Attestation Standards

In connection with an engagement (i) described in the AICPA's Auditing Standards Board's Statement on Standards for Attestation Engagements No. 10 (Codification of Statements on Auditing Standards, AT § 101.01 (AICPA 2002)) and (ii) related to the preparation or issuance of audit reports for issuers, a registered public accounting firm, and its associated persons, shall comply with the AICPA Auditing Standards Board's Statements on Standards for Attestation Engagements, and related interpretations and Statements of Position, as in existence on April 16, 2003.

Note: The Board intends that, during the period preceding the mandatory registration date, the Interim Attestation Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.

Rule 3400T. Interim Quality Control Standards

A registered public accounting firm, and its associated persons, shall comply with quality control standards, as described in—

(a) the AICPA's Auditing Standards Board's Statements on Quality Control Standards, as in existence on April 16, 2003 (AICPA Professional Standards, QC §§ 20–40 (AICPA 2002)); and

(b) the AICPA SEC Practice Section's Requirements of Membership (d), (f)(first sentence), (l), (m), (n)(1) and (o), as in existence on April 16, 2003 (AICPA SEC Practice Section Manual § 1000.08(d), (f), (j), (m), (n)(1) and (o)).

Note: The second sentence of requirement (f) of the AICPA SEC Practice Section's Requirements of Membership provided for the AICPA's peer review committee to ''authorize alternative procedures'' when the requirement for a concurring review could not be met because of the size of the firm. This provision is not adopted as part of the Board's Interim Quality Control Standards. After the effective date of the Interim Quality Control Standards, requests for authorization of alternative procedures to a concurring review may, however, be directed to the Board.

Note: The Board intends that, during the period preceding the mandatory registration date, the Interim Quality Control Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.

Rule 3500T. Interim Ethics Standards

In connection with the preparation or issuance of any audit report, a registered public accounting firm, and its associated persons, shall comply with ethics standards, as described in the AICPA's Code of Professional Conduct Rule 102, and interpretations and rulings thereunder, as in existence on April 16, 2003 (AICPA Professional Standards, ET §§ 102 and 191 (AICPA 2002)).

Note: The Board intends that, during the period preceding the mandatory registration date, the Interim Ethics Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.

Rule 3600T. Interim Independence Standards

In connection with the preparation or issuance of any audit report, a registered public accounting firm, and its associated persons, shall comply with independence standards—

(1) as described in the AICPA's Code of Professional Conduct Rule 101, and interpretations and rulings thereunder, as in existence on April 16, 2003 (AICPA Professional Standards, ET §§ 101 and 191 (AICPA 2002)); and

(2) Standards Nos. 1, 2, and 3, and Interpretations 99–1, 00–1, and 00–2, of the Independence Standards Board.

Note: The Board's Interim Independence Standards do not supercede the Commission's auditor independence rules. See Rule 2–01 of Reg. S–X, 17 CFR 240.2–01. Therefore, to the extent that a provision of the Commission's rule is more restrictive—or less restrictive—than the Board's Interim Independence Standards, a registered public accounting firm must comply with the more restrictive rule.

Note: The Board intends that, during the period preceding the mandatory registration date, the Interim Independence Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.

Each of the interim standards set forth above would remain in effect until modified or superceded, either by PCAOB action approved by the Commission as provided in the Act, or by Commission action pursuant to its independent authority under the federal securities laws and the rules and regulations thereunder. The Commission finds that the adoption of interim professional standards is consistent with the requirements of the Act and the federal securities laws and is necessary or appropriate in the public interest or for the protection of investors. Accordingly,

It is Ordered that PCAOB Rules 3200T through 3600T, setting forth interim professional standards for use in connection with the audits of public companies, are hereby approved.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–10781 Filed 4–30–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Securities Act of 1933, Release No. 8223/April 25, 2003, Securities Exchange Act of 1934, Release No. 47746/April 25, 2003; Order Regarding Section 101(d) of the Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act of 2002 (''Act'') established the Public Company Accounting Oversight Board (''PCAOB'') and charged it with the responsibility of overseeing the audits of public companies that are subject to the U.S. Federal securities laws. Under the Act, the PCAOB's duties include registering public accounting firms; establishing auditing, quality control, ethics, independence and other standards relating to public company audits; conducting inspections, investigations and disciplinary proceedings of

registered accounting firms; and enforcing compliance with the Act. The Commission has authority to oversee the operations of the PCAOB, including but not limited to the authority to appoint or remove members of the PCAOB, to approve its budget and rules, and to entertain appeals of adverse PCAOB inspection reports and disciplinary actions.

Section 101(d) of the Act provides that, no later than 270 days after the establishment of the PCAOB, the members of the PCAOB ''shall take such action (including hiring of staff, proposal of rules, and adoption of initial and transitional auditing and other professional standards) as may be necessary or appropriate to enable the Commission to determine * * * that the Board is so organized and has the capacity to carry out the requirements of [the Act], and to enforce compliance with [the Act] by registered public accounting firms and associated persons thereof.'' The purpose of the provision was to assure that the PCAOB is prepared to undertake promptly its statutory responsibilities.

Since the appointment of its board members, the PCAOB has undertaken many actions to demonstrate its readiness to carry out the requirements of the Act. For example, it has hired or substantially completed the hiring process to fill, on a permanent or acting basis, a majority of its key positions, including the Director of Registration and Inspections and the Chief Auditor. The PCAOB has adopted by-laws and proposed for public comment a code of conduct and ethical standards for PCAOB members and staff.

The PCAOB has adopted its budget for the calendar year 2003. It also has determined and submitted to the Commission a proposed formula for the computation of an Annual Accounting Support Fee for calendar year 2003. The PCAOB has adopted, and submitted to the Commission for approval, a plan for assessment, billing and collection of registration fees, annual fees and Annual Accounting Support Fees.

The PCAOB has begun to adopt rules for the profession. For example, it has proposed rules relating to the registration of public accounting firms and has supplemented its comment process on that proposal by holding a public roundtable meeting to solicit views on issues relating to the registration of non-U.S. public accounting firms. The PCAOB has adopted interim professional standards relating to auditing, attestation, independence, quality control, and ethical conduct of auditors. These standards are the subject of a separate Commission Order. After the date of that Order, no professional standards in these areas, as they relate to the audit of public companies, will take effect unless approved by the PCAOB under its statutory rulemaking process and published for comment and approved by the Commission. The PCAOB also has issued a policy statement setting forth a blueprint for its future standard-setting procedures, including a planned review of the interim standards.

Finally, the PCAOB has developed a plan for inspecting accounting firms. It has also prepared a plan to develop procedures and standards governing disciplinary proceedings and the imposition of sanctions against accounting firms and their associates.

As a result of these actions, but without this Order constituting approval of any specific PCAOB action, the Commission determines that the PCAOB is so organized and has the capacity to carry out the requirements of the Act and to enforce compliance with the Act by registered public accounting firms and associated persons thereof, as required by section 101(d) of the Act. Accordingly,

It is Ordered that the Commission hereby determines that the PCAOB has satisfied the requirements of section 101(d) of the Act.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–10782 Filed 4–30–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47725; File No. SR–Amex–2003–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Market at 4 p.m. Orders for ETFs

April 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 17, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 17, 2003 the Amex amended the proposal.[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 Amex proposes to add Commentary .02 to Amex Rule 131 (''Types of Orders'') to provide that an order in Exchange Traded Funds (''ETFs'') that trade until 4:15 p.m. may be designated as ''market at 4 p.m.''; and Commentary .06 to Amex Rule 155 (''Precedence Accorded to Orders Entrusted to Specialists'') to provide that ''market at 4 p.m.'' orders, shall be executed at one price at 4 p.m. or as close as practicable to 4:00 p.m. and shall have priority over limit orders priced at the execution price.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

The text of the proposed rule change is below. Proposed new language is *italicized*.

* * * * *

Types of Orders

Rule 131

* * * * *

Commentary .02

''Market at 4 p.m.'' orders. An order in Portfolio Depositary Receipts or Index Fund Shares that trade on the Exchange until 4:15 p.m. may be designated as ''market at 4 p.m.'' to denote that it is a market order which is to be executed at or as close as practicable to the close of the regular equity trading session on the exchange (normally 4 p.m. Eastern Time).

(b) Where a member is holding simultaneously both buy and sell

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Geraldine Brindisi, Vice-President and Corporate Secretary, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 16, 2003 (''Amendment No. 1''). In Amendment No. 1, the Amex replaced in its entirety the original proposed rule change.

''market at 4 p.m.'' orders, and where there is an imbalance between the buy and sell ''market at 4 p.m.'' orders, the member shall, at 4 p.m. or as close as practicable to 4 p.m., execute the imbalance against the prevailing bid or offer on the Exchange, as appropriate. (An imbalance of buy orders would be executed against the offer. An imbalance of sell orders would be executed against the bid.) The member shall then pair off the remaining ''market at 4 p.m.'' orders at the price of the immediately preceding sale described above.

(c) Where the aggregate size of buy ''market at 4 p.m.'' orders equals the aggregate size of sell ''market at 4 p.m.'' orders in a given security, the buy and sell orders shall be paired off at the midpoint of the then prevailing bid and offer in that security on the Exchange. In the event that that midpoint consists of a number including a fraction of a cent, then the price of the transaction shall be at the next higher one cent increment above the midpoint.

Precedence Accorded to Orders Entrusted to Specialists

Rule 155

No change

Commentary

.01 to .05 No change.

.06 Notwithstanding anything in Commentaries .03 and .04 above to the contrary, ''market at 4 p.m.'' orders entered with the specialist in Portfolio Depositary Receipts and Index Fund Shares (see Rule 131, Commentary .02) shall be executed at one price at 4 p.m. or as close as practicable to 4 p.m. and shall have priority over limit orders priced at the execution price.

* * * * *

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Many ETFs traded on the Exchange trade until 4:15 p.m., Eastern Time, instead of the normal 4 p.m. equities closing time. Currently, market participants trading ETFs (including Portfolio Depositary Receipts and Index Fund Shares) can place market-on-close orders and receive an execution at the 4:15 p.m. closing price for ETFs trading until 4:15 p.m. According to the Amex, however, certain market participants, including institutions, arbitrageurs and professional traders, may wish to receive on such orders a ''4 p.m. closing'' price (the so called ''cash close'') at the close of trading in U.S. equity markets. This is because ETF pricing may ''drift'' (*i.e.*, change significantly) between 4 p.m. and 4:15 p.m., based on changes in index futures pricing (which close at 4:15 p.m.) or changes in the over-the-counter ''cash'' market for underlying index stocks that may occur after 4 p.m.

The Exchange proposes to add Commentary .02(a) to Amex Rule 131 (''Types of Orders'') to provide that an order in ETFs traded until 4:15 p.m. may be designated as ''market on 4 p.m.'' (''MCC'') for execution at or as soon as practicable after the close of the regular equity trading session on the Exchange (normally 4 p.m.). Such orders could be entered until 4 p.m., and all MCC orders to buy and sell the same ETF would be paired off by the specialist and executed at one price. Commentary .02(b) of Amex Rule 131 would provide that when a member is holding simultaneously both buy and sell MCC orders, and where there is an imbalance of MCC buy and sell orders in a given ETF, the member entrusted with the orders would execute the imbalance against the prevailing bid or offer on the Exchange, as appropriate. This would mean that an imbalance of buy orders would be executed against the offer. An imbalance of sell orders would be executed against the bid. The remaining orders would be paired off at the immediately preceding sale price. Amex further proposes in Commentary .02(c) of Amex Rule 131 that where the aggregate size of buy and sell MCC orders in a given ETF is the same, then the orders would be paired off at the midpoint of the then prevailing bid and offer in that ETF on the Exchange. If the midpoint is a fraction of a cent, then the price of the transaction would be at the next higher one-cent increment above the midpoint.

The Amex further proposed adding a new Commentary .06 to Amex Rule 155 (''Precedence Accorded to Orders Entrusted to Specialists'') to make clear that ''market at 4 p.m.'' orders would be executed at one price at 4 p.m. or as close as practicable to 4 p.m. and shall have priority over limit orders priced at the execution price. Amex states that these MCC orders would be entered either with a floor broker or through the Amex Order File (''AOF''). However, Amex states that system changes to the Common Message Switch (''CMS'') would be required to accommodate orders designated as MCC, and, until these changes are made, floor brokers would provide the only way to enter MCC orders.

2. Statutory Basis

The Amex believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act [4] in general, and section 6(b)(5)[5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2003–17 and should be submitted by May 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–10711 Filed 4–30–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47737; File No. SR–Amex–2003–31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange LLC Relating to the Rules Implementing the Options Linkage Plan

April 25, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Amex Rule 941(e) to clarify that in those cases where a Linkage Order is not eligible for automatic execution, the specialist must address the order within 15 seconds to provide an execution for at least the Firm Customer Quote Size or Firm Principal Quote Size. Current Amex Rule 941(e) incorrectly references Commentary .01(d) to Amex Rule 933 instead of paragraph (f)(i) of Amex Rule 933 for those situations where the Exchange's Auto-Ex system may not operate.

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Amex Rule 941(e)[3] in order to accurately reflect the manner in which Linkage Orders[4] received by the Exchange will be executed when an order is not eligible for automatic execution through the Auto-Ex system (''Auto-Ex'').[5] The Exchange adopted Amex Rule 941(e) as part of its rules for implementing The Plan for the Purpose of Creating and Operating an Intermarket Options Market Linkage (the ''Linkage Plan'' or ''Plan'').[6] The Exchange, along with the other options exchanges, launched Phase I of the Linkage on January 31, 2003. Phase II is expected to commence on April 25, 2003. Phase I is limited to automatic executions while Phase II of the Linkage will include manual handling of Linkage Orders and satisfaction liability.

The reference in Amex Rule 941(e) to Commentary .01(d) to Amex Rule 933 does not accurately portray the manner in which option orders may be ineligible for automatic execution through the Exchange's Auto-Ex system.[7] Rather, the Exchange believes that Amex Rule 933(f)(i) is the proper rule to cross-reference in Amex Rule 941(e) to identify those situations in which Auto-Ex may not be available. For example, Amex Rule 933(f)(i)(F) provides for a by-pass of Auto-Ex during the following situations: (i) Whenever the bid or offer in a specific option series represents a limit order on the specialist's book; (ii) whenever a crossed or locked market causes an inversion in the quote; or (iii) whenever a better bid or offer is being disseminated by another options exchange and the order is not eligible for automatic price matching as set forth in Commentary .01(b). Accordingly, the Amex believes that the reference in Amex Rule 941(e) to Commentary .01(d) to Amex Rule 933 should be replaced with Amex Rule 933(f)(i).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(5)[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amex Rule 941(e) entitled ''Receipt of Linkage Orders,'' sets forth the manner in which Linkage Orders will be executed given the Exchange's disseminated quotation and the size of the particular order.

[4] ''Linkage Order'' means an order routed through the Linkage as permitted under the Linkage Plan. There are three types of Linkage Orders: (i) ''Principal Acting as Agent (''P/A'') Order,'' which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent; (ii) ''Principal Order,'' which is an order for the principal account of an Eligible Market Maker (or equivalent entity on another Participant Exchange) and is not a P/A Order; and (iii) ''Satisfaction Order,'' which is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

[5] Amex Rule 933(f)(i) sets forth the situations in which Auto-Ex may be disengaged or operated in a manner other than the normal manner. The circumstances of Auto-Ex disengagement outlined in the Rule include market data delays, unusual markets, unusual market conditions, system malfunctions, influx of order executions and for certain market activity such as book bids or offers and locked or crossed markets.

[6] *See* Securities Exchange Act Release No. 47297 (January 31, 2003), 68 FR 6526 (February 7, 2003).

[7] Commentary .01(d) to Amex Rule 933 describes the situations in which orders for automatic price matching series or automatic price improvement series will be routed to the specialist and not automatically executed.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been filed by the Exchange as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(i) of the Act [10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11] Consequently, because the foregoing rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest,[12] it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4 thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) may not become operative prior to thirty (30) days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the thirty (30) day waiting period in order for this proposed rule change to be effective and operative immediately thereby permitting the Exchange to operate Phase II of the Linkage (expected to commence on April 25, 2003) in a manner consistent with the Linkage Plan.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative as of the date of this order.[13] The Commission notes that this proposed rule change will provide clarity in the Amex Rules regarding how the options routed through the Linkage to the Amex will be handled upon commencement of Phase II.

At any time within sixty (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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2003–31 and should be submitted by May 22, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland

Deputy Secretary

[FR Doc. 03–10787 Filed 4–30–03; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A)(i).

[11] 17 CFR 240.19b–4(f)(6).

[12] The Commission has waived the requirement that the Exchange provide written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47730; File No. SR–Amex–2003–25]

Self-Regulatory Organizations; Notice of Filing and Accelerated Approval of Proposed Rule Change by American Stock Exchange LLC Relating to Trust Certificates Linked to a Basket of Investment Grade Fixed Income Securities

April 24, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 10, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to approve for listing and trading under Section 107A of the Amex Company Guide (''Company Guide''), trust certificates linked to a basket of investment grade fixed income debt instruments.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

listing criteria for common and preferred stocks, bonds, debentures, or warrants.[3] The Amex proposes to list for trading under Section 107A of the Company Guide, asset-backed securities (the ''ABS Securities'') representing ownership interest in the Select Income Trust 2003–02 (''Trust''),[4] a special purpose entity to be formed by Structured Obligations Corporation (''SOC''),[5] and the trustee of the Trust pursuant to a trust agreement, which will be entered into on the date that the ABS Securities are issued. The assets of the Trust will consist primarily of a basket or portfolio of up to approximately twenty-five investment-grade fixed-income securities (the ''Underlying Corporate Bonds'') and the United States Department of the Treasury STRIPS or securities issued by the United States Department of the Treasury (the ''Treasury Securities'') or government sponsored entity securities (the ''GSE Securities''). In the aggregate, component securities will be referred to as the ''Underlying Securities.''

The ABS Securities will conform to the initial listing guidelines under Section 107A [6] and continued listing guidelines under Sections 1001–1003 [7] of the Company Guide, except for the assets and stockholder equity characteristics of the Trust. At the time of issuance, the ABS Securities will receive an investment grade rating from a nationally recognized securities rating organization (an ''NRSRO''). The issuance of the ABS Securities will be a repackaging of the Underlying Corporate Bonds together with the addition of either Treasury Securities or GSE Securities,[8] with the obligation of the Trust to make distributions to holders of the ABS Securities depending on the amount of distributions received by the Trust on the Underlying Securities. However, due to the pass-through and passive nature of the ABS Securities, the Exchange intends to rely on the assets and stockholder equity of the issuers of the Underlying Corporate Bonds as well as GSE Securities, rather than the Trust to meet the requirement in Section 107A of the Company Guide. The corporate issuers of the Underlying Corporate Bonds and GSE Securities will meet or exceed the requirements of Section 107A of the Company Guide. The distribution and principal amount/aggregate market value requirements found in Sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the ABS Securities.[9] In addition, the Exchange for purposes of including Treasury Securities will rely on the fact that the issuer is the U.S. Government rather than the asset and stockholder tests found in Section 107A.

The basket of Underlying Securities will not be managed and will generally remain static over the term of the ABS Securities. Each of the Underlying Securities provide for the payment of interest on a semi-annual basis, but the ABS Securities will provide for monthly or quarterly distributions of interest. Neither the Treasury Securities or GSE Securities will make periodic payments of interest.[10] The Exchange represents that, to alleviate this cash flow timing issue, the Trust will enter into an interest distribution agreement (the ''Interest Distribution Agreement'') as described in the prospectus supplement related to the ABS Securities (the ''Prospectus Supplement'').[11] Principal distributions on the ABS Securities are expected to be made on dates that correspond to the maturity dates of the Underlying Securities (*i.e.*, the Underlying Corporate Bonds and Treasury Securities or GSE Securities). However, some of the Underlying Securities may have redemption provisions and in the event of an early redemption or other liquidation (*e.g.*, upon an event of default) of the Underlying Securities, the proceeds from such redemption (including any make-whole premium associated with such redemption) or liquidation will be distributed pro rata to the holders of the ABS Securities. Each Underlying Corporate Bond will be issued by a corporate issuer and purchased in the secondary market.

In the case of Treasury Securities, the trust will either purchase the securities directly from primary dealers or in the secondary market which consists of primary dealers, non-primary dealers, customers, financial institutions, non-financial institutions and individuals. Similarly, in the case of GSE Securities, the trust will either purchase the securities directly from the issuer or in the secondary market.

Holders of the ABS Securities generally will receive interest on the face value in an amount to be determined at the time of issuance of the ABS Securities and disclosed to investors. The rate of interest payments will be based upon prevailing interest rates at the time of issuance and interest payments will be made to the extent that coupon payments are received from the Underlying Securities. Distributions of interest will be made monthly or quarterly. Investors will also be entitled to be repaid the principal of their ABS Securities from the proceeds of the principal payments on the Underlying Securities. The payout or return to

[3] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[4] Telephone Conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Geoffrey Pemble, Special Counsel, Division, Commission, on April 23, 2003.

[5] SOC is a wholly-owned special purpose entity of J.P. Morgan Securities Holdings Inc. and the registrant under the Form S–3 Registration Statement (No. 333–70730) under which the securities will be issued.

[6] The initial listing standards for the ABS Securities require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. However, if traded in thousand dollar denominations, then there is no minimum holder requirement. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[7] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the ABS Securities, the Exchange will rely on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[8] A GSE Security is a security that is issued by a government-sponsored entity such as Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac), Student Loan Marketing Association (Sallie Mae), the Federal Home Loan Banks and the Federal Farm Credit Banks. All GSE debt is sponsored but not guaranteed by the federal government, whereas government agencies such as Government National Mortgage Association (Ginnie Mae) are divisions of the U.S. government whose securities are backed by the full faith and credit of the U.S.

[9] Telephone Conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Geoffrey Pemble, Special Counsel, Division, Commission, on April 23, 2003.

[10] A stripped fixed income security, such as a Treasury Security or GSE Security, is a security that is separated into its periodic interest payments and principal repayment. The separate strips are then sold individually as zero coupon securities providing investors with a wide choice of alternative maturities.

[11] Pursuant to the Interest Distribution Agreement, shortfalls in the amounts available to pay monthly or quarterly interest to holders of the ABS Securities due to the Underlying Securities paying interest semi-annually will be made to the Trust by JP Morgan Chase Bank or one of its affiliates and will be repaid out of future cash flow received by the Trust from the Underlying Securities.

investors on the ABS Securities will not be leveraged.

The ABS Securities will mature on the latest maturity date of the Underlying Securities. Holders of the ABS Securities will have no direct ability to exercise any of the rights of a holder of an Underlying Corporate Bond, however, holders of the ABS Securities as a group will have the right to direct the Trust in its exercise of its rights as holder of the Underlying Securities.

The proposed ABS Securities are virtually identical to a product currently listed and traded on the Exchange.[12] The only difference being the actual Underlying Corporate Bonds and the addition of Treasury Securities or GSE Securities in the basket of investment-grade corporate debt. Also, publicly issued asset backed securities that repackage a single underlying corporate debt obligation are currently listed and traded on the New York Stock Exchange, Inc. (''NYSE'').[13] The proposed ABS Securities also are similar to those repackaging transactions, except that the Trust will own more than one corporate debt obligation and, in the single repackaging transactions, there is no need for an Interest Distribution Agreement because the timing of the payment of interest on the underlying debt obligation matches the obligation to distribute interest on the repackaged securities. Accordingly, the Exchange proposes to provide for the listing and trading of the ABS Securities where the Underlying Securities meet the Exchange's Bond and Debenture Listing Standards set forth in Section 104 of the Company Guide. The Exchange represents that all of the Underlying Securities in the proposed basket will meet or exceed these listing standards.

The Exchange's Bond and Debenture Listing Standards in Section 104 of the Company Guide provide for the listing of individual bond or debenture issuances provided the issue has an aggregate market value or principal amount of at least $5 million and any of: (1) The issuer of the debt security has equity securities listed on the Exchange (or on the NYSE or on the Nasdaq National Market (''Nasdaq'')); (2) an issuer of equity securities listed on the Exchange (or on the NYSE or on Nasdaq) directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security; (3) an issuer of equity securities listed on the Exchange (or on the NYSE or on Nasdaq) has guaranteed the debt security; (4) a NRSRO has assigned a current rating to the debt security that is no lower than an S&P Corporation (''S&P'') ''B'' rating or equivalent rating by another NRSRO; or (5) or if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned (i) an investment grade rating to an immediately senior issue or (ii) a rating that is no lower than a S&P ''B'' rating or an equivalent rating by another NRSRO to a pari passu or junior issue.

In addition to the Exchange's Bond and Debenture Listing Standards, an Underlying Security must also be of investment grade quality as rated by a NRSRO and at least 75% of the underlying basket is required to contain Underlying Securities from issuances of $100 million or more. The maturity of each Underlying Security is expected to match the payment of principal of the ABS Securities with the maturity date of the ABS Securities being the latest maturity date of the Underlying Securities. Amortization of the ABS Securities will be based on: (1) The respective maturities of the Underlying Securities, including Treasury Securities or GSE Securities, (2) principal payout amounts reflecting the pro-rata principal amount of maturing Underlying Securities; and (3) any early redemption or liquidation of the Underlying Securities, including Treasury Securities or GSE Securities.

Investors will be able to obtain the prices for the Underlying Securities through Bloomberg L.P. or other market vendors, including the broker-dealer through whom the investor purchased the ABS Securities. In addition, The Bond Market Association (''TBMA'') provides links to price and other bond information sources on its investor Web site at *www.investinginbonds.com.* Transaction prices and volume data for the most actively-traded bonds on the exchanges are also published daily in newspapers and on a variety of financial Web sites. The National Association of Securities Dealers, Inc. (''NASD'') Trade Reporting and Compliance Engine (''TRACE'') will also help investors obtain transaction information for most corporate debt securities, such as investment grade corporate bonds.[14] For a fee, investors can have access to intra-day bellwether quotes.[15]

Price and transaction information for Treasury Securities and GSE Securities may also be obtained at *http://publicdebt.treas.gov* and *http://www.govpx.com,* respectively. Price quotes are also available to investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Valuation prices[16] and analytical data may be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

The prices of Underlying Securities generally will be determined by one or more market makers in accordance with applicable law, self-regulatory organization (''SRO'') rules and generally accepted accounting principles (''GAAP'') regarding the valuation of securities.

The ABS Securities will be listed in $1,000 denominations with the Exchange's existing debt floor trading rules applying to trading. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the ABS Securities.[17] Second, the ABS Securities will be subject to the debt margin rules of the Exchange.[18] Third, the Exchange will, prior to trading the ABS Securities, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the ABS Securities and highlighting the special risks and characteristics of the ABS Securities. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees

[12] *See* Securities Exchange Act Release Nos. 46835 (November 14, 2002), 67 FR 70271 (November 21, 2002) (File No. SR–Amex–2002–70); 46923 (November 27, 2002), 67 FR 72247 (December 4, 2002) (File No. SR–Amex–2002–92).

[13] *See e.g.,* Structured Asset Trust Unit Repackagings (SATURNS), CSFB USA Debenture Backed Series 2002–10, 1,330,000 of 7.00% Class A Callable Units dated August 15, 2002 and trading under the symbol ''MKK''; 1,380,000 PreferredPlus 8.375% Trust Certificates underlying 7.05% Debentures of Citizens Communications Company dated August 24, 2001 and trading under the symbol ''PIY''; and 1,980,000 Corporate Backed Trust Certificates, Royal & Sun Alliance Bond Backed Series 2002–2 underlying securities 8.95% subordinated guaranteed bonds issued by Royal & Sun Alliance Insurance Group plc dated February 11, 2002 and trading under the symbol ''CCS.''

[14] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (File No. SR–NASD–99–65). Investors are able to access TRACE information at *http://www.nasdbondinfo.com/.*

[15] Corporate prices are available at 20-minute intervals from Capital Management Services at *http://www.bondvu.com/.*

[16] ''Valuation Prices'' refer to an estimated price that has been determined based on an analytical evaluation of a bond in relation to similar bonds that have traded. Valuation prices are based on bond characteristics, market performance, changes in the level of interest rates, market expectations and other factors that influence a bond's value.

[17] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[18] *See* Amex Rule 462.

thereof recommending a transaction in the ABS Securities: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the ABS Securities. Specifically, the Amex will rely on its existing surveillance procedures governing debt, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [19] in general and furthers the objectives of Section 6(b)(5) [20] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–2003–25 and should be submitted by May 22, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[21] The Commission finds that this proposal is similar to several approved equity-linked instruments currently listed and traded on the Amex,[22] as well as to asset-backed securities listed and traded on the NYSE.[23] Accordingly, the Commission finds that the listing and trading of the ABS Securities is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[24]

As described more fully above, the ABS securities are asset-backed securities and represent a repackaging of the Underlying Corporate Bonds together with the addition of either Treasury Securities or GSE Securities, subject to certain distribution of interest obligations of the Trust. The ABS Securities are not leveraged instruments. The ABS Securities are debt instruments whose price will still be derived and based upon the value of the Underlying Securities. The Exchange represents that the value of the Underlying Securities will be determined by one or more market makers, in accordance with Exchange rules and generally accepted principles of accounting regarding the valuation of securities. Investors are guaranteed at least the principal amount that they paid for the Underlying Securities. In addition, each of the Underlying Corporate Bonds will pay interest on a semi-annual basis while the ABS securities themselves will pay interest on a monthly or quarterly basis, pursuant to the Interest Distribution Agreement. Neither the Treasury Securities or GSE Securities will make periodic payments of interest.[25] In addition, the ABS securities will mature on the latest maturity date of the Underlying Securities.[26] However, due to the pass-through nature of the ABS Securities, the level of risk involved in the purchase or sale of the ABS Securities is similar to the risk involved in the purchase or sale of traditional common stock. The Commission notes that asset-backed securities that repackage a single underlying debt instrument are currently listed and

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] *Id.*

[22] *See* Securities Exchange Act Release Nos. 45160 (December 17, 2001), 66 FR 66485 (December 26, 2001) (approving the listing and trading of non-principal protected notes linked to the Balanced Strategy Index) (File No. SR–Amex–2001–91); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected notes linked to the Institutional Holdings Index) (File No. SR–Amex–2001–40); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non-principal protected notes linked to the Industrial 15 Index) (File No. SR–Amex–2001–39); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (accelerated approval order for the listing and trading of Select Ten Notes) (File No. SR–Amex–2001–28); 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (accelerated approval order for the listing and trading of notes linked to a basket of no more than twenty equity securities) (File No. SR–Amex–99–42); 41546 (June 22, 1999), 64 FR 35222 (June 30, 1999) (accelerated approval order for the listing and trading of notes linked to a narrow based index with a non-principal protected put option) (File No. SR–Amex–99–15); 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997) (notice of immediate effectiveness for the listing and trading non-principal protected commodity preferred securities linked to certain commodities indices) (File No. SR–Amex–97–47); 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (accelerated approval order for the listing and trading of the Top Ten Yield Market Index Target Term Securities (''MITTS'')) (File No. SR–Amex–96–28); 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994) (accelerated approval order for the listing and trading of Stock Upside Note Securities) (File No. SR–Amex–93–40); and 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (accelerated approval order for the listing and trading of non-principal protected notes linked to a single equity security) (File No. SR–Amex–92–42).

[23] *See, e.g., supra* note 13.

[24] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[25] *See supra* n. 10.

[26] The Commission notes, however, that the Exchange has represented that the Underlying Securities may drop out of the basket upon maturity or upon payment default or acceleration of the maturity date for any default other than payment default. *See* Prospectus for a schedule of the distribution of interest and of the principal upon maturity of each Underlying Security and for a description of payment default and acceleration of the maturity date. Telephone Conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Geoffrey Pemble, Special Counsel, Division, Commission, on April 23, 2003.

traded on the NYSE. However, because the ABS Securities are similar to those repackaging transaction, except that the Trust will own more than one corporate debt obligation (in this case, also Treasury Securities or GSE Securities) and, in the single repackaging transactions, there is no need for an Interest Distribution Agreement because the timing of the payment of interest on the underlying debt obligation matches the obligation to distribute interest on the repackaged securities, there are several issues regarding the trading of this type of product that the Exchange must address.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the ABS Securities. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the ABS Securities. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the ABS Securities.

The Commission notes that the ABS Securities are dependent upon the individual credit of the issuers of the Underlying Securities. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide that only issuers satisfying asset and equity requirements may issue securities such as the ABS Securities. In addition, the Exchange's ''Other Securities'' listing standards further provide that there is no minimum holder requirement if the securities are traded in thousand dollar denominations.[27] The Commission notes that the Exchange has represented that the ABS Securities will be listed in $1000 denominations with its existing debt floor trading rules applying to the trading. In any event, financial information regarding the issuers of the Underlying Securities will be publicly available.[28]

Due to the pass-through and passive nature of the ABS Securities, the Commission does not object to the Exchange's reliance on the assets and stockholder equity of the Underlying Securities rather than the Trust to meet the requirement in Section 107A of the Company Guide. The Commission notes that the distribution and principal amount/aggregate market value requirements found in Sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the ABS Securities. Thus, the ABS Securities will conform to the initial listing guidelines under Section 107A and continued listing guidelines under Sections 1001–1003 of the Company Guide, except for the assets and stockholder equity characteristics of the Trust. At the time of issuance, the Commission also notes that the ABS Securities will receive an investment grade rating from an NRSRO.

The Commission also believes that the listing and trading of the ABS Securities should not unduly impact the market for the Underlying Securities or raise manipulative concerns. As discussed more fully above, the Exchange represents that, in addition to requiring the issuers of the Underlying Securities meet the Exchange's Section 107A listing requirements (in the case of Treasury securities, the Exchange will rely on the fact that the issuer is the U.S. Government rather than the asset and stockholder tests found in Section 107A), the Underlying Securities will be required to meet or exceed the Exchange's Bond and Debenture Listing Standards pursuant to Section 104 of the Amex's Company Guide, which among other things, requires that underlying debt instrument receive at least an investment grade rating of ''B'' or equivalent from an NRSRO. Furthermore, at least 75% of the basket is required to contain Underlying Securities from issuances of $100 million or more. The Amex also represents that the basket of Underlying Securities will not be managed and will remain static over the term of the ABS securities. In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

The Commission notes that the investors may obtain price information on the Underlying Securities through market venders such Bloomberg, L.P., or through websites such as *www.investinbonds.com* (for Underlying Corporate Bonds) and *http://publicdebt.treas.gov* and *http://www.govpx.com* (for Treasury Securities and GSE Securities, respectively).

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other equity-linked instruments currently listed and traded on the Amex,[29] and other asset-backed securities currently listed and traded on the NYSE.[30] The Commission believes that the ABS Securities will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the ABS Securities promptly. Additionally, the ABS Securities will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act[31] to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

Is it therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–Amex–2003–25) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–10789 Filed 4–30–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47729; File No. SR–Amex–00–30]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Accelerating Approval to Amendment No. 7 to the Proposed Rule Change by the American Stock Exchange LLC Relating to the Allocation of and Participation in Options Trades

April 24, 2003.

I. Introduction

On May 30, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the allocation of and participation in options trades. The proposed rule

[27] *See* Company Guide Section 107A.

[28] The ABS Securities will be registered under Section 12 of the Act.

[29] *See supra* note 10.

[30] *See, e.g., supra* note 11.

[31] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[32] 15 U.S.C. 78*o*–3(b)(6) and 78s(b)(2).

[33] 17 CFR200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change was published for comment in the **Federal Register** on June 28, 2000.[3] On August 25, 2000, August 30, 2001, February 19, 2002, April 22, 2002, September 16, 2002, and December 20, 2002, respectively, the Amex filed Amendment Nos. 1, 2, 3, 4, 5, and 6 to the proposed rule change.[4] These amendments were published for comment in the **Federal Register** on January 31, 2003.[5] The Commission received no comments on the proposed rule change, as amended. On April 3, 2003, Amex filed Amendment No. 7 to the proposed change.[6] This order approves the proposed rule change, as amended; grants accelerated approval to Amendment No. 7; and solicits comments from interested persons on that amendment.

II. Description of Proposal

The Amex proposes to codify in Rule 933(d), Commentary .06 to Rule 950(d), and Commentary .03 to Rule 950(n), current practices regarding the participation in option trades executed on the Exchange by registered options traders and specialists and the allocation of those trades to the appropriate party. The proposed rule change also would provide clarity concerning the allocation of an options trade among the specialist and registered options traders when a customer order is on parity.

A. Specialist Participation

Generally, Amex Rule 126 (made applicable to options trading by Amex Rule 950 (d)) provides that when bids (offers) are made simultaneously, all such bids (offers) are on parity, and any securities sold (bought) in execution of such bids (offers) are to be divided as equally as possible between those on parity up to the participants' stated or generally known sizes.

The Amex states, however, that a practice has developed in Amex trading crowds in many option classes to give the specialist a greater than equal share when he or she is on parity with registered options traders. The Exchange proposes to codify this practice.

The proposed rule change would set forth that the size of the specialist's participation in the number of option contracts executed is based on the number of traders on parity.[7] The proposed distribution of option contracts between the specialist and the traders on parity is as follows:

Number of traders on parity	Approximate number of option contracts (in percent)	
	Allocated to the specialist	Allocated to the traders (as a group)
1	60	40
2–4	40	60
5–7	30	70
8–15	25	75
16 or more	20	80

B. Allocation of Contracts Among Registered Options Traders

Once the specialist has determined and deducted his or her portion of the trade depending upon the number of traders on parity, the proposed rule change provides that he or she would allocate the remaining contracts to the registered options traders.

As a preliminary matter, the proposed rule change sets forth that registered options traders must announce, either at the start of the trading day, upon entry into the trading crowd, or prior to the dissemination of a quotation, the number of contracts for which they are willing to participate.[8] When it is the specialist's obligation to allocate the trade,[9] he or she would allocate the portion of the order allotted to the registered options traders as a group based on the following provisions:

1. If all participants have equal stated sizes, their participations will be equal.

2. If participants' stated sizes are not equal, their participations will depend upon whether the number of executed contracts left to be allocated exceeded the participants' aggregate stated sizes.

3. If the number of executed contracts left to be allocated does not exceed the participants' aggregate stated sizes, the specialist will allocate the executed contracts equally, unless a participant's stated size is for an amount less than an equal allocation. In such case, the smallest sizes will be allocated first, until the number of executed contracts remaining to be allocated require an equal allocation.

4. If the number of executed contracts left to be allocated does exceed the participants' aggregate stated sizes, the specialist will allocate the executed contracts by first allocating to each participant the number of executed contracts equal to each participant's stated size, with the remainder being allocated based on the percentage a participant's stated size is of the participants' aggregate stated size.[10]

The proposed rule change provides further that in the event a specialist or registered options trader declined to accept any portion of the available contracts, any remaining contracts would be apportioned among the remaining participants who bid or offered at the best price at the time the market was established in accordance

[3] *See* Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000).

[4] Amendment Nos. 1 and 2 concerned the allocation of an order when a customer order is on parity with the specialist and/or a registered options trader. Amendment Nos. 3, 4, and 5 provided further clarity on trade allocation, and were submitted by Amex in compliance with Section IV.B.j. of the Commission's Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000)(''Order''). Section IV.B.j. of the Order requires that respondent options exchanges adopt new, or amend existing, rules to set forth any practice or procedure ''whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class, or the allocation of orders in that option class.'' Amendment No. 6 made minor revisions to the proposal.

[5] *See* Securities Exchange Act Release No. 47229 (January 22, 2003), 68 FR 5060 (January 31, 2003) (''January 2003 Notice'').

[6] *See* letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division of Market Regulation (''Division''), Commission, dated April 2, 2003. Amendment No. 7 added proposed rule text permitting a registered options trader to direct his or her participation to a competing public order in the trading crowd. Although the narrative section of the January 2003 Notice indicated that a registered options trader, in addition to a specialist, could direct his or her participation in this manner, the proposed text of the rule omitted reference to a registered options trader. *See infra* at note and accompanying text. Amendment No. 7 further amended the proposed rule text to clarify how registered options traders would allocate the order of a registered options trader among themselves when the specialist is not participating, but a floor broker representing a customer order did seek to participate. *See infra* at note and accompanying text. Amendment No. 7 also made a technical correction to the rule text.

[7] Commentary .06(i) to Rule 950(d). The percentages indicated above would apply only when the specialist and/or registered options traders are on parity and would not include situations where a customer order is also on parity with the specialist and registered options traders. *See infra* Section II.C.

In addition, neither the specialist nor a registered options trader would be allocated more executed contracts than the number of contracts representing the specialist's or the registered options trader's portion of the aggregate quotation size that the responsible broker or dealer would be obligated to communicate to the Exchange pursuant to Exchange Rule 958A(c), except when the number of executed contracts to be allocated exceeded the aggregate quotation size disseminated for that options series. Commentary .06(i) to Rule 950(d).

[8] Commentary .03(a)(i)-(ii) to Rule 950 (n). The Exchange represents that these generally known sizes would be aggregated into the size disseminated by the Exchange pursuant to Amex Rule 958A so that the disseminated quote in each option series would reflect the level of participation by the specialist and each registered options trader. While the specialist would not be required to announce his or her size to the crowd, that size could be determined from the disseminated quote size.

[9] *See infra* Section II.D. on responsibility for allocating trades.

[10] *See* January 2003 Notice for an elaboration of these provisions, including examples of their application.

with the provisions described above.[11] In such instance, the Exchange represents, the specialist's participation would be based upon one less registered options trader participating and the allocation among the registered options traders would be increased proportionately.[12]

C. Customer Orders and Specialist and Registered Options Traders on Parity

As indicated above,[13] the allocation of an incoming order differs when a customer order is also on parity with the specialist and registered options traders. By way of background, Amex Rules 155 and 111 set forth the obligations and responsibilities of specialists and registered options traders when they handle or interact with customer orders.[14] Amex Rule 155 requires a specialist to yield precedence to orders entrusted to him or her as agent before executing a purchase or sale at the same price for an account in which he or she has an interest. Commentary .07 to Amex Rule 111 provides that a registered options trader, in establishing or increasing a position, may not retain priority over or have parity with an off-floor order (*i.e.*, a customer order). Thus, as explained by Amex,[15] Rules 155 and 111 require that, when the specialist as agent receives a customer marketable limit order, the specialist and any registered options trader establishing or increasing a position must yield precedence to the customer order. A registered options traders closing or reducing a position and a specialist not acting in an agency capacity can be on parity with a customer order.

The proposed rule change clarifies that when a customer order is competing on parity[16] for an incoming order, the specialist would allocate executed contracts on an equal basis to the customer and to the specialist and/or any registered options traders on parity with the customer. Any contracts that remained would be allocated, as between the specialist and the registered options traders as a group, in accordance with the percentages set forth in the table above.[17]

Further, although, as discussed above, Exchange Rules 111 and 115 do not require the specialist and registered options traders to yield priority in all circumstances to a customer order, the proposed rule change permits the specialist or a registered options trader to direct some or all of their participation to competing public orders (*i.e.*, competing orders for the accounts of non-broker-dealers) in the crowd.[18]

D. Responsibility for Allocating Trades

The proposed rule change sets forth that, for trades in which the specialist is participating, it is the specialist's responsibility to allocate executed contracts among all the participants in the trade.[19] The specialist would be required to allocate the contracts according to the allocation method described above.

The proposed rule change further specifies the party who would be responsible for allocating a trade that occurs without the participation of a specialist. When a floor broker is representing the contra-side of the trade, the floor broker would be required to distribute the contracts equally among the participating registered options traders, unless a registered options trader's portion of the disseminated quote size is less than an equal distribution. In the latter case, the registered options trader would be given a less than equal distribution and the remaining contracts would be allocated equally among the remaining participants to the trade.[20]

When neither the specialist nor a floor broker representing a customer as the contra-side of the trade is participating in the trade,[21] the registered options traders would allocate the executed contracts among themselves and other participants on parity in accordance with the same provisions setting forth allocations by the specialist.[22] The Amex represents that in these situations, as well as others, registered options traders are only required to participate up to their portion of the Exchange's disseminated quote size.[23]

E. Auto-Ex Trades

The proposed rule change also codifies Amex's procedures regarding the allocation of options trades executed through the Exchange's Auto-Ex system.[24] Such trades are automatically allocated on a rotating basis to the specialist and to each trader who has signed on to Auto-Ex, with the specialist receiving a larger than equal share. Under the proposed rule change, the rotation would be designed to provide that Auto-Ex trades over the course of a day in a given option class are allocated, as between the specialist and traders signed on to Auto-Ex for that class, in approximately the same percentages that the specialist and traders are allocated their respective portions of non-Auto-Ex trades—*i.e.*, depending upon the number of traders participating—as set forth in the table in Section II.A. above.[25]

III. Discussion

After careful consideration, the Commission has determined to approve the proposed rule change.[26] For the

[11] Commentary .03(iv) to Rule 950(n). The Exchange states that if a specialist or registered options trader declined an allocation or ''backed away'' from his disseminated size in whole or in part, he or she would be in violation of the firm quote rule (see Amex Rule 958A), investigated, and sanctioned accordingly. See January 2003 Notice. However, Commentary .03(iv) would also apply when the size of the incoming order exceeded the disseminated size and one or more registered options traders were not willing to participate in a size larger than their disseminated size.

[12] *See* January 2003 Notice.

[13] *Supra,* note .

[14] Rule 155 is made applicable to options trading by Rule 950(a) and Rule 111 is made applicable to options trading by Rule 950(c).

[15] *See* January 2003 Notice.

[16] A specialist can be on parity with a customer only when the specialist is not representing the customer's order.

[17] Commentary .06(ii) to Rule 950(d) and Commentary .03(a)(iii)(A) to Rule 950(n). Commentary .03(a)(iii) provides that the allocations are to be made ''to the extent mathematically possible'' according to the method set forth in the rule.

[18] Commentary .03(a)(v) to Rule 950(n) as amended by Amendment No. 7. *See supra* note .

[19] Commentary .03(a) to Rule 950(n).

[20] Commentary .03(b) to Rule 950(n).

[21] *See* Amendment No. 7, in which Amex amended the proposed text of Commentary .03(b) so that it refers to a situation where neither the specialist nor a floor broker representing a customer ''as the contra-side of the trade'' is participating in the trade. The intent of the added language is to clarify that this provision relates to a situation in which the bid or offer being filled is that of a registered options trader, not of a customer represented by a floor broker. If, in such a situation, a floor broker representing a customer seeks to participate with the other traders in the crowd in filling the first trader's order, the traders would allocate the contracts among themselves and the floor broker in accordance with the rule governing how a specialist allocates an order, as indicated above. Amendment No. 7 also included the phrase ''and other participants on parity'' to clarify that a floor broker representing a customer in this manner would be included in the allocation. Telephone conversation between Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, and Ira Brandriss, Special Counsel, Division, Commission, on March 31, 2003.

[22] *See* Commentary .03(a)(iii) to Rule 950(n).

[23] *See* Amex Rule 958A.

[24] Auto-Ex automatically executes public customer market and marketable limit orders of a minimum of 10 and a maximum of 500 contracts, generally, in equity and index options. *See* Securities Exchange Act Release No. 47429 (March 3, 2003), 68 FR 11418 (March 10, 2003). In Nasdaq-100 Tracking Stock (''QQQ'') options, the maximum Auto-Ex size is 2,000 contracts for the two near-term expiration months, and 1,000 contracts for all other expiration months. See Securities Exchange Act Release No. 45828 (April 25, 2002), 67 FR 22140 (May 2, 2002). Both the specialist and registered options traders are contra-parties to the trades executed on the Auto-Ex system. If an Auto-Ex trade is greater than ten contracts, Auto-Ex divides the execution into lots of ten or fewer contracts and allocates a lot to each Auto-Ex participant.

[25] Rule 933(d). Further details are described in the January 2003 Notice.

[26] In approving this proposed rule change, the Commission has considered its impact on

reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[27]

The proposed rule change would codify the existing practice in many Amex options trading crowds to give the specialist a greater than equal share when on parity with registered options traders, specifying the extent of a specialist's enhanced participation according to the number of traders on parity as discussed above.[28] The Exchange believes that it is necessary to provide an enhanced participation in order to attract and retain specialists that are willing to accept the added responsibilities imposed on specialists and the costs that are incurred in meeting these obligations.[29] The Exchange also believes that such enhanced participations are necessary for it to remain competitive with other exchanges that currently offer enhanced participation to their specialists and primary market makers, and to give specialists the ability to attract order flow to the Exchange and its customers with tighter, more competitive markets.[30]

The Commission believes that such participation guarantees are reasonable and are within the business judgment of the Exchange, as long as such advantages do not restrain competition and do not harm investors. The Commission notes that the proposed enhanced participations would not exceed 40 percent of an order (except when there is only one registered option trader on parity with the specialist). The Commission has found with respect to participation guarantees in other contexts that a maximum guarantee of 40 percent (where more than one trader is on parity with the specialist) is not inconsistent with statutory standards of competition and free and open markets.[31]

The Commission further believes that the proposed rules set forth a reasonable method to be used by the specialist in allocating the remaining contracts among the registered options traders.[32] This method is based on the size of each individual trader's interest as announced in advance.[33] The Commission also believes that the proposed method for the allocation of contracts that are declined by a specialist or registered options trader is fair and reasonable.[34]

When a specialist represents a customer order, such as when a customer order is in the specialist's limit order book, the specialist must yield to the customer order. The proposed rule change provides an articulated sequence for allocating a trade in a situation where a customer order is on parity with the specialist and registered options traders. Specifically, the proposed rule change stipulates that the specialist must first allocate contracts on an equal basis to the customer and those participants on parity with the customer, before dividing the remainder of the order among the specialist and registered options traders who are not on parity.[35] The Commission believes this provision to be reasonable, given the Exchange's longstanding rules that permit a specialist or a registered options trader closing a position to be on parity with a customer.[36] At the same time, the proposed rule change would make clear that specialists and/or registered options traders may direct some or all of their participation to competing public orders, codifying a practice described by the Exchange of accommodating customer orders in this manner.[37] The Commission believes that such accommodation of public customers is both reasonable and appropriate.

The Commission believes that it is reasonable to assign responsibility for allocating a trade generally to the specialist,[38] by virtue of the specialist's central role in the execution of trades and his or her awareness of the generally known sizes of registered options traders in the crowd and of customer interest. It is further reasonable, in the Commission's view, to assign the responsibility of allocation to the floor broker when the floor broker is representing the order that is being filled, and to the registered options traders when such traders are trading among themselves.[39] The Commission notes that while registered options traders would allocate the order among themselves in accordance with the same provisions that govern allocation by a specialist, a floor broker would be obligated to distribute the contracts among the traders on parity on an equal basis. The Commission believes it is reasonable to make this distinction in order to permit the floor broker, who may not be as conversant with the respective sizes of participating traders, to expeditiously allocate the order in an equitable manner.

The Commission further believes that the proposed rule regarding the allocation of Auto-Ex trades,[40] which would award the specialist and traders signed on to Auto-Ex throughout the day percentages that are the approximate equivalent of their respective entitlements in non-Auto-Ex trades, is a reasonable manner in which to apportion such trades.

The Commission finds good cause, consistent with Sections 6(b)(5)[41] and 19(b)(2)[42] of the Act, for approving Amendment No. 7 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 7 corrected the proposed rule text to reflect a proposed change that was described in the narrative portion of the January 2003 Notice, but was omitted from the proposed rule's text as published. The corrected version states that a registered options trader, as well as a specialist, may direct his or her participation to a competing public order.[43] As already noted above, the Commission believes that such accommodation of public customer orders is reasonable and appropriate.[44] Amendment No. 7 also clarified that when a transaction occurs without the participation of a specialist, and the bid or offer of a registered options trader is being filled, the registered options traders seeking to participate would include in the allocation a floor broker representing a customer order who was also seeking to

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78f(b)(5). Section 6(b)(5) of the Act requires that the rules of an exchange, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[28] *Supra* Section II.A.

[29] *See* January 2003 Notice.

[30] *Id.*

[31] *See, e.g.*, Securities Exchange Act Release Nos. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) at 11398; and 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000) at notes 96–99 and accompanying text.

[32] *Supra* Section II.B.

[33] *Id.*

[34] *Supra* notes—and accompanying text.

[35] *Supra* Section II.C.

[36] The Commission notes that the Amex has filed a proposed rule change that would provide that a specialist or registered options traders may not have priority over or be on parity with a public customer order. *See* File No. SR–Amex–2003–07, available at the Amex and at the Commission's Public Reference Room.

[37] *See* January 2003 Notice.

[38] Section II.D. above.

[39] *Id.*

[40] *Supra* Section II.E.

[41] 15 U.S.C. 78f(b)(5).

[42] 15 U.S.C. 78s(b)(2).

[43] *See supra* at text accompanying note .

[44] *Supra* at text accompanying note.

participate, in accordance with the same method that governs how a specialist allocates an order. As noted above, the Commission believes that this method is reasonable, and that the revision in Amendment No. 1 adds clarity to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 7, including whether Amendment No. 7 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–00–30 and should be submitted by May 22, 2003.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[45] that the proposed rule change (SR–Amex–00–30), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[46]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–10790 Filed 4–30–03; 8:45 am]

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[45] 15 U.S.C. 78s(b)(2).

[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47728; File No. SR–Amex–2003–16]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by American Stock Exchange LLC Relating to Automatic-Execution for Nasdaq National Market Securities

April 23, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 13, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On April 3, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to extend its existing Automatic Execution System (''Auto-Ex'') to Nasdaq National Market System stocks (''Nasdaq stocks'') admitted to trading pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (the ''OTC/UTP Plan'').[4] The text of the proposed rule change is set forth below. Proposed new language is in *italics*.

* * * * *

Automatic Execution For Nasdaq National Market Securities (Temporary)

Rule 118A–T. (a) An Auto-Ex eligible order in a Nasdaq National Market System security will be executed automatically at the Amex Published Quote (''APQ'') for such security in accordance with the provisions of this rule.

(b) An Auto-Ex eligible order for a Tier 1 Nasdaq National Market security must be a round lot, or partial round lot (''PRL''), market or marketable limit order for 1,000 shares or less received by the Exchange electronically. An Auto-Ex eligible order for a Tier 2 Nasdaq National Market security must be a round lot, or PRL, market or marketable limit order for 500 shares or less received by the Exchange electronically. For purposes of this Rule, a ''Tier 1'' Nasdaq National Market security is a stock with an average daily consolidated trading volume of over 10 million shares during the preceding calendar quarter, and a ''Tier 2'' Nasdaq National Market security is a stock with an average daily consolidated trading volume of 10 million shares or less during the preceding calendar quarter.

(c) The specialist will be the contra side to each Auto-Ex execution. In the event that the specialist trades as a result of an automatic execution at a price at which the specialist could have executed one or more limit orders on the book, the specialist shall immediately execute any such limit orders at the price of the Auto-Ex trade to the extent such booked orders would have been executed had the incoming order not been executed automatically.

(d) An Auto-Ex eligible order will be routed to the specialist and will not be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Amex provided anticipated implementation dates, stating that the Amex proposes to implement the proposed rule change before the end of May 2003 on a temporary basis until it implements its enhanced Auto-Ex technology in the fourth quarter of 2003. *See* April 2, 2003, letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission.

[4] The OTC/UTP Plan was initially approved in 1990. *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990). It has subsequently been amended. *See* also Securities Exchange Act Release Nos. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); 35221 (January 11, 1995), 60 FR 3886 (January 19, 1995); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995); 36226 (September 13, 1995), 60 FR 49029 (September 21, 1995); 36368 (October 13, 1995), 60 FR 54091 (October 19, 1995); 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995); 36589 (December 13, 1995), 60 FR 65696 (December 20, 1995); 36650 (December 28, 1995), 61 FR 358 (January 4, 1996); 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996); 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996); 37772 (October 1, 1996), 61 FR 52980 (October 9, 1996); 38457 (March 31, 1997), 62 FR 16880 (April 8, 1997); 38794 (June 30, 1997), 62 FR 36586 (July 8, 1997); 39505 (December 31, 1997), 63 FR 1515 (January 9, 1998); 40151 (July 1, 1998), 63 FR 36979 (July 8, 1998); 40896 (December 31, 1998), 64 FR 1834 (January 12, 1999); 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999); 42268 (December 23, 1999), 65 FR 1202 (January 6, 2000); 43005 (June 30, 2000), 65 FR 42411 (July 10, 2000); 44099 (March 23, 2001), 66 FR 17457 (March 30, 2001); 44348 (May 24, 2001), 66 FR 29610 (May 31, 2001); 44552 (July 13, 2001), 66 FR 37712 (July 19, 2001); 44694 (August 14, 2001), 66 FR 43598 (August 20, 2001); 44804 (September 17, 2001), 66 FR 48299 (September 19, 2001); 45081 (November 19, 2001), 66 FR 59273 (November 27, 2001); 46381 (August 19, 2002), 67 FR 164 (August 23, 2002); 46729 (October 25, 2002), 67 FR 212 (November 1, 2002).

automatically executed in the following situations:

(i) Auto-Ex will be turned-off for one or more securities when the specialist in conjunction with a Floor Governor or two Floor Officials determine that quotes are not reliable and the Exchange or the Nasdaq Stock Market is experiencing communications or systems problems, ''fast markets,'' or delays in the dissemination of quotes.

(ii) Auto-Ex will not occur if it would cause the election of a stop or stop limit order on the book, or it would cause a trade to occur through the price of an all or none order on the book.

(iii) Auto-Ex will not occur in a stock for 10 seconds after there has been an Auto-Ex trade in that security.

(iv) Auto-Ex will not occur in a stock when the spread in the APQ in that security is equal to or greater than thirty cents.

(v) Auto-Ex will not occur in a stock when the APQ on the opposite side of an incoming order is not at the NBBO for that security.

(vi) Auto-Ex will not occur when the size displayed in the APQ on the opposite side of an incoming order is less than the size of the incoming order.

(vii) Auto-Ex will not occur when an incoming order is larger than the applicable Tier 1 or Tier 2 size parameter for that stock.

(e) The Auto-Ex Enhancements Committee (''Committee'') will review a request from a specialist with respect to one or more securities to:

(i) Increase the size of Auto-Ex eligible orders above 1,000 share Tier 1 or 500 share Tier 2 parameters,

(ii) Reduce the duration of the 10-second pause between Auto-Ex executions, and/or

(iii) Increase the number of trades before the implementation of the 10-second pause in Auto-Ex described in paragraph (d)(iii) above.

The Committee may approve, disapprove or conditionally approve such requests. The Committee will balance the interests of investors, the specialist, and the Exchange in determining whether to grant a specialist's request to modify the Auto-Ex parameters specified in (i) through (iii) of paragraph (e) of this Rule. The Committee also will consider a request from a specialist to reduce Auto-Ex parameters that previously had been increased, provided, however, that the Committee may not reduce the Auto-Ex parameters below the floors stated in paragraphs (b) and (d) of this Rule. The Committee may delegate its authority to one or more Floor Governors. The Committee will meet promptly to review a Governor's decision to modify Auto-Ex parameters in the event that a Governor acts pursuant to delegated authority.

* * * * *

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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend its existing Auto-Ex technology to Nasdaq stocks trading pursuant to the OTC/UTP Plan to permit automatic execution of small orders to accommodate the needs of some investors who desire such executions.[5] The Amex proposes to implement the proposed rule change prior to the end of May 2003 on a temporary basis until it can implement the enhanced Auto-Ex technology that it currently is developing. The Exchange anticipates that it will implement its enhanced Auto-Ex technology in the fourth quarter of 2003.

Under the proposed rule change, the Amex would automatically execute a market or marketable limit order received by the Exchange electronically when (1) the order is equal to or less than the size displayed in the Amex Published Quote (''APQ''),[6] (2) the APQ is at the National Best Bid or Offer (''NBBO'') for the security, and (3) the order is for 1,000 shares or less for a ''Tier 1'' Nasdaq stock, or 500 shares or less for a ''Tier 2'' Nasdaq stock.[7] For example, assume that the NBBO for a stock is .03 to .05, and the APQ is .03 to .06. In this case, the Amex would automatically execute an eligible market sell order but would not automatically execute an eligible market buy order because the Amex is not at the NBBO for the stock on the offer side of the market. The Amex would automatically execute eligible orders when it is on the NBBO even where the NBBO is locked or crossed. Orders that are ineligible for Auto-Ex will be routed automatically to the book for execution by the specialist. The enhancements that the Exchange intends to implement to Auto-Ex in the fourth quarter of 2003 will allow Auto-Ex eligible orders to trade directly with orders on the book. This enhancement, accordingly, will eliminate the need for specialists to separately execute orders on the book that would have been executed by incoming Auto-Ex eligible orders by allowing incoming orders to automatically trade with orders on the book.

The specialist would be the contra side to every Auto-Ex trade. To protect limit orders on the book, in the event that an automatic execution results in the specialist buying or selling stock at a price at which the specialist could have executed an order on the book in whole or part, the specialist would be required to immediately execute the limit order at the price of the Auto-Ex trade to the extent that the limit order would have been executed had the incoming order not been automatically executed against the specialist.

Auto-Ex would be unavailable in one or more securities where the specialist in conjunction with a Floor Governor or two Floor Officials determines that quotes are not reliable and the Exchange or the Nasdaq National Market System is experiencing communications or systems problems, ''fast markets,''[8] or delays in the dissemination of quotes. The Exchange believes that any quote disseminated in these circumstances may be unreliable and, hence, should not be available for automatic execution. This is consistent with disengagement of Auto-Ex for EFTs when quotes are

[5] The Commission previously has approved the extension of the Exchange's Auto-Ex technology to exchange traded funds (''ETFs''). *See,* Securities Exchange Act Release No. 47105 (December 30, 2002), 68 FR 592 (January 6, 2003).

[6] The APQ is the quote that the Amex, pursuant to the OTC/UTP Plan, disseminates to investors by means of the plan securities information processor for last sale and quotation information.

[7] A ''Tier 1'' Nasdaq stock is a Nasdaq stock that has an average daily consolidated trading volume of more than 10 million shares during the preceding calendar quarter. A Tier 2 Nasdaq stock is a Nasdaq stock that has an average daily consolidated trading volume of 10 million shares or less during the preceding calendar quarter. At the end of each calendar quarter, the Amex would determine whether a particular Nasdaq stock admitted to trading pursuant to the OTC/UTP Plan would be considered a Tier 1 or Tier 2 Nasdaq stock for the following quarter.

[8] The Exchange represents that ''fast markets'' means the unusual market conditions that give rise to the unusual market exception pursuant to Amex Rule 115. Telephone conversation among William Floyd-Jones, Associate General Counsel, Amex; Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission; and Ann E. Leddy, Attorney, Division of Market Regulation, Commission (April 23, 2003).

unreliable.[9] Auto-Ex also would not occur if the execution would elect a stop or stop limit order on the book, or would trade through an all or none order on the book. The Exchange believes that the specialist should review situations where an incoming order may elect one or more stop orders or trade through an all or none order on the book to ensure that the orders are executed consistent with the maintenance of a fair and orderly market. Auto-Ex also would be unavailable for 10 seconds after an automatic execution to give the specialist an opportunity to update the market.

The Exchange believes that the 1,000 and 500 share size limits and the 10-second pause in Auto-Ex following an automatic execution are minimum standards that a specialist should have flexibility to increase on a security-by-security basis. The Exchange, consequently, is proposing to allow specialists to request an increase in the size of orders eligible for Auto-Ex, an increase in the number of trades between automatic executions before there is a pause in Auto-Ex, and a reduction in the 10-second pause. The Auto-Ex Enhancements Committee would review such requests to enhance these Auto-Ex parameters. The Auto-Ex Enhancements Committee also would review requests to reduce these parameters (if they had been previously increased) to no less than the base levels found in the rule.[10] The Auto-Ex Enhancements Committee could delegate its authority under the rule to one or more Floor Governors. If a Governor acts pursuant to delegated authority, the Committee would have to meet promptly to review the Governor's decision.

Auto-Ex would be unavailable when the spread in the Amex Published Quote is 30 cents or more. The Exchange represents that this is intended to prevent automatic executions at disadvantageous prices to the incoming electronic order.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[11] in general, and Section 6(b)(5) of the Act,[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange believes that the proposed rule change will speed the execution of small orders for Nasdaq stocks on the Amex. The Exchange also believes that the proposal will facilitate the comparison and settlement of trades, since Auto-Ex transactions result in ''locked-in'' trades.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposal, in fact, will enhance competition among markets and thereby benefit investors by allowing the Exchange to provide Auto-Ex for Nasdaq stocks.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2003–16 and should be submitted by May 22, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register** to permit application of the Auto-Ex technology to Nasdaq stocks at the earliest time possible. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[14] because it helps remove impediments to, and perfects the mechanisms of, a free and open market and a national market system. Specifically, the Commission believes that the proposed rule change does not raise any significant regulatory issues in view of the fact that the Exchange already provides Auto-Ex for options and ETFs, and the instant proposal seeks to extend existing Auto-Ex technology to another type of security traded on the Exchange. As a result, there are no unique regulatory issues that the Commission has not previously considered. In addition, the Exchange is proposing to implement Auto-Ex on a temporary basis until its enhanced Auto-Ex technology is available.

Furthermore, upon commencement of the Amex trading Nasdaq securities, the Commission received a substantial number of complaints that the Amex's trading of Nasdaq securities without Auto-Ex functionality was disrupting the Nasdaq marketplace generally. To

[9] *See* Commentary .03 to Amex Rule 128A, ''Contract Made on Acceptance of Bid or Offer.'' The Exchange has assured the Commission that the circumstances in which Auto-Ex is not available will be identical to the circumstances in which Auto-Ex is not available for ETFs and that the disengagement of Auto-Ex for Nasdaq securities will work in the same fashion as the disengagement of Auto-Ex for ETFs. Telephone conference among William Floyd-Jones, Associate General Counsel, Amex; Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission; and Ann E. Leddy, Attorney, Division of Market Regulation, Commission (April 16, 2003).

[10] The Auto-Ex Enhancements Committee is an existing committee of the Exchange consisting of the Exchange's four Floor Governors and the Chairmen (or their designees) of the Specialists Association, Options Market Makers Association and the Floor Brokers Association.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

the extent such concerns had merit, the Commission believes the Amex's development of Auto-Ex functionality for Nasdaq securities should help address the concerns raised by other market participants.

For the reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[15] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–Amex–2003–16) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–10791 Filed 4–30–03; 8:45 am]

BILLING CODE 8010–01–P

[15] 15 U.S.C. 78s(b)(2).

[16] *Id.*

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47734; File No. SR–PCX–2003–13]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to its Arbitration Program

April 24, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 11, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission has received two comment letters regarding the proposed rule change.[3] On April 17, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons described below, the Commission is granting accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to amend its arbitration rules by amending Commentary .02 to PCX Rule 12.1 and adding new PCX Rule 12.35(b). PCX Rule 12.35(b) would require that pending arbitrations filed prior to the date the SEC approves the proposed rule changes set forth herein (the ''Approval Date'') be administered in accordance with PCX Rules 12.1 through 12.34 if an arbitrator has been appointed prior to the Approval Date and all parties to the arbitration have waived application of the California Rules of Court, Division VI of the Appendix, entitled ''Ethics Standards of Neutral Arbitrations in Contractual Arbitration'' (the ''California Standards''), and waived any claims against the PCX that the conduct of the arbitration violates the California Code of Civil Procedure Section 1281.92 (''CCCP Claims'').[5] Both waivers must be made without condition and in the form required by PCX. A copy of the proposed waiver form for the CCCP Claims was filed with the Commission as Exhibit A to the proposed rule change. The waiver for the California Standards must be made pursuant to the rules previously approved by the Commission.[6] Additionally, this rule change will require industry parties in arbitration to waive the CCCP Claims upon the execution of a waiver by a customer or, in industry cases, upon the execution of a waiver by an associated person with claims of statutory discrimination.

Below is the text of the proposed rule change. Proposed new language is *italicized*, deleted text is in [brackets].

* * * * *

PCX RULE 12

Arbitration

Matters Subject to Arbitration

Rule 12.1(a)–(g)—No change.

Commentary:

.01 No change.

.02 It may be deemed conduct inconsistent with just and equitable principles of trade for a member, a member organization or a person associated with a member or member organization to:

(a) fail to submit to arbitration on demand under the provisions of this Rule[,]*;*

(b) fail to waive the California Rules of Court, Division VI of the Appendix, entitled ''Ethics Standards for Neutral Arbitrators in Contractual Arbitration'' (the ''California Standards''), if all the parties in the case who are customers have waived application of the California Standards in that case; or to fail to waive the California Standards if all associated persons with a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute have waived application of the California Standards in that case;

(c) fail to waive any claims against the Exchange that the conduct of the arbitration violates the California Code of Civil Procedure Section 1281.92 (''CCCP Claims''), if all the parties in the case who are customers have waived the CCCP Claims in that case; or to fail to waive the CCCP Claims if all associated persons with a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute have waived the CCCP Claims in that case;[or]

(d) to fail to appear or to provide any document in his or its possession or control as directed pursuant to the provisions of this Rule; or

(e) to fail to honor an award of arbitrators properly rendered pursuant to the provisions of this Rule where a timely motion has not been made to vacate or modify such award pursuant to applicable law.

.03 No change.

* * * * *

Rule 12.35 Applicability of Arbitration Rules

(a) Reserved.

(b) Arbitrations Filed Prior to [insert Approval Date]. Arbitration claims that were filed prior to [insert Approval Date] and remain pending will be administered as follows:

(i) The arbitration claim will be administered in accordance with Rules 12.1 through 12.34 if:

(A) arbitrator(s) have been appointed as of [insert Approval Date]; and

(B) all parties to the arbitration have waived, without condition and in the form required by the Exchange, the application of the California Standards and the CCCP Claims (as defined in Commentary .02 of Rule 12.1).]

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* e-mails dated April 14 and 18, 2003 from Tim Canning, Esq.

[4] *See* letter dated April 17, 2003 from Kathryn Beck, Senior Vice President, PCX, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission.

[5] The Exchange has filed a separate proposal (SR–PCX–2002–77) to address the administration of all other arbitrations.

[6] *See* Securities Exchange Act Release No. 46881 (Nov. 21, 2002), 67 FR 71224 (November 29, 2002).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change.[7] The text of these statements may be examined at the places specified in Item III below. PCX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PCX states that it makes every effort to serve investors who bring their claims to PCX by providing a fair, efficient, and economical arbitration forum. Recent changes in California law and the attendant litigation, however, have caused PCX to reevaluate the continuance of its arbitration program. Specifically, California recently adopted (1) Section 1281.92 of the California Code of Civil Procedure (''CCCP 1281.92''), which prohibits private arbitration providers from administering arbitrations, or providing any other services related to arbitration, if any party or attorney for a party has, or has had within the preceding year, any type of financial interest in the arbitration provider, and (2) the California Standards, which require arbitration providers to implement and maintain substantial new recordkeeping and disclosure requirements. CCCP 1281.92 became effective on January 1, 2003. Since their adoption, CCCP 1281.92 and the California Standards have become the subject of controversy or, in some cases, litigation regarding their interpretation and application to arbitration programs administered by self-regulatory organizations.[8] To minimize any potential financial and litigation risk associated with these new provisions, PCX has decided to implement certain changes to its arbitration rules. In this regard, PCX has developed a plan for the future handling of pending arbitration claims as well as any new arbitration claims raised under PCX rules.

As one part of this plan, the PCX intends to expeditiously proceed with the administration of pending arbitrations in which arbitrators have been appointed as of the Approval Date. Because PCX has a strong desire to accommodate the parties to these arbitrations, these matters will be permitted to continue under the existing PCX arbitration rules. However, given the uncertain legal environment in California, PCX would require the parties to these arbitrations to waive the California Standards and CCCP Claims in order for the arbitrations to continue pursuant to PCX Rules 12.1–12.34.[9]

Once this proposed rule filing is effective, PCX will notify parties to this subset of pending arbitrations of the rule change and provide them with the option of waiving the California Standards and the CCCP Claims. PCX will provide them with the waiver forms and the opportunity to speak with PCX staff if they desire more information regarding this option.

At the same time, PCX will notify industry parties in this same subset of cases that they must waive the California Standards and the CCCP Claims if the investor, or the associated person with a claim of statutory employment discrimination, agrees to a waiver. Industry parties in such cases will be required to execute waiver agreements. An industry party's failure to sign the waiver as required by the proposed rule change will be referred for disciplinary action.

2. Statutory Basis

PCX believes that this proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5),[11] which requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–13 and should be submitted by May 22, 2003.

IV. Summary of Comments

As noted above, this proposal is one of two filed by PCX relating to the administration of its arbitration program. The Commission received two letters from one commenter addressing the proposals.[12] The commenter, an attorney representing clients with pending arbitration claims at the Exchange, opposed accelerated approval of the proposals, and requested that they be subject to a full comment period. The commenter further expressed the concern that if any party to an arbitration proceeding did not execute the waivers required by PCX, the matter

[7] The discussion in this section represents the Exchange's views on the situation in California and does not in any way represent a Commission position on this issue.

[8] *See, e.g.*, Brief of the Securities and Exchange Commission, Amicus Curiae, in Support of Plaintiffs' Motion for Declaratory Judgment, NASD Dispute Resolution, Inc. and *New York Stock Exchange, Inc.,* v. *Judicial Council of California* (arguing that the California Standards conflict with, and thus are preempted by, the Commission's regulation of SRO arbitration under the Exchange Act and by the Federal Arbitration Act). The brief is available on the Commission Web site at: *www.sec.gov/litigation/briefs/nasddispute.pdf. See also* Securities Exchange Act Release No. 46881 (Nov. 21, 2002) (describing the controversy regarding new California arbitration provisions).

[9] PCX will defer action on those pending arbitrations in which the parties did not sign waivers as set forth in Rule 12.35(b)(i)(B). Another PCX rule filing, SR–PCX–2002–77, will address how such arbitrations will be administered, if and when the rule filing is approved by the SEC.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* n. 3, *supra*.

could be dismissed, exposing the claimant to additional costs, loss of fees, time and effort, and the risk of a lapsed statute of limitations.[13] The commenter further expressed concern that such waivers might be vulnerable to a legal challenge, thereby impairing the finality of any award. The commenter asserted that the PCX faced little or no harm if it continued its arbitration program.

In response, the PCX noted that SR–PCX–2003–13 applies only to cases where arbitrators have been appointed.[14] The PCX stated that none of the commenter's pending cases had arbitrators appointed, and that thus, approval of this proposal would not affect them. The PCX asserted that approval of this proposed rule change would permit other arbitrations to move forward in an expeditious manner. Finally, as noted above,[15] PCX has stated that it will defer action on arbitrations where the parties do not sign waivers, but will address their administration in the companion rule filing, SR–PCX–2002–77, subject to approval by the SEC.

V. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 of the Act.[16] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[17] The Commission believes that the proposed rules are designed to provide investors with a mechanism to help resolve their disputes with broker-dealers in an expeditious manner, and are designed to help ensure the certainty and finality of arbitration awards.

The Commission further finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that this proposal would apply only to a defined set of arbitrations currently pending at the PCX—those where arbitrators have been appointed. Accelerated approval is appropriate in that it will allow these cases to move forward in an expeditious manner. The Commission further notes that PCX will defer action on any case where a party refuses to execute the required waivers, and that the administration of such cases will be addressed in another PCX rule filing, as stated above.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–PCX–2003–13) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–10788 Filed 4–30–03; 8:45 am]

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[13] The commenter noted that although an arbitration generally tolls the statute of limitations, this does not apply when an arbitration is dismissed.

[14] *See* letters dated April 17 and 23, 2003 from Kathryn Beck, Senior Vice President, PCX, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission.

[15] *See* n. 9, *supra*.

[16] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47738; File No. SR–Phlx–2001–28]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Who Allocates Options Trades

April 25, 2003.

On March 9, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to who allocates options trades.

On January 31, 2002, May 17, 2002, July 8, 2002, and March 12, 2003, Phlx submitted Amendment Nos. 1, 2, 3, and 4 to the proposed rule change, respectively.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on March 25, 2003.[4] The Commission received no comments on the proposal.

The proposal would amend the Exchange's Option Floor Procedure Advice F–2 (''Advice F–2''), governing who is responsible for allocating, matching, and time stamping an options trade in specific situations, and for reporting the trade upon its execution. The proposal would also codify paragraph (a) of Advice F–2, as amended, in the Exchange's rules as new paragraph (vi) of Phlx Rule 1014(g).

The proposal specifies that, in trades involving a floor broker, the floor broker would be assigned the responsibility for allocating, matching, time stamping, and reporting, but provides that the floor broker would be permitted to delegate this responsibility to the specialist or an assistant under the specialist's supervision. The proposed rule change would also specify that, in all other cases where the specialist is a participant, the specialist or an assistant under the specialist's supervision would be required to allocate the trade. The responsibility for allocating trades in which neither the floor broker nor the specialist is a participant would remain the same under the proposed rule change. The proposal would also increase the fines for violation of the Exchange's rules on allocation and reporting of trades.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of Section 6 of the Act[6] and the rules and regulations thereunder. The Commission believes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Edith Hallahan, First Vice President and Deputy General Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated January 30, 2002 (''Amendment No. 1''); and letters from Richard S. Rudolph, Director and Counsel, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 16, 2002, July 5, 2002, and March 12, 2003 (''Amendment Nos. 2, 3, and 4'').

The proposed rule change was submitted by Phlx pursuant to subparagraph IV.B.j. of the Commission's Order of September 11, 2000, which requires the Exchange (among other respondent options exchanges) to adopt new, or amend existing, rules to make express any practice or procedure ''whereby Market-Makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class, or the allocation of orders in that option class.'' Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000).

[4] See Securities Exchange Act Release No. 47500 (March 13, 2003), 68 FR 14456.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] because it assigns the responsibility for trade allocation and reporting in an appropriate and reasonable manner. The Phlx seeks in addition to permit a floor broker to delegate his or her responsibility to the specialist in view of the different set of burdens that floor brokers face due to changed economic and technological realities on the Exchange floor. The Commission believes it is reasonable to allow the specialist, who is always in the trading crowd, to assume the responsibility if he or she is willing to do so. The Commission further notes that the proposed rule change would add a provision requiring the allocating party in each trade to record his or her role in a manner that would facilitate investigation of any allocation after the fact should questions arise. The Commission believes that the proposed increases to the fine schedule associated with the trade allocation function and reporting responsibility are reasonable to help ensure compliance with these rules.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–Phlx–2001–28) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–10785 Filed 4–30–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47739; File No. SR–Phlx–2001–39]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Allocation of Trades

April 25, 2003.

On March 12, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4 thereunder,[2] a proposed rule change relating to the allocation of trades on the Exchange's options floor.[3] On May 11, 2001, February 19, 2002, May 22, 2002, November 19, 2002, December 16, 2002, and February 25, 2003, Phlx submitted Amendment Nos. 1, 2, 3, 4, 5, and 6 to the proposed rule change, respectively.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on March 25, 2003.[5] The Commission received no comments on the proposal.

Specifically, the proposed rule change would revise Phlx Rule 1014(g) and Option Floor Procedure Advice B–6 to: (1) Eliminate current exceptions to the Exchange's rule that an order of a ''controlled account'' (any account controlled by or under common control with a broker-dealer) must yield priority to a customer order; (2) establish that specialists and Registered Options Traders (''ROTs'') are entitled to participate only in the portion of an incoming order that remains (''Remainder of the Order'') following the allocation of contracts to customers that are on parity; (3) establish that each Enhanced Specialist Participation granted by the Exchange's rules is applied to the Remainder of the Order, and is a form of entitlement, rather than a mandatory participation;[6] (4) set forth how the Remainder of the Order is to be allocated among all participants on parity, establishing a method that, after applying any Enhanced Specialist Participation, allocates contracts based on the ''stated size'' of each participant,[7] and accommodates smaller stated sizes first when the stated sizes of participants are not equal;[8] (5) set forth the procedures by which a specialist or ROT may waive some or all of the contracts to which he or she is entitled, and how such waived contracts would be allocated; (6) stipulate that a pattern or practice of waiving may be considered conduct inconsistent with just and equitable principles of trade; and (7) state that it would be considered conduct inconsistent with just and equitable principles of trade for a member to enter into any agreement with another member concerning allocation of trades, or to harass, intimidate, or coerce, any member to enter into any waiver or to make or refrain from making any complaint or appeal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[9] and, in particular, the requirements of Section 6 of the Act[10] and the rules and regulations thereunder. The Commission believes that the proposed rule change is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change was submitted by Phlx pursuant to subparagraph IV.B.j. of the Commission's Order of September 11, 2000, which requires the Exchange (among other respondent options exchanges) to adopt new, or amend existing, rules to make express any practice or procedure ''whereby Market-Makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class, or the allocation of orders in that option class.'' Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000).

The proposed rule change applies to trades that are not executed through the Exchange's automatic execution system. In addition, the Commission notes that the Exchange has adopted special allocation rules that pertain to its ''ROT Access'' system. *See* Securities Exchange Release Act No. 46763 (November 1, 2002), 67 68898 (November 13, 2002).

[4] *See* letters from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 10, 2001 (Amendment No. 1), February 15, 2002 (Amendment No. 2), May 21, 2002 (Amendment No. 3), November 18, 2002 (Amendment No. 4), December 12, 2002 (Amendment No. 5), and February 24, 2003 (Amendment No. 6).

[5] *See* Securities Exchange Act Release No. 47499 (March 13, 2003), 68 FR 14459 (''Notice''). The Notice contains a detailed description of the proposed rule change, the major aspects of which are summarized below.

[6] The Enhanced Specialist Participation programs in the Exchange's rules for certain options classes allocate to the specialist a greater than equal share of the portion of the order that is divided among the specialist and any controlled accounts that are on parity. The percentage awarded to the specialist varies according to the number of controlled accounts on parity. Most of the relevant provisions in Phlx Rule 1014(g) currently state that the specialist is entitled to the applicable percentage, but other provisions do not. *See* Notice.

[7] The proposed rule change would also define how a participant's ''stated size'' is determined. *See* Notice.

[8] As discussed in greater detail in the Notice, the proposed rule change would provide that if all participants' stated sizes were equal, they would receive equal allocations. If all participants' stated sizes were not equal, they would be allocated contracts according to a process whereby, in an initial round of allocation, each participant would receive a number of contracts equal to the stated size of the participant(s) with the smallest stated size (provided that if the sum of such allocations would exceed the number of contracts available, the contracts would be divided equally among all participants). Each participant whose stated size was not filled in the initial round of the process would be allocated in the next round a number of contracts equal to the stated size of the participant(s) with the smallest stated size in that round. The process would continue as necessary until all the contracts are allocated. In any round where the number of contracts remaining does not suffice to allocate the smallest stated size to all participants, or when the stated sizes of all remaining participants are equal, the contracts would be divided equally.

[9] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f.

consistent with Section 6(b)(5) of the Act,[11] because it codifies and clarifies the Exchange's procedures regarding how options trades are to be allocated among crowd participants.

Specifically, the Commission believes that it is reasonable and appropriate to afford priority to customer orders over accounts of broker-dealers. The Commission further believes that it is reasonable and consistent for the Exhange to conform its rules to specify that Enhanced Specialist Participations are entitlements rather than mandatory participations, and to clarify that such entitlements apply only to the Remainder of the Order, after customers have received their allocations. The Commission believes that the proposed rule change sets forth a reasonable method of allocating the Remainder of an Order among the specialist and ROTs, taking into account the Enhanced Specialist Participation, where applicable, and the stated sizes of all participants on parity. Further, the Commission believes that it is reasonable for the Exchange to establish procedures for allocating contracts when a specialist or ROT waives all or part of a trade to which he or she is entitled. The Commission notes, at the same time, that the proposal provides a safeguard against abuse in the waiver process by specifying that a pattern or practice of waiving may be considered conduct inconsistent with just and equitable principles of trade. Finally, the Commission believes that the added prohibitions against agreements among members concerning the allocation of trades, and against members harassing, intimidating, or coercing other members to enter into any waiver, or to make or refrain from making any complaint or appeal, are reasonable and appropriate.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[12], that the proposed rule change (File No. SR–Phlx–2001–39) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–10786 Filed 4–30–03; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed Between April 7, and April 18, 2003

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.

Applications filed during week ending: April 11, 2003.

Docket Number: OST–2003–14887
Date Filed: April 7, 2003
Parties: Members of the International Air Transport Association
Subject:
PTC2 AFR 0134 dated 14 March 2003
TC2 Africa Policy Group Report
PTC2 AFR 0136 dated 18 March 2003
Mail Vote 276—TC2 Within Africa Resolutions
PTC2 AFR Fares 0046 dated 21 March 2003
Intended effective date: 1 May 2003

Docket Number: OST–2003–14902
Date Filed: April 8, 2003
Parties: Members of the International Air Transport Association
Subject:
PTC23 ME–TC3 0172 dated 11 April 2003
Mail Vote 291—Resolution 010f TC23/123 Middle East-South East Asia Special Passenger Amending Resolution from Chinese Taipei
PTC23 AFR–TC3 0198 dated 11 April 2003
Mail Vote 291—Resolution 010f TC23/123 Africa-South East Asia Special Passenger Amending Resolution from Chinese Taipei,
Intended effective date: 15 April 2003

Applications filed during week ending: April 18, 2003.

Docket Number: OST–2003–14957
Date File: April 16, 2003
Parties: Members of the International Air Transport Association
Subject:
PTC2 ME–AFR 0102 dated 25 March 2003
Mail Vote 284—TC2 Middle East-Africa Resolutions
Minutes—PTC2 ME–AFR 0100 dated 11 March 2003
Fares—PTC2 ME–AFR Fares 0057 dated 28 March 2003
Intended effective date: 1 May 2003

Docket Number: OST–2003–14958
Date Filed: April 16, 2003
Parties: Members of the International Air Transport Association
Subject:
PTC123 0231 dated 18 April 2003
Mail Vote 293—Resolution 010g TC123 North/Mid/South Atlantic Special Passenger Amending Resolution from Korea (Rep. of),
Intended effective date: 1 May 2003

Docket Number: OST–2003–14962
Date Filed: April 16, 2003
Parties: Members of the International Air Transport Association
Subject:
PTC123 0232 dated 18 April 2003
Mail Vote 294—Resolution 010i TC123 North Atlantic Special Passenger Amending Resolution from Korea (Rep. of) to USA
Intended effective date: 1 May 2003

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–10696 Filed 4–30–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending April 18, 2003

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2003–14985.
Date Filed: April 18, 2003.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 9, 2003.
Description: Application of Boston-Maine Airways Corp., d/b/a Pan Am Clipper Connection (''BMAC''), pursuant to 49 U.S.C. 41102 and subpart B, requesting issuance of a new certificate of public convenience and necessity, and related fitness determination, authorizing BMAC to engage in foreign scheduled passenger operations utilizing 141-passenger B–727–200 aircraft in various foreign city-pair markets, both in conjunction with

the interstate and foreign scheduled service operations of its sister carrier, Pan Am, and as separate stand-alone operations.

Docket Number: OST–2003–14991.

Date Filed: April 18, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 9, 2003.

Description: Application of World Airways, Inc., pursuant to 49 U.S.C. 41101(a), 41102(a) and subpart B, requesting a new or amended certificate of public convenience and necessity for scheduled foreign air transportation of persons, property, and mail and all-cargo from a point or points in the United States and intermediate points to a point or points in Iraq.

Docket Number: OST–2003–14992.

Date Filed: April 18, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 9, 2003.

Description: Application of North American Airlines, Inc., pursuant to 49 U.S.C. 41101(a), 41102(a), and subpart B, requesting a new or amended certificate of public convenience and necessity for scheduled foreign air transportation of persons, property, and mail from a point or points in the United States and Intermediate points to: (1) A point or points in Switzerland and beyond; (2) Kabul, Afghanistan; (3) a point or points in Iraq; and, (4) Kuwait City, Kuwait.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–10693 Filed 4–30–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety Notice of Application for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional modes of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before May 16, 2003. Address comments to: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov*.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 25, 2003.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
6614–M		Auto-Chlor System, Memphis, TN (*See* Footnote 1)	6614
8451–M		ATK Thiokol, Brigham City, UT (*See* Footnote 2)	8451
10996–M		AeroTech, Inc. (Industrial Solid Propulsion, Inc.), Las Vegas, NV (*See* Footnote 3)	10996
11827–M		Blue Express, Inc., Osaka, 590–0960, Japan (*See* Footnote 4)	11827
11990–M	RSPA–97–3098	Taylor-Wharton, Huntsville, AL (*See* Footnote 5)	11990
12122–M	RSPA–98–4313	Atlantic Research Corporation, Knoxville, TN (*See* Footnote 6)	12122
13216–M		General Motors Corp./Autoliv ASP, Inc., Ogden, UT (*See* Footnote 7)	13216

[1] To modify the exemption to authorize the transportation of Class 3, Division 5.1 and additional Class 8 materials in non-DOT specification polyethylene bottles placed in a polyethylene crate.

[2] To modify the exemption to authorize the transportation of certain liquid explosives.

[3] To modify the exemption to authorize the transportation of an additional Division 1.4C material in certain rocket motor and rocket motor re-loading kits.

[4] To modify the exemption to authorize the transportation of an additional Division 6.1 material in certain lined DOT Specification portable tanks and UN Standard Intermediate Bulk Containers.

[5] To modify the exemption to authorize the use of non-DOT specification oil well sampling cylinders without pressure relief devices or burst discs and the transportation of additional Division 2.1 materials.

[6] To modify the exemption to eliminate the requirement for the 100% radiographic inspection of the non-DOT specification pressure vessel longitudinal weld seam used as a component of automobile vehicle safety systems.

[7] To reissue the exemption originally issued on an emergency basis for the shipment of ''recalled'' airbag modules from auto dealerships without general awareness/familiarization training.

[FR Doc. 03–10699 Filed 4–30–03; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA)

[Docket No. RSPA–98–4470]

Pipeline Safety: Meetings of the Pipeline Safety Advisory Committees

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) will convene a meeting of the Technical Pipeline Safety Standards Committee (TPSSC) to discuss and vote on the Notice of Proposed Rulemaking, ''Pipeline Integrity Management for Gas Transmission Pipelines in High Consequence Areas'' (67 FR 4278) and on the associated risk assessment. In addition, RSPA/OPS will brief the TPSSC on the draft Cost-Benefit Study of Excess Flow Valve Installation on Gas Service Lines completed by RSPA's Volpe National Transportation Systems Center. Other briefings and votes may include proposals on periodic underwater inspection and on clarifications and updates to the liquefied natural gas facilities section of the pipeline safety regulations.

DATES: The meetings will be held on Wednesday, May 28 from 1:30 p.m. to 5 p.m.; and Thursday, May 29 from 9 to 5 p.m. Friday, May 29 is reserved should additional business need to be conducted.

ADDRESSES: Members of the public may attend the meetings at Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Ballroom A—Lobby Level, Washington, DC.

An opportunity will be provided for the public to make short statements on the topics under discussion. Anyone wishing to make an oral statement should notify Jean Milam, (202) 493–0967, not later than May 19, 2003, on the topic of the statement and the length of the presentation. The presiding officer at each meeting may deny any request to present an oral statement and may limit the time of any presentation.

You may submit written comments by mail or deliver to the Dockets Facility, U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. It is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You also may submit written comments to the docket electronically. To do so, log onto the following Internet Web address: *http://dms.dot.gov*. Click on ''Help & Information'' for instructions on how to file a document electronically. All written comments should reference docket number RSPA–98–4470. Anyone who would like confirmation of mailed comments must include a self-addressed stamped postcard.

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*.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Jean Milam at (202) 493–0967.

FOR FURTHER INFORMATION CONTACT: Cheryl Whetsel, OPS, (202) 366–4431 or Richard Huriaux, OPS, (202) 366–4565, regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION: The TPSSC is a statutorily mandated advisory committee that advises RSPA/OPS on proposed safety standards for gas pipelines. The advisory committee is constituted in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1). The committee consists of 15 members—five each representing government, industry, and the public. The TPSSC is tasked with determining reasonableness, cost-effectiveness, and practicability of proposed pipeline regulations.

Federal law requires that RSPA/OPS submit cost-benefit analyses and risk assessment information on proposed safety standards to the advisory committees. The TPSSC evaluates the merit of the data and methods used within the analyses, and provides recommendations relating to the cost-benefit analyses.

Authority: 49 U.S.C. 60102, 60115.

Issued in Washington, DC, on April 25, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–10691 Filed 4–30–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–97–2426]

Pipeline Safety: National Pipeline Mapping System (NPMS)

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) will conduct a public meeting to discuss possible improvements in data submissions to the National Pipeline Mapping System (NPMS). Possible improvements are more detailed pipeline attributes, more accurate pipeline locational data, and delineation of natural gas transmission high consequence areas. The potential for collecting annual report data through data submitted to the NPMS will also be discussed.

DATES: Wednesday, May 28, 2003, from 9 a.m. to 12 p.m.

ADDRESSES: The public may attend the meeting at Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Ballroom A, Lobby Level, Washington, DC.

An opportunity will be provided for the public to make short statements on the topics under discussion. Anyone wishing to make an oral statement should notify Jean Milam, (202) 493–0967, not later than May 19, 2003, on the topic of the statement and the length of the presentation. The presiding officer at each meeting may deny any request to present an oral statement and may limit the time of any presentation.

You may submit written comments by mail or deliver to the Dockets Facility, U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. It is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You also may submit written comments to the docket electronically. To do so, log onto the following Internet Web address: *http://dms.dot.gov*. Click on ''Help & Information'' for instructions on how to file a document electronically. All written comments should reference docket number RSPA–

97–2426. Anyone who would like confirmation of mailed comments must include a self-addressed stamped postcard.

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 April 11, 2000, issue of the **Federal Register** (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Jean Milam at (202) 493–0967.

FOR FURTHER INFORMATION CONTACT: Steve Fischer, OPS, (202) 366–6267 or Richard Huriaux, OPS, (202) 366–4565, regarding the subject matter of this notice. Additional information about the NPMS and the ''National Pipeline Mapping System Standards for Pipeline and Liquefied Natural Gas Operator Submissions'' can be found at *http://www.npms.rspa.dot.gov*.

SUPPLEMENTARY INFORMATION: NPMS is a geographic information system database that contains the locations and selected attributes of hazardous liquid and natural gas transmission pipelines, breakout tanks, and liquefied natural gas. The data collected for the NPMS is necessary for regulatory oversight and for monitoring the security of the pipelines. The Pipeline Safety Improvement Act of 2003 required operators to submit data to the NPMS by June 17, 2003. This initial submission is being done in accordance with guidance previously developed for voluntary data submissions to the NPMS.

RSPA/OPS is holding this public meeting to solicit public comments on the potential for improving NPMS data submissions and the potential for collecting certain annual report data elements as submissions to the NPMS.

Improvements being considered include more detailed pipeline attributes, more accurate pipeline locational data, and the identification of natural gas transmission pipeline high consequence areas. The additional data requirements for these improvements may include diameter, maximum operating pressure for hazardous liquid pipelines, and maximum allowable operating pressure for natural gas transmission pipelines.

The current NPMS target locational accuracy goal is +/−500 feet for submitted geospatial data. RSPA/OPS will be soliciting feedback at the meeting regarding the effort required by the pipeline industry to better this target locational accuracy. To date, 15% of the NPMS mileage submitted has an accuracy of +/−50 feet, 46% has an accuracy of +/−50 to 300 feet, 28% has an accuracy of +/−301 to 500 feet, and 11% is either +/−500 feet or unknown.

RSPA/OPS has identified NPMS data requirements that could support RSPA/OPS and State oversight of gas integrity management programs. At the meeting, RSPA/OPS will focus on how natural gas transmission operators delineate high-consequence areas and how that data could be submitted to the NPMS.

Much of the data collected through RSPA/OPS annual reports lends itself to geospatial representation and could be submitted to RSPA/OPS through the NPMS. The meeting will address allowing pipeline operators the option of submitting certain annual report data elements as an NPMS submission in the future.

Authority: 49 U.S.C. 60102, 60109, 60117.

Issued in Washington, DC, on April 25, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–10690 Filed 4–30–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice; correction.

SUMMARY: This document contains a correction to a notice on an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee being conducted in Atlanta, Georgia, which was published in the **Federal Register** on Monday, April, 21, 2003 (68 FR 19605).

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or 718–488–3557.

Need for Correction

As published, this notice of an open meeting of the taxpayer advocacy panel earned income tax credit issue committee contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of an open meeting of the taxpayer advocacy panel earned income tax credit issue committee which is the subject of FR Doc. 03–9779 is corrected as follows:

1. On page 19605, column 2, under the caption **DATES**, the language ''The meeting will be held Wednesday, May 7 and Thursday, May 8, 2003.'' is corrected to read ''The meeting will be held on Thursday, May 8, 2003.''.

2. On page 19605, column 2, under the caption **SUPPLEMENTARY INFORMATION**, lines 8 and 9, the language ''Wednesday, May 7 and Thursday, May 8, 2003'' is corrected to read ''Thursday, May 8, 2003''.

Cynthia Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 03–10900 Filed 4–29–03; 2:43 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974: Computer Matching Program

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Matching Program.

SUMMARY: Pursuant to section 552a(e)(12) of the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct of the Internal Revenue Service Disclosure of Information to Federal, State and Local Agencies (DIFSLA) Computer Matching Program.

EFFECTIVE DATE: This notice will be effective June 2, 2003.

ADDRESSES: Inquiries may be mailed to the Director, Office of Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: D.G. Lee, Project Manager, Office of Governmental Liaison, Internal Revenue Service, (202) 622–3941.

SUPPLEMENTARY INFORMATION: The notice of the matching program was last published on October 12, 2000, at 65 FR 60722. Members of the public desiring specific information concerning an ongoing matching activity may request a copy of the applicable computer matching agreement at the address provided above.

Purpose

The purpose of this program is to prevent or reduce fraud and abuse in certain federally assisted benefit programs while protecting the privacy interest of the subjects of the match. Information is disclosed by the Internal Revenue Service only for the purpose of, and to the extent necessary in, determining eligibility for, and/or the correct amount of, benefits for individuals applying for or receiving certain benefit payments.

Authority

In accordance with section 6103(l)(7) of the Internal Revenue Code (IRC), the Secretary shall, upon written request, disclose current return information from returns with respect to unearned income from the Internal Revenue Service files to any Federal, State, or local agency administering a program listed below:

(i) A State program funded under part A of title IV of the Social Security Act;

(ii) Medical assistance provided under a State plan approved under title XIX of the Social Security Act;

(iii) Supplemental security income benefits under title XVI of the Social Security Act, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93–66);

(iv) Any benefits provided under a State plan approved under title I, X, XIV, or XVI of the Social Security Act (as those titles apply to Puerto Rico, Guam, and the Virgin Islands);

(v) Unemployment compensation provided under a State law described in section 3304 of the Internal Revenue Code;

(vi) Assistance provided under the Food Stamp Act of 1977;

(vii) State-administered supplementary payments of the type described in section 1616(a) of the Social Security Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93–66);

(viii)(I) Any needs-based pension provided under Chapter 15 of title 38, United States Code, or under any other law administered by the Secretary of Veterans Affairs;

(II) Parents' dependency and indemnity compensation provided under section 1315 of title 38, United States Code;

(III) Health-care services furnished under sections 1710(a)(2)(G) (formerly 1710(a)(1)(l)), 1710(a)(3) (formerly 1710(a)(2)), 1710(b) and 1712(a)(2)(B) of U.S.C. title 38; and

(ix) Any housing assistance program administered by the Department of Housing and Urban Development that involves initial and periodic review of an applicant's or participant's income, except that return information may be disclosed under this clause only on written request by the Secretary of Housing and Urban Development and only for use by officers and employees of the Department of Housing and Urban Development with respect to applicants for and participants in such programs.

Name of Recipient Agency: Internal Revenue Service.

Categories of records covered in the match: Internal Revenue Service Wage and Information Returns Processing File (Treas./IRS System 22.061 (IRP)) for the latest tax year. This file contains information returns (*e.g.*, Forms 1099–DIV, 1099–INT and W–2G) filed by payers of income.

Name of source agencies and categories of records covered in the match:

A. Federal agencies expected to participate and their Privacy Act systems of records are:

1. *Department of Housing and Urban Development:* Real Estate Assessment Center-Tenant Eligibility Verification Files, HUD/REAC–1;

2. *Department of Veterans Affairs:* Veterans Benefits Administration—Compensation, Pension and Education and Rehabilitation Records—VA, 58 VA 21/22; and Veterans Health Administration—Healthcare Eligibility Records, 89VA19;

3. Social Security Administration, Office of Systems Requirements—Supplemental Security Income Record and Special Veterans Benefits, (60–0103).

B. State agencies expected to participate using nonfederal systems of records are:

1. Alabama Department of Human Resources
2. Alabama Medicaid Agency
3. Alaska Department of Health and Social Services
4. Arizona Department of Economic Security
5. Arizona Health Care Cost Containment System
6. Arkansas Department of Human Services
7. California Department of Social Services
8. Colorado Department of Human Services
9. Connecticut Department of Social Services
10. Delaware Department of Health and Social Services
11. District of Columbia Department of Human Services
12. Florida Department of Children and Families
13. Georgia Department of Human Resources
14. Guam Department of Public Health and Social Services
15. Hawaii Department of Human Services
16. Idaho Department of Health and Welfare
17. Illinois Department of Human Services
18. Indiana Family and Social Services Administration
19. Iowa Department of Human Services
20. Kansas Department of Social and Rehabilitative Services
21. Kentucky Cabinet for Families and Children
22. Louisiana Department of Health and Hospitals
23. Louisiana Department of Social Services
24. Maine Department of Human Services
25. Maryland Department of Human Resources
26. Massachusetts Department of Transitional Assistance
27. Massachusetts Division of Medical Assistance
28. Michigan Family Independence Agency
29. Minnesota Department of Human Services
30. Mississippi Department of Human Services
31. Mississippi Division of Medicaid
32. Missouri Department of Social Services
33. Montana Department of Public Health and Human Services
34. Nebraska Department of Health and Human Services System
35. Nevada Department of Human Resources
36. New Hampshire Department of Health and Human Services
37. New Jersey Department of Human Services
38. New Mexico Human Services Department
39. New York Office of Temporary and Disability Assistance
40. North Carolina Department of Health and Human Services
41. North Dakota Department of Human Services
42. Ohio Department of Job and Family Services
43. Oklahoma Department of Human Services
44. Oregon Department of Human Resources
45. Pennsylvania Department of Public Welfare
46. Puerto Rico Department of the Family
47. Puerto Rico Department of Health
48. Rhode Island Department of Human Services

49. South Carolina Department of Social Services
50. South Dakota Department of Social Services
51. Tennessee Department of Human Services
52. Texas Department of Human Services
53. Utah Department of Health
54. Utah Department of Workforce Services
55. Vermont Department of Prevention, Assistance, Transition, and Health Access
56. Virgin Islands Bureau of Health Insurance and Medical Assistance
57. Virgin Islands Department of Human Services
58. Virginia Department of Social Services
59. Washington Department of Social and Health Services
60. West Virginia Department of Human Services
61. Wisconsin Department of Health and Family Services
62. Wisconsin Department of Workforce Development
63. Wyoming Department of Family Services

Beginning and completion dates: The matches are conducted on an ongoing basis in accordance with the terms of the computer matching agreement in effect with each participant as approved by the applicable Data Integrity Board(s). The term of these agreements is expected to cover the 18-month period, July 1, 2003 through December 31, 2004. Ninety days prior to expiration of the agreement, the parties to the agreement may request a 12-month extension in accordance with 5 U.S.C. 552a(o).

Dated: April 11, 2003.

Bob Wenzel,

Acting Commissioner of Internal Revenue.

Dated: April 23, 2003.

W. Earl Wright, Jr.,

Chief Management and Administrative, Programs Officer.

[FR Doc. 03–10776 Filed 4–30–03; 8:45 am]

BILLING CODE 4830–25–P

DEPARTMENT OF THE TREASURY

United States Mint

Citizens Coinage Advisory Committee; Meetings

ACTION: Notification of CCAC bi-monthly meetings open to the public.

SUMMARY: Pursuant to Public Law 108–15, enacted on April 23, 2003, the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) bi-monthly meetings. The meetings are open to the public. The purpose of the meetings is to advise the Secretary of the Treasury on designs pertaining to the coinage of the United States and for other purposes. The 2003 meeting schedule is monthly for the first three months and unless otherwise notified, standing meetings will be held bi-monthly on the third Wednesday at the United States Mint in Washington, DC.

It is our intent to hold the first public CCAC meeting on May 5, 2003. *Please call 202–354–7502 on May 2, 2003 after 3 p.m. EST for updated information regarding the May 5, 2003 meeting.*

The following is the meeting schedule for 2003:

Date and Time: May 5, 2003 9 a.m. to 11 a.m.

Location: United States Mint; 799 Ninth St. NW., Washington, DC; Conference room X and Y.

Subject: Consider 5-cent coin designs, state commemorative quarter-dollar coin designs, and other business.

The location for the meetings below is United States Mint, 801 Ninth St. NW., Washington, DC; Conference Room A.

June 18, 2003—9 a.m. to 11 a.m.
July 16, 2003—9 a.m. to 11 a.m.
September 17, 2003—9 a.m. to 11 a.m.
November 19, 2003—9 a.m. to 11 a.m.

All of the completion times above may be extended to accommodate additional business that must be conducted in sessions open to the public. *Interested persons should call 202–354–7502 for the latest update on expected completion times.*

Public Law 108–15 established the CCAC to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, congressional gold medals, and national and other medals produced by the United States Mint.
- Advise the Secretary of the Treasury with regard to the events, persons, or places that the Committee recommends to be commemorated by the issuance of commemorative coins in each of the 5 calendar years succeeding the year in which a commemorative coin designation is made.
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Melody Grimm, United States Mint Liaison to the CCAC, 801 Ninth Street, NW., Washington, DC 20220, or call 202–354–7606.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: (202) 756–6424.

Authority: Public Law 108–15 (April 23, 2003).

Dated: April 28, 2003.

Henrietta Holsman Fore,

Director, United States Mint.

[FR Doc. 03–10844 Filed 4–30–03; 8:45 am]

BILLING CODE 4810–37–P

Corrections

Federal Register

Vol. 68, No. 84

Thursday, May 1, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 020801186–3073–02; I.D. 053102D]

RIN 0648–AQ09

Pacific Halibut Fisheries; Subsistence Fishing

Correction

In rule document 03–8822 beginning on page 18145, in the issue of Tuesday, April 15, 2003 make the following correction:

The following material is being reprinted due to numerous errors following amendatory instruction 5.

Subpart E—[Corrected]

■ 5. Figure 1 to subpart E is revised; Figure 2 through 5 to subpart E are added to read as follows:

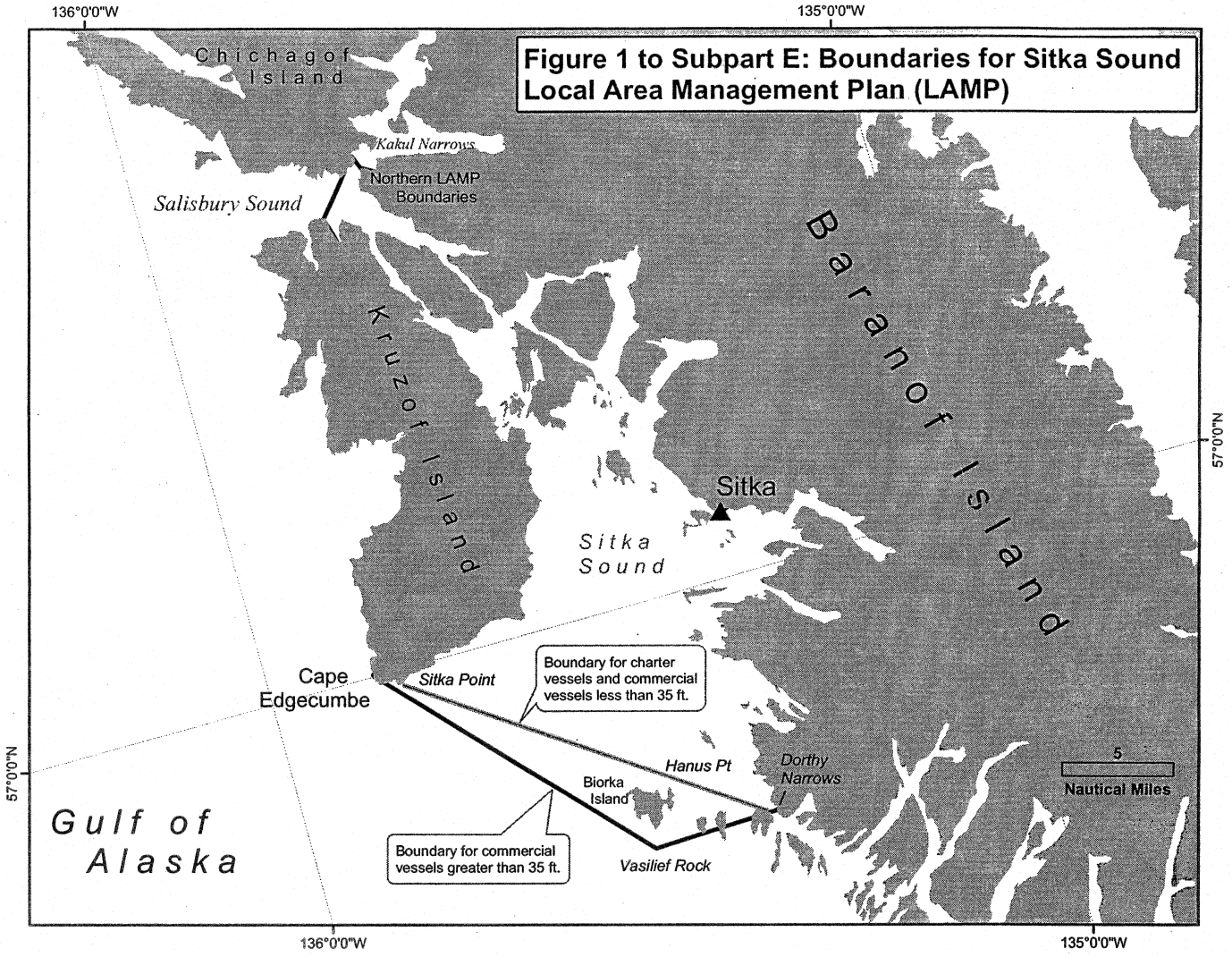


Figure 1 to Subpart E: Boundaries for Sitka Sound Local Area Management Plan (LAMP)
136°0'0"W
135°0'0"W
57°0'0"N
Chichagof Island
Kakul Narrows
Northern LAMP Boundaries
Salisbury Sound
Kruzof Island
Baranof Island
Sitka
Sitka Sound
Cape Edgecumbe
Sitka Point
Boundary for charter vessels and commercial vessels less than 35 ft.
Hanus Pt
Dorthy Narrows
Biorka Island
Boundary for commercial vessels greater than 35 ft.
Vasilief Rock
Gulf of Alaska
5
Nautical Miles

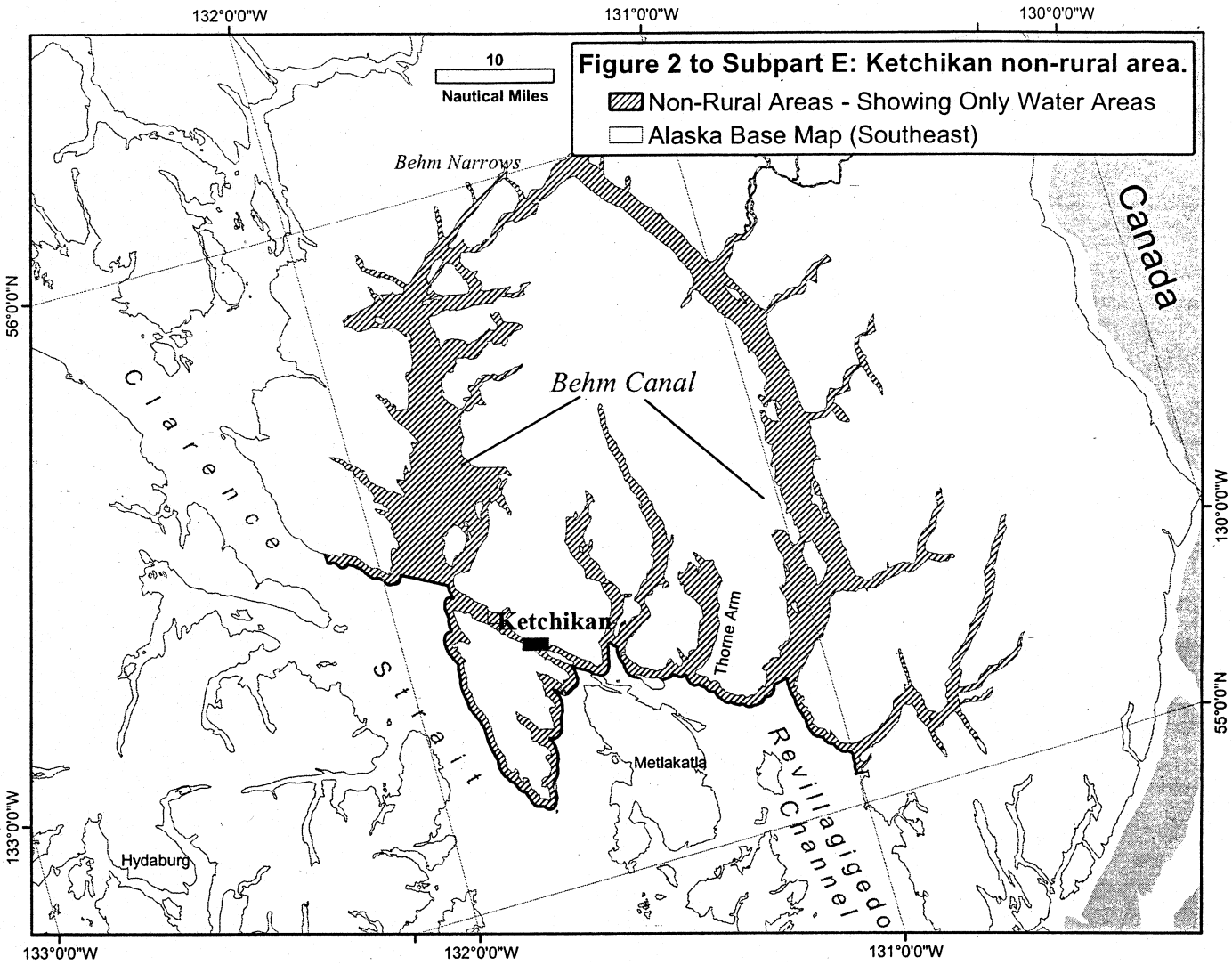


Figure 2 to Subpart E: Ketchikan non-rural area.
Non-Rural Areas - Showing Only Water Areas
Alaska Base Map (Southeast)
10
Nautical Miles
132°0'0"W
131°0'0"W
130°0'0"W
56°0'0"N
55°0'0"N
133°0'0"W
Behm Narrows
Behm Canal
Canada
Clarence Strait
Ketchikan
Thorne Arm
Metlakatla
Revillagigedo Channel
Hydaburg

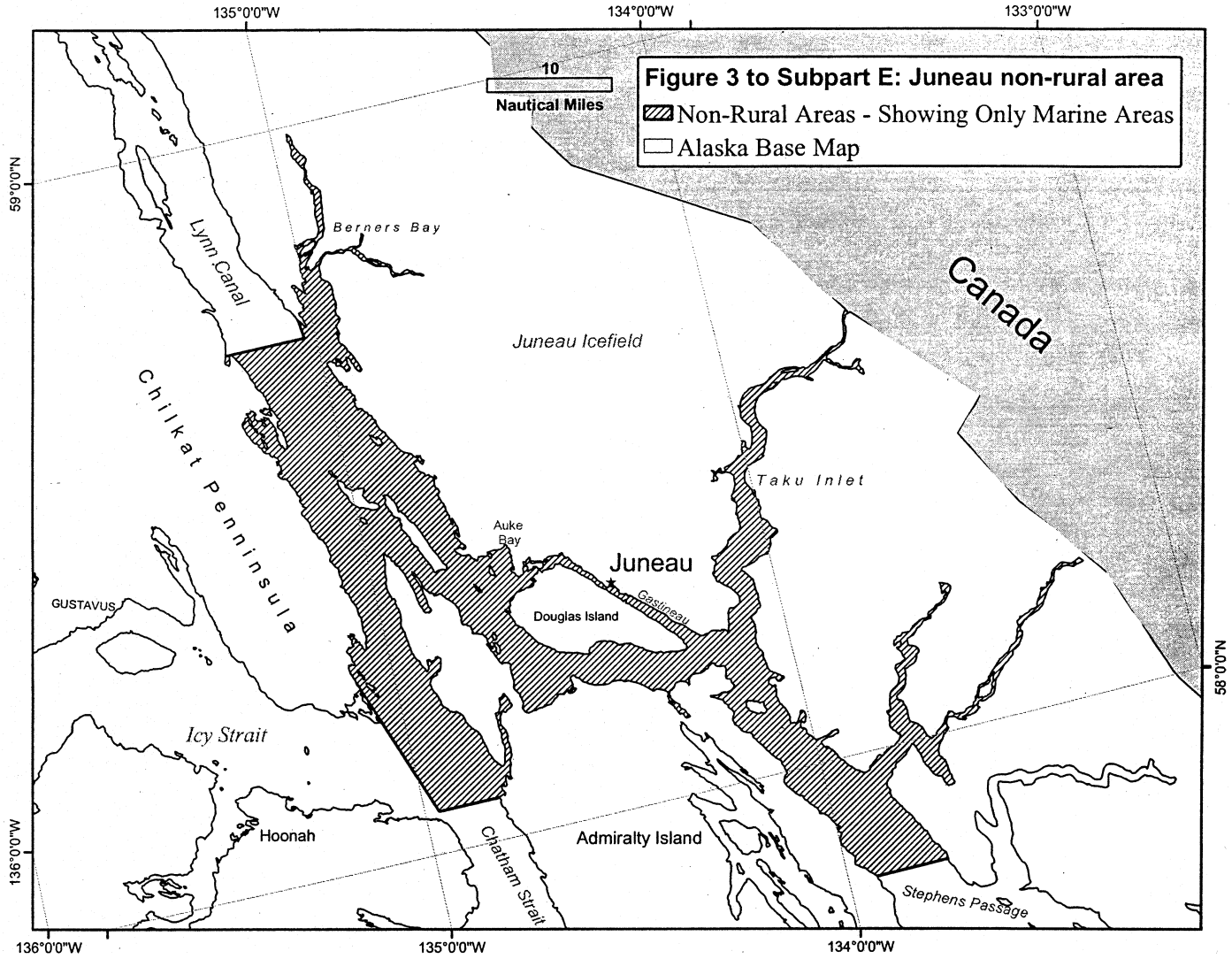


Figure 3 to Subpart E: Juneau non-rural area
Non-Rural Areas - Showing Only Marine Areas
Alaska Base Map
10
Nautical Miles
135°0'0"W
134°0'0"W
133°0'0"W
59°0'0"N
58°0'0"N
136°0'0"W
Canada
Berners Bay
Lynn Canal
Juneau Icefield
Chilkat Penninsula
Taku Inlet
Auke Bay
Juneau
Gastineau
Douglas Island
GUSTAVUS
Icy Strait
Hoonah
Chatham Strait
Admiralty Island
Stephens Passage

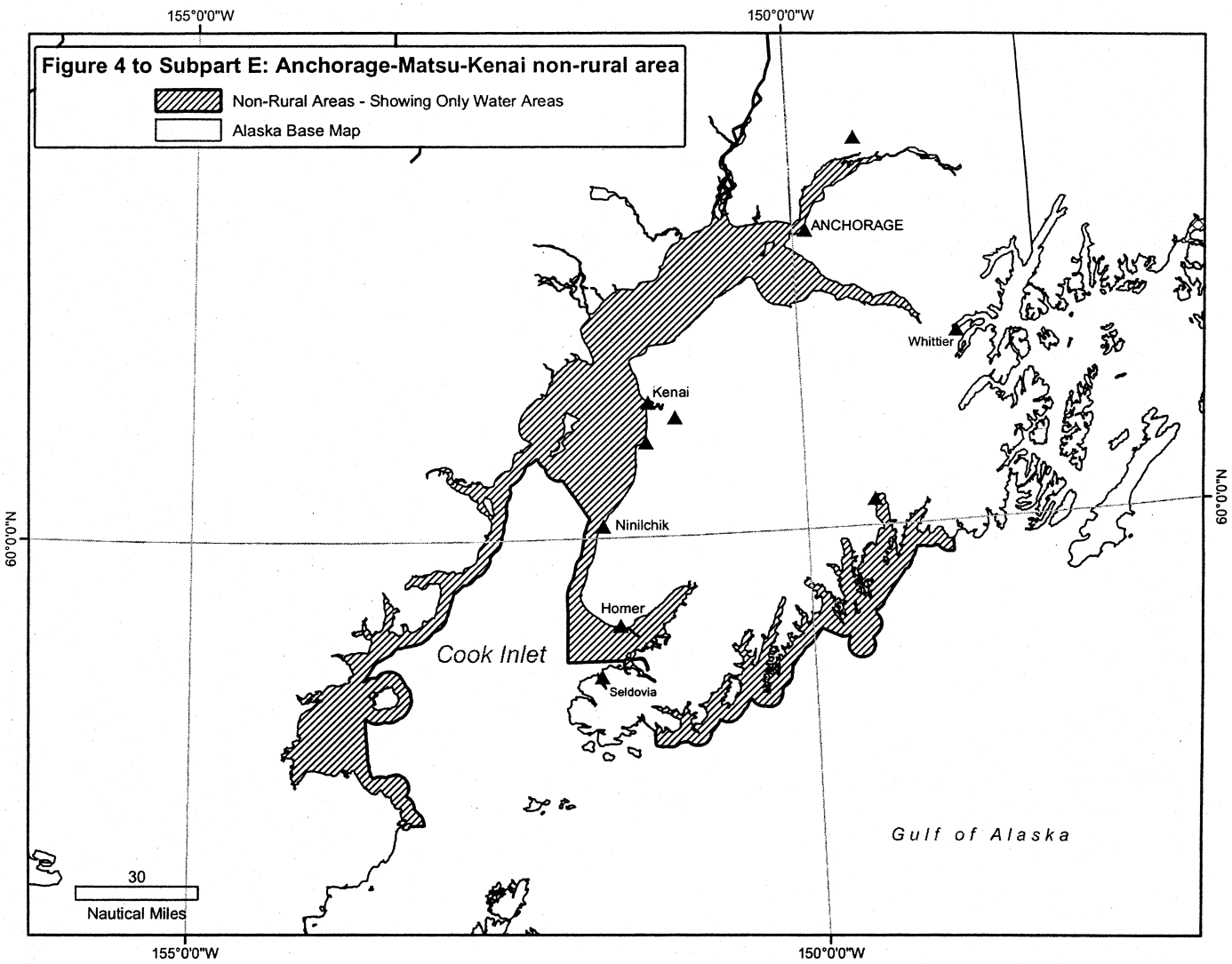
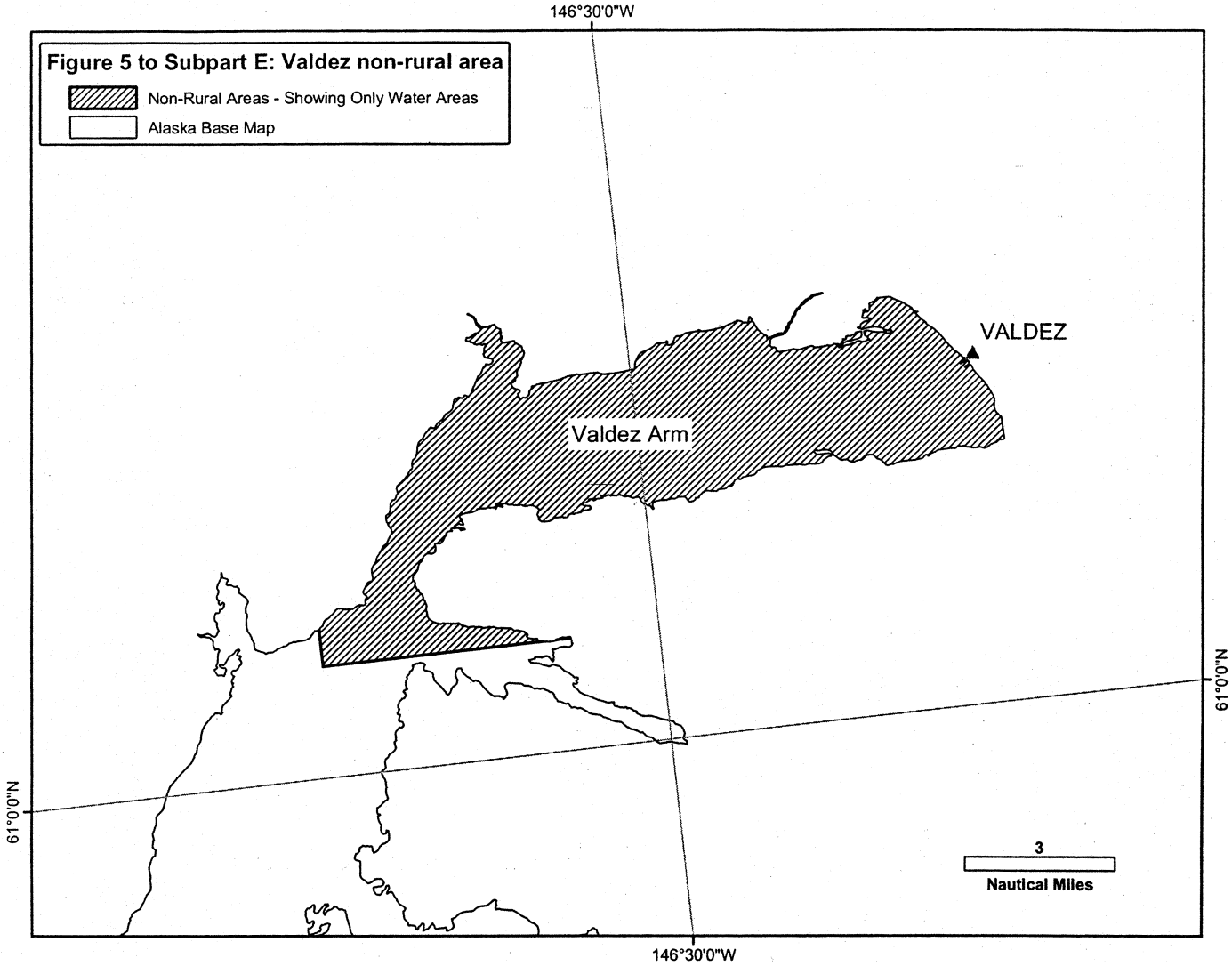


Figure 4 to Subpart E: Anchorage-Matsu-Kenai non-rural area
Non-Rural Areas - Showing Only Water Areas
Alaska Base Map
155°0'0"W
150°0'0"W
60°0'0"N
ANCHORAGE
Whittier
Kenai
Ninilchik
Homer
Seldovia
Cook Inlet
Gulf of Alaska
30
Nautical Miles



PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 is amended to read as follows:

Authority: 5 U.S.C 561, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 1801 *et seq.*

■ 2. In § 600.725, table VII in paragraph (v) is revised to read as follows:

§ 600.725 General Prohibitions.

* * * * *

(v) * * *

VII. NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

Fishery	Allowable gear types
1. Alaska Scallop Fishery (FMP).	Dredge.
2. Bering Sea (BS) and Aleutian Islands (AI) King and Tanner Crab Fishery (FMP):	
Pot fishery	Pot.
3. BS and AI King and Tanner Crab Fishery (Non-FMP):	
Recreational fishery	Pot.
4. BS and AI Groundfish Fishery (FMP):	
A. Groundfish trawl fishery	A. Trawl.
B. Bottomfish hook-and-line, and handline fishery.	B. Hook and line, handline.
C. Longline fishery	C. Longline.
D. BS and AI pot and trap fishery.	D. Pot, trap.
5. BS and AI Groundfish Recreational Fishery (Non-FMP)..	Handline, rod and reel, hook and line, pot, trap.
6. Gulf of Alaska (GOA) Groundfish Fishery (FMP):	
A. Groundfish trawl fishery	A. Trawl.
B. Bottomfish hook-and-line and handline fishery.	B. Hook and line, handline.
C. Longline fishery	C. Longline.
D. GOA pot and trap fishery.	D. Pot, trap.
E. Recreational fishery	E. Handline, rod and reel, hook and line, pot, trap.
7. Pacific Halibut Fishery (Non-FMP):	
A. Commercial (IFQ and CDQ).	A. Hook and line.

VII. NORTH PACIFIC FISHERY MANAGEMENT COUNCIL—Continued

Fishery	Allowable gear types
B. Recreational	B. Single line with no more than 2 hooks attached or spear.
C. Subsistence	C. Setline gear and hand held gear of not more than 30 hooks, including longline, handline, rod and reel, spear, jig, and hand-troll gear.
8. Alaska High Seas Salmon Hook and Line Fishery:	
(FMP)	Hook and line.
9. Alaska Salmon Fishery (Non-FMP):	
A. Hook-and-line fishery	A. Hook and line.
B. Gillnet fishery	B. Gillnet.
C. Purse seine fishery.	C. Purse seine.
D. Recreational fishery	D. Handline, rod and reel, hook and line.

VII. NORTH PACIFIC FISHERY MANAGEMENT COUNCIL—Continued

Fishery	Allowable gear types
10. Finfish Purse Seine Fishery (Non-FMP)..	Purse seine.
11. Octopus/Squid Longline Fishery (Non-FMP)..	Longline.
12. Finfish Handline and Hook-and-line Fishery (Non-FMP).	Handline, hook and line.
13. Recreational Fishery (Non-FMP).	Handline, rod and reel, hook line.
14. Commercial Fishery (Non-FMP).	Trawl, gillnet, hook and line, longline, handline, rod and reel, bandit gear, cast net, spear.

* * * * *

PART 679— FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209 Pub. L. 106–554.

■ 2. In § 679.2, the definitions for ''commercial fishing'' and ''IFQ halibut'' are revised as follows:

§ 679.2 Definitions.

* * * * *

Commercial fishing means:

(1) For purposes of the High Seas Salmon Fishery, fishing for fish for sale or barter; and

(2) For purposes of the Pacific halibut fishery, fishing, the resulting catch of which either is, or is intended to be, sold or bartered but does not include subsistence fishing for halibut, as defined at 50 CFR 300.61.

* * * * *

IFQ halibut means any halibut that is harvested with setline or other hook and line gear while commercial fishing in any IFQ regulatory area defined in this section.

* * * * *

[FR Doc. C3–8822 Filed 4–30–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
May 1, 2003

Part II

Department of Housing and Urban Development

24 CFR Part 203

Prohibition of Property Flipping in HUD's Single Family Mortgage Insurance Programs; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Doc. No. FR–4615–F–02]

RIN 2502–AH57

Prohibition of Property Flipping in HUD's Single Family Mortgage Insurance Programs

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule addresses property ''flipping,'' the practice whereby a property recently acquired is resold for a considerable profit with an artificially inflated value, often abetted by a lender's collusion with the appraiser. Specifically, the final rule establishes certain new requirements regarding the eligibility of properties to be financed with Federal Housing Administration (FHA) mortgage insurance. The regulatory amendments will comply with Congressional mandates to maintain the FHA Insurance Fund in a sound actuarial manner. The new requirements will make flipped properties ineligible for FHA-insured mortgage financing, thus precluding FHA home purchasers from becoming victims of predatory flipping activity. The final rule follows publication of a September 5, 2001, proposed rule and takes into consideration the public comments received on the proposed rule.

DATES: *Effective Date:* June 2, 2003.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Office of Insured Single Family Housing, Room 9266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–2121 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—HUD's September 5, 2001, Proposed Rule

On September 5, 2001 (66 FR 46502), HUD published a proposed rule for public comment to address property ''flipping,'' the predatory lending practice whereby a property recently acquired is resold for a considerable profit with an artificially inflated value, often abetted by a lender's collusion with the appraiser. Most property flipping occurs within a matter of days after acquisition, and usually with only minor cosmetic improvements, if any. In the September 5, 2001, proposed rule, HUD proposed to restrict flipping by establishing new eligibility requirements for properties whose purchase is being financed with FHA mortgage insurance.

As noted, property flipping involves the rapid re-sale, often within days, of a recently acquired property. Accordingly, HUD proposed to prohibit FHA financing for any property being sold within six months after acquisition by the seller. The proposed six-month restriction would not have applied to re-sales by HUD of Real Estate-Owned (REO) properties under 24 CFR part 291 and single family assets in revitalization areas pursuant to section 204 of the National Housing Act (12 U.S.C. 1710). The proposed rule also provided for legitimate transactions involving the quick and profitable re-sale of a recently acquired property, by authorizing HUD to grant case-by-case exceptions to the six-month restriction where the lender demonstrates that the sales price of the property corresponds to its market value.

HUD also proposed to establish a new owner of record requirement for properties financed with FHA mortgage insurance. Unscrupulous investors will often flip properties they have contracted to purchase (but have not yet acquired) by selling or assigning the rights to the sales contract, often for a significant profit. The September 5, 2001, proposed rule addressed this issue by providing that only those properties purchased from the owner of record would be eligible for mortgages insured by FHA.

The preamble to the September 5, 2001, proposed rule provides more information regarding the proposed regulatory amendments to the FHA regulations.

II. Significant Differences Between This Final Rule and September 5, 2001, Proposed Rule

This final rule follows publication of the September 5, 2001, proposed rule, and takes into consideration the public comments received on the proposed rule. The most significant differences between this final rule and the September 5, 2001, proposed rule are summarized below. Additional information regarding these changes is provided in the discussion of the public comments in sections III through VI of this preamble.

1. *Revised time restrictions on re-sales.* In response to significant public comment on this issue, this final rule revises the proposed time restrictions on re-sales. The final rule reduces the time restriction on FHA mortgage insurance to short-term re-sales occurring within 90 days following acquisition by the seller.

The rule, however, provides additional measures that HUD may take after 90 days, depending upon the circumstances of the re-sale. If the re-sale is between 91 days and 180 days following acquisition by the seller, the final rule requires the lender to document the re-sale value if the re-sale price is a certain percentage, as established by HUD, over the purchase price. The percentage established by HUD will be between 50 to 150 percent over the purchase price. The final rule provides the lender a number of options to meet this requirement. Specifically, the lender may obtain a second appraisal that supports the increased value. As an alternative, the lender may document its file to establish that the increased value is the result of rehabilitation to the property. The requirement for additional documentation will be set at a level that, as determined by HUD, will deter unscrupulous purchasers from attempting to flip property while simultaneously ensuring that legitimate rehabilitation of properties continues. This final rule would establish the level that triggers the additional documentation requirement at 100 percent above the original purchase price. HUD may revise the level that triggers this documentation requirement by **Federal Register** notice.

In addition to requiring documentation for re-sales within the 91 to 180 day period, the final rule authorizes HUD to impose additional protections against ''flipping'' for re-sales up to 12 months following acquisition by the seller. To address specific circumstances or locations where HUD identifies property flipping as a problem, the final rule authorizes that HUD may require the lender, for re-sales occurring between 91 days and 12 months, to obtain additional documentation to support the re-sale value if the re-sale price is 5 percent or greater than the lowest sales price of the property during the preceding 12 months (as evidenced by the contract of sale). Should HUD exercise this authority, it would supersede the higher threshold established for the 91 day to 180 day period. At HUD's discretion, this documentation must include, but is not limited to, an appraisal from another appraiser.

HUD will announce its determination to require additional value documentation for re-sales up to 12

months following acquisition by the seller through **Federal Register** notice. The requirement for additional value documentation may be established either on a nationwide or regional basis. The **Federal Register** notice will specify the percentage increase in the re-sale price that will trigger the need for additional documentation, and will specify the acceptable types of documentation. The **Federal Register** notice may also exclude re-sales of less than a specific dollar amount from the additional value documentation requirements. In order to provide the public with sufficient time to adjust to the additional documentation procedures, any such **Federal Register** notice, and any subsequent revisions, will be issued at least thirty days before taking effect.

If the additional documentation supports a value that is more than 5 percent lower than the value supported by the first appraisal, the lower value will be used in calculating the maximum insured mortgage amount. Otherwise, the value supported by the first appraisal will be used to calculate the maximum mortgage amount.

If the re-sale date is more than 12 months following the date of acquisition by the seller, the property is eligible for a mortgage insured by FHA.

2. *Clarification of relevant dates for time restrictions on re-sales.* The final rule clarifies that, for purposes of the time restrictions on re-sales, the seller's date of acquisition will be based upon the date of settlement. The re-sale date will be based on the date of execution of the sales contract that will result in FHA mortgage insurance.

3. *Elimination of case-by-case exceptions to time restrictions on re-sales.* The final rule no longer provides for case-by-case exceptions to the time restrictions on re-sales.

4. *Inapplicability of time restrictions on re-sales.* The final rule continues to provide that the time restrictions on re-sales do not apply to re-sales by HUD of REO properties under 24 CFR part 291 and single family assets in revitalization areas pursuant to section 204 of the National Housing Act. In addition, the final rule also provides that the time restrictions do not apply to the re-sale of properties acquired by an employer or relocation agency in connection with the relocation of an employee.

5. *Owner of record documentation requirements.* The final rule adopts the owner of record requirements contained in the proposed rule, but clarifies that lenders will be required to verify compliance with the requirement. The final rule provides that the lender must submit documentation verifying that the seller is the owner of record as part of the application for mortgage insurance. This documentation may include, but is not limited to, a property sales history report, a copy of the recorded deed, or other documentation (such as a copy of a property tax bill, a title commitment, or binder) indicating the seller's ownership of the property.

6. *Sanctions and indemnification.* The final rule clarifies that failure of a lender to comply with the regulatory anti-flipping requirements may result in HUD requesting indemnification of the mortgage loan and/or seeking other appropriate remedies.

7. *Conforming changes to § 203.255.* The final rule amends § 203.255 of the FHA regulations, which lists the items that must be included in a mortgage insurance application, to reflect the anti-flipping documentation required by this rule.

III. Discussion of Public Comments Received on the September 5, 2001, Proposed Rule

The public comment period on the September 5, 2001, proposed rule closed on November 5, 2001. HUD received 120 public comments on the proposed rule. Comments were received from national associations representing realtors, individual realtors, homebuilders and contractors, mortgage bankers, state and local housing and community development agencies, and other commenters. Many commenters submitted identical ''form'' letters. Sections IV, V, and VI of this preamble present a summary of the most significant issues raised by the public commenters, and HUD's responses to these issues. Section IV of the preamble discusses the public comments regarding the proposed six-month restriction on re-sales. Section V discusses the public comments on the provisions regarding case-by-case exceptions and the owner of record requirements. Section VI of the preamble discusses the other public comments received by HUD on the September 5, 2001, proposed rule.

IV. Comments Regarding Time Restriction on Re-Sales

Under the September 5, 2001, proposed rule, any property sold within six months after acquisition by the seller would not be eligible for a mortgage insured by FHA. The proposed six-month restriction would not have applied to re-sales by HUD of REO properties under 24 CFR part 291 and of single family assets in revitalization areas pursuant to section 204 of the National Housing Act. This provision of the proposed rule was of significant public interest, and the majority of comments on the September 5, 2001, proposed rule concerned the six-month restriction on re-sales. Several commenters supported the restriction, writing that the proposal would help to eliminate the most extreme cases of property flipping. Most of the commenters, however, expressed concerns about the six-month restriction and urged HUD to reconsider its proposal.

Comment: The proposed time restriction will hurt HUD's interests and the interests of homebuyers. Several commenters wrote that a six-month restriction would be too short, and fail to deter longer-term property flipping transactions. These commenters suggested lengthening the re-sale ban to nine months or one year. Many other commenters, however, wrote that the six-month restriction would be too long, and hurt HUD's interests and the best interest of the home buying public. The commenters wrote that by eliminating the ability of legitimate investors to resell homes using HUD financing, the six-month ban would reduce the incentive for investors to buy and rehabilitate these properties. The commenters wrote that this could mean that many undesirable properties remain unsold by the lender for years. Rather than providing a decent home, these properties would instead blight neighborhoods as decaying eyesores. The commenters wrote that the unintended consequence of the proposed rule would be to unwittingly close down the businesses of many residential real estate investors while attempting to outlaw the predatory practices of a few.

HUD Response. In response to these concerns raised by the public commenters, HUD has substantially revised the proposed time restrictions on re-sales. HUD agrees with the commenters who wrote that there are many legitimate transactions that would be prohibited by a six-month restriction on FHA financing. Accordingly, HUD has revised the rule to accommodate such re-sales, while still implementing safeguards to assure that the value of the property is recognized in the marketplace and to reduce the possibility of appraisal fraud.

The final rule reduces the time restriction on FHA mortgage insurance to short-term re-sales occurring within 90 days following acquisition by the seller. HUD will not grant case-by-case exceptions to the 90-day restriction. If the re-sale is between 91 and 180 days following acquisition by the seller, HUD will require that the lender document

the increased value of the property if the re-sale price exceeds an established value between 50 and 150 percent of the purchase price. As a further safeguard against flipping for re-sales up to 12 months following acquisition by the seller, the final rule authorizes HUD to require that the lender obtain additional verification of the value of the property if the re-sale price is 5 percent or greater than the lowest sales price of the property during the preceding 12 months (as evidenced by the contract of sale).

HUD believes that short re-sales executed within 90 days imply pre-arranged transactions that often prove to be among the most egregious examples of predatory lending practices and, thus, will not insure mortgages on these ''flipped'' properties. Ninety days is also not an unreasonable waiting period if actual rehabilitation and repairs of a property occur before the property is re-sold. HUD agrees that the previously proposed six-month ban on re-sales would have been disruptive to the industry and would have provided a disincentive to legitimate contractors who improve houses—thus increasing the stock of affordable housing. It was never HUD's intention to eliminate the ability of investors and contractors to profit from their actions, but rather to assure that homebuyers are not purchasing overvalued houses and becoming the unwitting victims of predatory practices. To this end, HUD believes that the final rule accomplishes this goal. While the most egregious examples of property flipping consist of nearly immediate re-sales or ''flips,'' HUD also agrees with the commenters who wrote that the six-month restriction was too short to deter longer-term predatory flipping transactions. While an outright ban on FHA mortgage insurance is not warranted for re-sales occurring beyond 90 days, HUD agrees that additional safeguards may be required to ensure that the value of the property has not been fraudulently inflated. Recognizing this, the final rule requires that lenders document the increased value of the property if the re-sale price exceeds an established value for re-sales occurring between 91 and 180 days following acquisition of the property. As an additional protection against flipping, the final rule provides that HUD may require lenders to obtain additional documentation that supports the re-sale price for re-sales within 12 months of the acquisition date if the re-sale price is 5 percent or greater than the purchase price if HUD identifies specific circumstances or locations where property flipping is a problem. Should HUD exercise this authority, this authority would supersede the higher threshold established for the 91 day to 180 day period. At HUD's discretion, this additional documentation must include, but is not limited to, an appraisal from another appraiser. As an alternative, the lender may document its file to establish that the increased value is the result of rehabilitation to the property.

For re-sales between 91 and 180 days, HUD will establish the level that triggers this documentation requirement at 100 percent above the original purchase price. HUD believes that setting the level at 100 percent above the original purchase price will deter unscrupulous purchasers from attempting to flip property while simultaneously ensuring that legitimate rehabilitation of properties continues. The final rule provides HUD the authority to revise the level. Should HUD determine that the level is not effectively deterring property flipping, HUD may lower the trigger. Similarly, HUD may increase the level if HUD determines that legitimate rehabilitation of properties is adversely affected by the documentation requirement, and that adverse effect is not justified by a significant deterrent effect on property flipping. HUD may revise the trigger level by **Federal Register** notice. In order to provide the public with sufficient time to adjust to the additional documentation procedures, revisions to the standard will be issued at least thirty days before taking effect.

If HUD identifies specific circumstances or locations where property flipping is a problem, HUD may require the lender, for re-sales up to 12 months following acquisition of the property, to provide additional documentation if the re-sale price is 5 percent or greater than the purchase price. Should HUD exercise this authority, this authority would supersede the higher threshold established for the 91 day to 180 day period. HUD will announce its determination to require additional value documentation through issuance of a **Federal Register** notice. The requirement for additional value documentation may be established on a nationwide or regional basis. Further, the **Federal Register** notice will specify the percentage increase in the re-sale price that will trigger the need for additional documentation, and will specify the acceptable types of documentation. The **Federal Register** notice may also exclude re-sales of less than a specific dollar amount from the additional value documentation requirements. In order to provide the public with sufficient time to adjust to the additional documentation procedures, any such **Federal Register** notice, and any subsequent revisions, will be issued at least thirty days before taking effect.

If the additional documentation supports a value that is more than 5 percent lower than the value supported by the first appraisal, the lower value will be used in calculating the maximum insured mortgage amount. Otherwise, the original value supported by the first appraisal will be used to calculate the maximum mortgage amount.

Comment: Re-sales involving only a modest increase over the previous sales price should be exempt from the time restrictions. Several commenters wrote that when the sale price increases only a small amount between the previous sale and the new sale to be financed with an FHA-insured mortgage, HUD's concern with property flipping is drastically diminished.

HUD Response. HUD agrees that its concerns with property flipping are reduced when the sales price increases only a small amount between the previous sale and the new sale to be financed with an FHA-insured mortgage. As described in more detail in the preceding response, HUD may exclude re-sales of less than a specific dollar amount from any additional valuation requirements.

Comment: The proposed rule could have significant negative consequences on government and corporate employees relocated yearly by their employers. Several commenters wrote that the six-month restriction would have a negative impact on the thousands of government and private sector employees that are relocated each year. The commenters wrote that, from an employer's standpoint, any house purchased from a relocating employee would essentially be unsaleable through the FHA programs because the six-month waiting period would result in unacceptably large carrying costs. Several of the commenters advocated that the final rule exempt properties acquired by an employer in connection with an employee's relocation from the restriction on re-sales.

HUD Response. HUD agrees with the commenters and has revised the proposed rule at the final rule stage accordingly. The final rule exempts properties acquired by an employer or relocation agency in connection with the relocation of an employee from the time restriction on re-sales.

Comment: The final rule should provide clarification regarding the relevant dates for calculating the time

restriction on re-sales. Several commenters recommended that the final rule define the date of acquisition of the property by the seller and the re-sale date used to calculate the time restriction on re-sales.

HUD Response. HUD agrees with the commenters. The final rule clarifies that, for purposes of the time restrictions on re-sales, the seller's date of acquisition will be based upon the date of settlement. The re-sale date will be based on the date of execution of the sales contract that will result in FHA mortgage insurance.

V. Comments Regarding Case-by-Case Exceptions and Owner of Record Requirements

A. Comments Regarding Case-by-Case Exceptions to Time Restrictions on Re-Sales

The September 5, 2001, proposed rule would have provided HUD with the authority to grant exceptions to the six-month restriction on re-sales, on a case-by-case basis, if the mortgagee provided written documentation demonstrating that the sales price of the property accurately corresponded to its market value. The proposed rule provided that such documentation could include, but would not be limited to, evidence that: (1) The sales price reflected a rapidly appreciating real estate market; (2) the seller had made improvements that resulted in a corresponding increase in the value of the property; or (3) the property was being sold at below market value due to a distress sale or at a tax sale.

Comment: Objections and Requested Clarifications to Proposed Exceptions Procedure. Several commenters submitted comments regarding the proposed exceptions procedure contained in the proposed rule. Some of the commenters focused on the process HUD would use to process exception requests. These commenters asked HUD to provide additional details regarding this process (such as identifying the entity within HUD that would be responsible for examining exception requests.) Some of these commenters also wrote that HUD does not have sufficient resources to responsibly handle this task and that the ''wheels of bureaucracy'' could drag the review process beyond the six-month restriction period. The commenters requested that the final rule establish specific deadlines for speedily processing and granting exception requests (for example a 30-day period).

Other commenters objected to the factors that the proposed rule stated HUD would consider in determining whether to grant an exception. The commenters wrote that these factors were all biased toward market abnormalities and had little relevance to the amount of time the owner holds a property. The commenters advocated that HUD expand the list of factors to address this perceived deficiency. For example, some commenters suggested that the final rule specify that HUD will permit exceptions as a result of death, job loss, unemployment/military transfer, and other reasonable circumstances beyond the owner's control. Other commenters suggested that the list of factors should be modified to recognize specific actions by lenders to justify exceptions to the six-month restriction, such as obtaining a home inspection.

HUD Response. HUD has eliminated the need for case-by-case exceptions by reducing the time restriction on FHA mortgage insurance to short-term re-sales that occur within 90 days following acquisition of the property by the seller. HUD believes that the short-term restriction on re-sales is reasonable, addresses concerns raised by the public commenters on the proposed rule, and will prohibit the most egregious examples of predatory lending involving flipped properties. HUD will not grant case-by-case exceptions to the revised 90-day restriction.

B. Comments Regarding Owner of Record Requirement

The September 5, 2001, proposed rule provided that only those properties purchased from the owner of record would be eligible for a mortgage insured by FHA.

Comment: The owner of record requirements require clarification. One commenter suggested that the owner of record requirements be expanded and clarified to ensure that unscrupulous parties do not avoid the intent of the rule. The commenter recommended that the language of the proposed rule be revised to specify that the property must be purchased ''solely and completely'' from the owner of record to be eligible for a mortgage insured by FHA. The commenter also suggested that the proposed rule be revised to clarify that the sale may not involve any transfer or assignment of any sales agreement or any interest therein. Further, the commenter wrote that the final rule should clearly prohibit any person intervening in the sales transaction on behalf of the owner of record, including those who transfer ownership to the buyer and collect the sale proceeds.

HUD Response. HUD agrees and has modified the proposed rule to clarify what constitutes an ''owner of record'' and the manner in which compliance with this requirement must be verified. The final rule clarifies that lenders will be required to verify compliance with the requirement. The final rule provides that the lender must submit documentation verifying that the seller is the owner of record as part of the application for mortgage insurance. This documentation may include, but is not limited to, a property sales history report, a copy of the recorded deed, or other documentation (such as a copy of a property tax bill, a title commitment, or binder) indicating the seller's ownership of the property.

VI. Other Comments on the Proposed Rule

A. General Objections to Proposed Rule

Comment: HUD should focus its efforts on fraudulent appraisals. Several commenters wrote that rather than establishing additional regulatory requirements, HUD should focus its enforcement efforts on the root of most property flipping—poor and fraudulent appraisals. Several of the commenters wrote that HUD should conduct independent appraisals of all properties being purchased with FHA financing. Other commenters suggested that HUD strengthen its requirements concerning the education and experience of appraisers conducting FHA appraisals. Still other commenters recommended that HUD take more aggressive steps to identify and sanction unscrupulous appraisers engaged in property flipping.

HUD Response. HUD agrees that fraudulent and inflated appraised values are the source of most predatory practices involving property flipping, and the final rule requires additional appraised value safeguards. HUD does not agree that FHA should be the entity to perform the appraisals. Staffing realities and HUD's commitment to the Direct Endorsement (DE) program compel it to rely on qualified appraisers and DE lenders to deliver mortgage financing to the consumer as efficiently and inexpensively as possible. HUD also notes that it has implemented several policies to help ensure the accuracy and completeness of appraisals on properties securing FHA-insured mortgages. For example, HUD has established the FHA Appraiser Roster, which lists those appraisers who are eligible to perform FHA single family appraisals. HUD is also developing several other initiatives to strengthen the quality of FHA appraisals, and to impose stricter FHA Appraiser Roster qualifications. In addition, where those involved in property flipping schemes

have been identified, HUD will pursue those entities and individuals to impose sanctions available to HUD, and HUD will enlist the assistance of applicable federal and local authorities in prosecuting those individuals.

Comment: HUD should target known property flippers. Several commenters wrote that, rather than imposing new restrictions, HUD should focus its regulatory efforts on individuals who are known to have engaged in property flipping. The commenters suggested that HUD should review its claim and default records to identify those persons currently engaged in predatory lending practices. The commenters suggested that those persons should be barred from participating in the FHA programs for a specified period (such as 1–3 years). The commenters wrote that in this way HUD could reduce predatory lending activity without punishing the innocent subsequent buyer.

HUD Response: HUD believes it is better to preclude predatory practices proactively and eliminate opportunities for unscrupulous actors, than to retroactively attempt to find the perpetrators after the damage to the homebuyers has been done. As noted, however, in the response to the preceding comment, where unscrupulous actors have been identified in property flipping schemes, HUD will take action against those individuals and entities.

Comment: HUD already has the enforcement tools necessary to prohibit property flipping. Several commenters wrote that HUD should make better use of its existing sanction and penalty methods to deter property flipping, rather than subject the FHA programs to increased regulation.

HUD Response. HUD agrees in principle that existing procedures exist to protect its interests as well as those of the homebuyers. However, unlike existing enforcement tools, the additional safeguards implemented by this final rule are directly targeted at the problems associated with property flipping. The final rule proactively deals with both the pre-arranged transaction that often results in predatory practices against unwitting homebuyers as well as appraisals that cannot support the value claimed.

B. Suggested Changes to Proposed Rule

Comment: HUD should establish additional safeguards for victims of property flipping. One commenter made this suggestion. The commenter wrote that such procedures should include timely and thorough re-appraisals of properties where flipping is alleged, assistance for all homeowners victimized by a fraudulent appraisal or other mortgage fraud, and remediation to victimized homeowners.

HUD Response. HUD does not agree that the expansive remedies proposed by the commenter are necessary, since this final rule should preclude the most egregious examples of fraudulent property flips before they occur.

Comment: HUD should expand the scope of the rule to include mortgages insured by other governmental entities. One commenter made this suggestion.

HUD Response. HUD has not revised the proposed rule in response to this comment. HUD has no jurisdiction over mortgages guaranteed or made by other government agencies, such as the Department of Veterans Affairs, and the Rural Housing Service of the Department of Agriculture.

Comment: The final rule should prohibit gifts to potential borrowers that will enable them to pay off debts that would otherwise render them ineligible for FHA mortgage insurance. The commenters wrote that ''gifts'' made to potential borrowers in order to enable them to pay off debts, including judgments and liens, are often a principal tool of those engaged in property flipping and should be prohibited in the final rule.

HUD Response. HUD does not believe that a change to the rule is required. Mortgagee Letter 2002–02 (issued on January 16, 2002) already addresses gifts for the purpose of paying off obligations and judgments. A copy of this Mortgagee Letter may be downloaded from the HUD Client Information and Policy System (HUDCLIPS) Internet Web site at *http://www.hudclips.org.*

C. Miscellaneous Comments

Comment: HUD should consider modifying the FHA connection appraisal assignment screen to include a field for capturing the seller's name. The commenter wrote that this would allow HUD to more easily determine whether a seller had previously sold a home to an FHA applicant, and if so, whether the history of a prior sale is indicative of possible property flipping.

HUD Response. HUD is considering the change to the FHA connection system suggested by the commenter, and may implement this modification at a later date.

Comment: HUD should create a public database of property sales within neighborhoods and the pricing history of individual homes. Several commenters made this recommendation. The commenters wrote that the names of the lenders, brokers, real estate agents, and appraisers should also be included in the database. The commenters wrote that the database would allow potential buyers to research the market values of homes in their areas. Additionally, the commenters wrote that because many victims of property flipping may not have access to computers, these services must be advertised and made available, possibly at community home counseling offices. The commenters also recommended that HUD make available to the public lists of lenders and appraisers involved in a high volume of foreclosures.

HUD Response. HUD does not have the capacity to develop such a database for other than FHA-insured mortgages, and does not believe it should compete with private-sector service providers that already have developed property sales history reporting systems. HUD already provides public access to information regarding lenders with high rates of mortgage defaults through its Neighborhood Watch system.

Comment: HUD should focus on educating homebuyers. One commenter wrote that HUD should help ensure that low-income buyers are better educated regarding the risks and responsibilities of purchasing a home, including predatory lending abuses.

HUD Response. HUD has long advocated homeownership counseling and funds many agencies that provide such services.

VII. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2502–0547. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Office of General Counsel, Room 10276, 451

Seventh Street, SW., Washington, DC 20410–0500.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding remains applicable to this final rule and is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the office of the Department's Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary has reviewed this final rule before publication, and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows. The final rule is exclusively concerned with curbing the predatory lending practice of property flipping. The vast majority of lenders participating in the FHA single family mortgage insurance programs fully comply with all program requirements and conduct themselves in an ethical manner. The final rule will only impact the small minority of unscrupulous lenders who participate in the FHA programs and engage in this predatory practice.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This final rule will not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Numbers for 24 CFR part 203 are 14.117 and 14.133.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 203 to read as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

■ 2. Add § 203.37a to read as follows:

§ 203.37a Sale of property.

(a) *Sale by owner of record.* (1) *Owner of record requirement.* To be eligible for a mortgage insured by FHA, the property must be purchased from the owner of record and the transaction may not involve any sale or assignment of the sales contract.

(2) *Supporting documentation.* The mortgagee shall obtain documentation verifying that the seller is the owner of record and must submit this documentation to HUD as part of the application for mortgage insurance, in accordance with § 203.255(b)(12). This documentation may include, but is not limited to, a property sales history report, a copy of the recorded deed from the seller, or other documentation (such as a copy of a property tax bill, title commitment, or binder) demonstrating the seller's ownership.

(b) *Time restrictions on re-sales.* (1) *General.* The eligibility of a property for a mortgage insured by FHA is dependent on the time that has elapsed between the date the seller acquired the property (based upon the date of settlement) and the date of execution of the sales contract that will result in the FHA mortgage insurance (the re-sale date). The mortgagee shall obtain documentation verifying compliance with the time restrictions described in this paragraph and must submit this documentation to HUD as part of the application for mortgage insurance, in accordance with § 203.255(b).

(2) *Re-sales occurring 90 days or less following acquisition.* If the re-sale date is 90 days or less following the date of acquisition by the seller, the property is not eligible for a mortgage to be insured by FHA.

(3) *Re-sales occurring between 91 days and 180 days following acquisition.* (i) If the re-sale date is between 91 days and 180 days following acquisition by the seller, the property is generally eligible for a mortgage insured by FHA.

(ii) However, HUD will require that the mortgagee obtain additional documentation if the re-sale price is 100 percent over the purchase price. Such documentation must include an appraisal from another appraiser. The mortgagee may also document its loan file to support the increased value by establishing that the increased value results from the rehabilitation of the property.

(iii) HUD may revise the level at which additional documentation is required under § 203.37a(b)(3) at 50 to 150 percent over the original purchase price. HUD will revise this level by **Federal Register** notice with a 30 day delayed effective date.

(4) *Authority to address property flipping for re-sales occurring between 91 days and 12 months following acquisition.*

(i) If the re-sale date is more than 90 days after the date of acquisition by the seller, but before the end of the twelfth month after the date of acquisition, the property is eligible for a mortgage to be insured by FHA.

(ii) However, HUD may require that the lender provide additional documentation to support the re-sale value of the property if the re-sale price is 5 percent or greater than the lowest sales price of the property during the preceding 12 months (as evidenced by the contract of sale). At HUD's discretion, such documentation must include, but is not limited to, an appraisal from another appraiser. HUD may exclude re-sales of less than a specific dollar amount from the additional value documentation requirements.

(iii) If the additional value documentation supports a value of the property that is more than 5 percent lower than the value supported by the first appraisal, the lower value will be used to calculate the maximum mortgage amount under § 203.18. Otherwise, the value supported by the first appraisal will be used to calculate the maximum mortgage amount.

(iv) HUD will announce its determination to require additional value documentation through issuance of a **Federal Register** notice. The requirement for additional value documentation may be established either on a nationwide or regional basis. Further, the **Federal Register** notice will specify the percentage increase in the re-sale price that will trigger the need for additional documentation, and will specify the acceptable types of documentation. The **Federal Register** notice may also exclude re-sales of less than a specific dollar amount from the additional value documentation requirements. Any such **Federal Register** notice, and any subsequent revisions, will be issued at least thirty days before taking effect.

(v) The level at which additional documentation is required under § 203.37a(b)(4) shall supersede that under § 203.37a(b)(3).

(5) *Re-sales occurring more than 12 months following acquisition.* If the re-sale date is more than 12 months following the date of acquisition by the seller, the property is eligible for a mortgage insured by FHA.

(c) *Exceptions to time restrictions on re-sales.* The time restrictions on re-sales described in paragraph (b) of this section do not apply to:

(1) Re-sales by HUD of Real Estate-Owned (REO) properties under 24 CFR part 291 and of single family assets in revitalization areas pursuant to section 204 of the National Housing Act (12 U.S.C. 1710); and

(2) Re-sales of properties purchased by an employer or relocation agency in connection with the relocation of an employee.

(d) *Sanctions and indemnification.* Failure of a mortgagee to comply with the requirements of this section may result in HUD requesting indemnification of the mortgage loan, or seeking other appropriate remedies under 24 CFR part 25.

■ 3. Amend § 203.255 as follows:

■ a. Revise paragraph (b)(1);

■ b. Redesignate paragraph (b)(13) as (b)(14); and

■ c. Add a new paragraph (b)(13) to read as follows:

§ 203.255 Insurance of mortgage.

* * * * *

(b) * * *

(1) Property appraisal upon a form meeting the requirements of the Secretary (including, if required, any additional documentation supporting the appraised value of the property under § 203.37a), or a HUD conditional commitment (for proposed construction only), or a Department of Veterans Affairs certificate of reasonable value, and all accompanying documents required by the Secretary;

* * * * *

(13) The documentation required under § 203.37a providing that:

(i) The seller is the owner of record; and

(ii) That more than 90 days elapsed between the date the seller acquired the property (based upon the date of settlement) and the date of execution of the sales contract that will result in the FHA mortgage insurance.

* * * * *

Dated: February 7, 2003.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 03–10778 Filed 4–30–03; 8:45 am]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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